

NO. 125017**IN THE SUPREME COURT
OF THE STATE OF ILLINOIS**

DENNIS TZAKIS, ZENON GIL, CATHY) Appellate Court, 1st District,
PONCE, ZAIA GILIANA, JULIA) Case No. 17-0859;
CABRALES, and JUAN SOLIS, on Behalf) 2019 IL App (1st) 170859
of Themselves and All Other Persons)
Similarly Situated,) Circuit Court of Cook County
A Proposed Class Action,) No. 2009 CH 6159-09/13/2008
Plaintiffs- Appellees-Cross-Appellants,) Cabrales-10CH38809-7/24/2010
v.) Huynh-11CH29586-7/23/2011
MAINE TOWNSHIP, METROPOLITAN) Giliana-13CH10423-4/18/2013
WATER RECLAMATION DISTRICT OF) Solis-14CH06755-6/26/2013
GREATER CHICAGO, and THE CITY OF) and 5/12/2014
PARK RIDGE,) (consolidated)
Defendants-Appellants-Cross-Appellees)
And) The Honorable Sophia H. Hall,
ADVOCATE HEALTH AND HOSPITALS) Trial Judge Presiding
CORPORATION d/b/a Advocate Lutheran)
General Hospital,) Prior 1st District Decision:
Defendant in Trial Court,) 2015 IL App (1st) 142285-U
And)
BERGER EXCAVATING) Related Petition for Leave to
CONTRACTORS, INC.; COOK COUNTY;) Appeal filed by Plaintiffs-
GEWALT HAMILTON ASSOCIATES,	— Appellees 7/5/2019 - No. 125023
INC.; THE VILLAGE OF GLENVIEW;	
and THE VILLAGE OF NILES;	
Dismissed Defendants	

BRIEF OF APPELLEES. CROSS-RELIEF REQUESTED.**ORAL ARGUMENT REQUESTED.**

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PLAINTIFFS-APPELLEES' RESPONSE BRIEF "POINTS AND AUTHORITIES"

Note: All Sections Refer to the Tort Immunity Act 745 IL ST CH 85 §1-101.1 et seq. as set forth in the Appendix containing full citations unless otherwise stated .

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PLAINTIFFS-APPELLEES' CROSS-BRIEF "POINT AND AUTHORITIES"

Note: All Sections Refer to the Tort Immunity Act 745 IL ST CH 85 §1-101.1 et seq. as set forth in the Appendix containing full citations unless otherwise stated .

I. PLAINTIFFS ARE ENTITLED TO RECOVER DAMAGES ARISING FROM THE LPEs' CREATION OF AN ARTIFICIAL DANGER ON PROPERTY IN THEIR POSSESSION AND, THEREFORE, THE APPELLATE COURT ERRED IN DISMISSING COUNTS 25, 45 AND 64 OF PLAINTIFFS' COMPLAINT.....73

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BRIEF OF PLAINTIFFS-APPELLEES

PLAINTIFFS-APPELLEES' RESTATEMENT OF THE ISSUES PRESENTED IN

1. Whether Plaintiffs are entitled to the application of *Coleman* to this case where (a) Plaintiffs' cause of action arose 3 months after the cause of action arose in *Coleman*, (b) Plaintiffs action against the LPEs was filed after the *Coleman* case was filed, (c) Plaintiffs have, as the plaintiff in *Coleman*, also challenged assertion of the Public Duty Rule from the inception of this case, and (d) this Court abolished the Public Duty Rule in *Coleman* while the applicability of the Rule was an issue still pending before the Circuit Court in this case.

2. Whether, in the event this Court holds the *Coleman* decision should not be "retroactively" applied to this pending case, Defendants are entitled to assert the Public Duty Rule when the Public Duty Rule has never been considered in the context of a public improvement.

3. Whether Plaintiffs are entitled to recover compensation for taking of their property and/or consequential damages under **Article I, Section 15 of the Illinois Constitution** from the local governments where (a) the LPEs' created the stormwater sewer system whose operation was the substantial cause of Plaintiffs' losses, and (b) the catastrophic stormwater intrusion into Plaintiffs' homes occurred due to conduct for which the LPEs are expressly liable and excluded from immunity under Section 3-102(a) and 3-103(a) of the Tort Immunity Act.

NATURE OF THE ACTION.

Contrary to the Decision's focus, the Plaintiffs aver that the proper subject public improvement is the Maine Township ("MT"), Park Ridge ("PR") and Metropolitan Water Reclamation District of Greater Chicago's ("MWRD") (collectively "LPEs") entire multi-town Prairie Creek Stormwater System ("PCSS"), not only the Advocate Hospital stormwater sub-system of the PCSS. See *Tzakis v. Berger Excavating Contractors, Inc.*, 2019 IL App (1st) 170859. Unlike the Advocate Appeal (*Tzakis v. Advocate Health and Hospitals Corp.*, 2015 IL App (1st) 142285-U), this LPE Appeal implicates all LPEs' stormwater sub-systems of the entire PCSS including their LPE basins. The PCSS consists of undersized stormwater basins and bottlenecking drains and sewer subsystems receiving upstream Niles, PR and MT stormwater flooding into to the downstream Robin-Dee-Community. Advocate's stormwater sub-system is one major sub-component. The PCSS is shown by the IDNR's 2002 Flood Inundation Map below (RA218):



JURISDICTIONAL STATEMENT

Plaintiffs agree adding that jurisdiction for the Cross-Brief is predicated upon Rule 318(a).

CONSTITUTION AND STATUTORY PROVISIONS AT ISSUE.

The Takings Clause at ILCS Constitution Article I, Section 15 provides:

“Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.”

The relevant Tort Immunity Act provisions are set out in the Appendix (RA207-RA213).

I. COUNTER-STATEMENT OF FACTS ¹.

A. The LPEs' Multi-jurisdiction PCSS of Which Hospital Drainage Is One of Many Sub-systems.

Since the 1960s, the LPEs have induced the Plaintiffs' storm sewer system flooding by deliberately under-designing and deliberately neglecting to redesign the LPEs'-controlled multi-town, public Prairie Creek Stormwater System. In the early 1960s, the LPEs relocated the natural Prairie Creek flows into an artificial LPE-permitted channelized open drain between Points C1-C2 and Point E, which we refer to as the Robin Neighborhood Main Drain ("RNM Drain") (§26:RA14) and which traverses the middle of the Robin Alley-Robin Court Neighborhood as shown on the below RDC-NAD Map (RA218) which identifies these points. This Drain is capable of conveying a ten-foot (one-hundred-twenty-inch) diameter flow given that flow is conveyed through the 10' diameter Point D Robin Drive Culvert (§40,41:RA18) .

However, rather than increasing the Point E downstream intake sewer from ten feet to twelve feet or another larger diameter to receive ten feet of flow from the RNM Drain and added tributary flow Robin-Dee-Community (RDC) street sewers under Robin Alley, Robin Drive and Howard Court, the LPEs connected this 10' Drain to the five foot (60") Dee Neighborhood Stormwater Pipe (DNS Pipe) at the Point E Howard Court Culvert. The Point E five-foot Culvert is both the discharge culvert of the ten-foot RNM Drain and the intake culvert of the five-foot DNS Pipe. (§43-46:RA18). Consequently, flow greater than a 5 foot diameter from the upstream Drain bottlenecks at the five foot diameter Pipe's

¹ "RA" refers to Plaintiffs-Appellees' Response Brief Appendix attached hereto. "A" refers to the Defendants-Appellants' Opening Brief Appendix. "C" refers to the Common Law Record.

and unable to store the LPEs' Flooding Upstream Stormwater from upstream PR, MT and Niles, which escaping upstream stormwater is a substantial cause of Plaintiffs' injuries.

Accordingly, the stormwater sewer system at issue is the LPEs' Prairie Creek Stormwater System ("PCSS"). It is understandable that the First District misfocused upon the "hospital drainage" subsystem which is a subsystem of the PCSS because the hospital drainage subsystem was the factual background giving rise Advocate's liabilities in *Tzakis v. Advocate*, 2015 IL App (1st) 142285-U. The First District adopted the facts of this first appeal without re-analyzing the Complaint for LPEs' stormwater structures.

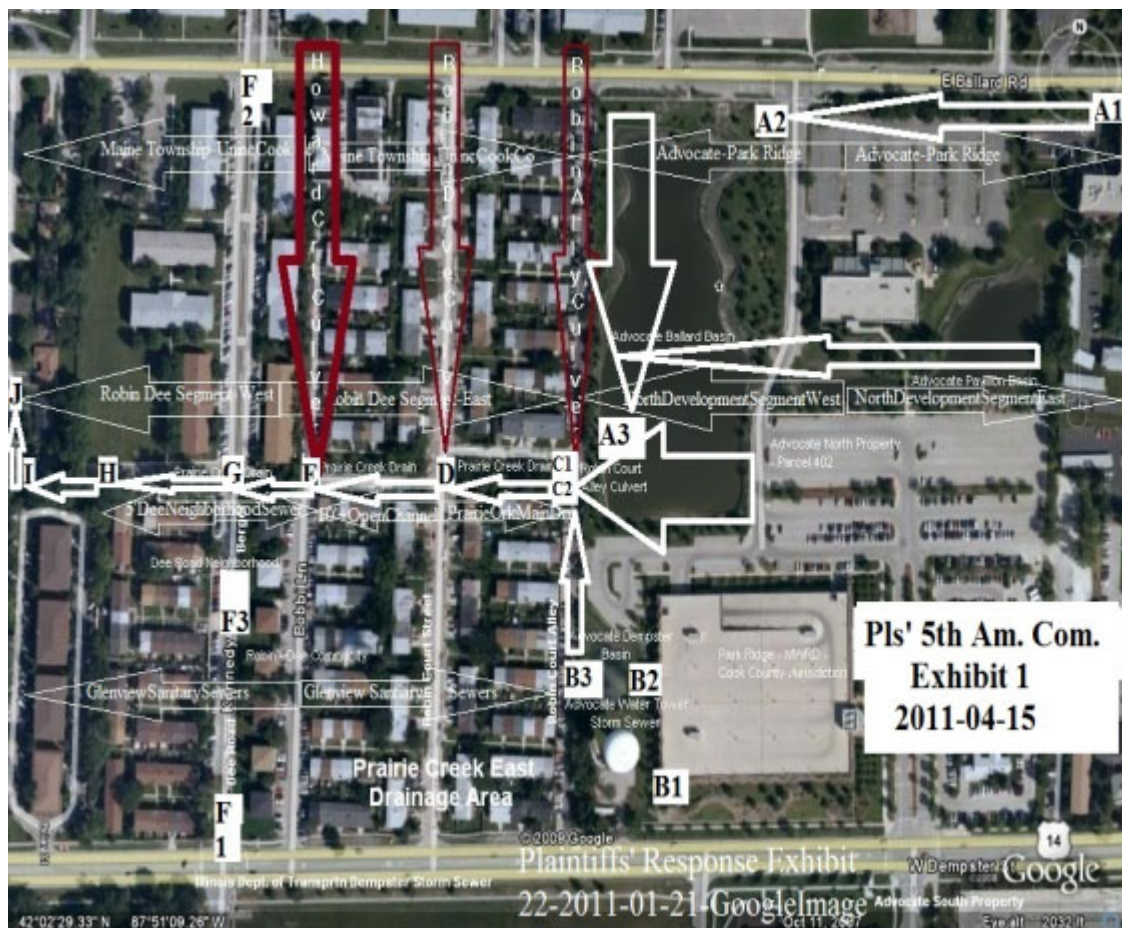
However, the drainage system at issue in this Appeal is the multi-jurisdictional, public Prairie Creek Stormwater System ("PCSS") spanning from Niles on the east through PR and MT to the Des Plaines River near the Tri-State (§25:RA15;RA218) , of which the "hospital drainage system" is a sub-segment. The LPEs collect public PCSS stormwater from "[T]he area upstream of the north campus detention pond, including the north campus itself, ... slightly less than one square mile" (RA148;§27:RA15)(herein "LPEs' Upstream Stormwater"). Critically, the predominating escaping stormwater is the LPEs' Upstream Stormwater.

B. The LPEs' PCSS.

The PCSS is the east-to-west stormwater sewer system paralleling Dempster and Church which extends from Niles east of Greenwood draining west past Potter in MT where it conjoins with the north-to-south Farmers Creek Stormwater System east of the Tri-State, then out falling into the Des Plaines River as shown below (RA217: IDNR 2002 Flood Inundation Map):



The above IDNR 2002 Flood Inundation Map shows how the LPE Flooding Upstream Stormwater and the Advocate Flooding Stormwater comingled to inundate the Plaintiffs' Robin-Dee-Community ("RDC"). The RDC is the flooded area north of East Maine High School: note soccer fields and oval running track contiguous to Dempster south of the RDC. In 2004, the IDNR proposed excavating the soccer fields to install a new retention basin capable of reducing RDC flooding by 84% (RA197; RA216 Diagram).



The LPE Flooding Upstream Stormwater Route A and the South Advocate Development Flooding Stormwater Route B (§25:RA15;§26:RA16) home-invade the Plaintiffs with stormwater through the following general mechanisms.

The LPE Upstream Flooding Stormwater Route A depicts the Route A PCSS basins, drains, sewers and culverts (§27.2:RA16) including the North-Advocate-Development (“NAD”) Ballard Basin (Point A3) and Pavilion Basin (east of the Ballard Basin (§27.1:RA16:“Point A on the north...North Development Main Drain...”) (the Route A basins referred to as the “BP Basins”). The LPEs’ NAD BP Basins are designed to collect the LPEs’ Flooding Upstream Stormwater within the PCSS sewer shed which stormwaters enter the NAD from both north at Point A2 and east about 100 yards south of Point A1.

This LPE Upstream Stormwater under non-flood conditions discharges the Route A Upstream Stormwater through Point A3 (§31:RA17:“...Ballard Basin stormwater discharge through Point A3, the Ballard Basin Discharge Culvert...”)(§31:RA17) as follows:

1. The Route A LPE Upstream Stormwater flows into and out of the BP Basins to five-foot Point A3 Ballard Basins Discharge Culvert: “...Ballard Basin stormwater discharge through Point A3, the Ballard Basin Discharge Culvert...” (§92:RA29); during flooding, the Point A3 Culvert is surcharged and stormwater sheet flows from the Basins into the Robin Neighborhood;
2. The Route B South Advocate Development (“SAD”) Advocate Stormwater enters the NAD from the SAD at Point B1 sewer flowing towards Point B2 Discharge Culvert; this Point B2 discharge culvert discharges South Advocate Development stormwater from the 96” Under-Dempster Stormwater Sewer into the Dempster Basin; this Dempster Basin stormwater is then designed to discharge by gravity through the 60” Point B3 Dempster Basin Discharge Culvert (§58:RA20); during flooding, Advocate Stormwater surcharges the Point B3 Culvert and overflows by sheet flow into the Robin Neighborhood;
3. Route A stormwater from the Ballard Basin discharges through the 60” Point C1 Culvert; and the Route B stormwater from the Dempster Basin is conveyed under Robin Alley to the 60” C2 culvert; the Point C1 Culvert receives Route A stormwater from the Point A3 Ballard Basin Culvert; and the Point C2 Culvert receives Route B stormwater from Point B3 by way of an underground 60 inch sewer between Points B3 and C2;

4. The Route A LPE Upstream Stormwater flowing to C1 and the Route B Advocate Stormwater flowing to C2 then generate up to 120" flow into the 10 foot wide Robin Neighborhood Main Drain ("**RNM Drain**"): the RNM Drain also receives stormwater from the street storm sewers within Maine Township under Robin Court and Robin Alley (§34:RA17); and
5. The combined Route A and Route B stormwater flowing from the 120" Point D Robin Court Culvert then bottleneck at the 60" Point E Howard Court Culvert, which is the intake culvert from the Dee Neighborhood Stormwater Pipe ("**DNSP**") depicted between Points E and H (§43:RA18); the DNSP also receives tributary flow from the Maine Township street sewers running under Dee Road at Points F1 through F3 to G from the south and at Points F2 to G from the north; and
6. These street tributary storm sewers reverse flow when the RNMD and DNSP, flooding Plaintiffs also.

Critical to understanding the substantial governmental cause of these stormwater sewer floodings is that, when the RNM Drain between Points C and E and the DNS Pipe between Points E and H are surcharged during flooding, these Maine Township tributary street sewers backflow/reverse flow stormwater into the below-flood-elevation townhomes and apartments of the Robin-Dee-Community. These street-sewer overflows are in addition to the other substantial and material overflows from the Ballard, Pavilion and Dempster Basins (PBD Basins) on the NAD and the contiguous open Robin Neighborhood Main Drain overflowing between Points C1/C2 and E, with all waters comingling and invading Plaintiffs' townhomes (§209.3:RA51).

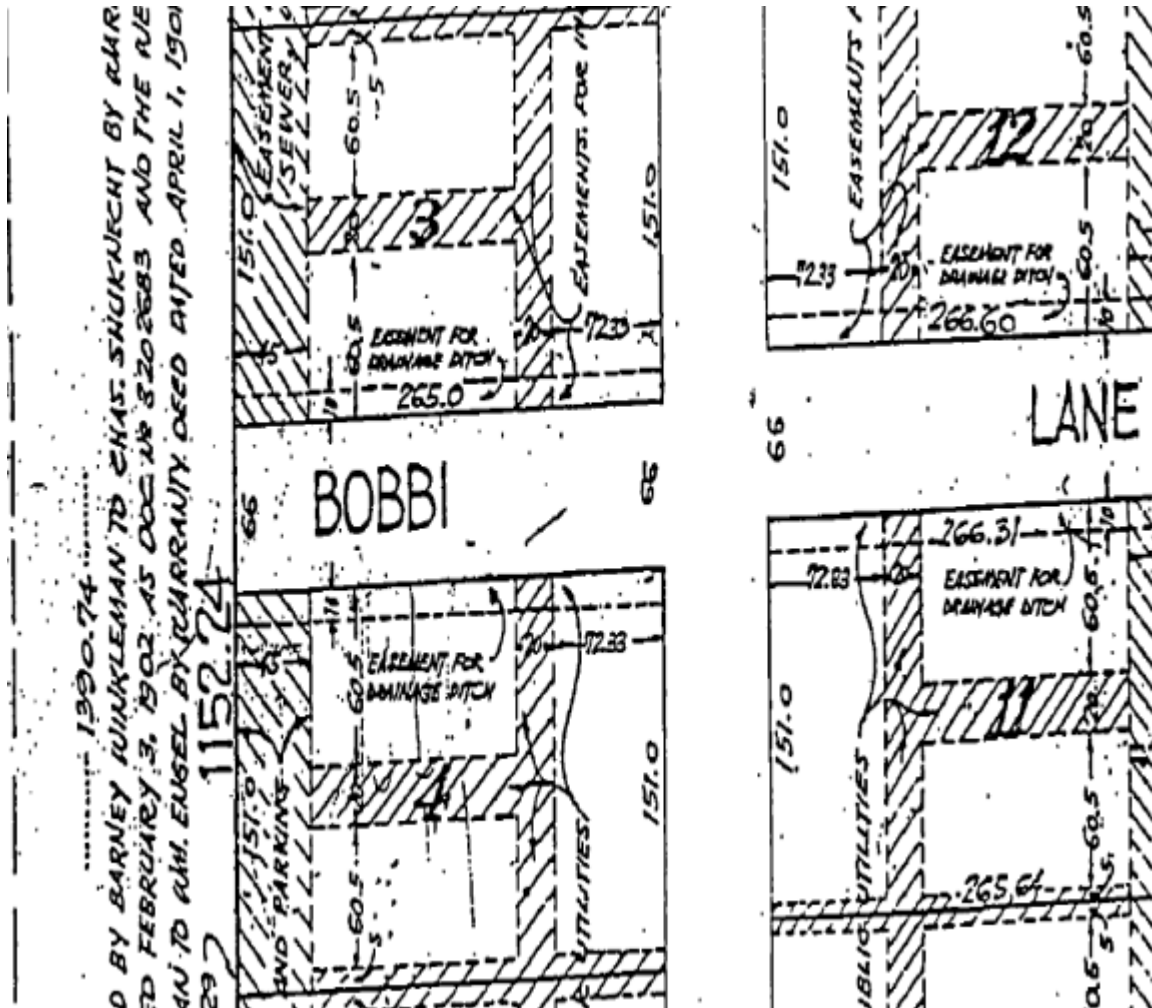
C. 1950s: The pre-development natural Prairie Creek.

In the 1950s, the Prairie Creek followed a natural, meandering route as depicted in the below Prairie Creek Pre-development Map, with the “Project Site” being the north-half of the North Advocate Development between Ballard and Dempster:



Prairie Creek Pre-Development Map (RA140: Prairie Creek Pre-Development Map-Exhibit2-16. See Complaint §III.B. ¶¶59 entitled “Pre-1960 Main Drain Natural Path Meandering Not Straight)

- D. The 1960s: The LPEs ceased using the Prairie Creek to convey Prairie Creek Upstream Flows, channelizing the Prairie Creek flows into the RNM Drain and DNS Pipe through the RDC.



RN Plat showing LPEs' Prairie Creek Channelization (RA186:Exhibit 21-417 Robin Neighborhood Plat).

The LPEs' permitting, supervision and control over the PCSS development began in the early 1960s as evidenced by the Robin Neighborhood Plat which was recorded around 1960 (RA186:Exhibit 21-418-Robin Neighborhood Plat Excerpts). The LPEs approved plat includes an easement showing the LPEs' ownership of the Robin Neighborhood Main Drain ("RNM Drain") operating between Points C1-C2 (¶¶33-

35:RA17-18) and Point E (§§40-42:RA18). The RN Plat Plan depicts “the existing straightened, man-made route Main Drain on which the Robin Neighborhood Main Drain was laid out ” (§62:RA221-22) thereby creating the channelized open drain with stormwater flowing from Points C1-C2 60” twin culverts through the Point D 120” Robin Drive Culvert before bottlenecking at the Point E 60” Howard Court Culvert per PR approval (§63:RA22;§64:RA22;§66:RA22-23).

In the early-to-mid 1960s, the LPEs assumed control which Plaintiffs allege as follows:

66.4. The District, Park Ridge, Maine Township, ... were permitted and/or authorized by the MD Drainage Easement to construct, build, improve... related to or arising out of the ownership and/or operation of the Robin Neighborhood Main Drain *. (§66:RA22-23).

Similarly, the LPEs obtained a drainage easement for the Dee Neighborhood Stormwater Pipe and assumed operational control of the DNSP (§§73-84:RA25-26). In the early 1960s, to permit construction of the Robin-Dee Community (“RDC”) townhomes, apartments and condos, the LPEs ceased to use the Prairie Creek, completely abandoning the historical creek beds of the Prairie Creek as it meandered through the RDC.

To convey the abandoned Prairie Creek stream flows, the LPEs built a single main drain with two in-line components through the middle of the RDC.

The first LPE engineered and constructed stormwater conveyance structure will be referred to as the “Robin Neighborhood Main Drain” or “RNM Drain”. Please refer to the points on the RDC-NAD Map. The RNM Drain is a 10’ wide open channelized drain between Points C1/C2 to Point E. (§35:RA17). The major in-line culverts conveying RNM Drain flow from the Ballard and Dempster basins under non-flood rainfall conditions are:

- (1) the twin 5’ diameter C1-C2 Discharge Culverts under Robin Alley, the C1 Culvert discharging flows from the Ballard Basin via the Ballard Basin’s A3

Discharge Culvert and the C2 Culvert discharging flows from the Dempster Basin B3 Culvert;

(2) the single 10' diameter Culvert at Point D under Robin Drive receiving the upstream flows from C1/C2; and

(3) the single 5' diameter Point E Bottlenecking Howard Court Culvert which is simultaneously the RNM Drain Discharge Culvert and the Dee-Neighborhood-Stormwater-Pipe Intake Culvert ("DNS Pipe")

The second LPE engineered and constructed stormwater structure was is the DNS Pipe. The DNS Pipe is underground enclosed 60" storm sewer pipe between Points E (§43:RA18) discharging at H into an open drain meander west and north to Potter.

These two LPE PCSS Main Drain components straightened the route of upstream stormwater in the late 1950s or early 1960s to allow for RDC townhome construction "The Prairie Creek has been converted by urbanization including public improvements such as channelization in the Robin-Dee-Community to a stormwater drain..." (§84:RA27).

E. The LPEs deliberately permitted the construction of Plaintiffs' townhomes two-three feet below BASE FLOOD ELEVATION.

One of the most substantial, consequential series of LPE governmental actions occurred in the 1960s when the LPEs permitted construction of the Plaintiffs' 48 plus townhomes **"two to three feet below the Base Flood Elevation ("BFE")** in both the Robin Neighborhood and the Dee Neighborhood. In 1994, Advocate Engineer Hamilton explicitly told MWRD Engineer Jackson that the Plaintiffs' townhomes were **"on the order of 2 to 3 feet below Base Flood Elevations (BFE)"** and that the LPEs' channelization (RNMD and DNSP) was **"restricted"** in 1994 causing RDC flooding (RA143-144:1994AdvocateEngineerHamilton-to-MWRD-Jackson-Letter):

History

This channel was once an open channel flowing west from Greenwood across Lutheran General Hospital on about its current path and continuing west. Three major changes have occurred, changing its character: ...

2. **The downstream housing was constructed directly in the historic path to the north. The structures are on the order of 2 to 3 feet below the Base Flood Elevations (BFE) and the reroute was in a small (60") CMP with very limited capacity. Other downstream restricted sections were also constructed.**²
(Emphasis added.)

F. 1970s:LPEs knew of RDC flooding.

In the 1970s, the MSD was stamping all permits issued to the PR-Advocate public-private partnership for the North Advocate Development and South Advocate Development within the NAD-RDC area with the following warning (RA139:Exhibit 2-5: 1976 MSD Flood Warning) :



1976 MSD Warning Stamp.

The RDC likely experienced flooding as soon as Plaintiffs' townhomes had been built in the LPE-abandoned Prairie Creek's creek bed 2-3 feet below base flood elevation. In 1976, Park Ridge had full knowledge that Plaintiffs were in a "Flood Hazard Area" because they executed Permit 1776-773 for North Advocate Development as follows (RA146:Exhibit 2-119:PR-AdvocateEngineeringCertificationsForPermit1976-773):



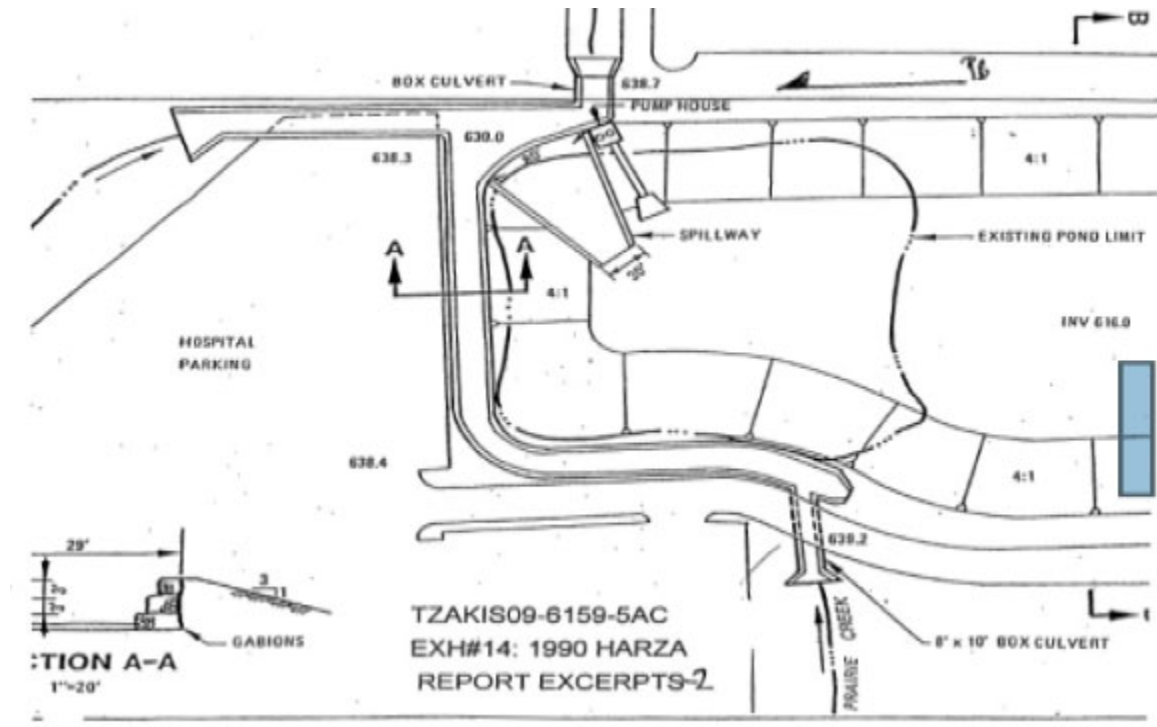
Also, by 1976, the Illinois Department of Transportation issued and recorded a similar flood hazard warning for the RDC-NAD lands (§§109-111:RA31-32).

In 2006, Advocate Engineer Hamilton told the MWRD that LPE Upstream Route A flooding stormwater combines with Advocate SAD flooding stormwater to form a single pond” with “one water surface” at “flood stage” in the **LPE authorized “design condition, as it has been for 30 years”** (RA148.1-148.2:Exhibit 9–226-2006-03-17-Hamilton to MWRD Letter). Plaintiffs refer to this 84” sewer as the “Dempster Basin Stormwater Sewer” (§134:RA37;§160:RA39) conveying SAD Stormwater:

.... Apparently, in 1976-1981, they considered this to be a single pond, since there was one water surface at the 100 year level....the entire area is in flood stage – overbanked in the design condition, as it has been for 30 years.

Hamilton’s 2006 Flood History

G. 1980s Floodings and Harza Study.



1990 HARZA'S PUMP DOWN PLAN (RA149: Exhibit 14-332, 1990 Harza Report Excerpts).

In 1990, the Harza Report commissioned by the LPEs in investigate the flooding problem noted:

Extensive flooding damages in the Prairie Farmers Creek watershed have occurred in 1986, 1987 and 1989...lesser damages have occurred periodically...

(RA154: Exhibit14-340, 1990 Harza Report Excerpts)

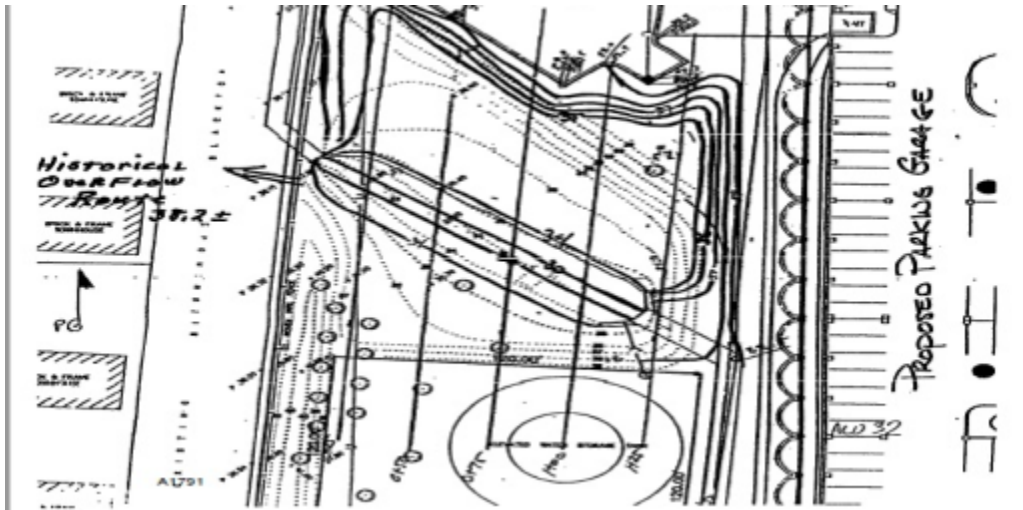
Based upon that investigation, Harza recommended that the LPEs engage in pre-storm basin pumping-down:

Lutheran General Reservoir. A...reservoir...is planned for the area south of Ballard on Lutheran General Hospital....The facility would include...a 15 cfs dewatering pump station designed to evacuate the reservoir in a 48 hour period.

(RA167: Exhibit14-361, 1990 Harza Flood Study Recommendation; RA149: Exhibit14-335).

H. 1990s:MRWD knew of Route B SAD Flooding.

The MWRD knew in 1994 of the “historic overflow route” of **Route B SAD Advocate Flooding** because MWRD Engineer Jackson told Advocate Engineer Hamilton of the Route B Flooding. Hamilton penned in a note of the Route B on a North Parking Garage blueprint after being told by MWRD Engineer Jackson of this “historical overflow route” flooding Plaintiffs:



HAMILTON HISTORICAL OVERFLOW MAP (RA145:Exhibit4–106.)

Points B1, B2 and B3 of the RDC-NAD Maps show the route of SAD (“SAD”) Stormwater being also a material cause of Plaintiffs’ flooding. The SAD is south of Dempster in relationship to the NAD (RA188: Exhibit 25-2004 Gewalt Plan; RA189: Exhibit 27-433:2007 Gewalt Plan) flooding Plaintiffs from the bottlenecked five-foot Point B3 Dempster Basin Discharge Culvert from the eight-foot Point B2 Dempster Basin Intake Culvert (¶¶128-129:RA35-36.)

I. IDNR 2002 Flood Inundation Map.



2002 FLOOD INUNDATION MAP.

(RA217:Exhibit 17-384-A-IDNR's 2002 Flood Inundation Map)

The RDC was again catastrophically flooded on August 22-23, 2002 (¶127:RA35). With the LPEs' involvement, the IDNR studied and developed the above 2002 Flood Inundation Map: Plaintiffs' RDC is located north of the High School running track. The IDNR further called for the construction of a new retention basin, excavating the adjacent High School soccer fields as "[T]his alternative would benefit all 48 flood prone structures along Lower Prairie Creek by reducing average annual flood damages 84% overall in that reach"(RA197; RA216: Exhibit 17-2004 IDNR Flood Study – Alternative S-4-Lutheran General Hospital Pond and High School Reservoir.)

J. Manageable Runoff.

Year-after-year between 2002 and the September 13, 2008, the LPEs deliberately decide not to make any improvements to their PCSS. As Plaintiffs allege at Paragraph 183 of their Complaint, the LPE decisions not to redesign their PCSS inevitably caused the RDC to suffer the *Tzakis*-occurrence catastrophic home-invasive flood in 2008. (¶¶181-183:RA45). Plaintiffs further allege this rainfall runoff was manageable and not an “act of God”:

186. The rainfall and its associated stormwater...and the resulting runoff was a stormwater runoff which could have been properly managed by this Defendant. (¶185:RA46.)

187. This rainfall and its associated stormwater... were not an “Act of God” rainfall or stormwater runoff... (¶¶184-187:RA45-45.)

K. LPE Route A Upstream Flooding and LPE-Advocate Route B SAD Flooding comingle.

LPE Upstream Stormwater Route A Flooding consists of the north upstream and east upstream LPE stormwater of the PCSS from PR, MT and Niles which flood the Plaintiffs’ Robin-Dee-Community. The flooding occurs from Route A overland Basins flooding, Points A3-C1-D-E-G-H-I-and-J drain and sewer surcharging flooding and reverse street sewer surcharging flooding through the Maine Township stormwater sewers. **South Advocate Development Route B Advocate Flooding Stormwater** is the “historic overflow route” of SAD stormwater per **Exhibit 4-106– Hamilton’s Historic Overflow Map** (RA45)(¶¶128-129:RA35-36).

In 1990, Harza reported that PR and MT along with other local corporate entities were responsible for the flooding drainage systems located within their jurisdiction, explaining how MWRD main stem flooding contributes to localized PR and MT flooding

(RA162). According to Harza, the inter-relatedness between PR and MT's local systems and the MWRD Main Drain required development of a collective, system-wide remedy (RA154).

- L. LPE Route A NOTE: POINT A1 AS A POINT OF STORMWATER ENTRY ONTO THE NAD IS INCORRECT: the actual correct entry of LPE upstream stormwater is further south of Point A1 at the white arrow below the Pavilion shown in the RDC-NAD Map stormwater predominate.**

The Ballard and Pavilion Basins are surcharged with LPE Upstream Route A Stormwater originating from the multi-town one square mile upstream watershed:

**27. The PCSS receives.. stormwater runoff within the Prairie Creek Watershed (PCW), a watershed which exceeds 1 square mile upstream of the 60" Howard Court Culvert. (§27:RA15).
See also ¶210.3.**

The MWRD was told by Hamilton that the quantity of the Route A LPE upstream stormwater was a multiple of the SAD stormwater quantity; specifically, that the Route A contributing watershed flood waters were a more significant cause of stormwater flooding of Plaintiffs than the Route B SAD stormwater This is the Point B3 60" Dempster Basin Culvert bottlenecking flow from the Point B2 96" Under-Dempster Road Sewer transporting SAD stormwater into the Dempster Basin:

...This was prompted by a flood condition which occurred in June of 1994.

...The flood storage which was reduced in this area was quite minor, particularly as compared with the size of the contributing watershed, however, you were concerned none the less.

(RA45: Exhibit 4-101-Hamilton-to-Jackson Letter.)

The District and, by incorporation, the other LPEs, owned and controlled the “PWC Upstream stormwater” which caused the Plaintiff’s flooding. (See ¶¶986,987,989:RA96.)

M. LPEs control stormwater.

The trespassory flooding stormwater is controlled by the LPEs:

457. This Defendant owned, operated, managed, maintained and/or controlled drainage components and/or drainage structures...including the Ballard Basin, Pavilion Basin and Dempster Basin from which the nuisance of excess accumulated stormwater invaded the...Plaintiff Class’. ...
[¶¶455-462]

N. LPE Bottlenecks.

RDC-NAD Map Points E, A3 and B3 identify the three primary bottlenecks:

- Point E Howard Court 60” Culvert bottlenecking 120” flow from the Point D Robin Drive 120” Culvert (¶¶41:RA18;¶209.2:RA50-51);
- Point A3 Ballard Basin 60” Culvert bottlenecking tsunami-like flows from the Ballard Basin (¶¶32:RA17;¶32:RA17); and
- Point B3 Dempster Basin 60” Culvert bottlenecking 96” Point B2’s 96” flow (¶¶197:RA48).

The LPEs attempt to drain through the Point E 60” Howard Court Culvert 120” of flow resulting in the Point E bottleneck. (¶¶44-45:RA18).

As for the Point A3 bottleneck, the 60” Point A3 Ballard Basin Discharge Culvert is surcharged by mini-tsunami-like flood wave action from the Ballard Basin, causing bottlenecking at Point A3 and its downstream culvert Point C1, with excess accumulated stormwater overflowing into the adjacent Plaintiffs’ townhomes along Robin Alley and Robin Drive. (¶¶196:RA48).

Similarly, the Point B3 60” Dempster Basin Discharge Culvert bottlenecks the Point

B2 84” Dempster Basin Stormwater Sewer Subsystem Discharge Culvert flow from Advocate’s South Development (¶197:RA48).

O. District owns PCSS.

The District is ultimately responsible for stormwater management within Cook County based upon Public Act 93-1049 (¶546:RA80). Plaintiffs further alleged :

969. ...As the regional local public entity charged with multi-jurisdiction operation of stormwater management, the District owns and/or controls all drains, basins, structures, components and other stormwater improvements within the public improvement referred to herein as the “Prairie Creek Stormwater System” (“PCSS”) of the Prairie Creek Watershed (“PCW”).

¶969:RA93.

Specific PCSS North Development Segment stormwater structures such as the Basins (¶971.1) and the downstream PCSS Robin-Dee-Community Segment (¶971.2) in addition to the entire length of the PCSS (¶971:RA93-94) are owned by the District (¶26:RA15).

P. PR controls the Basins.

Park Ridge owns and controls the Basins as well as the North Development Main Drain (¶1161:RA112). Park Ridge admitted ownership of NAD-BPD Basins:

“Owner of Local Sewer System: CITY OF PARK RIDGE”

This above line is from Permit 94-530:

CERTIFICATE BY MUNICIPAL OR SYSTEM ENGINEER: The application and the drawings, together with other data being submitted with this application, have been examined by me and are found to be in compliance with all applicable requirements. The manner of drainage is satisfactory and proper. The existing local sewer system to which the project discharges has been examined and the system is found to be adequate to transport the wastewater that will be added through the proposed sewer without violating any provisions of the Illinois Environmental Protection Act or the rules and regulations thereunder.

Comments, if any: _____

Owner of Local Sewer System: CITY OF PARK RIDGE

Municipal Engineer: JOE SACCOMANNO Telephone: (708) 381-5246

Address: 505 BUZLER PLACE City: PARK RIDGE, IL. Zip: 60068

 Signature: Joe H. Saccomanno Date: 10/25/19
(Name and Title)
JOE SACCOMANNO, CITY ENGINEER

NAD GARAGE PERMIT

(RA146: Exhibit 4 – 119- PR-NDP Garage Permit 94-530).

Q. MT controls MT Point E bottlenecking culvert.

Maine Township is the owner of the 60” Howard Court Culvert bottlenecking the 120” flow from MT’s 120” Robin Drive Culvert conveying the Robin Neighborhood Main Drain from Points C1 and C2 into the 60” Dee Neighborhood Stormwater Pipe. (¶1279:RA125.1).

R. Repeated Flooding.

Those who have studied the PCSS sewer shed flooding have used the term “historical” to summarize the ongoing, continuing history of flooding including:

1. The 1986, 1987 and 1989 floods noted in 1990 by Harza (RA145:¶113;RA61);
2. The 1994 “Historical Overflow Route” at RDC-NAD Map Point B3 (RA143-144:Exhibits4-101,4-102); and
3. The August 22/23, 2002 flood (¶¶127-129:RA35-36).

Further, Plaintiffs specifically allege the *Cabrales* July 24, 2010 claim (¶533: SupC 156).

S. LPEs and Advocate are partners.

The partnership of the LPEs and Advocate is alleged at Paragraph 25 which states:

“Over the decades Park Ridge, the County, Maine Township, and the District...in coordination with their **private partners including Advocate... developed ...“PCSS”....**” (§25:RA15).

T. Only lower-elevation Plaintiffs.

Finally, the 2002 Flood Inundation Map (RA217) demonstrates that only the down-sewer-stream, below-base-flood-elevation creek bed Plaintiffs were flooded (RA185).

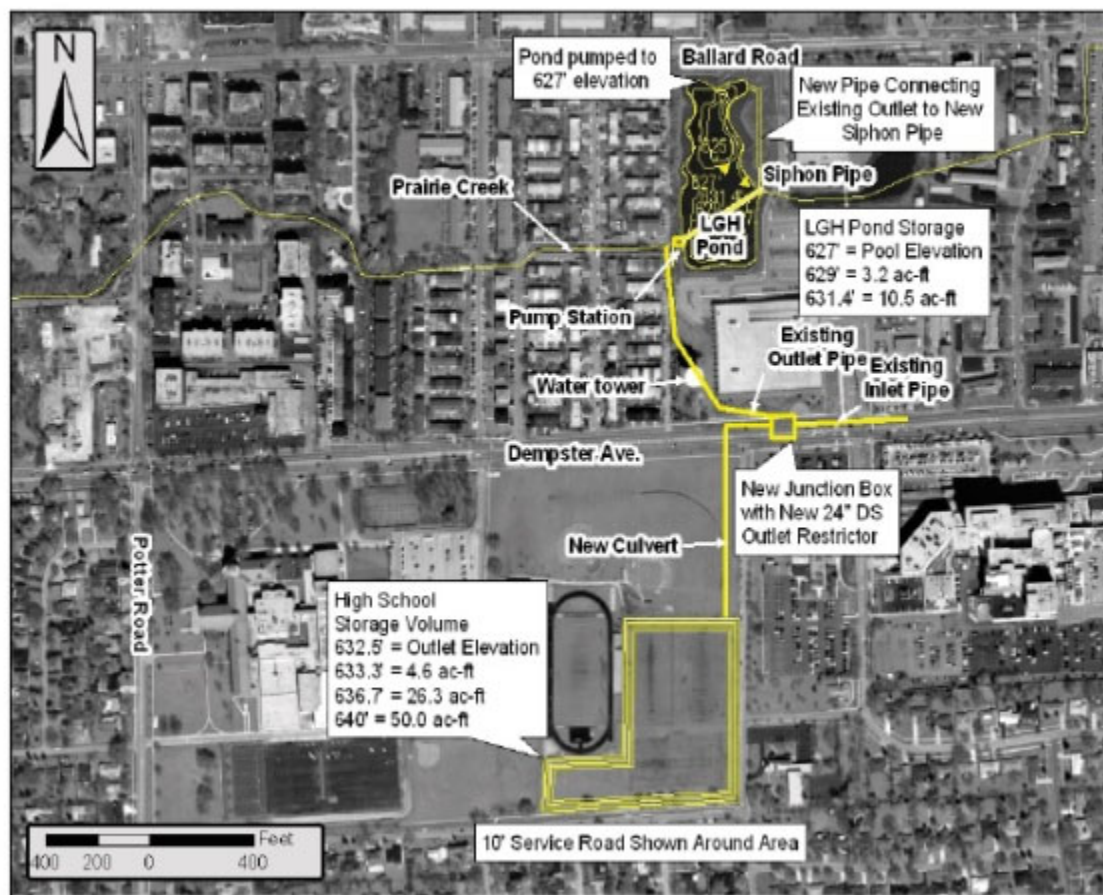
“Not even a single drop of water invaded any part of Advocate’s Medical Pavilion located less than 15 yards from the Pavilion Basin.”

(¶621:RA90). Advocate has elevated all of its structures above base flood elevation, ensuring that Advocate does not flood as evident from the 2002 Flood Inundation Map (RA217). Thus, it was elevation, not rainfall, that caused the catastrophic flooding of Plaintiffs’ homes.

U. LPEs could reduce flooding by 84% per IDNR high school soccer field retention basin.

In 2004, the INDR recommended that the LPEs improve their PCSS by constructing a new retention basin on the East Maine Township High School soccer fields, which basin would reduce flooding by 84% (RA179-180;RA216):

Exhibit 9: Alternative S4 - Lutheran General Hospital Pond and High School Reservoir



ARGUMENT IN RESPONSE TO APPELLANTS' JOINT BRIEF

The Appellate Court ruled that *Coleman v. East Joliet Fire Protection District*, 2016 IL 117952 (2016) which abolished the Public Duty Rule (“PDR”) was retroactively applicable to this case and, on that basis, reversed the Trial Court’s dismissal of the Plaintiffs’ Complaint under the PDR. The Appellate Court further held that Plaintiffs Complaint properly stated a Takings claim under **Article I, Section 15 of the Illinois Constitution** and Defendants’ claims of immunity under the Tort Immunity Act did not provide an alternate basis for dismissal. This Court should affirm the First District Appellate Court as to these issues. Alternatively, this Court should hold that, even if the *Coleman* decision were not applied to this case, (1) the PDR is not a bar to a taking or consequential damages claim under Illinois Constitution Article I, Section 15 or (2) a claim arising out an injury caused by a defective public improvement per *City of Chicago v. Seben*, 165 Ill 371 (1987).

I. **BASED UPON THE RATIONALE ENUNCIATED IN MOLITOR, PLAINTIFFS ARE ENTITLED TO AN APPLICATION OF THE COLEMAN DECISION TO THIS ONGOING CASE AGAINST THE LPEs.**

The LPEs argue at Page 24 of their Joint Brief that *Molitor v Kaneland Community Unit District No. 302*, 18 Ill.2d 11 (1959), a case where the Court ordered its abandonment of local governmental sovereign immunity apply only prospectively, and, therefore, is **most analogous to *Coleman’s* abolition of the public duty rule**” (emphasis added). The LPEs emphasize that the *Molitor* Court addressed “reliance upon an overruled precedent” and how its decision could cause “great hardship”. The LPEs then, quoting *Molitor*, state:

“To limit that hardship, the Court held that the abolition of sovereign immunity would ‘apply only to cases arising out of future occurrences’. *Id.* at 26-27.”

The LPEs interpretation of *Molitor* is not quite correct. This is what the Court in *Molitor* actually said:

“In here departing from stare decisis because we believe justice and policy require such departure, we are nonetheless cognizant of the fact that retrospective application of our decision may result in great hardship to school districts which have relied on prior decisions upholding the doctrine of tort immunity of school districts. **For this reason we feel justice will best be served by holding that, except as to the plaintiff in the instant case, the rule herein established shall apply only to cases arising out of future occurrences.** This result is in accord with a substantial line of authority embodying the theory that an overruling decision should be given only prospective operation whenever injustice or hardship due to reliance on the overruled decisions would thereby be averted.” *Molitor*, at 26-27.(emphasis added).

Thus, in *Molitor*, the new rule was not, as stated by the LPEs, limited “only to cases arising in the future” because it was applied to the underlying case upon remand. Equally important for purposes of this case, the LPEs also fail to mention the rationale the *Molitor* Court expressed to justify application of the new rule to the existing litigation despite the hardship it might impose on defendants. On that point, the Court stated:

“At least two compelling reasons exist for applying the new rule to **the instant case** while otherwise limiting its application to cases arising in the future. First, if we were to merely announce the new rule without applying it here, such announcement would amount to mere dictum. **Second, and more important, to refuse to apply the new rule here would deprive appellant of any benefit from his effort and expense in challenging the old rule which we now declare erroneous.** Thus, there would be no incentive to appeal the upholding of precedent since appellant could not in any event benefit from a reversal invalidating it.” *Molitor* at 28. (emphasis added).

That same rationale is implicit in the Court’s decision in *Coleman* where summary judgment in favor of the defendant fire protection districts was reversed and the case remanded so that plaintiff could proceed with his claims. That same rationale justifies an application of the *Coleman* decision to this case because plaintiff’s claims in *Coleman* and Plaintiffs’ claims in this case track a parallel timeline.

The cause of action in *Coleman* arose on **June 7, 2008** and the lawsuit was commenced against the fire protection districts on **April 29, 2009**. The cause of action in this case arose on **September 13, 2008** and this litigation against the LPEs commenced on **September 11, 2009**. Thereafter, the defendants in *Coleman* and the LPEs in this case each filed motions based on the PDR. In *Coleman*, the Trial Court granted defendants' motions for summary judgment on May 16, 2012, some 3 years after the litigation began, and it was that dismissal, with prejudice, which triggered the appeal culminating in this Court's decision on January 22, 2016.

In this case, on the other hand, Plaintiffs initially repelled the LPEs' first attack under the PDR when, on March 3, 2011, Judge Sophia Hall heard oral argument on the LPEs' various motions asserting the PDR and, more specifically, application of the PDR based upon the decision in *Alexander v. Consumers Illinois Water Co.* 358 Ill.App.3d 774 (3d Dist. 2005). While Judge Hall did not issue a ruling on that date and, instead, revised the briefing schedule pending Plaintiffs amending their Complaint, Judge Hall did provide some guidance to the LPEs' with respect to the PDR and the LPEs' possible reliance upon *Alexander* in any future motions, stating:

“I do not believe that *Alexander* furthers defendants' argument very far in nature of the limited decision that was presented by the Court”. (RA206, Lines 15-19).

Plaintiffs, thereafter, consistently maintained neither *Alexander* nor any other reported decision supported application of the PDR to the claims in this case and Plaintiffs have matched, motion-for-motion, their opposition to the LPEs' assertion of the PDR.

On July 25, 2014, Judge Hall ordered the LPEs to file Amended Motions To Dismiss, as the LPEs state at Page 18 of their Brief, in order “to update the case law”. (C1070). Thereafter, on April 3, 2015, the Circuit Court granted the LPEs' Section 2-615

motions to dismiss on the basis of *Alexander* and *Harinek v. 161 North Clark Street Ltd. Partnership*, 181 Ill.2d 335 (1998). That ruling, however, was not a final judgment so the LPEs moved for a Rule 304(a) finding. (C1910-1921, C2130-2162). While the LPE's Rule 304(a) motions were still pending, the Circuit Court requested further briefing and conducted a hearing on the issue of whether the April 3, 2015 ruling on the PDR should also apply to Plaintiffs' Taking claims under Article I, Section 15 of the Illinois Constitution. (C1924-1925, C22170). The Circuit Court never ruled on that issue and at the time of the *Coleman* decision on January 22, 2016, no final judgment had been entered against Plaintiffs' on any of their claims against the LPEs.

Based upon the foregoing, it cannot fairly be said that applying *Coleman* to this case would constitute a truly "retroactive" application when Plaintiffs' cause of action arose after that which gave rise to *Coleman* and the action against the LPEs was filed after the *Coleman* action was filed against the fire protection district. Moreover, as the *Coleman* case was proceeding through the appellate system up to, and including, the decision on January 22, 2016, Plaintiffs were engaged in an ongoing challenge to the PDR and the Circuit Court retained full jurisdiction over the entire litigation against the LPEs.

In this case, Plaintiffs have been challenging the PDR since the time the LPEs first presented their motions to dismiss in March 2010. The significant difference between this case and *Coleman* is that, unlike *Coleman*, the Circuit Court originally viewed the PDR, as applied by *Alexander*, not to be a bar to any of Plaintiffs claims. However, had Judge Hall viewed *Alexander* differently on March 3, 2011 and ruled in favor of the LPEs, Plaintiffs' action would have arrived prior to *Coleman* on this Court's doorsteps. The LPEs' argument begs the question: Should Plaintiffs be penalized because the LPEs failed

to convince the Circuit Court on March 3, 2011 that the PDR should be applied to Plaintiffs' claims in this case? Of course not.

Applying the rationale of *Molitor* to this case, it would be fundamentally unfair to deprive Plaintiffs of any benefit from their efforts and expense in challenging the PDR were this Court to reverse the Appellate Court and bar application of *Coleman* to this ongoing case. Furthermore, applying the *Coleman* decision while limiting its application to this ongoing litigation – litigation which commenced within the same year as *Coleman* -- during which Plaintiffs herein repeatedly challenged application of the PDR, does not expose the LPEs to any more hardship than that to which the defendants were exposed in both *Molitor* and *Coleman*.

LPEs, citing initially to *Molitor* at Page 22 of their Brief, state that “[i]f the Court undertakes a retroactivity analysis and finds a decision alters the law, the Court **nearly always** orders that it apply only prospectively” (emphasis added) and citing again to *Molitor*, the LPEs argue that “[i]t does so to avoid undue hardship or injustice”. Well, once again, that is not an accurate statement of the law because in *Molitor*, the Court held that justice would best be served by allowing the party who affirmatively challenged the existing law to benefit from the new rule pronounced by the Court and the Court did so knowing that allowing the plaintiff to proceed would create hardship on the governmental entity. The *Molitor* Court avoided imposing “undue hardship or injustice” by limiting application of the new rule to the instant case because it would be unfair to deny the benefits of that rule change to the party challenging existing law. Limiting application of *Coleman* to the specific circumstances of this case – a case where Plaintiffs have affirmatively challenged the PDR **during the same period *Coleman* was being litigated** and continue

to do so to the present day -- would achieve the same result.

Beyond *Molitor*, the LPEs cite to a plethora of other cases for the proposition that when a decision alters the law, the Court “nearly always” orders a prospective application and, therefore, there should only be a prospective application of the new rule abolishing the PDR in this instance. The underlying premise of the LPEs argument is fundamentally flawed because this case deals with the question of whether a decision in a specific case, namely *Coleman*, should be applied to Plaintiffs’ case where the new rule announced by *Coleman* abolishing the PDR was not limited to a prospective application. The question, therefore, is whether Plaintiffs in this case are entitled to benefit from the rule abolishing the PDR in the same manner as the plaintiff in *Coleman* was entitled to benefit from the new rule in that case. Plaintiffs should, under the circumstances of this case, be entitled to application of *Coleman* and none of the authorities cited by the LPEs would require a different result.

II. THE LPEs FAIL TO ESTABLISH THE FACTORS REQUIRED UNDER *CHEVRON* TO OVERRIDE THE PRESUMPTION THAT COLEMAN APPLIES RETROACTIVELY.

When a court issues an opinion, the decision is presumed to apply both retrospectively and prospectively. *Aleckson v. Village of Round Lake Park*, 176 Ill.2d 82, 85 (1997). In *Aleckson*, the Court described the two types of circumstances where that presumption can be overcome, stating as follows:

“First, the issuing court itself may expressly state that its decision will be applied prospectively only. See, e.g. *Molitor v. Kaneland Community Unit District No. 302*, 18 Ill.2d 11, 163 N.E.2d 89 (1959). Second, later court may, **under certain circumstances**, override the presumption by declining to give the previous opinion retroactive effect, at least with respect to the parties appearing before the later court.” *Aleckson* at 86 (emphasis added).

Here, the *Coleman* decision nowhere expressly states that it is to be applied only

prospectively. Therefore, *Coleman* is presumed to apply retroactively unless grounds exist to override that presumption.

When determining whether the presumption should be overruled, the *Aleckson* Court recognized that *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) was the seminal case concerning the prospective application of a civil decision. Here, the LPEs claim, beginning at Page 25 of their Joint Brief, that “a detailed analysis of the *Chevron* factors confirms that prospective only application of *Coleman* is the just result”. The LPEs are wrong in their analysis.

A. The LPEs Fail On The First Factor Because *Coleman*’s Abolition Of The PDR Did Not Overrule Clear Past Precedent Nor Was *Coleman* A Case Of First Impression As It Pertains To Plaintiffs’ Claims In This Case Because The PDR Has Never Been Applied To Those Claims

In *Aleckson*, the Court spoke to the first *Chevron* factor as follows:

“The first factor of the *Chevron* test is whether the decision to be applied nonretroactively established a new principle of law, **either by** overruling clear past precedent on which litigants have relied **or by** deciding an issue of first impression whose resolution was not clearly foreshadowed.” *Aleckson*, at 92 (emphasis added).

In other words, it’s not enough that a new principle of law was created in the prior case. Rather, the question is: what impact does that new law have on the litigant in the later case who is now trying to challenge the presumption of retroactivity. In *Aleckson*, the Court found that a prospective only application in the later case was warranted by the Appellate Court because it was “beyond dispute that plaintiffs relied on ‘clear past precedent’ when they filed their complaint in this action”. *Aleckson*, at 92.

In this case, there is no dispute that *Coleman*’s abolition of the PDR changed Illinois law. However, the LPEs cannot argue they ever relied on any “clear past precedent” overruled by *Coleman*, because the PDR has never been applied in the context

of a public improvement. The Appellate Court in this case correctly acknowledged that fact. See, Decision at ¶30. Furthermore, the PDR has never been applied to a takings claim or consequential damages claim under Article I, Section 15 of the Illinois Constitution. See, as an example of inapplicability, *Pineschi v. Rock River Water Reclamation District*, 346 Ill.App.3d 719, 726-727 (2nd Dist. 2004).

Furthermore, the MWRD cannot claim any reliance on the PDR to pass the first *Chevron* test when it never argued the PDR applied to a takings claim in *Hampton v. MWRD*, 2016 IL 119861. Indeed, nowhere in *Hampton* was the PDR issue discussed let alone decided. Likewise, in *Andrews v. MWRD*, 2019 IL 12483, there is no evidence that the MWRD raised PDR as a defense. Yet, another example of an LPE not relying on the PDR can be found in *Monson v. City of Danville*, 2018 IL 122486 where the City of Danville never raised the PDR though the injury occurred in 2013 thereby predating *Coleman*. The Plaintiffs are unaware of any other case in which an LPE litigant raised the issue of the PDR as applicable to a claim in the context of a public improvement and the LPEs have failed to cite to any prior case.

Nor can it be said that *Coleman* decided an issue of first impression because *Coleman* did not speak to, nor did it have to speak to, the issue of whether the PDR applied to claims for damages arising out of the LPE-owned, LPE-possessioned or the LPE-controlled public improvements. Likewise, *Coleman* was not called upon to address the issue of whether the PDR applied to a takings claim or a consequential damages claim under Article I, Section 15 of the Illinois Constitution. The LPEs, therefore, have failed the first *Chevron* test.

B. The LPEs Fail On The Second Test Because Retroactive Application Of *Coleman* Furthers The Purpose Of The *Coleman* Decision To Remove The Incompatibility Between The PDR And The Legislative Intent To Impose Liability Upon An LPE As Set Forth In The Tort Immunity Act.

The second *Chevron* test requires an evaluation of the new rule in terms of “whether retrospective operation will further or retard its operation.” *Aleckson*, at 93. That evaluation, in turn, requires an examination of the reasoning behind the Court’s creation of the new rule. In that regard, the Court in *Coleman* explained its reasoning as follows:

“We believe that departing from *stare decisis* and abandoning the public duty rule *and* its special duty exception is justified for three reasons: (1) the jurisprudence has been muddled and inconsistent in the recognition and application of the public duty rule and its special duty exception; (2) application of the public duty rule is incompatible with the legislature's grant of limited immunity in cases of willful and wanton misconduct; and (3) determination of public policy is primarily a legislative function and the legislature's enactment of statutory immunities has rendered the public duty rule obsolete. *Coleman* at ¶54 (*emphasis added*).

As to the second reason, articulated above, directed at how the Court believed application of the public duty rule has been, and would continue to be, incompatible with the Legislature’s grant of limited immunity, the Court stated the following:

“The legislature has deemed it appropriate to allow recovery in cases of willful and wanton misconduct. When the public duty rule is applied, however, a plaintiff is precluded from pursuing a cause of action for willful and wanton misconduct, in contravention of the clear legislative decision to allow recovery against the public entity in certain cases involving willful and wanton misconduct. The legislative intent is to impose liability upon public entities under circumstances of willful and wanton misconduct. **Thus, application of the public duty rule to preclude recovery is incompatible with the legislature's grant of limited immunity.**” *Coleman* at ¶58 (*emphasis added*).

This second reason for abolishing the PDR is directly applicable to this case and, thereby, requires the *Coleman* decision be applied both retroactively as well as prospectively.

In this case, the gravamen of Plaintiffs’ case is that they have suffered catastrophic damages as the result of the LPEs’ failure to exercise ordinary care to maintain their

property in a reasonably safe condition and, by their involvement in the construction of public improvements, the LPEs have created conditions that are not reasonably safe. Under Section 3-102(a), an LPE is, subject to actual or constructive notice, liable for breach of its duty to maintain its property in reasonably safe condition. Under Section 3-103(a), an LPE is liable where, by its construction of, or improvement to public property, it has created a condition that is not reasonably safe. Thus, in both circumstances, the Legislature has provided for only limited immunity.

The Legislature's intent to impose liability upon an LPE under those circumstances delineated in Section 3-102(a) and Section 3-103(a) is incompatible with an application of the PDR for exactly the same reason *Coleman* found the application of the PDR was incompatible with the Legislature's intent to impose liability upon an LPE under circumstances of willful and wanton misconduct. Therefore, retroactive application of *Coleman* would remove that incompatibility in this case and, thereby, further the underlying purpose of the decision.

As to the third reason articulated in *Coleman* regarding public policy, it is clear that by its enactment of statutory immunities and, in this case, limited immunities in those circumstances involving construction and maintenance of public improvements, the Legislature has exercised its function of determining what the public policy of the State of Illinois is, and must be, in those circumstances. That public policy would be entirely thwarted were the PDR allowed application to the Plaintiffs' case. Therefore, retroactive application of *Coleman* would further the public policy recognized by the Court and, thereby, further the underlying purpose of the decision. On the other hand, a failure to

apply *Coleman* to this case would subvert the underlying purposes for which *Coleman* abolished the PDR. The LPEs have, therefore, failed the second *Chevron* test.

C. Allowing The LPEs To Be Held Liable For The Catastrophic Damages Created By Their Public Improvements Would Not Be Inequitable Nor Cause Undue Hardship While Immunizing The LPEs Under The PDR Would Cause An Inequitable Catastrophic Loss To The Plaintiffs.

The third *Chevron* test requires an evaluation of “whether substantial inequitable results would be produced if the former decision is applied retroactively”. *Aleckson*, at ¶93-94. The LPEs claim in the caption to their argument at Page 28 of their Joint Brief that “[t]he LPEs and Other Municipalities Relied on the Public Duty Rule for Decades and Allowing Them to be Held Liable for Actions Taken When the Rule Existed Would be Inequitable and Cause Them Hardship”. In support of this argument, the LPEs cite to *Stigler v. City of Chicago*, 48 Ill.2d 20, 25 (1971); *Huey v. Town of Cicero*, 41 Ill.2d 361, 363 (1968); *Zimmerman v. Village of Skokie*, 183 Ill.2d 30, 32 (1998) quoting *Shaffrath v. Village of Buffalo Grove*, 160 Ill.App.3d 999, 1003 (1987) and *Harinek* apparently as being representative of their reliance. However, none of these authorities involve application of the PDR to a claim arising out of, or related to, a public improvement.

The LPEs do not cite, and cannot cite, to any such authority because, as noted above, the PDR has never been applied in the context of a public improvement as correctly acknowledged by the Appellate Court in this case. See, Decision at ¶30. As also stated above, the PDR has never been applied to a Takings claim or a consequential damages claim under Article I, Section 15 of the Illinois Constitution. The LPEs, therefore, cannot claim they ever relied upon the PDR with respect to the type of claims Plaintiffs bring before this Court.

The Appellate Court also noted that the LPEs reliance upon the PDR to support the

argument they shouldn't be exposed to the additional expense and time commitments of ongoing litigation was an "argument that presupposes that their actions were, in fact, covered by the public duty rule". In response to the LPEs' claim that in the absence of *Coleman*, this litigation would have ended long ago, the Appellate Court correctly stated:

"However, that overlooks the fact that it is not beyond dispute that the public duty rule would, in fact, apply. Plaintiffs likely would have appealed the trial court's April 3, 2015, dismissal even in the absence of *Coleman*, and we would have been asked to determine whether the public duty rule applies to the circumstances present in the case at bar. As discussed earlier in our analysis, this is not a question that has been considered by our supreme court, nor is it an area that has a clear answer at the appellate level." Decision at ¶46.

The fact that application of the PDR to the factual circumstances now before this Court, has never previously been considered by this Court and no Appellate Court has provided any clear answer, precludes any legitimate claim the LPEs have relied upon the PDR and, therefore, should not now be subject to application of the *Coleman* decision.

Furthermore, since the time Section 3-102(a) and Section 3-103(a) were first promulgated by the Legislature, the LPEs have always known they are not immunized – and therefore liable – for damages arising out of their failure to exercise ordinary care to maintain their property in a reasonably safe condition and, by their involvement in the construction of public improvements, they created conditions that are not reasonably safe.

On the other hand, Plaintiffs have suffered catastrophic damages arising out of unsafe conditions created by the LPEs' public improvements. Equally important, the LPEs were on direct and repeated notice, of the dangers they created and steps they could have taken to remove or significantly reduce the threat of catastrophic loss. The LPEs stood back and did nothing. The clear balance of the equities favor application of *Coleman* to this case. The LPEs have, therefore, failed the third and final *Chevron* test.

III. WHEN APPLIED TO THIS CASE, THE PUBLIC DUTY RULE DOES NOT, AND CANNOT, BAR PLAINTIFFS' CLAIMS.

The LPEs argue at Page 31 of their Joint Brief that the PDR precludes LPE liability because Plaintiffs' Complaint fails to allege facts "showing that the LPEs owed the Plaintiffs an individual duty" citing to *Harinek*, 181 Ill.2d at 345. The LPEs argument is fundamentally flawed because Plaintiffs' claims arise out of both the failure to maintain public property as well as the planning, design and construction of public property and it was that public property which created, what the LPEs always knew, was an unreasonable risk harm to the Plaintiffs. *Harinek* has nothing to do with public property and, therefore, does not address application of the PDR to the facts as they exist in this case, as the Appellate Court noted. Decision at ¶46.

Similarly, the LPEs' reliance on *Town of Cicero v. MWRDGC*, 2012 IL App (1st) 11264 is misplaced. *Town of Cicero* turned on the question of whether plaintiff's complaint stated a claim under Section 19 of the Metropolitan Water Reclamation District Act, 70 ILCS 2605/1. The plaintiff's complaint was not based upon any tort theory of liability. *Town of Cicero* at ¶41. The LPEs, nevertheless, quote from a footnote in the opinion where the First District Appellate Court states "the 'public duty' would appear to bar any such claims". The LPEs fail to fully quote the Court's entire statement. The footnote to Paragraph 41 of the opinion states in full as follows:

"Without deciding the issue, we note that the 'public duty rule' would appear to bar any such claims. See *Harinek v. 161 North Clark Street, Ltd. Partnership*, 181 Ill.2d 335, 345 (1998) (stating that under the public duty rule, a public entity may not be 'held liable for their failure to provide adequate governmental services')" (emphasis added).

It is clear from this footnote the Appellate Court was not deciding the issue, nor was it required to decide the issue, of whether the PDR applies to a flooding case. The

statement at footnote 4 is, therefore, mere dicta.

Finally, the LPEs' reliance on *Alexander* is equally misplaced. In *Alexander*, the plaintiff brought an action to recover for damages occurring from a sewage back-flow caused by a clogged private main sewer line servicing the plaintiff's home not owned by the LPE. The clog in the sewer line, however, was caused by debris created when a homeowner down the street was cleaning out their privately owned lateral line which ran from the homeowner's house to the main sewer line. Thus, because the Village did not own or control the sewer line, the incident did not arise from any failure by the Village to maintain its own property. Again, the main sewer line servicing the entire street was privately owned and operated by Consumers Illinois Water Company.

Thus, unlike this case, *Alexander* did not, in any way, involve the ownership, planning, design, construction, operation or the maintenance of any public property. Therefore, to the extent *Alexander* speaks to application of the PDR, it certainly does not stand for the proposition that the PDR can immunize the LPEs for their conduct in this case, namely the creation of a series of conditions they knew were capable of causing catastrophic flooding damages.

The LPEs attempt to apply the PDR, a judicially created immunity, to the facts of this case also violates the sovereign immunity and separation powers provisions of the Illinois Constitution. *Zimmerman v. Village of Skokie*, 183 Ill.2d 30 (1998). In *Zimmerman*, the plaintiff sought to recover damages against the Village of Skokie on behalf of an arrestee who became mentally disabled after attempting suicide while in police custody. In response to plaintiff's argument that the "special duty doctrine" negated the immunities provided under the Tort Immunity Act the Court held:

“Because the special duty doctrine is a judicially created exception to the public duty rule, the special duty doctrine cannot, and was not intended to, contravene the immunities provided to governmental entities under the Tort Immunity Act. Such operation constitutes a violation of the Illinois Constitutions provisions governing sovereign immunity (Ill. Const. 1970, art. XIII, §4) as well as the separation of powers (Ill. Const.. 1970, art II, §1).”

The Tort Immunity Act in certain specific instances, also codifies duties. For example, in *Monson*, the Court rejected defendant’s argument that the second clause in Section 3-102(a) operated as an immunity provision stating:

“... no court has held that section 3-102(a) grants immunity to municipalities. Rather, the courts of this state have uniformly held that section 3-102(a) merely codifies the common-law duty of a local public entity to maintain its property in a reasonably safe condition”. *Monson* at ¶24

Citing to *Wagner v. City of Chicago*, 166 Ill.2d 144, 151-152 (1995), the Court in *Monson* emphasized this principle by further stating:

“[T]he **language in section 3-102(a) is clear**: the city has a duty to maintain its property in a reasonably safe condition so that persons using ordinary care are not harmed.” (emphasis added).

Most recently, in *Coleman* this Court, citing to *Zimmerman*, noted that “the special duty exception to the public duty rule cannot override statutory immunities” and further held that “application of the public duty rule to preclude recovery is incompatible with the legislature’s grant of limited immunity”. *Coleman* at ¶¶ 57,58.

The same principle should also apply to this case. More specifically, application of the PDR is incompatible with the Legislature’s codification of duties codified in Section 3-201(a) and Section 3-103(a) of the Tort Immunity Act. It is the LPEs’ breach of their duty to maintain their property and the LPEs’ creation of conditions that are not reasonably safe that form the basis of Plaintiffs’ claims. Therefore, aside from the fact that the PDR has never been applied in the context of a claim arising out of a public improvement,

application of the PDR to the Plaintiffs' claims in this case would violate the sovereign immunity and separation clauses of the Illinois Constitution.

IV. THE LPEs OWE A DUTY UNDER THE COMMON LAW AND AS CODIFIED UNDER SECTION 3-102(a) AND SECTION 3-103(a) OF THE TORT IMMUNITY ACT TO REASONABLY MAINTAIN THEIR PROPERTY AND NOT CREATE A CONDITION THAT IS UNREASONABLY SAFE.

The LPEs argue at Page 34 of their Joint Brief that the magnitude of the burden of guarding against the injury which Plaintiffs have suffered and the consequences of placing that burden on the LPEs “weigh against finding that the LPEs owed Plaintiffs a duty of care”.

First, it is beyond any dispute that the LPEs owe a duty to the Plaintiffs under the common law and as codified under Section 3-102(a) and Section 103(a) of the Tort Immunity Act to act reasonably in the maintenance of their property and not create a condition that is unreasonably safe.

Secondly, the burden the LPEs now complain about is a burden they have chosen to put upon themselves by their knowing and deliberate breach of these duties. The LPEs' argument about “burden” is a deliberate act of misdirection. Plaintiffs are **not** asking this Court “to impose a duty **on all municipalities throughout Illinois** to ‘plan substantially before’ any rain event so that they maximize stormwater storage and to pump excess stormwater away” (emphasis added). Plaintiffs are **not** asking this Court “to order **municipalities, including the LPEs**, to deploy tremendous resources any time a predicted storm could overwhelm an existing system” (emphasis added). The Plaintiffs are asking this Court, under the facts of this case – facts which demonstrate the deliberate, knowing breach of duty by these LPEs – to hold these specific LPEs responsible for their specific

acts which have catastrophically damaged the Plaintiffs.

V. PLAINTIFFS' COMPLAINT PROPERLY ALLEGES A TAKINGS CLAIM AS WELL AS A CONSEQUENTIAL DAMAGES CLAIM UNDER ARTICLE I, SECTION 15 OF THE ILLINOIS CONSTITUTION.

Under Article I, Section 15 of the Illinois Constitution, Plaintiffs are entitled to recover compensation for the taking of, or damage to, their property. *Hampton v. MWRDGC*, 2016 IL 119861. LPEs argue that the Appellate Court was wrong in recognizing Plaintiffs' claim on the grounds that (a) a Taking claim requires government action be the only source of the invasion, (b) this Court should follow a "limited lockstep approach" and find Plaintiffs must assert affirmative governmental action, not merely inaction, to support their claim, and (c) the Tort Immunity Act bars Plaintiffs' Taking claims. The LPEs' argument ignores both the undisputed facts in this case and the law supporting Plaintiffs' claims.

A. Plaintiffs' Taking Claims Do Not Fail Because Of The Presence Of Private Entities Where The Intrusion Of Water Was A Probable Result Of Direct Action By The LPEs And Actions Directly Authorized By The LPEs.

The law is clear that a temporary flooding may constitute a compensable taking under Article I, Section 15 of the Illinois Constitution where **"the invasion of the property was intentional or whether it was a foreseeable result of an authorized government action"**. *Hampton* at 2016 IL 119861, ¶25 (emphasis added). In this case, the undisputed allegations of Plaintiffs' Complaint present facts which demonstrate a Takings claim as well as a consequential damages claim under the Illinois Constitution based upon government action in the following manner:

- A) **Point E 10' Drain-to-5' Pipe Bottleneck:** In the early 1960s, the LPEs governmentally acted to abandon the Prairie Creek and artificially redirect

the natural Prairie Creek flows from upstream Park Ridge, Maine Township and Niles into two man-made inline conveyance stormwater structures bottlenecking at their connection at the Point E culvert.

- B) **Permitted Townhome Construction:** concurrently with the construction of the above Drain and Pipe in the 1960s, the LPEs approved townhome construction in the abandoned creek bed two-to-three feet below flood elevation (RA143-144;RA217).
- C) **Ballard and Pavilion Basins:** the LPEs supervised and controlled, through their permitting process, the engineering and construction of the undersized Ballard and Pavilion Basins as integral stormwater storage components of the LPEs' multi-town PCSS to collect LPE upstream stormwater from Park Ridge, Maine Township and Niles: see the IDNR's 2002 Flood Inundation Map (R217;RA148;RA15).
- D) **Dempster Basin:** The LPEs supervised and controlled, through their permitting process the engineering and construction of the undersized Dempster Basin; the LPEs designed this basin as an integral part of the PCSS to collect South Advocate Development stormwater draining upstream from the Plaintiffs entering the NAD at Point B1, discharging into the Dempster Basin at Point B2 and then being conveyed by an under-Robin-Alley sewer from Point rough B3 for discharge into the 10 foot diameter Drain at Point C2 which, in turn, discharges into the smaller 5 foot diameter Pipe (RA20).

- E) **LPE Tributary Sewers:** Prior to, or in connection with, the construction of Plaintiffs' townhomes, the LPEs constructed sewers adjacent to those townhomes which, thereafter, served as the conduit to back-flow water directly into Plaintiffs' homes when the downstream bottleneck at Point E constructed by the LPEs caused sewer water to surcharge back to Points C1/C2 which, thereupon, also blocked drainage from the Ballard Basin, Pavilion Basin and Dempster Basin causing water to cascade over the basin walls into Plaintiffs' homes (§43:RA18;§209.3:RA51).

These undisputed facts demonstrate the LPEs' direct governmental action in the creation of the public improvement known as the PCSS collecting upstream public stormwater from Park Ridge, Maine Township and Niles and their direct responsibility for the inherent design defects in that stormwater sewer system.

In addition, the undisputed facts further demonstrate how the catastrophic losses Plaintiffs suffered from the invasion of sewer stormwater into their homes were a foreseeable result of that governmental action in the following manner:

- 1) By the mid-1970s, the LPEs had actual knowledge that the inherent designs of their existing stormwater structures were posing flooding risks to the Plaintiffs. The ongoing Robin-Dee-Community flooding was so evident that the MWRD stamped Park Ridge permits for the NAD and SAD with oversized letters: "Warning: Flood Hazard Area: Permittee Assumes All Liability" (RA139); indisputably, the LPEs had actual knowledge of Plaintiffs' flood risks by 1975; the LPEs knew then that, unless they improved the design capacity of their PCSS stormwater

structures, every stormwater structure design would pose an inherent risk of flooding the Plaintiffs;

- 2) By 1990, the LPEs knew what stormwater structure designs were necessary to prevent flooding per the 1990 Harza Report; the LPEs knew that the PCSS had less than a 5-year-rainfall return frequency capacity and far below the 100-year rainfall return per the Harza recommendations. (RA149,154,167). Specifically, the LPEs knew in 1990 per the Harza Report that the construction of a pump station and pre-storm pump down of the Ballard Basis was necessary to reduce the risk of catastrophic flooding inherent in the existing design of the PCSS; and
- 3) By 2004, the LPEs knew the proper design of PCSS components from the 2004 IDNR recommendations and further knew the most effective recommended improvement would be the construction of an additional new retention basin at the High School soccer fields which improvement would reduce flooding by a projected 84 percent (RA216).

The callous refusal of the LPEs to undertake any Harza or IDNR recommendation demonstrates a deliberate indifference and deliberate redesign neglect satisfying the elements required to support a Takings claim as well as a consequential damages claim under Article I, Section 15 of the Illinois Constitution.

Perhaps recognizing that, upon remand, the LPEs will never be able to refute the allegations of Plaintiffs' Complaint, they present a novel theory at Page 38 of their Joint Brief where, citing to *Sorrells* at ¶18, they argue that Plaintiffs' Taking claims must fail unless Plaintiffs can show "the LPEs actions were the **sole cause** of the alleged intrusion"

(emphasis added). Nowhere does *Sorrells* state an LPE's action must be the sole cause of a water intrusion in order to establish a Takings claim or a consequential damages claim. The LPEs argument mischaracterizes both the facts as well as the holding in *Sorrells* and is contrary to the law, including the authorities cited in that case.

In *Sorrells*, the plaintiffs' complaint was fatally defective because it "alleged that the **private development** as a whole caused the alleged unreasonable amount of surface water to drain onto their land from the detention and drainage basins." *Sorrells* at ¶30 (emphasis added). The Court went on to explain the basis for dismissal of plaintiffs' Takings claim as follows:

"Thus, the allegations of count IV of the third-amended complaint are insufficient to support plaintiffs' claim of a taking for public use where the alleged increased water drainage was coming from the entire development, including streets, through detention or drainage basins. The **development was not a public property** and the acceptance of the dedication of the streets inside the development does not give rise to a taking where the drainage was from the basins. In addition, **plaintiffs failed to allege that the water draining from the development onto their land, in an unreasonable amount and unnatural channels, was the intended or foreseeable result, in whole or part, of the City's actions rather than that of the development**" *Sorrells* at ¶32 (emphasis added).

Sorrells clearly recognizes that where the increase in water drainage is a "foreseeable result, **in whole or in part**" of a governmental action, the plaintiff has stated a Takings claim.

The plaintiffs failed in *Sorrells* because the stormwater drainage came from private retention basins which received only private subdivision stormwater. In this case, the PCSS is public property transporting not merely stormwater runoff from the Advocate Development property, but LPE stormwater upstream from Advocate encompassing a geographical area far greater than the Advocate property (¶26:RA15). Furthermore, the facts alleged demonstrate that the flooding which occurred from stormwater draining in

unreasonable amounts upon Plaintiffs' land was a foreseeable result, "in whole or in part", of the actions undertaken by the LPEs.

The drainage basins were built per plans and specifications approved by the LPEs and in the course of the permitting process, Park Ridge represented itself as being an "owner" of the basins. Unlike *Sorrells*, these basins were designed and constructed with the direct involvement of the LPEs because the LPEs intended these basins would be an integral part of the LPEs public stormwater system collectively known as the PCSS.

The LPEs argue at Page 39 of their Joint Brief that "Plaintiffs allege that the flooding initiated from these privately held detention basins and then overwhelmed the entire system". This is a mischaracterization of the facts. These are not private water retention ponds. The water which overflowed from the Ballard Basin and the Pavilion Basin was not stormwater runoff collected merely from the Advocate development. Instead, these basins – though located on private property – were constructed for the specific purpose of collecting LPE stormwater draining upstream from the Advocate development and not merely stormwater runoff from Advocate's North Development property (¶¶208-209:RA50-53).

Moreover, the LPEs are not relieved from liability merely because Advocate constructed the Ballard Basin, Pavilion Basin and Dempster Basin on its privately held land because the LPEs (MWRD and PR) exercised supervision and control over Advocate's construction of those basins through the permitting process and the work was performed for a public benefit. Compare, *People ex rel Pratt v. Rosenfeld*, 399 Ill. 247 (1948) (where the city contracted with the railroad to construct a viaduct under city

jurisdiction); *Maezes v. City of Chicago*, 316 Ill.App. 464 (1st Dist. 1942) (where sanitary district controlled construction of an interceptor sewer).

In addition, it was the LPEs who were responsible for changing nature by channeling what used to be the meandering Prairie Creek into the 120 inch underground Open Channel Prairie Creek Main Drain (located between Points C1/C2 and Point E on RA218). This culvert was built to accept discharge of stormwater from the Ballard Basin (which also accepts water from the Pavilion Basin) as well as stormwater discharged from the Dempster Basin. It was also the LPEs who built the 60 inch underground culvert known as the Dee Neighborhood Sewer (located at Points E through I on RA218) to accept the discharge of stormwater from the 120 inch culvert, thereby, creating the inherent bottleneck. (located at Point E on RA218). This LPE created bottleneck is a substantial cause of the flooding because it surcharges the system inhibiting the water from being discharged from the already undersized Ballard Basin, Pavilion Basin and Dempster Basin and, thereby, contributing to the cascading basin overflows that inundated the Plaintiffs' homes along with the stormwater surcharging through the street sewers immediately adjacent to Plaintiffs' homes.

The decision in *Ridge Line, Inc. v. United States*, 346 F.3d 1346 (2003), cited in *Sorrells* and relied upon the LPEs, also supports Plaintiffs' right to bring a Takings claims and a consequential damages claim in this case based upon the foreseeability that the LPEs' actions would cause increased stormwater runoff onto Plaintiffs' property. In *Ridge Line*, the plaintiff brought an action asserting that the increased stormwater drainage caused by the construction of Postal Service facility constituted a taking by the government of a water flowage easement entitling compensation under the Takings Clause of the U.S

Constitution. The Federal Circuit Court vacated the judgment entered in favor of the government and remanded the case with the following directions to the Court of Federal Claims:

“Here, since Ridge Line does not allege that the government intentionally appropriated its property, **on remand the court must first determine whether Ridge Line proved that the increased storm runoff was the direct, natural, or probable result of the Postal Service development**, rather than merely an incidental or consequential injury, perhaps compensable as a tort, caused, for example, by improvident conduct on the part of the government in managing its property. **Specifically, the court must determine whether the increased runoff on the claimant’s property was the predictable result of the government action.** See *Sanguinetti v. United States*, 264 U.S. 146, 149–50 (1924) (holding that no taking occurred where the claimant failed to show that increased flooding resulting from the governments construction of a canal was the direct or necessary result of the structure; [or] within the contemplation of **or reasonably to be anticipated by the government**)” *Ridge Line* at 1356. (emphasis added).

In this case, the LPEs have a serious problem, and they know it. The undisputed facts – facts they will never be able to refute on remand – demonstrate the LPEs were repeatedly warned that increased flooding would result if they continued to allow the planned improvements to the PCSS which included, among other things, the construction of undersized basins on the Advocate property along with a bottlenecked culvert system that would be incapable of safely collecting and discharging the LPE upstream stormwater. The facts in this case clearly establish (a) the existence of an inherent risk of flooding presented by the deliberate design, construction and maintenance of the PCSS system, and (b) damage to Plaintiffs’ property substantially caused by that inherent risk. See, *City of Oroville v. Superior Court of Butte County*, 7 Cal.5th 1091 (2019).

The LPEs’ reliance upon *St. Bernard Parish Government v. U.S.*, 887 F3d 1354, 1362 (Fed. Cir. 2018) is equally misplaced. Plaintiffs’ Taking claims do not arise from flooding caused by river water or, for that matter, a hurricane. This is a case involving the

designed collection of upstream LPE stormwater and the conveyance of that upstream LPE stormwater through a designed stormwater sewer system (the PCSS) which the LPEs were warned would naturally and foreseeably result in the catastrophic flooding of Plaintiffs' downstream homes. The LPEs affirmative actions with respect to the PCSS are inexcusable.

Finally, in *Arkansas Game & Fish Commission v. United States*, 578 U.S. 23, (2012) also cited in and quoted by *Sorrells*, the Supreme Court recognized that there is “no magic bullet” to determine, whether a governments interference with property is a “taking” and most takings claims turn on the specific facts of the case. *Sorrells* at ¶27. Here, the specific and undisputed facts demonstrate Plaintiffs have sufficiently alleged their right to bring a Takings claim as well as a consequential damages claim under the Illinois Constitution.

B. Plaintiffs Taking Claims Are Not Premised Upon Mere “Inaction” By The LPEs And The Authorities Cited By The LPEs Are So Factually Distinct They Have No Application To This Case.

The LPEs argue at Page 40 of their Joint Brief that “government inaction cannot support a taking claim under the U.S. Constitution” and applying the “limited lockstep approach” this Court should hold the same and, in support their proposition, cite to *U.S. Sponenbarger*, 308 U.S. 256, 265 (1939) As the *Sorrells* Court noted, “[m]ost takings claims turn on the specific facts of the case”. *Sorrells* at ¶27. Therefore, it is important to examine the facts which controlled the decision in *Sponenbarger* because those facts demonstrate *Sponenbarger* is entirely distinguishable from the facts of this case and, thereby, cannot support dismissal of Plaintiffs' Taking claims.

Sponenbarger was an action brought to recover compensation for what plaintiff alleged was the alleged taking of land resulting from the Mississippi Flood Control Act of 1928 and the construction contemplated (though not yet completed) under that Act. The plaintiff's land was located in the alluvial valley of the Mississippi River which had a long history of recurrent natural flooding. The 1928 Act arose following the occurrence of the most disastrous of all recorded floods in 1927 during which plaintiff's land was left under 15 to 20 feet of water and stripped bare of buildings of any kind despite the existing levees. *Sponenbarger* at 261.

The 1928 Act provided for a plan designed to limit escapes of water from the main channel of the Mississippi River to predetermined points. As part of that plan, Plaintiffs' land was located in an area contemplated as a diversion channel. That area, known as the Boeuf Basin, however, had "always been a natural floodway for waters from the Mississippi" and plaintiff's land, along with others in that same area, had "been repeatedly overflowed by deep water despite the presence of strong levees". *Sponenbarger* at 263-264. Following a full hearing, the District Court made the following finding:

"Levee protection to lands such as plaintiff's has not been reduced. In fact, plaintiff's land has been afforded additional protection by virtue of the fact that this government improvement program has materially reduced the crest of the river at all times, including flood crests, and her land has also been protected by the Government's reconstruction of levees on the Arkansas River pursuant to its general program." *Sponenbarger* at 263.

The Court further found:

"The United States has in no way molested respondent's possession or interfered with her right of ownership. She has remained in uninterrupted possession of her property operating it as a farm and borrowing money upon it as security." *Sponenbarger* at 264.

Based upon these findings, the District Court ruled that “Respondent’s property had not been taken within the meaning of the constitutional prohibition against taking without compensation”.

Upon examination of the record before the District Court, the Supreme Court noted:

“An undertaking by the Government to reduce the menace from flood damages which were inevitable but for the Government’s work does not constitute the Government a taker of all lands not fully and wholly protected. When undertaking to safeguard a large area from existing flood hazards, the Government does not owe compensation under the Fifth Amendment to every landowner which it fails to or cannot protect. In the very nature of things the degree of flood protection to be afforded must vary. And it is obviously more difficult to protect lands located where natural overflows or spillways have produced natural floodways.” *Sponenbarger* at 265.

The Supreme Court, accordingly, affirmed stating that “the District Court justifiably found that the program of the 1928 Act has greatly reduced the flood menace to respondent’s land by improving her protection from floods” and, therefore, “respondent’s land has not been taken within the meaning of the Fifth Amendment”. *Sponenbarger* at 267. Thus, *Sponenbarger* is not a case involving government “inaction”. It is, actually, a case where government action improved the plaintiff’s conditions. That is not this case.

Here, the Plaintiffs’ homes are not located “where natural overflows or spillways have produced natural floodways”. The catastrophic flooding of Plaintiffs homes was not inevitable as in *Sponenbarger*, it was man-made. In this case, unlike *Sponenbarger*, the undisputed facts demonstrate that the LPEs engaged in a series of actions relating to the creation and development of the PCSS which they knew already created a dangerous condition and, thereafter, deliberately ignored the written warnings to correct their own mistakes. Stated again, the flooding in this case was man-made and it arose as the result

of conditions the LPEs created and, thereafter, refused to correct. For this reason, the LPEs reliance on *St. Bernard Parish Government* is, again, totally misplaced.

Furthermore, the LPEs' argument ignores the principle enunciated in *City of Chicago v. Seben*, 165 Ill 371 (1987):

“It is the duty of a municipal corporation, which exercises its power of building sewers, **to keep such sewers in good repair**, and such duty is not discretionary, but purely ministerial. **Shear. & R. Neg. § 287; 2 Dill. Mun. Corp. § 1049.** The adoption of a general plan of sewerage involves the performance of a duty of a quasi judicial character, but the construction and regulation of sewers, and **the keeping of them in repair**, after the adoption of such general plan, **are ministerial duties, and the municipality which constructs and owns such sewers is liable for the negligent performance of such duties.** *Seben* at 379 (emphasis added).

In *City of Oroville v. Superior Court of Butte County*, the Court spoke to how the breach of this duty to maintain a public improvement will support an inverse condemnation claim, stating:

“A public entity might construct a public improvement and then entirely neglect any kind of preventive monitoring or maintenance for the improvement. (See *Pacific Bell, supra*, 81 Cal.App.4th at pp. 599–600.) If the public entity makes a policy choice to benefit from the cost savings from declining to pursue a reasonable maintenance program, for instance, inverse condemnation principles command “the corollary obligation to pay for the damages caused when the risks attending these cost-saving measures materialize.” (*Id.* at p. 608). It may be sensible in some sense for a public entity to forgo regular monitoring and repair and instead adopt a “wait until it breaks” plan of maintenance to save on the costs of imposing a monitoring system. **But the damages that result from the inherent risks posed by the public entity’s maintenance plan should be spread to the community that benefits from lower costs, instead of leaving property owners adversely affected by the public entity’s choice to shoulder the burden alone.**”

Oroville at 1107.

This rationale should apply equally to facts presented this case.

In this case, aside from the LPEs creation of the inherent risk of flooding, the LPEs ignored the warnings, chose to forego all recommended remedial measures and, thereby, saved the costs which would have been imposed upon them to remedy the problem they

created. Under these circumstances, the Plaintiffs should not be forced to shoulder the burden of the damages which resulted from the inherent risks posed by the LPEs' deliberate conduct.

VI. GOVERNMENT ACTION INCLUDES (A) DELIBERATE GOVERNMENT INACTION IN DECIDING NOT TO IMPROVE AN INADEQUATE, OBSOLETE STORMWATER SEWER SYSTEM AND (B) DELIBERATE DESIGN OF LPE STORMWATER SYSTEM WHICH POSES INHERENT RISKS OF DANAGERS TO THE PLAINTIFFS.

A. Deliberate Neglect to Improve An Undertaken Public Improvement with Actual Knowledge That the Public Improvement Is Causing Continuing Inescapable, Intervallic Private Harm That Will Continue Indefinitely Unless Taking Liability Is Recognized Constitutes Government Action.

Where the LPEs have actual knowledge that the LPEs' public stormwater system has become inadequate and obsolete and the LPEs deliberately decide not to improve their stormwater system by the LPEs themselves not constructing the IDNR's recommended soccer field retention basins and improve storage in other ways, the LPEs' episodic deliberate decisions after each flood not to remedy the inherent design dangers in their existing public stormwater system constitute government action. This holding is supported by the fact that the MWRD has financing authority effective 2004 to pay for reasonable stormwater management improvements. *70 ILCS 2605/7h*. Hence, under these facts of actual LPE knowledge of the inadequacy and obsolescence of their public stormwater system causing repetitive flooding and the LPEs' deliberate episodic decisions to do absolutely nothing to improve the LPEs' PCSS, a takings claim and a consequential damages claim are stated based upon the LPEs' deliberate, conscious indifference to Plaintiffs' harms being caused by the LPEs' decisions to intentionally neglect the LPEs'

public stormwater system containing actually known inherent design risks resulting likely indefinite future flooding.

People ex re. Pratt v. Rosenfield, 399 Ill. 247 (1948) arose from the city and its railroad partner redesigning an inadequate and obsolete public vehicular travel viaduct. Commendably, the city actually undertook to redesign and improve its vehicular conveyance system given the inherent design dangers evident from its inadequate, obsolete viaduct. Nonetheless, the city was still found responsible for consequential damages because, as a consequence of the public improvement, the LPE caused flooding to Plaintiffs. *Hampton* summarized some of *Pratt's* facts:

¶ 18 In *Pratt*, the plaintiffs alleged that their properties were damaged when an old viaduct was removed and replaced...In replacing the viaduct, the grade of the street bordering the plaintiffs' properties was changed...

Added facts relevant here include that the city had “jurisdiction and control” over an “inadequate and obsolete” conveyance public improvement with its inherent original design which limited public traffic, thereby posing the risk of injury to the travelling public. The City recognized the need to increase conveyance capacity due to the original inherent traffic capacity design risks and proceeded to totally replace its “inadequate and obsolete” traffic conveyance system:

....The amended petition alleged...that certain portions of the **street** are under the **jurisdiction and control** of the city...;the railroad passes under the viaduct which carries Court Street over the tracks; that said viaduct **had become inadequate and obsolete** and the three appellees...**entered into an agreement...**for the construction of a new viaduct...; that **in the course of construction of the new viaduct**, the grade...was raised above its former elevation; that **all of the work in removing the old and constructing the new viaduct had been done pursuant to said agreement and at the instigation of, by authority of, and under the direction of, the appellees**; that the work was done for a **public use**...

Pratt at 698-699.

In summary, just as the LPEs partnered with Advocate to build the Basins, the city partnered with the railroad for the railroad to construct the viaduct under city jurisdiction and control for the public safety of safe streets. Hence, where an LPE exercises through the permitting process supervision over the engineering and construction of the public NAD basins for the benefit of the downstream RDC Plaintiffs, even though the work was done by Advocate, the LPEs remain liable.

Tzakis also involves a conveyance system: the stormwater conveyance system of the PCSS similar to a traffic conveyance system. Just as a traffic conveyance system can become inadequate and obsolete, so too can a stormwater conveyance system become inadequate and obsolete as in this case herein. Uniquely here, the LPEs, unlike the city in *Pratt*, have actual knowledge that the LPE-defectively designed stormwater conveyance system is causing repeated constitutional violations: the using of Plaintiffs' private homes as public retention mini-basins for LPE Upstream Stormwater from Park Ridge, Maine Township and Niles, an unequivocal public use.

Pratt recognized that an Article I, Section 15 consequential damages claim may proceed against the city. Both the city and its agent the railroad could be liable:

...By the express allegations of the petition, an adequate remedy at law is shown to exist **against the city and the railroad** and each is alleged to have funds available with which to pay the damages...

Pratt at 252.

Accordingly, the LPEs are not relieved of takings clause liabilities because Advocate constructed the Basins: the MWRD and PR directly supervise through the permitting process Advocate's basins' construction including capacity which work was done for a public benefit and are responsible under *respondeat superior*.

Continuing, the city in *Pratt* likely had *Seben* thinking in mind when it did the right thing in remedying by rebuilding an inadequate and obsolete public improvement. The *Seben* rule is the duty “to keep such sewers in good repair”:

...It is the duty of a municipal corporation, which **exercises its power of building sewers, to keep such sewers in good repair**....and the municipality which constructs and owns such sewers is liable....

Seben was reaffirmed in both *In Re Chicago Flood* and *Van Meter*.

Using *Pratt* as a hypothetical, what if the city had deliberately decided to indefinitely neglect the viaduct past its use-life, letting it pothole, thereby causing damages to cars and truck? When does a breach of the duty to improve rise to a constitutional taking? When a public improvement inevitably causes recurring property damage and an LPE deliberately decides not to improve the public property causing repetitive harm, the LPE is held to have taken private property, be it cars in *Pratt* or townhomes herein.

Episodic deliberate LPE decisions not to improve its PCSS sewer system following one catastrophic flood after another crosses from a breach of a duty to remedy a known dangerous public improvement to a constitutional taking when the breach of the duty to remedy repeatedly recurs after every flood with inevitable repetitive future private harm which is inescapable by the plaintiffs and which will indefinitely recur unless the LPE is stopped by being held constitutionally liable for the taking. Otherwise, Plaintiffs herein and their successors will have to endure the LPEs using their homes as retention basins indefinitely. This is constitutionally unacceptable under American takings clause jurisprudence per *Collier v. City of Oak Grove*, 2007 WL 1185982 reversed on other ground *Collier v. City of Oak Grove*, 246 S.W.3d 923 (2008) and *City of Oroville v. Superior Court of Butte County*, 7 Cal.5th 1091 (2019).

Collier found intolerable Oak Grove’s conscious episodic decisions not to remedy its defective sewers which resulted in not only repetitive sewage invasions but inevitable future sewage invasions. Where government deliberately decides not to fix, improve or otherwise remedy its dangerous sewer system causing recurrent, inevitable, indefinite sewer water invasions, these facts state a takings claim.

Collier stated the question as follows: “whether a municipality is subject to an action in inverse condemnation for its failure to correct a city sewage system that causes continued and substantial backup into its citizens’ home?” *Collier at 1*. Donna Collier had bought a newly built home in Oak Grove in 1972 and finished the basement. Oak Grove sewage-flooded her multiple times between 1992 and 2004. The jury entered a just compensation award from the date of the taking to when Collier would be paid adding interest delay-damages given that “[J]ust compensation requires the “ ‘full and perfect equivalent in money of the property taken.’ ” *Collier at 10*. “Collier presented evidence at trial that, despite the Oak Grove’s denial of responsibility, City officials were well aware of the problem with its sewer system”. *Collier at 6*. **“Based on an engineering study of the sewers commissioned by the City” proved that the sewage backups were due to the city’s sewer defects (Collier at 6)**. The Court recognized “a submissible claim for inverse condemnation against Oak Grove for its failure to maintain and repair its sewer system such failure leading to the repeated backups in her basement and subsequent damage to her property.” *Collier at 4*.

The Court explicitly rejected the affirmative governmental action requirement because such a ruling would allow an LPE to neglect its public improvement forever:

...once a municipality acts to design, construct, operate, and maintain a sewer system, the city has a duty to maintain and repair any inadequacies in that system

that causes damage to its citizens' real property. *Fletcher v. City of Independence*, 708 S.W.2d 158, 167. A city that fails to do so is held liable. *Id.*

Collier at 8.

The Court reasoned that to accept the affirmative government action limitation on a taking claim would condone government inaction causing episodic damage to plaintiff's property inevitably:

If this court were to accept Oak Grove's argument, a municipality could not be held liable for its inaction; i.e., allowing its municipal sewer system to deteriorate until it routinely damages its citizens' property. The city could ignore the sewer systems' defects and deficiencies and hide behind the "affirmative act" argument proposed by Oak Grove.

Collier at 9.

Alternatively, the city's deliberate choice not to improve its sewer system causing ongoing home-invasive sewage flooding constitutes the 'affirmative act' for inverse condemnation:

From another perspective, Oak Grove's deliberate choice not to address the cracks and deformations in its sewer system that led to the backups into Colliers home could constitute the "affirmative act" they claim a landowner must show to make a claim for inverse condemnation... Oak Grove knew about the deficiencies in their sewer system and the damage the sewer system was causing to the Collier home. **Rather than act to resolve the issue, City officials made an affirmative choice to stonewall, deny responsibility, and allow an intolerable condition to persist. Such a choice arguably constitutes the affirmative act required under Oak Grove's argument.**

Collier at 10.

See also *Oroville*. *Oroville* holds that, where a public improvement included inherent design risks causing property injury, a takings clause violation exists. However, Oroville includes inherent maintenance and continued upkeep risks arising from maintenance and upkeep of the public work:

...So the "inherent risk" aspect ... also encompasses risks from the maintenance or continued upkeep of the public work. (See *Bauer, supra*, 45 Cal.2d at p. 285, 289 P.2d 1.) A public entity might construct a public improvement and then entirely

neglect any kind of preventive monitoring or maintenance for the improvement. (See *Pacific Bell*, *supra*, 81 Cal.App.4th at pp. 599–600.) ...[i]nverse condemnation principles command “the corollary obligation to pay for the damages caused when the risks attending these cost-saving measures materialize.” (*Id.* at p. 608.)

***Oroville* at 814-815.**

Hence, an LPE’s deliberate decision not to remedy its sewer system including upgrading to prevent flooding is a basis for a takings claim and consequential damages claim. Accord *State ex rel. Livingston Court Apts. v. Columbus*, 130 Ohio App.3d 730 (10th Dist. 1998) (inadequate sewer system) and *Livingston v. Virginia Dept. of Transp.*, 726 S.E.2d 264 (S.Ct.Va. 2012) (inadequate stream maintenance). Note that *Collier* relied upon *Fletcher v. City of Independence*, 708 S.W.2d 158 (Mo.App.1986). In *Fletcher*, the Court noted that the installation of a “larger outflow line” would have solved the sewer backups.

While Illinois has not addressed facts similar to *Collier* or *Fletcher* involving repeated deliberate indifference to a constitutional duty to improve a known inherently dangerous public improvement, Illinois does recognize “deliberate indifference” in the constitutional context as being actionable. *Barnes v. Martin*, 2014 IL App (2d) 140095-U. A constitutional violate arises when government actors are on “actual or constructive notice” of government action inducing a violation of a citizen’s constitution rights:

“Governmental policymakers may be deliberately indifferent if they were “on actual or constructive notice that a particular omission in their training program cause[d] * * * employees to violate citizens’ constitutional rights,” but nevertheless chose to retain that program. *Connick*, 131 S.Ct. at 1360. *Id.*”

***Barnes* at ¶95.**

Upholding a Taking claims where the LPE is deliberately indifferent to the

recurring violations of a citizen's rights to be free of government invasions is consistent with the American "central value" that our homes are our castles:

... "it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people," ... We have...lived our whole national history with an understanding of "the ancient adage that a man's house is his castle..." *Wilson v. Layne*, 526 U.S. 603, 610.

Georgia v. Randolph, 547 U.S. 103, 105 (2006).

See also *Wolf v. Crook*, 163 Ill.App. 511,514 (1911): "While the law recognizes a man's home as his castle ...". Hence, "deliberate indifference" to a government induce private property flooding supports a takings clause violation.

B. A Takings Clause Claim Arises Where an LPE Knowingly Causes Damage Due to the Original Public Improvement Inherent Design Risks Posing Harm to Plaintiffs per *Oroville*.

In addition to a takings claim and consequential damages claim based upon deliberate indifference to a citizen's property harm where the LPE consciously chooses to neglect improvement of public property per *Collier*, a takings claim and consequential damages claim also arise where the LPEs deliberate design a public improvement which has inherent risks to a citizen and, due to these inherent design risks, a citizen suffers harm.

City of Oroville v. Superior Court of Butte County, 7 Cal.5th 1019 arose from Oroville's municipal sewer water backing-up and invading a dental practice. The California Supreme Court reversed the Appellate Court because it was not proven "whether the inherent risks associated with the sewer system — as deliberately designed, constructed, or maintained — were the substantial cause of the damage to the private property." *Oroville* at 806. The Court held that when a public improvement is "inherently dangerous to private property", a taking or damage claim arises:

Consistent across our assessment of these varied public works is the expectation

that if an improvement is “inherently dangerous to private property,” the public entity — by virtue of the constitutional provision — undertakes the responsibility “to compensate property owners for injury to their property arising from the inherent dangers of the public improvement or originating ‘from the wrongful plan or character of the work.’ ” (*House v. L. A. County Flood Control Dist.* (1944) 25 Cal.2d 384, 396 (*House*).)

Oroville at 810-811.

The fundamental causation question is whether the injury is “the direct and necessary effect of the inherent risks posed by public improvement as deliberately designed, constructed or maintained” not whether “absent government action” the injury would have occurred as urged by the LPEs herein:

...[a]claim arising from sewage overflow must consider whether the damages to private property were the direct and necessary effect of the inherent risks posed by the public improvement as **deliberately designed, constructed, or maintained....**

Oroville at 809.

The “inherent risk” includes risks from maintenance and continued upkeep of the public work:

...So the “inherent risk” aspect ... also encompasses risks from the maintenance or continued upkeep of the public work. (See *Bauer, supra*, 45 Cal.2d at p. 285.) A public entity might construct a public improvement and then entirely neglect any kind of preventive monitoring or maintenance for the improvement. (See *Pacific Bell, supra*, 81 Cal.App.4th at pp. 599–600.) ...[i]nverse condemnation principles command “the corollary obligation to pay for the damages caused when the risks attending these cost-saving measures materialize.” (*Id.* at p. 608.)

Oroville at 814-815.

Applied here, the LPEs deliberately designed and constructed the LPEs’ PCSS stormwater structures “with inherent risks” of RDC flooding both at the PCSS’ creation in the 1960s through to 2008 relating to basin permitting.

First, in the 1960s, the LPEs designed and constructed the 120” wide channel open-drain RNMD between Points C1-C2 bottlenecking at the 60”diameter DNSP Point E

Howard Court Intake Culvert. The deliberateness of the inherent design risk causing a flooding bottleneck is open and obvious to any reasonable person that reducing a 10' open-channel flow to a 5' diameter culvert at Point E would bottleneck all flows in excess of a 5' diameter from the RNMD causing bottleneck open drain flooding between Points C1-C2 and E. This bottlenecking at Point E would also cause surcharging of the DNSP, resulting in reverse street stormwater-grate flooding in the Dee Neighborhood.

Second, for all the retention basins, the LPEs knew beginning at least in the mid-1970s that increased storage was necessary due to the flooding likely as early as the 1960s when these townhomes were built. The MSD-now-MWRD "Warning: Flood Hazard Area: Permittee Assumes All Liability" statement stamped on all permits arose during the mid-1970s. Harza in 1990 used a 100 year return frequency standard for determine whether a stormwater system can safely collect, transport, store and discharge stormwater to its outfall (RA161).

Given this 100 year return frequency standard for PCSS stormwater basin and given that Harza in 1990 recommended that a basin be constructed with pumps to pre-storm pump down a basin for the purpose of increase stormwater storage, all retention basins designed and built after 1990 which were not designed with pump stations and were not design to increase stormwater storage consistent with volumes of LPE Upstream Stormwater for storms less than a 100 year event posed inherent design risks of flooding the RDC.

Third, as for stormwater improvements after 2004, the IDNR recommended the high school retention basin storage in 2004. Consequently, any PCSS improvements designed during 2004 and before 2008 which did not include the IDNR-recommended increased storage retention basin would also be deemed designs having the inherent design

risk of flooding the RDC plaintiffs.

The very policy of takings law is to compensate the few who suffer to benefit the many as, once again, stated in *City of Oroville v. Superior Court of Butte County*:

. . . The public entity may reach its decision because the likelihood of damage is remote, but the expense of additional protection is great. (Ibid.) **Where the undertaking of the project at the lower cost creates “some risk, however slight, of damage to plaintiffs’ property, it is proper to require the public entity to bear the loss when damage does occur.”** (Id. at pp. 310–311.) In those circumstances, private property owners should be compensated for the damage to their property resulting from the inherent risks posed by the public improvement as reasonably undertaken at the lower cost because the public entity “ ‘is in a better position to evaluate the nature and extent of the risks of public improvement than are potentially affected property owners.’ ” (Citations omitted).

***Oroville* at 1106-1107.**

Accordingly, because the LPEs have made decisions to use Plaintiffs’ homes as mini-basins rather than increase capacity, Plaintiffs pled a taking predicated upon the LPEs’ deliberate public improvement designs of the PCSS including the LPEs’ Basins which pose the inherent risk of flooding to the Robin-Dee-Community.

Note while not a takings clause case, *Dial v. City of O’Fallon*, 81 Ill.2d. 548,556 recognized that government action by the intentional design of a storm sewer system causing flooding constituted an intentional, deliberate government act:

In *Langford v. Kraft* (Tex.Civ.App.1973), 498 S.W.2d 42, it was held that intentionally designing a storm-sewer facility to collect water from an entire area and discharge it upon an adjoining owner’s property, where otherwise a part of the water would not have reached, was an intentional intrusion.

***Dial* at 566.**

Hence, Illinois recognizes that a stormwater sewer design with an inherently dangerous design risk causing flooding is also government action.

VII. The Tort Immunity Act Does Not Bar Plaintiffs' Taking Claims Because Section 2-102(a) And Section 3-103(a) Of The Act Demonstrate It Is The Intent Of The Legislature To Impose Liability Upon An LPE For Damages Caused By The Failure To Maintain Its Property As Well As The Creation Of A Conditions That Are Not Reasonably Safe.

The LPEs argue at Page 43 of their Joint Brief that “[b]ecause claims brought under the Illinois Constitution are subject to the Tort Immunity Act, and the LPEs cannot be held liable for injuries caused by their discretionary acts, inspection or lack thereof, and any permits they may have issued, the LPEs are immune from liability on Plaintiffs’ Taking claims”.

A. No TIA Immunities or Defenses Apply to the Constitutional Claims per *Van Meter* and *Birkett*.

Takings and consequential damages claims are not limited by the TIA. Justices Fitzgerald and Garman in *Van Meter* recognized viable takings clause claims would not be subjected to the TIA immunities such as §2-201 discretionary immunity as applicable: “Though §2-201 bars the plaintiffs' tort claims, **properly pleaded ... constitutional claims could survive under the Act**”. *Van Meter* at 385-387.

Rozasavolgyi v. City of Aurora, 2016 IL App (2d) 150493 was vacated by *Rozsavolgyi v. City of Aurora*, 2017 IL 121048 (2017). Consequently, *People ex rel. Birkett v. City of Chicago*, 325 Ill. App. 3d 196 (2d 2001), *Firestone v. Fritz*, 119 Ill. App. 3d 685 (2d 1983), and *Streeter* are viable. “[T]he Tort Immunity Act does not bar claims for constitutional violations” per *Birkett* at 202 where plaintiffs asserted an airport noise nuisance claim. Accord *Streeter* at 295.

The Plaintiffs incorporate the Decision at ¶¶87-105 judging that there are no TIA immunities or defenses barring the Plaintiffs’ causes of action. Where, as here, **no factual material** was presented in the LPEs’ §2-619 motion, issues are decided per §2-615

standards. *Van Meter; Coghlan v. Beck*, 2013 IL App (1st) 120891 (2013).

B. §2-201 Relating to Discretionary Immunity is Inapplicable as No Evidence of a Conscious Decision Relating to Improving the PCSS.

Plaintiffs incorporate herein the *Decision ¶¶ 90-95* rejecting §2-201 LPE immunity.

Andrews v. MWRD, 2019 IL 124283 (2019) mandates evidentiary proof of a conscious decision per *Monson ¶33*:

¶ 31...a municipality seeking immunity under section 2-201 for the failure to repair a defective condition “must present sufficient evidence that it made a *conscious* decision not to perform the repair. The failure to do so is fatal to the claim.” (Emphasis added.) *Id.* ¶ 33....in the absence of a conscious decision on the part of the municipality, “nearly every failure to maintain public property could be described as an exercise of discretion,” which constitutes an “ ‘ “impermissibly expansive definition of discretionary immunity.” ’ ”...[Citations].

There is no conscious act by an MWRD employee evident in the *Tzakis* record.

C. §2-104 Relating to Permit Issuance Inapplicable.

Plaintiffs incorporate herein the *Decision ¶¶ 100-101* rejecting the §2-104 defense. The issuance of a permit under §2-104 is not the basis for the Plaintiffs’ claim: §3-102(a) and §3-103(a)-S2 are. See *Salvi* regarding violation of an LPEs own standards relating to improvements. §2-104 has never been applied to permits relating to LPE-owned property where it was an LPE public improvement at issue: see *Doyle v. City of Marengo*, 303 Ill.App.3d 831 (2nd Dist. 1999). In contrast, the MWRD issued permits to either PR and MT as permittees to use the MWRD’s own PCSS stormwater sewer system: PR and MT were only owners of the “local system”. The MWRD remained the de facto owner and responsible for the overall ownership and management of the PCSS. See generally *Cohen v. Chicago Park District*, 2016 IL App (1st) 152889 (2016). The statutory use of the term “permit” does not apply to an LPE’s own property when the permitting relates to the construction of its own sewers.

D. §2-105 Relating to Property Inspection Inapplicable.

Plaintiffs incorporate herein the **Decision** ¶¶97-98 rejecting the **§2-105 defense**. Further, Plaintiffs agree that LPE liability for negligent inspection is limited to LPE property. Facially, Plaintiffs' claims are based upon an LPEs' negligence in inspecting its own property. See *Salvi* at ¶¶15.

E. §3-110 Relating to Waterways Not Applicable.

Plaintiffs incorporate herein the Decision at ¶¶103-105 rejecting the **§3-110** defense. The Complaint makes no reference to the PCSS as a "waterway": Plaintiffs plead the PCSS as a man-made stormwater system: see ¶¶25-26.

CONCLUSION

For all of the foregoing reasons, Plaintiffs pray this Court affirm the Illinois Appellate Court, First District, Fourth Division's decision that this Court's holding in *Coleman v. East Joliet 69Fire Protection District*, 2016 IL 117952 should be applied to this case and, in the alternative, that the Public Duty Rule does not bar any of Plaintiffs' claims. In addition, Plaintiffs pray that this Court affirm the Illinois Appellate Court's holding that the Amended Fifth Amended Complaint properly states a taking clause claims including a takings claim as recognized by the First District and, on the facts presented herein, a claim for consequential damages under Section 15 of Article I of the Illinois Constitution and that no provision of the Illinois Tort Immunity Act bars any of the Plaintiffs claims.

CROSS-RELIEF REQUESTED

NATURE OF THE ACTION

Plaintiffs-Appellees restate the Nature of the Action as set forth in their Response to the Defendants-Appellants' Joint Brief

ISSUES PRESENTED

1. Whether Plaintiffs are entitled to recover damages caused by an artificial danger created on property adjacent to Plaintiffs' homes by sewer and drainage structures in the possession and control of the LPEs located on land under the possession and control of the LPEs.
2. Whether Plaintiffs are entitled to plead a cause of action based upon the codified duty imposed upon the LPEs under Section 3-102(a) of the Tort Immunity Act.
3. Whether Plaintiffs are entitled to plead a cause of action based upon the codified duty imposed upon the LPEs under Section 3-103(a) of the Tort Immunity Act.
4. Whether, in the event Plaintiffs are not entitled to plead breach of a statutory duty under Section 3-102(a) and/or Section 3-103(a) of the Tort Immunity Act, Plaintiffs are entitled under Section 2-603(c), Section 2-612 and Section 2-617 of the Illinois Code of Civil Procedure to replead their claims a common law claims upon remand to the Circuit Court.

STANDARD OF REVIEW

This Cross-Appeal arises from the decision issued by First District Appellate Court, Fourth Division which dismissed certain Counts in Plaintiffs' Amended Fifth Amended Complaint for failure to state a cause of action. Decisions regarding the sufficiency of complaints are reviewed by this Court utilizing a *de novo* standard.

Simpkins v. CSX Transportation, Inc., 2021 IL 110662, ¶26.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear this Cross-Appeal in that the Court allowed the LPEs' Petition For Leave To Appeal on September 25, 2019 and pursuant to **Supreme Court Rule 318(a)** in all appeals, by whatever method, from the Appellate Court to the Supreme Court, any appellee may seek and obtain any relief warranted by the record on appeal without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal.

CONSTITUTIONAL PROVISIONS / STATUTES INVOLVED

Plaintiffs cite to and rely upon the following statutes in this Cross-Brief which are fully set forth in the Appendix:

735 ILSC 5/2-603(c)

735 ILCS 5/2-612

735 ILCS 5/2-617

735 ILCS 10/2-201

745 ILCS 10/3-102

745 ILCS 10/3-103

745 ILCS 10/3-105

STATEMENT OF FACTS

Plaintiffs-Appellees restate the Statement Of Facts as presented in their Response Brief to Defendants-Appellants' Joint Brief.

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO RECOVER DAMAGES ARISING FROM THE LPEs' CREATION OF AN ARTIFICIAL DANGER ON PROPERTY IN THEIR POSSESSION AND, THEREFORE, THE APPELLATE COURT ERRED IN DISMISSING COUNTS 25, 45 AND 64 OF PLAINTIFFS' COMPLAINT.

Count 25 (against the District), Count 45 (against Park Ridge) and Count 64 (against Maine Township) of Plaintiffs' Complaint were negligence claims originally styled as "dominant estate overburdening". As the Appellate Court correctly noted, Plaintiffs abandoned that theory during the appeal but argued that the same facts alleged in these counts established an "adjacent property owner" claim. Decision at ¶68

The Appellate Court, citing to *Dealers Service & Supply Co. v. St. Louis National Stockyards Co.*, 155 Ill.App.3d 1075, 1079 (1987) and *Choi v Commonwealth Edison Co.*, 217 Ill.App.3d 952 957 (1991) recognized that the creation of an artificially dangerous condition or the aggravation of a natural condition may give rise to liability where an adjacent landowner is damaged by that condition. The Court also recognized that, under *Van Meter v. Darien Park District*, 207 Ill.2d 359, 369 (2003), an LPE bears a common law duty not to increase the natural flow of water onto the property of an adjacent landowner. Decision at ¶69.

The Court, however, ruled that because Plaintiffs' Complaint did not allege "that defendants are landowners" and, instead, alleged "that defendants were holders of easements for the purpose of drainage and sewers, which ran through plaintiffs' property",

there was “no basis to applying ‘adjacent property owner’ liability to defendants”. Decision at ¶¶70-71. The Appellate Court erred because the duty of care attaches to the “possessor” of the property, not simply the landowner.

In *Dealers Service & Supply Co.*, the Court drew the principle of law as it pertains to damages caused by a dangerous artificial condition on the land of another from the *Restatement (Second) of Torts, Section 364* (1975) which provides as follows:

“A **possessor of land** is subject to liability to others outside of the land for physical harm caused by a structure or other artificial condition on the land, which the **possessor** realizes or should realize will involve an unreasonable risk of such harm, if

- (a) the **possessor** has created the condition, or
- (b) the condition is created by a third person with the **possessor’s** consent or acquiescence while the land is in his possession, or
- (c) the condition is created by a third person without the **possessor’s** consent or acquiescence, but reasonable care is not taken to make the condition safe after the **possessor** knows or should know of it.”
(emphasis added).

Thus, based on the *Restatement*, the Court in *Dealer’s* described the duty as follows:

“The **possessor of property** must use and maintain it in such a manner so as not to create an unreasonable risk of harm to others”. (*Custom Craft Tile, Inc. v. Engineered Lubricants Co.* (Mo.Ct.App.1983), 664 S.W.2d 556, 558; *see Prosser, Torts § 57, at 351-52, 355 (4th ed. 1971); Rest. (2nd) of Torts, §364 (1975).*”
Dealers at 1079. (emphasis added).

Ownership of the land, therefore, is not the predicate for liability. Instead, the focus is upon who is in possession of the land. See, *Deibert v. Bauer Brothers Construction*, 141 Ill.2d 239, 241 (1990) which recognized adoption of *Section 343* of the *Restatement (2nd) of Torts* regarding the obligation of “possessors of land” to their invitees.

This same principle is set forth in the *Restatement (3rd) of Torts: Physical & Emotional Harm §54 (2012)* “*Duty of Land Possessors to Those Not on the Possessor’s*

Land’ which provides:

(a) The **possessor of land** has a duty of reasonable care for artificial conditions or conduct on the land that poses a risk of physical harm to persons or property not on the land.

(b) For natural conditions on land that pose a risk of physical harm to persons or property not on the land, the possessor of land

(1) has a duty of reasonable care if the land is commercial; otherwise

(2) has a duty of reasonable care only if the possessor knows of the risk or if the risk is obvious.

“Land possessor” not “landowner” is the relationship which is the basis for the duty not to create a dangerous artificial condition per *Restatement (3rd) of Torts, §54(a) and (b)*.

See also, *Rest. (3rd) of Torts, §54, Reporters’ Note Comment b* identifies flooding as within the ambit of §54 liability: “... *Dye v. Burdick*, 553 S.W.2d 833 (Ark. 1977) (negligently maintained dam resulted in flooding damage to plaintiff’s home. **Comment b** adds that liability exists where artificial conditions were created by others or were the responsibility of others, stating:

“Land possessors are subject to a duty under this Section for artificial conditions created by others on the land or that were the responsibility of others to address”.

Similarly, municipal actor liability also noted in *Hall v. Dotter*, 879 P.2d 236 (Or. Ct. App. 1994) (local governmental entity in control of public road subject to liability for negligence of state, which had assumed obligation to maintain local road).

Likewise, *Restatement (3rd) of Torts, §49* defines “possessor” predicated upon control: “ A possessor of land is (a) a person who occupies the land and controls it;...”.

Restatement (3rd) of Torts, §49, Comment a emphasizes actual control as the test for whether the defendant is a possessor

a. History. ... it is administratively easier to use control as the standard than to determine an individual’s intent.

Restatement 3rd Torts, §49, Comment b reinforces control not ownership (“*b. Owners. ..* However, the critical issue is occupation and control rather than ownership....”) with **Restatement 3rd Torts, §49 Comment c** justifying liability predicated upon reducing risk through control, legal title not required:

c. Control. An actor who controls land without legal title ... is nevertheless a possessor....

Restatement 3rd Torts, §49, Comment d imposes concurrent duties on several actors sharing control: “*d. Multiple possessors. ...* Similarly, control over some areas may be shared, and each actor is subject to the duties...”

In this case, the Complaint pleads LPE ownership, possession and control of both the Ballard, Pavilion and Dempster Basins and, most importantly, ownership, possession and control of the escaping, trespassing LPE Upstream Stormwater. The basins are the adjacent nuisance-inducing stormwater structures from which the LPEs’ Flooding Upstream Stormwater invades the Robin-Dee-Community. These adjacent sewer structures include both the 10’ open channel Robing Neighborhood Main Drain and, significantly, all the tributary streets sewers which backup and reverse flow into Plaintiffs’ townhomes.

Hence, Count 25 pleads duties, based upon the LPEs’ status as the adjacent property possessor. These duties are to protect the Plaintiffs who live contiguous, and/or adjacent, to the Prairie Creek Stormwater System Robin Neighborhood Main Drain, the LPEs Basins’ on the North Advocate Development and the tributary street sewers of Robin Alley, Robin Drive, Howard Court, Bobbi Lane, Dee Road and Briar Court which backup into Plaintiffs’ home (¶¶987-988:RA96-97). Count 25 pleads duties (¶¶984-993:RA96-97)

based upon the LPEs' adjacent property possessor status given that the LPEs own, possess and control open basins, open sewers and open drains adjacent to the Flooded Citizens. The LPEs are the pled owners of the Main Drain contiguous to Plaintiffs' homes: see ¶¶66-78 (RA23-24) relating to the Robin Neighborhood Main Drain and Dee Neighborhood Main Drain. The Plaintiffs also plead LPE ownership of the tributary sewers which reverse flow when the Main Drains are surcharged. The Complaint also pleads control over the storm water instrumentality. (¶26:RA15; ¶34:RA17; ¶44:RA19; ¶67:RA24-24; ¶419:RA27.)

Based on the foregoing, Plaintiffs' Complaint alleges sufficient facts to establish a prima facie case to support an award of damages based upon dangerous artificial conditions.

II. PLAINTIFFS' ARE ENTITLED TO PLEAD A CAUSE OF ACTION BASED UPON THE LPEs' DUTY TO MAINTAIN ITS PROPERTY IN A REASONABLY SAFE CONDITION AS CODIFIED UNDER §3-102(a)

Count 34, Count 57 and Count 74 of Plaintiffs' Complaint plead a cause of action based upon the LPEs' breach of their duty to exercise ordinary care to maintain their property as expressly set forth in **§3-102(a)** of the Tort Immunity Act. In addressing those counts, the Appellate Court focused upon the LPEs' argument that "[t]he Tort Immunity Act grants only immunities and defenses; it does not create duties" citing to *Village of Bloomingdale v. CDG Enterprises*, 196 Ill.2d 484, 490 (2001) and *Barnett v. Zion Park District*, 171 Ill.2d 378,386 (1996). The Court then concluded, "[t]he statutory duty is the common law duty, simply published in statutory form" and, because there was no separate statutory duty, the Court affirmed dismissal of Count 34, Count 57 and Count 74 of Plaintiffs' Complaint. Decision, ¶¶58.60. The Court erred and the dismissal of Plaintiffs' claims must be reversed.

A. Section 3-102(a) Has Uniformly Been Held Not To Grant Any Immunity But Merely Codifies The Duty Of The LPEs To Maintain Their Property.

The Appellate Court erred, and Plaintiffs were right to plead a statutory cause of action for breach of the LPEs' duty to maintain their property because this Court has held Section 3-102(a) "does not grant any immunities". See *Monson* at ¶ 21. Instead, in *Monson*, this Court rejected defendant's argument that the second clause in Section 3-102(a) operated as an immunity provision and went further to state:

"... no court has held that section 3-102(a) grants immunity to municipalities. Rather, the courts of this state have uniformly held that section 3-102(a) merely codifies the common-law duty of a local public entity to maintain its property in a reasonably safe condition". *Monson* at ¶24

Citing to *Wagner v. City of Chicago*, 166 Ill.2d 144, 151-152 (1995), the Court in *Monson* left no doubt as to the clarity of the duty enunciated in Section 3-102(a) stating:

"[T]he language in section 3-102(a) is clear: the city has a duty to maintain its property in a reasonably safe condition so that persons using ordinary care are not harmed." (emphasis added).

Aside from the decisional law which uniformly finds a duty of care codified within **Section 3-102(a)**, it also important to note that the Legislature recognizes the same **Section 3-102(a)** duty of care in **Section 3-105(c)** of the Act which states:

"Nothing in this Section shall relieve the local public entity of the duty to exercise ordinary care in the maintenance of its property as set forth in Section 3-102. (emphasis added).

By comparison, the Legislature can also speak very clearly when it intends no duty is provided within the Act as can be seen from **Section 3-109(c)** which states:

"(c) Notwithstanding the provisions of subsection (a), this Section does not limit liability which would otherwise exist for any of the following:

- (1) Failure of the local public entity or public employee to guard or warn of a dangerous condition of which it has actual or constructive notice and of

which the participant does not have nor can be reasonably expected to have had notice.

(2) An act of willful and wanton conduct by a public entity or a public employee which is a proximate cause of the injury.

Nothing in this subsection creates a duty of care or basis of liability for personal injury or for damage to personal property.” (emphasis added).

The “no **new** duties” idiom repeatedly stated in the case law nonetheless means that **Section 3-102(a)**, therefore, “creates” a duty, albeit by way of the codification of a “old” duty in the sense that the **Section 3-102(a)** duty to maintain is one that has long been recognized under the common law. See *City of Chicago v. Seben*, 165 Ill. 371, 379 (1897). Furthermore, as a matter of basic statutory construction, “a reasonable construction must be given to each word, clause, and sentence of a statute, and no term should be rendered superfluous”. *Better Government Association v. Illinois High School Association*, 2017 IL 121124 at ¶22. In this case, holding that Plaintiffs are not entitled to bring an action under Section 3-102(a) for the LPEs’ breach of their duty to maintain their own property would render superfluous **Section 3-102(a)**’s statutory duty recognized by *Monson*. See generally, *Wagner v. City of Chicago*, 166 Ill.2d 144 (1995).

Moreover, if **Section 3-102(a)** does not contain any immunities but does, instead, provide a codification of an LPE’s common law duty to maintain its property, how can the Plaintiffs be faulted for bringing an action under **Section 3-102(a)** based upon that codified duty? Stated another way, because **Section 3-102(a)** does not provide any immunity but **does clearly provide** for a codified duty on the part of an LPE to exercise ordinary care in the maintenance of its property in a reasonably safe condition, Plaintiffs are entitled to bring an action for breach of that duty as codified under that section of the Tort Immunity Act.

B. The Section 3-102(a) Duty Is Not Strictly A Codification Of The Common-Law Duty Because Section 3-102(a) Both Limits The Circumstances When An LPE May Be Liable And It Excludes All Other Statutory Immunities Not Found Within Article III Of The Act.

The Appellate Court was critical of Plaintiffs' assertion that Section 3-102(a) provides a separate, independent and stand-alone cause of action. However, the words, clauses and sentences in Section 3-102(a), when taken together, codify a duty which, in certain important respects, is clearly distinct from the common law.

First, while Section 3-102(a) codifies the LPEs' common law duty to maintain their property, it also limits the scope of that duty by delineating the circumstances under which the LPE may be not found liable for an injury caused by its breach of that common law duty.

Second, as noted by Justice Thomas in his concurring opinion in *Monson* (joined by Justice Kilbride and Theis), the duty codified in Section 3-102 also differs from the common law duty in the following ways:

“Section 3-102(b) contains further tweaks on the notice provision that are not strictly part of the common law duty. For example, it allows for an inspection system that is subject to a cost-benefit analysis of sorts. 745 ILCS10/3-102(b) (West 2012). Similarly, subsection (a) removes from liability, in ways not countenanced by the common-law duty, situations involving non-intended and non-permitted users as well as those involving injury to persons not exercising ordinary care.”

The Appellate Court, therefore, erred in its refusal to recognize Plaintiffs' right to bring a separate cause of action based upon codified in Section 3-102(a) because statutory law controls over the common law: “[T]he fundamental law of Illinois is the common law except where the system of law is in conflict with the constitution or statute law of the state...” *Forsyth v. Barnes*, 131 Ill.App.467, 471 (1st Dist. 1907). The primacy of the Legislature's §3-102(a) declaration of duty in relationship to the common law is further

evident from Justice Thomas’s analysis in *Monson v. City of Danville*, 2018 IL 122486 (2018):

¶ 60 While it is true that section 3-102 articulates the duty ... and the Act itself creates no **new** duties (citations omitted), ... section 3-102 expresses a clear legislative intent that the common-law duty delineated *now by statute* be applied ...this language of the statutory scheme clearly shows that it was the legislature’s intent to make **the duty set forth in section 3-102** subject only to the immunities and exceptions in article III... *Monson* at ¶60 (Italicized emphasis in the original; bold emphasis added).

In *Monson*, Justice Thomas did note that the majority cited to *Richter v. College of Du Page*, 2013 IL App(2d) 130095 to support application of discretionary immunity, but went on to state:

“To the extent *Richter* can be construed as holding that section 2-201 trumps section 3-102 where section 3-102 is properly raised by the plaintiff **and the defendant public entity takes no reasonable action to repair or otherwise remedy the unsafe condition in a reasonable period of time**, I would find that that Richter was wrongly decided and should be overruled”.

Monson at ¶73 (emphasis added)

In this case, Plaintiffs have properly raised Section 3-102 by expressly pleading the statute as the basis for the claims against the LPEs and Plaintiffs allegations further establish the LPEs took no reasonable action to remedy the unsafe condition. Indeed, how else should Plaintiffs have “properly raised” the statutory duty but to plead the statute as a basis for their claim. Thus, *Richter* should not control this case.

In summary, the Appellate Court correctly found that Plaintiffs’ Complaint properly pled a common law claim, stating:

“Here, the substance of these counts of the complaint can be interpreted as alleging negligence based on a breach of defendants’ common-law duty to maintain their property in a reasonably safe condition”.

Decision at ¶59.

These same facts also support a statutory duty claim under §3-102(a). For all of the foregoing reasons, Plaintiffs correctly plead a cause of action against the LPEs based upon a breach of their codified duty under Section 3-102(a) to maintain their public improvements.

III. PLAINTIFFS ARE ENTITLED TO PLEAD CAUSE OF ACTION BASED UPON LPE’S DUTY CODIFIED UNDER SENTENCE 2 OF §3-103(a).

The Decision also affirmed dismissal of Count 37, Count 58 and Count 75 of Plaintiffs’ Complaint on the grounds that Plaintiffs were not entitled to plead a cause of action based upon the LPEs’ duty codified under Section 3-103(a) which was separate and independent from a cause of action based strictly upon the LPEs’ common law duty. The Appellate Court supports this decision citing to *Salvi v. Village of Lake Zurich*, 2016 IL App(2d) 150249, ¶43, *O’Brien v. City of Chicago*, 285 Ill.App.3d 864, 871 (1996) and *Horrell v. City of Chicago*, 145 Ill.App.3d 428, 435 (1986).

The authorities cited by the Appellate Court do stand for the proposition that Section 3-103(a) “codifies” the common law duty of care owed by the LPEs “if after execution of such plan or design it appears from its use that it has created a condition that it is not reasonably safe” . This duty will be referred to as the “after-plan-execution duty” which, while a sub-set of the §3-102(a) “maintain-its-property” duty, is a separate duty with profound implications for the plaintiffs in this case given the deliberate indifference to the LPEs in redesigning and improving the PCSS flooding Plaintiffs. . However, these authorities do not, in any manner, prohibit Plaintiffs from bringing a cause of action based upon the duty codified within the Sentence 2 of Section 3-103(a) and, to date, Plaintiffs’ research has not disclosed the existence of any authority barring a plaintiff from bringing a cause of action based upon that codified duty. This is also true with respect to the codified

duty in Section 3-102)(a).

It must also be noted that, unlike any of the provisions in Article II as well as Sections 3-104, 3-105, 3-106, 3-107, 3-108, 3-109, 3-110 of Article III, the **second sentence** in Section 3-103(a) clearly sets forth **a duty** and **not** an immunity. While in *O'Brien*, cited at ¶63 of the Decision, the Court held **Sections 3-102(a) and 3-103(a)** codify duties but do not impose any **new obligations** on local governments” (emphasis added), this does not mean these sections do not impose any obligations. Rather, these sections of the Act do clearly impose an obligation in the form of a codified duty. Thus, *Horrell*, also cited at ¶63 of the Decision, speaks to the “**duties * * * that are found in section 3-103(a)** as being “derived from the basic common law duty articulated in section 3-102”. (emphasis added). The fact that these “duties” are derived from the common law, does not mean they are not enforceable as a statutory duty. Plaintiffs should, therefore, be entitled to plead a cause of action based upon the duty as codified in the second sentence of Section 3-103(a). Indeed, how can it be argued Plaintiffs cannot plead a cause of action based upon a specific duty codified by the Illinois Legislature? No such argument has ever been made, as best as Plaintiffs can tell, until the Decision in this case affirming dismissal of Plaintiffs claims on a theory never presented to the Trial Court nor raised by the LPEs before Appellate Court or this Court.

Furthermore, in order to determine whether Plaintiffs’ are entitled to plead a cause of action on the grounds that the LPEs are liable under **Section 3-103(a)** for the damages because, after plan execution, the LPE has caused a not reasonably safe condition, the Court must examine the language used by the Legislature in its entirety. In addition, during that examination, “[a] reasonable construction must be given to each word, clause, and

sentence” of **Section 3-103** “and no term should be rendered superfluous”. *Better Government Association* at ¶22. Here, the **second sentence** of Section 3-103(a) states:

“The local public entity **is liable**, however, if after the execution of such plan or design it appears from its use that it has created a condition that it is not reasonably safe. (emphasis added).

Thereafter, **Section 3-103(b)** provides:

“A public employee is **not liable under this Article** for an injury caused by the adoption of a plan or design of a construction of, or an improvement to public property.” (emphasis added).

There would be no reason for the Legislature to remove a liability “under this Article” through **Section 3-103(b)**, if **Section 3-103(a)** did not create a statutory liability. A plain reading of Paragraph (a)-Second Sentence and Paragraph (b) of **Section 3-103** clearly demonstrates that a statutory liability is created by **Section 3-103(a)-Second Sentence** and an LPE can, therefore, be held liable on a claim brought **under** **Section 3-103(a)-Second Sentence** based upon the LPE’s breach of their codified duty. The Appellate, therefore, wrongly affirmed dismissal of those counts of Plaintiffs’ Complaint which expressly plead the LPEs’ liability under **Section 3-103(a)-Second Sentence**.

A. Section 3-103(a)-Second Sentence Is a Hybrid Provision Discussed by Justice Thomas in Monson Both Declaring a Duty AND Declaring an Immunity Exception to the immunities in Section 3-103(a)-First Sentence.

In *Monson*, the plaintiffs argued the City of Danville could not claim discretionary immunity under the Act because specific immunities provided in **Section 3-102(a)** prevailed over the general immunities in **Sections 2-109** and **2-201**. The Court found that argument fatally flawed because **Section 3-102(a)** “does not grant any immunities”. *Monson* at ¶¶20, 21. That “fatal flaw” does not exist in this case because the first sentence of **Section 3-103(a)** clearly provides for an immunity which an LPE is entitled to assert

and prove as an affirmative defense. Specifically, an LPE can assert **Section 3-103(a)-First Sentence** immunity where it can prove that “the plan or design has been approved in advance of the construction or improvement by the legislative body of such entity or by some other body or employee exercising **discretionary** authority” (labeled herein as “plan-adoption discretionary immunity”, emphasis added). The first sentence of **Section 3-103(a)** is clearly an immunity provision similar to other immunity provisions in the Act except that this **Section 3-103(a)-First Sentence** immunity provision is specifically directed to an LPE’s immunity relating to the design or plan of a public improvement.

Critically, the Legislature after declaring the existence of specific plan-adoption discretionary immunity in Sentence 1 then immediately creates an immunity exception in Sentence 2 by stating in Sentence 2 that the LPE’s plan-adoption discretionary immunity is excluded where “after execution of such plan or design it appears from its use that it has created” a dangerous condition:

§3-103(a)-Sentence 2: “The local public entity is liable, however, if after the execution of such plan or design it appears from its use that it has created a condition that it is not reasonably safe.”

Accord *West v. Kirkham*, 147 Ill.2d 1, 7 (1992) which expressly recognized **§3-103(a)-Sentence 2** as an immunity exclusion stating “[T]hat section goes on to specifically *exclude* from the scope of that immunity, those situations in which it *appears from the use of the plan or design* that an unsafe condition has been created” relating to Sentence 2:

“Section 3–103(a) grants immunity for injury caused by a municipality's adoption of a plan or design for a public improvement where that plan or design is approved by the proper authority. That section goes on to specifically *exclude* from the scope of that immunity, those situations in which it *appears from the use of the plan or design* that an unsafe condition has been created”. (emphasis in original).

§3-103(a)-Sentence 2 is a hybrid, a term used by Justice Thomas in ***Monson***: it is

simultaneous both a statutory duty and an immunity exclusion. Hence, **§3-103(a)-Sentence 2** is an immunity exception to the **§3-103(a)-First Sentence** plan-adoption discretionary immunity which specific immunity arises when an LPE approves the design of a public improvement.

B. §3-103(a)-Second Sentence Also Creates an Immunity Exception to General Discretionary Immunity Delineated Under §2-201.

As this Court stated in *Henrich v. Libertyville High School*, 186 Ill.2d 381, 390 citing to *Hernon v. E.W. Corrigan Construction Co.*, 149 Ill.2d 190, 195(1992) and *Bowes v. City of Chicago*, 3 Ill.2d 175, 205 (1954), “[i]t is a well-settled rule of statutory construction that ‘[w]here there are two statutory provisions, one of which is general and designed to apply to cases generally, and the other is particular and relates to only one subject, **the particular provision must prevail**’.” (emphasis added). In this case, two immunities are in play:

- (1) **§3-103(a)-First Sentence** plan-adoption discretionary immunity; and
- (2) **§2-201** general discretionary immunity.

Given that the **§3-103(a)-First Sentence** plan-adoption discretionary immunity is more specific than the **§2-201** general discretionary immunity, **§3-103(a)-Sentence 1’s** plan-adoption discretionary immunity pre-empts and bars the application of the more general discretionary immunity in **Section 2-201**.

There is a second reason that discretionary immunity cannot insulate the LPEs in this case. In *Monson*, this Court noted that discretionary immunity under **Section 2-201** is restricted, stating:

“The conditional language in section 2-201, “[e]xcept as otherwise provided by Statute,” indicates that the legislature did not intend for the immunity in this provision to be absolute and applicable in all circumstances. See *Murray*, 224 Ill.2d

at 232. Thus, **discretionary immunity under section 2-201 “is contingent upon whether other provisions, either within the Act or some other statute, create[] exceptions to or limitations on that immunity.”**

Monson at ¶18 (emphasis added)

On that point, **Section 2-201** states:

“Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused”. (emphasis added).

In this case, discretionary immunity is expressly “otherwise provided” for in another “Statute”, namely the **Section 3-103(a)-Second Sentence** which states:

“...The local public entity is liable, however, if after the execution of such plan or design it appears from its use has created a condition that it is not reasonably safe.”

Hence, **§2-201** general discretionary immunity is excluded by the second sentence of **Section 3-103(a)** which states:

“The local public entity is liable, however, if after the execution of such plan or design it appears from its use that it has created a condition that it is not reasonably safe.”

In *West v. Kirkham*, 147 Ill.2d 1, 7 (1992) spoke to **§3-103(a)-Second Sentence** as a specific immunity exclusion, stating:

“Section 3–103(a) grants immunity for injury caused by a municipality's adoption of a plan or design for a public improvement where that plan or design is approved by the proper authority. **That section goes on to specifically exclude from the scope of that immunity, those situations in which it appears from the use of the plan or design that an unsafe condition has been created”.**

(Emphasis in original).

Therefore, **§2-201’s “Except as otherwise provided by Statute”** phrase entirely precludes application of discretionary immunity to Plaintiffs’ claims in this case because those claims arise out of the LPEs’ breach of the duty codified under **Section 3-103(a)-Sentence 2**.

Neither the Appellate Court nor the LPEs challenged the sufficiency of Plaintiffs' allegations to state a cause of action for breach of the codified duty under Section 3-103(a) of the Act. Indeed, the Decision at ¶53, ¶74, ¶77, ¶78, ¶94 and ¶101 acknowledges the adequacy of Plaintiffs' Complaint to state a cause of action.

Nevertheless, in order avoid any waiver of their argument on that point, Plaintiffs will simply state that, as acknowledged by the Decision, it clear that design defects associated with, among other things, the undersized culverts and resultant bottlenecking are alleged at Paragraphs 27, 41, 115, 132, 136, 139, 167.3, 556, 561, 562, 563 and 564 of Plaintiffs' Complaint along with the LPEs' knowledge of those defects and failure to correct. It was those defects in the construction of, or improvements to, public property which created a condition not reasonably safe that resulted in the flooding of Plaintiffs' homes.

In summary, Plaintiffs' Complaint, therefore, alleges sufficient facts to establish liability of each LPE under **Section 3-103(a)** based upon their breach of the codified duty.

IV. SHOULD THIS COURT AFFIRM THE APPELLATE COURT'S DISMISSAL OF PLAINTIFFS' COUNTS ALLEGING BREACH OF THE DUTIES CODIFIED IN SECTION 3-102(a) AND SECTION 3-103(a) PLAINTIFFS SHOULD BE ALLOWED TO AMEND EACH COUNT AND PROCEED ON A COMMON LAW CLAIM.

Section 2-612 of the Illinois Code of Civil Procedure provides that "[n]o pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet". **735 ILCS 5/2-612**. Likewise, as the Appellate Court noted in its Decision, the character of a pleading should be determined from its content rather than how it is labeled and the title which plaintiffs may give to the allegations of their complaint does not control over the

substance of the pleading. *In re Parentage of Scarlett Z.-D.*, 2015 IL 117904 at ¶64; *Papadakis v. Fitness*, 2018 IL App(1st) 170388 at ¶32. The focus the Court is required to give to the character of a plaintiff's complaint arises out of the mandate of **Section 2-603(c)** of the Code of Civil Procedure that "[p]leadings shall be liberally construed with a view to doing substantial justice between the parties". **735 ILCS 5-2-603(c)**.

In this case, the Decision of the Appellate Court correctly found that Plaintiffs' Complaint alleged sufficient facts to establish proximate cause. Decision at ¶¶52, 53. The Appellate Court also correctly found that "the substance" of Counts 34, 57 and 74 "can be interpreted as alleging negligence based on a breach of defendants' common-law duty to maintain their property in a reasonably safe condition and that the "substance" of Counts 37 and 45 "could be interpreted as alleging negligence based on a breach of defendants' common-law duty in the making of public improvements". Decision at ¶¶59, 64. Therefore, based upon the Appellate Court's findings, these five Counts of Plaintiffs' Complaint reasonably inform the LPEs as to the existence of Plaintiffs' claims under the common law.

The Appellate Court held Plaintiffs were not entitled to bring a statutory claim under Section 3-102(a) and Section 3-103(a) and, further dismissed all five Counts because the Court believed Plaintiffs had foreclosed the opportunity to have the Court interpret those claims as actions under the common law based upon their argument the codified statutory duty (though derived from the common law) was an "enforceable, individual duty separate from common law" Decision at ¶¶60,64.

The Appellate Court did not speak to the issue of Plaintiffs' right to amend but in the event this Court affirms dismissal of Counts 34, 37, 45, 57 and 74 because Plaintiffs

are not entitled to seek their remedy through a statutory claim under Sections 3-102(a) and 3-103(a) of the Tort Immunity Act, the Plaintiffs should, upon remand, be granted leave to amend those counts so as to plead those same claims under the common law.

Plaintiffs' right to amend is authorized under **Section 2-617** of the Illinois Code of Civil Procedure which states:

“Where relief is sought and the court determines, on motion directed to the pleadings, or on motion for summary judgment or upon trial, that **the plaintiff has pleaded or established facts which entitled the plaintiff to relief but that the plaintiff has sought the wrong remedy, the court shall permit the pleadings to be amended**, on just and reasonable terms, and the court shall grant the relief to which the plaintiff is entitled on the amended pleadings or upon the evidence. In considering whether a proposed amendment is just and reasonable, the court shall consider the right of the defendant to assert additional defenses, to demand a trial by jury, to plead a counterclaim or third party complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed.” **735 ILCS 5/2-617**. (emphasis added).

In this case, as a preface to its dismissal of Counts 34, 37, 45, 57 and 74 the Appellate Court noted that “[t]he statutory duty *is* the common law-duty, simply published in statutory form”. Decision at ¶60. Therefore, the plaintiffs were, as a matter of law, pleading a “statutory form” of the actual common-law duty owed by defendants.

Under these circumstances, it cannot be said that Counts 34, 37, 45, 57 and 74 of Plaintiffs' Complaint fail to adequately inform the Defendants of Plaintiffs' right to a remedy under the common law. The only problem was Plaintiffs Counsel's advocacy that Sections 3-102(a) and 3-103(a) provide a remedy independent from the common law. The Plaintiffs never abandoned their common law claims. Substantial justice, coupled with the requirements the of Code of Civil Procedure, entitle Plaintiffs to proceed on their common law claims upon remand to the Trial Court.

CONCLUSION

For all of the foregoing reasons, Plaintiffs pray this Court reverse the Illinois Appellate Court, First District, Fourth Division's decision dismissing Count 25, Count 45 and Count 64 of Plaintiffs' Amended Fifth Amended Complaint for failure to state a claim based upon LPEs' creation of artificial dangerous conditions on property in their possession and control. In addition, Plaintiffs pray that this Court reverse the Illinois Appellate Court's decision dismissing Count 34, Count 57 and Count 74 of Plaintiffs' Complaint for failure to state a cause of action based upon the duty codified in Section 3-102(a) of the Tort Immunity Act and further dismissing Count 37, Count 58 and Count 75 for failure to state a cause of action based upon the duty codified in Section 3-103(a) of the Tort Immunity Act. In the alternative, Plaintiffs pray the Court grant them leave to amend Count 34, Count 37, Count 57, Count 58, Count 74 and Count 75 to replead Plaintiffs' claims as strictly a breach of the common law duty.

Tuesday, February 19, 2020

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NO. 125017**IN THE SUPREME COURT
OF THE STATE OF ILLINOIS**

DENNIS TZAKIS, ZENON GIL, CATHY)	Appellate Court, First Judicial
PONCE, ZAIA GILIANA, JULIA CABRALES,)	District, Case No. 17-0859
and JUAN SOLIS, on Behalf of Themselves and)	
All Other Persons Similarly Situated,)	2019 IL App (1st) 170859
A Proposed Class Action,)	
Plaintiffs- Appellees-Cross-Appellants,)	Circuit Court of Cook County
v.)	Nos. 2009 CH 6159-09/13/2008
MAINE TOWNSHIP, METROPOLITAN)	Cabrales-10CH38809-07/24/2010
WATER RECLAMATION DISTRICT OF)	Huynh-11CH29586-7/23/2011
GREATER CHICAGO, and THE CITY OF)	Giliana-13CH10423-4/18/2013
PARK RIDGE,)	Solis-14CH06755-6 /2014
Defendants-Appellants-Cross-Appellees)	(consolidated)
And)	
ADVOCATE HEALTH AND HOSPITALS)	The Honorable Sophia H. Hall,
CORPORATION d/b/a Advocate Lutheran)	Trial Judge Presiding
General Hospital,)	
Defendant in Trial Court,)	Prior 1st District Appeal: 1-14-2285
And)	Prior 1st District Decision:
BERGER EXCAVATING CONTRACTORS,)	2015 IL App (1st) 142285-U
INC.; COOK COUNTY; GEWALT)	
HAMILTON ASSOCIATES, INC.; THE)	Related Petition for Leave to
VILLAGE OF GLENVIEW; and THE	—	Appeal filed by Plaintiffs-
VILLAGE OF NILES;		Appellees - No. 125023
Dismissed Defendants		

PLAINTIFFS-APPELLEES' RESPONSE BRIEF APPENDIX

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NOVEMBER 2011 ORDER RELATING TO JOINT DEFENDANTS' SEC. 2-606 MOTION TO DISMISS-RE FILING OF COMPLAINT EXHIBITS	11/08/2011	RA 137	Supp C 237
REFERENCED AMENDED FIFTH AMENDED COMPLAINT EXHIBITS	1/23/2012	RA 138- 190	Supp C 255 etc.
DECEMBER 20, 2011 DECISION OF THE HONORABLE SOPHIA H. HALL AS TO ADVOCATE	12/20/2011	RA 191- 203	C 1022 etc.
REFERENCED MARCH 3, 2011 REPORT OF PROCEEDINGS-PDR HEARING-EXCERPTS	3/03/2011	RA 204- 206	Sup 328 etc.
TORT IMMUNITY ACT: RELEVANT STATUTORY PROVISIONS		RA 207- 215	
EXHIBIT 17-391-A: IDNR'S 2004 HIGH SCHOOL-BALLARD BASIN STORAGE RECOMMENDATION	12/31/2019	RA 216	Sup C 11
EXHIBIT 17-384-A: IDNR'S 2002 FLOOD INUNDATION MAP	12/31/2019	RA 217	Sup C 10
EXHIBIT 1-1-A: ROBIN-DEE-COMMUNITY-NORTH-ADVOCATE-DEVELOPMENT MAP	12/31/2019	RA 218	Sup C 09

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DENNIS TZAKIS, ZENON GIL, CATHY PONCE,)	
ZAIA GILIANA, JULIA CABRALES, AND JUAN)	
SOLIS ON BEHALF OF THEMSELVES AND)	HON. SOPHIA H. HALL
ALL OTHER PERSONS SIMILARLY SITUATED,)	CASE NO. 09 CH 06159
A Proposed Class Action,)	
Plaintiffs)	
v.)	JURY DEMAND
BERGER EXCAVATING CONTRACTORS, INC.,)	
ADVOCATE HEALTH AND HOSPITALS CORPORATION)	
D/B/A ADVOCATE LUTHERAN GENERAL HOSPITAL,)	
COOK COUNTY, GEWALT HAMILTON ASSOCIATES,)	
INC., VILLAGE OF GLENVIEW, MAINE TOWNSHIP,)	
METROPOLITAN WATER RECLAMATION DISTRICT)	
OF GREATER CHICAGO, and CITY OF PARK RIDGE,)	
Defendants)	

FILED
 12 JAN 20 PM 4:23
 CLERK
 CHANCERY DIV.
 COOK COUNTY, ILLINOIS

AMENDED FIFTH AMENDED CLASS ACTION COMPLAINT
AMENDING THE COMPLAINT ONLY ON ITS FACE

The Plaintiffs Dennis Tzakis, Zenon Gil, Cathy Ponce, Zaia Giliana, Julia Cabrales, and Juan Solis, on behalf of themselves and on behalf of all others similarly situated within the Robin-Dee Community Area Plaintiffs' Class, as proposed Plaintiff Class Representatives of the Robin-Dee Community Area Plaintiffs' Classs, by and through their attorneys, Phillip G. Bazzo, Macuga, Liddle, and Dubin, P.C., admitted Pro Hac Vice Counsel herein, Timothy H. Okal, Spina, McGuire and Okal, P.C., and William J. Sneckenberg, Sneckenberg, Thompson and Brody, P.C., state in support of their Fifth Amended Complaint against the Defendants Berger Excavating Contractors, Inc. ("Berger"), Advocate Health and Hospitals Corporation d/b/a Advocate Lutheran General Hospital ("Advocate"), Gewalt Hamilton Associates, Inc. ("Gewalt"), Metropolitan Water Reclamation District of Greater Chicago ("District"), City of Park Ridge ("Park Ridge"), Maine Township ("Township"), Village of Glenview ("Glenview"), and Cook County ("County"), the following averments.

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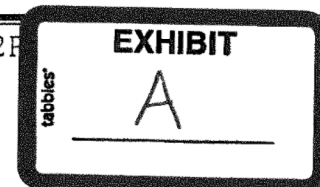


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PART I: JURISDICTION, VENUE AND CLASS ACTION AVERMENTS

1. The proposed Representative Plaintiffs Dennis Tzakis, Cathy Ponce, Zenon Gil, Zaia Giliana, Julia Cabrales, and Juan Solis resided in and continue to reside in the **Robin Court-Dee Road Community Area (herein "Robin-Dee Community Area")** ~~including the Park Ridge North Ballard Neighborhood~~ within the Township of Maine and the City of Park Ridge, Cook County, State of Illinois and were and are citizens of the State of Illinois. **See Complaint Exhibit 1.**
2. "Plaintiffs" are defined to mean and include: (i) all family members of all residents including all children, adults, elderly persons and/or home companions residing in the flood damaged residences at the time of the invasion, (ii) all persons who resided, occupied and/or owned property of any nature within these flood damaged residences at the time of the invasion; (iii) all persons who were and/or are owners of the flood damaged residences and other damaged real and/or personal property; (iv) all persons who were and/or are lessors of the properties who sustained water invasion damage, and (v) all insurers and/or subrogees of any of the persons who sustained water invasion damage.
3. "**Plaintiffs' property**" or "**property**" means and includes the Plaintiffs' residences, buildings, vehicles and/or any and all real property and/or personal property owned, rented, leased and/or otherwise controlled by a Plaintiff and any and all other property of any nature including legal estates of real property of a Plaintiff within Robin-Dee Community. "Plaintiffs' property" includes all servient estates of real property owned and/or controlled by a Plaintiff in relationship to a defendant's dominant estate(s) of real property.
4. The Defendant Berger Excavating Contractors, Inc. ("Berger") was and is an Illinois corporation doing business in Cook County, Illinois and is a citizen of Illinois.

5. The Defendant Advocate Health and Hospitals Corporation d/b/a Advocate Lutheran General Hospital ("Advocate") was and is an Illinois corporation doing business in Cook County, Illinois and is a citizen of Illinois. "Advocate" includes all predecessor corporations and all related corporations of Advocate.
6. The Defendant Gewalt Hamilton Associates, Inc. ("Gewalt") was and is an Illinois corporation doing business in Cook County, Illinois and is a citizen of the State of Illinois. "Gewalt" includes all predecessor corporations and associations and all related entities.
7. The Defendant Cook County ("County") was and is under the Tort Immunity Act ("TIA") a "local public entity", doing business in Cook County as a citizen of Illinois.
8. The Defendant Village of Glenview ("Glenview") was and is a "local public entity" under the TIA doing business in Cook County as a citizen of Illinois.
9. The Defendant Maine Township ("Township") was and is a "local public entity" under the TIA, doing business in Cook County as a citizen of Illinois.
10. The Defendant Metropolitan Water Reclamation District of Greater Chicago (the "District") was and is a TIA "local public entity", doing business in Cook County as a citizen of Illinois.
11. The Defendant City of Park Ridge ("Park Ridge") was and is a "local public entity" under the TIA, doing business in Cook County, as a citizen of Illinois.
12. "Defendant" includes any predecessor or successor in interest and/or title of a Defendant.
13. This case has an amount in controversy that exceeds \$75,000 and satisfies the other minimum legal and equitable jurisdictional amounts and conditions of this Court.
14. Cook County is the proper venue as (a) these claims arise out of occurrences occurring in Cook County, (b) the Plaintiffs reside and/or own property in Cook County, (c) non-governmental Defendants do business in Cook County, and (d) local public entities operate in Cook County.

PART II: ROBIN-DEE COMMUNITY AREA PLAINTIFF CLASS

15. The proposed Robin-Dee Community Area Class Representatives Plaintiffs Dennis Tzakis, Cathy Ponce, Zenon Gil, Zaia Giliana, Julia Cabrales, and Juan Solis resided in, owned residences and owned other properties within the Robin-Dee Community Area and continue to reside in, continue to own residences and continue to own other properties in this Area.
16. Nothing here in this paragraph is intended in any way to prevent the certification of this action as a class action. The following listing of plaintiff class members is only for purpose of providing notice to the Defendants as to known claimants within the class and not limitation. The plaintiff members of the class include but are not limited to the following persons: Dennis Tzakis, Cathy Ponce, Zenon Gil, Edward Lee-Fatt, Zaia Giliana, Julia Cabrales, and Juan Solis, the proposed representative plaintiffs; Angela DeLeon, Fred Dinkha, Lisa Hegg, Carolyn Reed, , and Jerry Tzakis, Griselda Alarcon, Mohammed Anwer, Khalid Anwer and Rahila Afshan, Fidelmar Arriaga and Georgina Catalan, Cesar Arteaga and Edith Castaneda, Fazle Asgar and Farida Yasmee, Wanda Austin, Lubna Awwad and Eddie Michael, Noma and Subul Baig, Domingo and Daditha Barbin, Valerie Barton, Madline Baturin, Salvador Berrum, Briar Court Condominium Association, Roque Carbrales, James and Michelle Catane, Charles Cawelle and Ferron Forrester, Alejandro and Abehna Chavez, Pravin Chokshi and Dixit and Sancotta Chokshi, Felipe Contreras, Rodulfo Cuballes, Ricardo Cuevas, Thalia and Konstantinos Davos, Antonio DeLeon, Francisco Diego and Felicitas Pagua, Michelle Diego and Marlon Mansalapuz, Nawal Dinka, Ismael and Angela Dominguez, Nieves Escobar, Bernabe and Marcelina Escobedo, Smajl and Safete Feka, Richard Gabrel, Ananda Gil, Evon Giliana, Ioan and Analiana Gyulai, Chigozie and Flora Harry, Abu and Laila Hasan, Syed and Asmat Hasan, Carlos and Gina Herbias, Alejandro and Brenda Herrera, Agustin Herrera and Marina Enrriguez,

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Daniela Hristova and Ilia Georgiev, Eloy and Martha Huicochea, Aaron Huynh and Beyinda Phan-Huynh, Amir and Shamoona Khan, Shashi and Sandeep Khurana, Charles and Aloha Koffler, Harshad and Bharti Kothari, Oliver and Marjorie Lawrence, Sr., Linnette Lee-Fatt, Alexander Leschinsky and Marina Aksman, Cipriano Librea and Margarita Tungcab, Jaime and Ana Macapugay, Nitin and Nidhi Malik, Nicanor and Lourdes Mandin, Javier and Maria Montes, Jose and Maria Nunez, c/o Janet Nunez, Oluwatoyin and Olajide Okedina, Rajendran and Lilitha Paramasivam, Rosalinda Paramo, Katuiscia Penette, Victor and Catalina Ponce, c/o Cathy Ponce, Sheel and Minu Prajapati, Christopher Reed and Amy Berenholz, Shabbis and Zeenat Samiwala, Anne Sloma, Jefferson and Shirley Ann Sotto, Deborah Tzakis, Christina Tzakis, Annalinda Villamor, Noel and Lucent Wilson, Joshua Winter and Beth Campbell, Robert Yalda, Robert and Helda Youkhana, Magdalena Zieba-Surowka and Bartosz Surowka and Vela Swain.

17. The proposed Representative Plaintiffs bring this proposed class action pursuant to 735 ILCS 5/2-801 on behalf of themselves and on behalf of all other persons, owners, residents and/or insurers within the **Robin-Dee Community Area Class** affected by the **Prairie Creek Stormwater System**'s stormwater surface overflows complained of herein.

17.1. Generally, the **Robin-Dee Community Area Class** includes the Robin-Dee Community, ~~but also includes other neighborhoods upstream of the Robin-Dee Community and includes neighborhoods in Park Ridge such as the Park Ridge North Neighborhood.~~

17.2. The Proposed Robin-Dee Community Area Class substantially exceeds 500 citizens.

17.3. The Robin-Dee Community Area Class Plaintiffs consist of all persons (including insurers) who sustained injury or damage arising from surface water and/or sanitary sewer

home-invasive flooding on September 13, 2008 from the overflow of the Prairie Creek Stormwater System.

17.4. This class includes persons who sustained sewer water invasions through this area's sanitary sewers due to the overflow of the Prairie Creek Stormwater System including the Main Drain overflows and Ballard, Pavilion and Dempster Basins overflows ~~including in areas upstream of Potter Avenue in the Prairie Creek Watershed.~~

17.5. This class includes persons in the **Robin Neighborhood, Dee Neighborhood, Briar Neighborhood,** ~~and Park Ridge North Neighborhood besides other neighborhoods including other neighborhoods which may be uncovered during discovery upstream of Potter Avenue.~~

17.5.1. ~~The Park Ridge North Ballard Neighborhood includes water invasion citizen victims north of Ballard Road on Western, Parkside, Home and Woodview within Park Ridge.~~

17.6. ~~Other areas of the Prairie Creek Watershed upstream of the Robin-Dee Community may also be affected by the stormwater and sanitary water defects as discovery is ongoing.~~

18. As detailed herein relating to the issues of fact and law, there are questions of fact and law common to the members of the Robin-Dee Community Area Plaintiff Class which predominate over questions affecting only individual members as required by 735 ILCS 5/2-801(2).

19. The Representative Plaintiffs and their attorneys will fairly and adequately represent and protect the interests of the proposed Robin-Dee Class as required by 735 ILCS 5/2-801(3).

20. This proposed Class Action is an appropriate method for the fair and efficient adjudication of this controversy as contemplated by 735 ILCS 5/2-801.

PART III. STATEMENT OF FACTS COMMON TO ALL COUNTS

21. "This Defendant" means each defendant. By this averment is meant that these averments are direct to each Defendant individually, requiring an individual answer. It is not the intent of this pleading to plead a "joint" averment, that is, an averment requiring this Defendant to answer as to another Defendant or the knowledge of another Defendant. Each Defendant is requested to answer these averments only as to its knowledge. "Joint allegations", "joint counts", "joint knowledge" or joinder of claims is not the intent of this Part of this Complaint. This statement applies to Subparts in Part III and is incorporated into all Subparts.
22. "Defendant" means this Defendant (through its attorney) who is answering this Part III. Each Defendant is request to respond to this Part III.
23. "At all relevant times" prefaces each averment paragraph.
24. "Upon information and belief" qualifies each averment sentence where an **asterisk** appears at the end of the averment sentence unless otherwise evident from the context.

III.A.OVERVIEW OF PRAIRIE CREEK STORM WATER SYSTEM MAP

25. Over the decades Park Ridge, the County, Maine Township, and the District among other local public entities in coordination with their private partners including Advocate and Gewalt developed a man-made public improvement hereinafter referred to as the Prairie Creek Stormwater System ("PCSS"). These local public agencies have controlled the process of the PCSS public improvement's development through their review, approval and construction oversight including original plat approvals dated in 1960 and 1961 for the Robin-Dee Community. Each of these local public entities receives tax monies and fees from Plaintiffs for the services it provides relating to planning, development, review and/or management of the

Prairie Creek Stormwater System public improvement. Attached hereto and incorporated herein as Exhibit A is a Google Earth Image of the most relevant area of the Prairie Creek Stormwater System to the most immediate causes and responsibilities for the September 13, 2008 man-made home-invasive flooding as alleged herein by the Plaintiffs.

26. The PCSS is a stormwater system of public improvements consisting of a (a) a central Main Drain ultimately receiving all Prairie Creek Watershed stormwater, said main drain consisting of open, channelized drains like the Robin Neighborhood Main Drain, and enclosed pipes like the Dee Neighborhood Stormwater Pipe, and other drains and culverts in various segments along the path of the Main Drain; (b) retention/detention basins for stormwater storage such as the Ballard Basin, Pavilion Basin and Dempster Basin and their tributary stormwater sewers which feed these basins; and (c) tributary stormwater sewers usually under the streets collection street stormwater runoff which then drain to the Main Drain or its storage components.
27. The PCSS receives generally receives most of the stormwater runoff within the Prairie Creek Watershed (PCW), a watershed which exceeds 1 square mile upstream of the 60" Howard Court Culvert at Point E yet is expected by its operator(s) to safely drain through this culvert without flooding the Robin-Dee Community. See Exhibit 1.
 - 27.1. The North Drain Main Drain and Robin-Dee Main Drain of the Prairie Creek Main Drain drains stormwater essentially from Point A on the north, the east boundary of the North Development Main Drain and Point B on the south to Point J on the west.
 - 27.2. The thick white arrows on Exhibit 1 show the general path of the Main Drain's stormwater as it proceeds through the Main Drain's North Development Main Drain Subsystem and the Main Drain's Robin-Dee Main Drain of the PCSS.

- 27.3. Exhibit 1 sets forth terms that are incorporated herein and will be used to describe the stormwater structures, flows and other facts relevant to this case.
28. Relating to Exhibit 1 and the North Development Main Drain Subsystem of the PCSS , the PCW's Upstream stormwater enters at Point A1, the Upstream Main Drain's discharge point.
29. The upstream stormwater from Point A1 flows either to the Ballard or Pavilion Basin, where the stormwater discharges to the 60" Ballard Basin Discharge Culvert at Point A3.
30. Stormwater also enters the Ballard Basin at Point A2, Point A2 stormwater being collected from the tributary storm sewers which are located in Park Ridge and/or Maine Township*.
31. During dry weather conditions, stormwater remains in the Ballard Basin; only when it rains does the Ballard Basin stormwater discharge through Point A3, the Ballard Basin Discharge Culvert into the MD Robin-Dee Community Segment.
32. The Ballard and Pavilion Basin's stormwater then flows to Point A3, which is the 60" Ballard Basin Discharge Culvert; over 1 square mile of Upstream Watershed stormwater is expected by its operator(s) to flow through this single 60" culvert.
33. The 60" Ballard Basin Discharge Culvert then discharges to Point C1, the north 60" Ballard Robin Alley Culvert.
34. The Robin Neighborhood Subsegment of the Prairie Creek Stormwater System includes besides the Robin Neighborhood Main Drain the Maine Township tributary stormwater sewers within to the Robin Neighborhood*.
35. The Robin Neighborhood Main Drain begins at Point C1 and Point C2, the identical 60" culverts. These Robin Alley Culverts are side-by-side under the Robin Alley bridge.
36. Point C2 , the south 60" Dempster Robin Alley Culvert, receives Dempster Basin stormwater.

37. The Dempster Basin contributes flow to the Robin Neighborhood Main Drain from the South Development drains through an 84" stormwater sewer turning at Point B1 to Point B2.
38. Point B3 is the 60" Dempster Basin Discharge Culvert which receives the Dempster Basin stormwater and conveys it through the 60" Robin Alley Stormwater Sewer to Point C2.
39. During land-invasive and home-invasive flooding, overflowing surface water invades the Robin Neighborhood from the Dempster Basin Parking Lot, between Points B3 and C2.
40. Point D is the 120" Robin Court Culvert receiving the Robin Neighborhood Main Drain's stormwater from the twin 60" Robin Alley Culverts.
41. Point E is the 60" Howard Court Culvert through which the owner(s), engineer(s) and/or operator(s) of the Robin Neighborhood Main Drain attempt to drain the 120" upstream flow from the 120" Robin Court Culvert and the twin 60" Robin Alley Culverts.
42. The Robin Neighborhood Main Drain begins at Points C1 and C2, the twin 60" Robin Alley Culverts and ends at Point E, the 60" Howard Court Culvert.
43. Point E, the Howard Court Culvert is the intake culvert for the 60" Dee Neighborhood Stormwater Pipe ("DNSP") which is also the Dee Neighborhood Main Drain.
44. Points F1, F2 and F3 are points of tributary stormwater flow into the DNSP.
45. Point G is the Dee Road Junction Manhole through which the Dee Neighborhood Main Drain flows in its DNSP and which receives stormwater from Points F1, F2 and F3.
46. Point H is the 60" discharge end pipe of the 60" Dee Neighborhood Stormwater Pipe which empties the Dee Neighborhood MD into an open channel, the Briar Neighborhood MD.
47. The Dee Neighborhood Main Drain is the Dee Neighborhood Stormwater Pipe extending from Point E, the Howard Court Culvert, to Point H.

48. The PCSS's Dee Neighborhood Subsegment includes both the Dee Neighborhood Main Drain and its tributary stormsewers beginning at Points F1 and F2.
49. Point I is a hard, right 90 degree turn of the Briar Neighborhood Main Drain, where the entire Prairie Creek Main Drain is expected to turn and proceed north to the Rancho Lane Neighborhood.
50. Point J is the approximate location of the Rancho Lane Culverts.
51. Point H through Point J is the Briar Court Main Drain.
52. The Robin-Dee Community Main Drain means the Main Drain from Points C1 and C2 through and past Point J west to Potter Road.
53. "Robin-Dee Community" refers to the Robin Neighborhood platted in or around 1960 and the Dee Neighborhood platted in or around 1961 and contiguous parcels such as the apartment parcel on the eastside of Dee Road and the Briar Court Condominium parcel.
54. "Robin Dee Community Area" means the Robin-Dee Community ~~and other nearby areas within the Prairie Creek Watershed~~ which sustained invasive flooding on September 13, 2008 because of the surface water overflow flooding described herein. ~~This term includes the Park Ridge North Ballard Neighborhood.~~
55. Point A3 is situated near the bank of the Ballard Basin; the Ballard Basin together with the Pavilion Basin which is to the east of Ballard Basin constitute the North Development Ballard Basin Complex which includes connected sewers and stormwater structures.
56. Point B2 is near the bank of the Dempster Basin. "Basin Structures" or "Primary Basin Structures" mean the Ballard, Pavilion and Dempster Basins and their and any connected stormwater subsystem including interconnected drains.

57. Points A1, A2 and A3 and B1, B2 and B3 on on Advocate's North Development which includes Advocate's property north of Dempster Road and includes (1) the Basin Structures (2) North Development Main Drain and (3) other lands, buildings and improvements including streets, parking lots and parking garage(s). See Exhibit 1.
58. Point B2 receives stormwater from Advocate's South Development which is Advocate's property south of Dempster Road, which includes land, building and other improvements.

III.B. PRE-1960 MAIN DRAIN NATURAL PATH MEANDERING NOT STRAIGHT

59. The **Prairie Creek Watershed** ("PCW") is a stormwater watershed generally having its boundaries as Golf Road on the north, Washington Ave. on the east, Dempster Road on the south and Potter Road on the west in Maine Township, Park Ridge, Glenview, Niles and Des Plaines. The PCW specific boundaries are delineated in the 2002-Initiated IDNR Farmers/Prairie Creek Strategic Planning Investigation (herein "2002 IDNR Investigation").
60. Through most of the first-half of the 20th century, and (a) before 1960, before the **Robin Neighborhood** was platted in 1960 and the **Dee Neighborhood** was platted in 1961, and (B) before the Robin-Dee Community Area Plaintiff Class' land and residences were built and developed in these two neighborhoods, the **Prairie Creek** naturally meandered through the PCW through the **Robin-Dee Community Area**.
- 60.1. The **Robin-Dee Community Area** and Robin-Dee Community Area Class is defined here by these three primary neighborhoods affected by the 2008 home-invasive flooding along other contiguous neighborhoods may have been affected as further discovery may reveal.
- 60.2. The **Robin Neighborhood** is bounded on the north by Ballard, on the east by Robin Alley, on the south by Dempster, and on the west by Howard Court and a line to Ballard.

- 60.3. The **Dee Neighborhood** is bounded on the north by the Dee Neighborhood Main Drain, on the east by Howard Court, on the south by Dempster and on west by Briar Court.
- 60.4. ~~The **Park Ridge Ballard North Neighborhood** is bounded on the north by Church, on the east by Western, on the south by Ballard and on the east by Columbus/Federal.~~
- 60.5. The Robin Dee Community is the Robin Neighborhood and the Dee Neighborhood .
- 60.6. ~~The **Robin Dee Community** and the **Park Ridge Ballard North Neighborhood** form the **Robin Dee Community Area**, the primary Plaintiff Class area pending further discovery.~~
61. A semi-circular line from Points C1-C2 to Point F3 to Point I depicts the Prairie Creek's natural path the Prairie Creek before its development as the Prairie Creek Stormwater System Public Improvement.

III.C. 1960-61 PARK RIDGE AND COUNTY APPROVED RN-DN PLAT PLAN-60"
HOWARD COURT CULVERT AND DEE NEIGHBORHOOD STORMWATER PIPE

62. Before or around 1960, the public improvements of the PCSS's Robin Neighborhood Main Drain had been or were being constructed. The developer of the Robin Neighborhood prepared a plat plan depicting the existing straightened, man-made route **Main Drain** on which the **Robin Neighborhood Main Drain** was laid out. This plat plan was entitled "Dempster Garden Homes Subdivision" (herein "**RN Plat Plan**") and is geographically coextensive with the Robin Neighborhood, being Ballard to Robin Court Alley to Dempster to Howard Court back to Ballard.
- 62.1. The developer also prepared other stormwater and sanitary sewer water management documents to the **RN Plat Plan** which where necessary or required as preconditions to obtaining LPE approvals relating to stormwater and sanitary sewer water management.

- 62.2. The developer submitted these water management plans to **Park Ridge** and the **County** for their review and expected approval water management requirements set by them *.
- 62.3. These plans requested permission and authority for construction and improvements including public improvement construction from **Park Ridge** and the **County** to drain stormwater into the PCSS's Robin Neighborhood Main Drain *.
63. In or around 1960, **Park Ridge** & the **County** received the **RN Plat Plan** and the necessary and/or required sewer water management plan *. **Park Ridge** & the **County** reviewed the **RN Plat Plan** including sewer water management plans for compliance with **Park Ridge** & **County** stormwater drainage requirements *. **Park Ridge** & the **County** also reviewed the **RN Plat Plan** for compliance with their sanitary sewage collection requirements for plat plan approval *.
64. In or around 1960, **Park Ridge** and the **County** approved the **RN Plat Plan**. Concurrent with the **RN Plat Plan** approval, **Park Ridge** approved sewer construction plans including approving all storm and sanitary sewers to be installed as compliant with applicable laws *.
65. The **RN Plat Plan** set forth that **Park Ridge** and/or the **County** represented to the developer that the developer could hook up to a public sanitary sewer system or interceptor sewer to serve all of the residences in this subdivision in conformity with standards of design and safety adopted by the Cook County Department of Health governing sanitary sewers.
66. **RN PLAT MD DRAINAGE EASEMENT**: The **RN Plat** provided, conveyed, created, dedicated and/or acknowledged easements for ingress and egress to the public, governmentally-owned and/or governmentally-controlled **Robin Neighborhood Main Drain**.
- 66.1. The **RN Plat Plan** provided, conveyed, created, dedicated and/or acknowledged easements along the existing path of the **Robin Neighborhood Main Drain** within an "EASEMENT FOR DRAINAGE DITCH" (herein "**RN Plat's MD Drainage Easement**").

66.2. The **RN Plat's MD Drainage Easement** consisted of two areas which are both 265' long, the distance between the Robin Alley, the Robin Court and Howard Court Culverts.

66.3. The District, Park Ridge, Maine Township, Glenview and/or the County were and/or are and/or continue to be the easement holders of this MD Drainage Easement *.

66.4. The District, Park Ridge, Maine Township, Glenview and/or the County were permitted and/or authorized by the MD Drainage Easement to construct, build, improve, maintain, clean and/or perform any other activity related to or arising out of the ownership and/or operation of the **Robin Neighborhood Main Drain** *.

67. **RN PLAT TRIBUTARY STORMWATER SEWER EASEMENT:** The **RN Plat Plan** also provided, conveyed, created, dedicated and/or acknowledged utility easements for the Robin Neighborhood's **Tributary Stormwater Sewer Service** tributary to the **Robin Neighborhood Main Drain** ("RN Plat's Tributary Stormwater Sewers Easement).

67.1. The **RN Plat Plan** provided, conveyed, created, dedicated and/or acknowledged easements along the route of the existing **RN Tributary Stormwater Sewers** which sewers drain into the Robin Neighborhood Main Drain.

67.2. The existing 60" **Robin Alley Sewer** conveys stormwater from the **Dempster Basin** under **Robin Alley** to the **Robin Alley Culverts** which discharge into the **M D Robin Neighborhood Subsegment** is within the **RN Tributary Stormwater Sewers Easement**.

67.3. The District, Park Ridge, Maine Township, Glenview and/or the County were and/or are the easement holders of the **RN Plat's Tributary Stormwater Sewers Easement** *.

67.4. The District, Park Ridge, Maine Township, Glenview and/or the County were permitted and/or authorized by the **RN Plat's Tributary Stormwater Sewers Easement** to construct,

build, improve, maintain, clean and/or perform any other activity related to or arising out of the ownership and/or operation of stormwater sewers tributary to the Main Drain *.

68. **RN PLAT'S SANITARY SEWER EASEMENT:** The **RN Plat Plan** also provided, conveyed, created, dedicated and/or acknowledged a **Sanitary Sewer Easement** ("RN Plat's Sanitary Sewer Easement") for municipal sanitary sewer service within the **Robin Neighborhood**.

68.1. The District, Park Ridge, Maine Township, Glenview and/or the County were and continue to be the easement holders of the RN Plat's Sanitary Sewers Easement *.

68.2. The District, Park Ridge, Maine Township, Glenview and/or the County were permitted and/or authorized by the RN Plat's Sanitary Sewers Easement to construct, build, improve, maintain, clean and/or perform any other activity related to or arising out of the ownership and/or operation of sanitary sewers within the Robin Neighborhood *.

69. **RN PLAT PLAN A TIA PLAN:** The **RN Plat Plan** is a plan within the meaning of "plan" as the term "plan" is used in Article III of the Tort Immunity Act.

70. **STORMWATER STRUCTURES WITHIN APPROVED PLAN:** The following existing stormwater structures are within the governmentally-approved **RN Plat Plan's Easements**: (a) the undersized 60" **Howard Court Culvert**; (b) the 100 yard upstream 120" **Robin Court Culvert**; (c) the 100 yards upstream twin 60" **Robin Alley Culverts**; (d) **Robin Neighborhood Main Drain** which flows through the Robin Court Culvert but bottlenecks at the Howard Court Culvert; and (e) the 60" **Robin Alley Stormwater Sewer** now connected to the Dempster Basin, transporting stormwater from the Dempster Basin to the **Robin Neighborhood Main Drain**.

71. In or around 1960, **Park Ridge** issued permits for the construction of the existing **RN Plat's Tributary Stormwater Sewers and Sanitary Sewers** as set forth in the tributary stormwater sewers easements identified in the RN Plat Plan *. Construction occurred per these Permits *.

72. In or around 1960, the **County** issued permits for the construction of the existing **RN Plat's Tributary Stormwater Sewers and Sanitary Sewers** as set forth in the tributary stormwater sewer easement in the RN Plat Plan *. Construction occurred per these Permits*.
73. The foregoing eleven paragraphs are incorporated by reference with the substitution of "DN Plat Plan" for "RN Plat Plan. " In or around 1961, the developer of the Dee Neighborhood prepared a similar plat plans as the RN Plat Plans depicting the straightened route of the **Dee Neighborhood Main Drain** channeled through the undersized 60" **Dee Neighborhood Stormwater Pipe**. This plat plan was entitled the "First Addition to the Dempster Garden Homes Subdivision" (herein "DN Plat Plan").
74. In or around 1961, Park Ridge & **County** approved the **DN Plat Plan**. Concurrently, **Park Ridge & the County** approved all sewer water management plans *.
75. As set forth in the **DN Plat Plan**, the County, Park Ridge, the District, Glenview and/or Maine Township represented to the developer that the developer could hook up sewers to a public sanitary sewer system or interceptor sewer to serve residences in this subdivision in conformity with standards of design and safety adopted by the Cook County Department of Health.
76. **DN PLAT MD DRAINAGE EASEMENT:** The **DN Plat** provided, conveyed, created, dedicated and/or acknowledged easements for ingress and egress to the public, governmentally-owned and/or governmentally-controlled **Dee Neighborhood Main Drain of the PCSS**.
- 76.1. Specifically, the **DN Plat Plan** provided, conveyed, dedicated and/or acknowledged easements along the existing path of the **Dee Neighborhood Main Drain** within the **Dee Neighborhood** within an easement for drainage ditch (herein "DN Plat's MD Easement").
- 76.2. The **DN Plat's MD Drainage Easement** consisted of the routing of the **Dee Neighborhood Stormwater Pipe** which channeled the **Main Drain**.

- 76.3. The District, Park Ridge, Maine Township, Glenview and/or the County were and continue to be the easement holders of the DN Plat's MD Drainage Easement *.
- 76.4. The District, Park Ridge, Maine Township, Glenview and/or the County were permitted and/or authorized by the DN Plat's MD Drainage Easement to construct, build, improve, maintain, clean and/or perform any other activity related to or arising out of the ownership and/or operation of the undersized 60" **Dee Neighborhood Stormwater Pipe** conveying the **Dee Neighborhood Subsegment of the Robin-Dee Community Segment of the Main Drain** within the **DN Plat's MD Drainage Easement** *.
77. **DN PLAT TRIBUTARY STORMWATER SEWER EASEMENT:** The **DN Plat Plan** also provided, conveyed, created, dedicated and/or acknowledged utility easements for the **Dee Neighborhood's Tributary Stormwater Sewer Service** referred to herein as the **DN Plat's Tributary Stormwater Sewers Easement**.
78. **DN PLAT'S SANITARY SEWER EASEMENT:** The **DN Plat Plan** also provided, conveyed, created, dedicated and/or acknowledged a **Sanitary Sewer Easement** ("DN Plat's Sanitary Sewer Easement") for municipal sanitary sewer service within the **Dee Neighborhood**.
79. **RN PLAT PLAN and DN PLAT PLAN A TIA PLAN:** The **RN Plat Plan** and the **DN Plat Plan** is a plan within the meaning of "plan" as used in Article III of the Tort Immunity Act.
80. In or around 1961, **Park Ridge** & the County issued permits for the construction of the existing **DN Plat's Tributary Stormwater Sewers** within the **DN Plat Plan** *.
81. In or around 1961, **Park Ridge** & the County issued permits for the construction of the existing **DN Plat's Sanitary Sewers** as set forth in the sanitary sewer easements in the **DN Plat Plan** *.

**III.D. GOVERNMENTAL DEFENDANTS SUPERVISED SEWERS
INFRASTRUCTURE**

82. During the land development of the Robin-Dee Community Area, the County, the District, Park Ridge, Maine Township and/or Glenview authorized and permitted the construction of stormwater sewers developed stormwater sewers serving the Robin-Dee Community Area including the stormwater and sanitary sewer infrastructure in and around the Robin-Dee Community Area, these stormwater sewers being structures and elements of the PCSS.
83. In or about early 1960s, the following **Prairie Creek Stormwater System** structures had been built or were built and both **Park Ridge** and the **County** knew of their existence and their drainage and conveyance capacity
84. The Prairie Creek has been converted by urbanization including public improvements such as channelization in the Robin-Dee Community to a stormwater drain and will be referred to as the "Prairie Creek Main Drain", "Main Drain" or "MD".
85. The Prairie Creek Main Drain is now part of a complex, interrelated stormwater system which be referred to as the "Prairie Creek Stormwater System" ("PCSS"). The PCCC receives, conveys, stores and discharged stormwater collected within the now-urbanized, publicly improved Prairie Creek Watershed.
86. The now-straightened, channelized subsegment of the Prairie Creek Main Drain of the Prairie Creek Stormwater System proceeding through the Robin Neighborhood will be referred to as the "MD Robin Neighborhood Subsegment" of the Prairie Creek Stormwater System. The Robin Neighborhood Main Drain is a channelized 10' wide open stormwater drain beginning at the Robin Alley on the east and proceeding west to Howard Court.

87. The Main Drain flows from east to west within the Dee Neighborhood through a 60" enclosed stormwater pipe (the "MD Dee Neighborhood Stormwater Pipe"). The MD Dee Neighborhood Stormwater Pipe is a 60" enclosed stormwater pipe which begins at Howard Court and ends at the western boundary of the Dee Neighborhood. The MD Dee Neighborhood Pipe receives stormwater through the Howard Court Culvert from the Robin Neighborhood Main Drain.
88. The straightened segment of the Prairie Creek has become a stormwater drain integral to the operation of the entire Prairie Creek Stormwater System as the only exit for stormwater from the North Development Main Drain is the Robin-Dee Community Main Drain (from Points C1-C2 through Point J) which is the Robin-Dee Community Segment of the PCSS. A segment as used herein means, not only the Main Drain but the tributary sewers feeding the Main Drain and related and connected tributary structures. For example, F1 and F2 are tributary stormwater sewers conveying stormwater to the Main Drain.
- 88.1. The existing **Robin-Dee Main Drain's** straightened path from Robin Alley to the Briar Court Elbow (**Points C1-C2 through Point I**) was not its original route, original path, original topography or original elevations of the Prairie Creek.
- 88.2. Through development and urbanization, the Prairie Creek has been transformed from a natural creek to the man-made PCSS conveying stormwater from areas upstream and tributary to the Prairie Creek Main Drain within the now-urban Prairie Creek Watershed.
- 88.3. One or more of the governmental defendants approved this straightening of the Main Drain Robin-Dee Community Segment of the PCSS.
89. Before 1987, the following Prairie Creek Stormwater Structures were constructed within the :
- (a) the Robin Neighborhood Main Drain; (b) the twin 60" Robin Alley Culverts; (c) The 60" Robin Alley Stormwater Sewer currently connected to the Dempster Basin and the Robin

Neighborhood Main Drain; (d) the 120" Robin Court Culvert; and (e) the 60" Howard Court Culvert.

90. Both **Park Ridge** and the **County** (a) approved the existence of these **Prairie Creek Stormwater Structures**, (b) approved their drainage and conveyance capacity, and (c) knew of the undersized 60" Howard Court Culvert in relationship to both the 120" Robin Court Culvert which was less than 100 yards upstream and the twin 60" Robin Alley Culverts which were less than 200 yards upstream of the Howard Court Culvert *.

III.D.1. PARK RIDGE OWNS AND OPERATES THE TRIBUTARY NORTH BALLARD STORM SEWERS WHICH FLOW TO THE MAIN DRAIN

91. During this infrastructure development before 1987, the City of Park Ridge constructed and/or caused to be constructed the **Park Ridge North Ballard Storm Sewers** which are storm sewers north of Ballard and the Advocate North Development on the streets of Parkside Dr. , Parkside Avenue and Knight Avenue and nearby and contiguous streets within Park Ridge's city limits.
92. Park Ridge drains the Park Ridge North Storm Sewers south to the **Prairie Creek Main Drain**.
93. Park Ridge approved the design, construction and operation of the **Park Ridge North Storm Sewers** to flow into the **Prairie Creek Main Drain**.

III.D.2. PARK RIDGE OPERATES THE BALLARD STORM DRAIN WHICH FLOWS TO THE DRAIN.

94. During this infrastructure development before 1987, Park Ridge constructed and/or caused to be constructed the **Park Ridge North Ballard Storm Drain** which is a storm drain on the south side of Ballard Road within Park Ridge's city limits which drains into the **Main Drain** *.
95. Park Ridge owns and/or operates the **Park Ridge Ballard Storm Drain** which parallels Ballard Road and drains into the **Prairie Creek Main Drain** *.

96. The County, District and/or another governmental body in addition to Park Ridge also approved the drainage of the Park Ridge Ballard Storm Drain to collect, receive, transport and convey stormwater runoff flows during rainfalls into the Prairie Creek Main Drain *.
97. The Park Ridge Ballard Storm Drain contributed to and/or caused the man-made home-invasive flooding suffered by the Plaintiff Class herein.

III.D.3. COOK COUNTY, DISTRICT AND/OR MAINE TOWNSHIP OWN AND OPERATE THE ROBIN-DEE COMMUNITY STREET STORM SEWERS WHICH FLOW TO THE DRAIN.

98. Cook County, the District and/or Maine Township own and operate the Robin-Dee Community Street Storm Sewers under Robin Alley, Robin Court, Howard Court, Dee Road, Briar Court and Bobbi Lane within Maine Township.
99. Cook County, the District and/or and/or Maine Township own and operate the upstream and tributary municipal street Stormwater Sewers upstream of the Main Drain within Maine Township ("Upstream Stormwater Sewers")

III.D.4. COOK COUNTY, DISTRICT, PARK RIDGE AND/OR MAINE TOWNSHIP OWN AND/OR OPERATE THE TRIBUTARY UPSTREAM STREET STORM SEWERS WHICH FLOW TO THE DRAIN.

100. Cook County, the District, Park Ridge and/or Maine Township own and operate the Street Storm Sewers under Robin Alley, Robin Court, Howard Court, Dee Road, Briar Court and Bobbi Lane and upstream of these street sewers in Maine Township and/or Park Ridge *.

III.E. 1975: THE NORTH DEVELOPMENT IS PART OF THE INTEGRATED MUNICIPAL PRAIRIE CREEK MAIN DRAIN PUBLIC IMPROVEMENT.

101. Before the North Development's land, building, parking lots and other improvements were developed, the Prairie Creek naturally meandered through the North Development in a semi-circular path, different from the unnatural, man-made September 13, 2008 path.

- 104.4. Advocate dedicated a drain easement to Park Ridge for the Dempster Drainage Ditch *.
105. In 1976, in the North Development Plat Plan, Advocate explicitly reserved for Park Ridge the site of the existing Dempster Basin specifying that said southwest corner of the North Development as reserved for a future City of Park Ridge water reservoir.
- 105.1. The existing Dempster Basin site is situated on this reserved water reservoir site.
- 105.2. This Dempster Basin site was reserved in 1976 by Advocate for Park Ridge's benefit*.
106. In 1976, Park Ridge approved the **North Development Plat Plan** including all drainage alterations including changes to the topography of the North Development.
- 106.1. Concurrently, **Park Ridge** approved all sewer water management documents including approving all stormwater and sanitary water management provisions of these documents relating to all applicable drainage laws, statutes, ordinances and other sources of law *.
107. In 1976, after these approvals from **Park Ridge**, the **North Development Plat Plan** was recorded with the Cook County Recorder of Deeds.
108. Since 1976, this Defendant was on constructive notice that both the North Development Segment and the Robin-Dee Community Segment of the Prairie Creek Main Drain posed substantial flood risks to the Robin-Dee Community Area Plaintiffs' Class *.

III.E.2. IN 1976, IDOT PUBLICLY DECLARED THE ROBIN-DEE COMMUNITY AREA SUBJECT TO FLOOD RISKS.

109. In October 1976, the Illinois Department of Transportation issue a Flood Risk Report ("1976 IDOT Flood Risk Report") relating to the **North Development Plat Plan**.
110. IDOT reported that a large portion of the subdivision set out in the the North Development Plat Plan was and is subject to flood risks.
- 110.1. This IDOT Flood Risk Report was partially based upon the "1st Addition to Lutheran General Hospital Subdivision" Plat approved by Park Ridge and the County in 1976.

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111. This IDOT Flood Risk Report was recorded by the Cook County Recorder of Deeds.

111.1. Since 1976, this Defendant was on constructive notice that both the North Development Segment and the Robin-Dee Community Segment of the Prairie Creek Main Drain posed substantial flood risks to the Robin-Dee Community Area Plaintiffs' Class *.

III.E.3. POST-1976 ALTERATIONS TO THE TOPOGRAPHY OF THE NORTH DEVELOPMENT.

112. Advocate's modifications to the natural patterns of drainage include but are not limited to

(a) constructing and/or enlarging the Ballard Basin, (b) constructing and/or enlarging the Pavilion Basin, (c) constructing the Dempster Basin and (d) altering the pre-existing path of the **North Development Segment** of the Main Drain.

113. For purposes of example but not limitation, on or about August 13/14, 1987, invasive flooding catastrophically invaded the Robin-Dee Community from **Advocate's North Development** and from the PCSS when stormwater invaded and flooded homes and properties within the Robin-Dee Community Area.

III.F. 1987 CATASTROPHIC INVASIVE FLOODING

114. After the 1987 Catastrophic Invasive Flooding of the Robin-Dee Community Area from Advocate's North Development and the PCSS, **Park Ridge, Maine Township, and Glenview** along with other entities commissioned an investigation into the 1987 Flooding by hiring Harza Engineering Services to investigate the 1987 Flooding.

III.G. 1990-1991 HARZA REPORT REPORTING UNDERSIZED CULVERTS AND OTHER DEFECTS

115. In 1990, Harza notified and put the Stormwater Defendants on notice of both maintenance defects and design defects in the PCSS including defects in both the MD

North Development Segment and Robin-Dee Community Segment including but not limited to the undersized 60" Howard Court Culvert Bottleneck.

116. The 1990 Harza Study actually informed and notified Park Ridge, Maine Township and Glenview and possibly other Stormwater Defendants that the stormwater flow capacity of the PCSS including the MD North Development Segment and the MD Robin-Dee Community Segment had been seriously eroded through design defects and maintenance defects. Specifically, the Harza Studies put these Stormwater Defendants on notice that:

116.1. The stormwater flow capacity of the PCSS's Robin-Dee Community Main Drain and North Development Main Drain was reduced by design defects including the effects of inadequately designed modifications and including undersized culverts, tortuous channel realignments, and other stormwater component or structure design defects; and

116.2. Stormwater flow capacity was reduced by maintenance defects relating to maintenance within the Prairie Creek Main Drain of the PCSS including within the MD Robin-Dee Community Segment including by not limited to brush, debris, trees, and other obstructions to flow within the Prairie Creek Main Drain itself.

117. In 1990, Harza specifically imparted actual and/or constructive knowledge to the Park Ridge, Maine Township and Glenview and possibly other Stormwater Defendant that the MD Robin-Dee Community Segment of the PCSS had several serious maintenance and design obstructions which limited the capacity of these segments of the Prairie Main Drain to less than a pre-climate-change 5 year rainfall-runoff event, substantially below any reasonably safe standard for the safe collection, storage, transportation, conveyance and discharge of stormwater within the PCSS.

118. The 1990 Harza Study reported design defects (including but not limited to undersized culverts and tortuous channel realignments) and reported maintenance defects (including but not limited to bushes, concrete and other obstructions caused by debris) existed within the Robin-Dee Community Main Drain of the PCSS. These design and maintenance defects posed an imminent, foreseeable risk of invasive flooding into the Robin-Dee Community Area during significant but reasonably manageable rainfalls.

III.H. POST 1987 AND/OR PLANS BETWEEN 1987 AND 2002 FAILED TO CORRECT
THE KNOWN DANGEROUS DEFECTS

119. After the 1987 Invasive Flood and before the 2002 Invasive Flood, numerous Post-1987 and Post-1990 Plans including multiple plans relating to **North Development's** stormwater drainage and **South Development's** stormwater drainage were prepared and submitted by **Advocate** and its engineer **Gewalt** to the **District** and **Park Ridge** as Advocate continued the development of its North Development and South Development.
120. Specifically, Advocate initiated development plans relating to its North Development and alteration of its Ballard Basin on its North Development as part of the Drainage Plans.
- 120.1. Advocated initiated the development process for areas of the North Development including the development of the Ballard Basin by retaining Gewalt to draft Plans including but not limited to drainage engineering plans and topography altering plans altering the topography and natural drainage of areas of Advocate's North Development.
121. After the 1987 Flood, Gewalt engineered the North Development Drainage Plans including Plans relating to alterations to the Ballard Basin and connected structures.
122. Advocate and Gewalt submitted these Plans and related stormwater permit applications relating to the North Development Drainage Plans to Park Ridge and the District.

123. After initial submission of these Drainage Plan, Advocate and Gewalt discussed, consulted and/or revised some of its drainage plans based upon discussions or reviews performed by Park Ridge and the District *.
124. Park Ridge reviewed the North Development Drainage Plans including the Advocate Ballard Basin Plans and approved Advocate's North Development Drainage Plans including those plans relating to the alteration of Advocate's North Development Drainage.
125. The District reviewed the North Development Drainage Plans including the Advocate Ballard Basin Plans and approved these Advocate's North Development Drainage Plans.
126. Based upon these Drainage Plans from Advocate and Gewalt and the approvals and permits issued by the District and Park Ridge, Advocate constructed the existing North Development Stormwater Subsystem including but not limited to the public improvements and/or quasi-public improvements of the existing Ballard Basin and the Pavilion Basin.

III.I. AUGUST 2002 CATASTROPHIC FLOODING

127. On or about August 22/23, 2002, as rain fell upon the Prairie Creek Watershed and stormwater accumulated within the Prairie Creek Main Drain including but not limited to Advocate's **North Development**, accumulating stormwater flood waves from the then existing Advocate's **Ballard Basin** surcharged the undersized 60 " Advocate **Ballard Basin Discharge Culvert** and catastrophically overflowed the Ballard Basin and the Robin Neighborhood Main Drain of the Prairie Creek Stormwater System ("PCSS") onto the properties of and into the residences of the Robin-Dee Community Area Plaintiff Class.
128. On or about August 22/23, 2002, as rain fell on the Advocate **South Development**, the then-existing undersized 60 " **Dempster Basin Discharge Culvert** was surcharged by flows from the 84 " Advocate **Dempster Stormwater Sewer** which overflowed the undersized 60

“ Dempster Basin Discharge Culvert, catastrophically invading the residences of members of the Robin-Dee Community Area Plaintiff Class who sustained invasive flooding.

129. On or about August 22/23, 2002, as accumulated stormwater from Advocate’s North Development and South Development discharged into the Robin-Dee Community Segment of the Prairie Creek Main Drain, these discharging accumulated stormwaters surcharged the undersized 60 “ Howard Court Culvert, resulting in the MD Robin-Dee Community Segment of the PCSS being surcharged, catastrophically invading the residences of members of the Robin-Dee Community Area Class who sustained invasive flooding.

III.J. 2002 IDNR COMMENCED INVESTIGATION OF THE 2002 FLOOD.

130. Later in 2002 or in 2003, based upon this 2002 Invasive Flooding from the Prairie Creek Main Drain into the Robin-Dee Community Area, the Illinois Department of Natural Resources commenced a study of the Prairie Creek Drainage Watershed (herein “2002 IDNR Study”) in conjunction with the Local Public Entities including Park Ridge, Maine Township, Glenview and the District.

131. The IDNR Study found numerous bottlenecks and obstructions to flow as the causes of the invasive flooding into the Robin-Dee Community and developed possible remedies including remedies which could be implemented by this Defendant to prevent invasive flooding into the Robin-Dee Community. These remedies included but were not limited to:

- 131.1. increasing the storage capacity of Advocate’s Basin Structures by pumping stormwater out of the Basin(s) before and/or during anticipated rain storms;
- 131.2. increasing storage capacity for upstream stormwater by the construction of a dual purpose soccer-field/retention basin contiguous to Advocate’s South Development on East Maine High School property south of Dempster; and

131.3. constructing a main drain stormwater pipe which would supplement the Dee Neighborhood Stormwater Pipe to transport more stormwater west towards the Potter Street

131.4. As used here, these alternatives shall be referred to as the “Equitable Remedies”.

III.K. PLANS BETWEEN 2002 AND SEPTEMBER 2008
FAILED TO CORRECT KNOWN DANGEROUS BOTTLENECKS

132. After the 2002 Invasive Flooding but before the September 13, 2008 Invasive Flooding, numerous Plans including multiple plans relating to Advocate North Development’s stormwater drainage and Advocate South Development’s stormwater drainage including relating to the Dempster Basin, the Dempster Basin Stormwater Sewer and other North Development and South Development drainage plans (herein “these Post-2002 Plans” in the following paragraphs) were submitted by Advocate and its engineer Gewalt to the District and Park Ridge as Advocate continued its development of its North Development and its South Development.

133. Gewalt engineered these North Development and South Development Drainage Plans including the Advocate’s Plans relating to the Dempster Basin and the Dempster Basin Stormwater Sewer and connected land and drainage structures.

134. Advocate and Gewalt submitted their applications relating to these Plans for the North Development Drainage Plans and South Development Drainage Plans including the Advocate’s Plans relating to the Dempster Basin and Dempster Stormwater Sewer and connected structures to Park Ridge and the District.

135. After initial submission of these Plans relating to Advocate’s North Development and South Development, Advocate and Gewalt discussed, consulted and/or revised these Drainage Plans based upon discussions or reviews performed by Park Ridge and/or the District *.

136. Park Ridge reviewed these North and South Development Properties Drainage Plans including the Advocate Dempster Basin Plans and any Plan modifications and approved these

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and/or the operator of the facilities, and said responsibility shall not be discharged nor in any way affected by change of ownership of said property.

144. **Permit Conditions Apply to Detention Basins:** By way of example and illustration, but not limited to MWRD Permit No. 06-032, said permit conditions apply to Detention Basins such as Advocate's Basin Structures.

III.M. KNOWLEDGE OF LACK OF MAINTENANCE PROGRAM.

145. **Knowledge of Lack of Maintenance Program:** Based upon the 1990 Harza Studies, the 2002 invasive flooding, other **Earlier Flooding Studies** and other facts set forth herein, before September 13, 2008, this Defendant knew or should have known that the responsible parties were not undertaking the extensive cleaning program called for in the Harza Study and/or performing other required maintenance of the MD Robin-Dee Segment and/or MD North Development Segment of the PCSS, thereby reducing if not further eroding the flow capacity of the MD Robin-Dee Community Subsegment to receive flows from Advocate North Development Property and significantly increasing the foreseeable risk of catastrophic surcharging and surcharging invasive flooding into the Robin-Dee Community.
146. This Defendant knew or should have known that all areas within the Robin-Dee Community south of the Prairie Creek Main Drain were in either an alleged Special Flood Hazard Area or a Floodway as reported by the 1990 Harza Study and IDNR Study, as evidenced by the 1987 and 2002 invasive flooding into the Robin-Dee Community and as defined by the 2000 FEMA FIRM and the 2008 FEMA FIRM.
147. This Defendant should have known that the Robin-Dee Community Area Class was at a significant, highly foreseeable, highly probable substantial risk of invasive flooding damage and injury from the North Development's accumulated stormwater.

III.R. DISTRICT PROVIDES SANITARY SEWERAGE DISPOSAL SERVICES

156. The District owns and operates the regional sanitary sewer interceptors to which the Maine Township and Park Ridge street sanitary sewers connect and provide sanitary sewerage disposal services to all Plaintiffs in the Robin-Dee Community Area.
157. Plaintiffs paid taxes and fees to the District to provide sanitary sewerage services.
158. The District collected taxes and fees for providing its sewerage services to Plaintiffs.

III.S. KNOWLEDGE OF HOWARD COURT CULVERT BOTTLENECK AND OTHER BOTTLENECKS

159. This Defendant knew of the persistent, repetitive, frequent flooding of the Plaintiffs' land and homes over the course of decades.
160. Prior to September 13, 2008, based on facts existing from 2002 through September 2008 being documented by, reported by or available from the Illinois Department of Natural Resources (the "2002 IDNR Study"), this Defendant knew or should have known of substantial and serious design and maintenance defects within the PCSS which defects posed imminent and serious foreseeable unreasonable risks of invasive flooding damage to the Plaintiffs including but not limited to the following defects: (a) the Ballard Basin Discharge Culvert Bottleneck; (b) the Dempster Basin Discharge Culvert Bottleneck; and (c) the Howard Court Culvert Bottleneck; (d) defects in the maintenance of the **MD Robin-Dee Community Segment** including bushes, brush, concrete, rocks and other debris affected flow; (e) defects in the maintenance of the **MD North Development Segment** and Basin Structures including failures to desilt detention basins; and (f) other defects relating to the drainage design(s) and/or plan(s) of Advocate's North Development Property and/or the Prairie Creek Main Drain including but not limited to the design and/or plans for or relating to the Advocate Basin Structures including the **Dempster Basin Stormwater Subsystem** which received flows from the South Development.

166. **Reasonable Inspection Disclose this Knowledge:** This Defendant knew or should have known of the foregoing publicly known unsafe drainage conditions and their character by the use of a reasonable adequate inspection system or program and/or other reasonably adequate investigations relating to the Advocate North Development and the MD Robin-Dee Segment of the PCSS.

167. On September 11, 2008, the following conditions existed within the Main Drain:

167.1. Relating to the North Development Main Drain and its Segment Subsystem, surcharge and overflow surcharge flooding from Advocate's North Development was more likely than not to occur during a significant rain caused by the following actions or failures to act:

167.1.1. Since the 2002 Invasive Flooding, responsible parties failed to increase temporarily storage on Advocate's North Development Properties such as by using sandbags and other water storage systems to increase the storage capacity of the **Basins**;

167.1.2. Since the 2002 Invasive Flooding, responsible parties failed to increase permanent storage on Advocate's North Development Properties such as by increasing the ability of Advocate's **Basin Structures** to store more stormwater such as by raising the Discharge Culvert's Discharge level, desilting these three Basins, and taking other steps to increase storage capacity relating to Advocate's **Basin Structures** including pre-storm pumping;

167.1.3. Since the 2002 Invasive Flooding, responsible parties failed to deploy substantial temporary stormwater pumps to pump out as much stormwater as is feasible before and during the early stages of a rain storm from North Development **Basin Structures**;

167.1.4. Since the 2002 Invasive Flooding, responsible parties failed to construct and permanently deploy stormwater pumps to pump out as much stormwater as is feasible before and during the early stages of a rain storm from North Development's Basins;

- 167.2. Since the 2002 Invasive Flooding, responsible parties failed to increase storage upstream of the Robin-Dee Community including upstream of the MD Robin-Dee Segment such as on other areas of the Advocate's North Development, Maine Township's Hall property off Ballard Road and/or the Maine Township High School Property south of Dempster Road.
- 167.3. Relating to the PCSS's Robin-Dee Main Drain and its Segment Subsystems:
- 167.3.1. This Defendant knew or upon reasonable inspection would have known that the Howard Court Culvert was an undersigned culvert and would cause bottleneck surcharge invasive flooding from the stormwater discharging and overflowing from the Robin Neighborhood Subsegment of the Main Drain;
- 167.3.2. This Defendant knew or should have known that surcharge invasive flooding from the Dee Neighborhood Subsegment of the Prairie Creek Main Drain would result in reverse, stormwater sewer surcharging and invasive flooding from the Dee Road Stormwater Subsystem and the Howard Court Stormwater Subsystem;
- 167.3.3. This Defendant knew or should have known that surcharge invasive flooding caused by the Briar Neighborhood Elbow would occur during significant rains; and
- 167.3.4. This Defendant knew or should have known that the Rancho Neighborhood Bottlenecks would cause invasive flooding during significant rains.
168. Given the repeated invasive floodings into homes and properties of the Robin-Dee Community in 1987 and 2002 and on other dates before September 13, 2008 and the repeated governmental studies including the 1990 Harza Study in 1990, the 2000 FEMA FIRM, the 2008 FEMA FIRM and the IDNR stating the flood risks threatening the Plaintiffs, this Defendant knew or, with reasonable, due diligence, should have known before September 13, 2008 that:
- 168.1. this Defendant knew or should have known that the Prairie Creek Drain, tributary

storm sewers and/or other structures of the PCSS were not being inspected and/or adequately inspected to determine the existence of debris, the necessity for removing debris and/or the existence of other maintenance defects which defects would obstruct or reduce the flow of stormwater during a rainfall;

168.2. this Defendant knew or should have known of the accumulations of debris in the Prairie Creek Main Drain, tributary storm sewers and/or other structures of the Prairie Creek Main Drain which blocked, obstructed and/or restricted stormwater flows within the sewers and other structures of the PCSS;

168.3. this Defendants knew or should have known that the storm sewers and/or other structures of the PCSS were not being adequately cleaned or maintained including not being cleaned or maintained free of obstructive or restrictive debris such as trees, bushes, brush, rocks, and other debris which would obstruct flow and/or reduce flow of stormwater during a rainfall;

168.4. this Defendant knew or should have known that Advocate's North Development Property and the PCSS were not being adequately operated immediately or shortly before a rainfall including:

168.4.1. this Defendant knew that the **Primary Basin Structures** on Advocate's North Development Property were not being properly operated because the responsible parties were not pumping out and emptying the **Primary Basin Structures** within the PCSS so as to optimize storage of likely or expected stormwater runoff; and

168.5. this Defendant knew or should have known that the defective maintenance, the undersized culverts, the bottlenecks, the tortuous channel misalignments and other defects within Prairie Creek Main Drain including but not limited to Advocate's North Development Segment and the Robin-Dee Community Segment of the Prairie Creek

this stormwater as demonstrated by four major catastrophic floods since 1987 and many less class-wide invasive flooding during this period.

III.T. THE PUBLIC IMPROVEMENTS IN PLACE AT THE TIME OF THE SEPTEMBER 13, 2008 MAN-MADE CATASTROPHIC WATER INVASIONS.

172. Public Improvement: The Ballard Basin and the Pavilion Basin are public improvements to the Prairie Creek Stormwater System as these Basins receive upstream stormwater from upstream areas of Prairie Creek Watershed.
- 172.1. Upstream stormwaters drain to the Upstream Main Drain from PCSS's Upstream Segment tributary sewers and the retention/detention basin(s);
- 172.2. Upstream stormwater enters the Upstream Main Drain upstream of the North Development, emptying all of its collected and conveyed stormwater at **Point A1**;
- 172.3. Tributary stormwater from the Park Ridge North Ballard Neighborhood drains into the North Development Main Drain at or between **Point A1 and Point A2**;
- 172.4. Tributary stormwater from the Maine Township North Ballard Neighborhood drains into the North Development Main Drain at or between **Point A1 and Point A2** and/or at other locations south of Ballard (drainage culverts/pipes near or between **Points A1 and A2**); and
- 172.5. possible Upstream Stormwater tributary to the Pavilion Basin entering the Pavilion Basin from the east of the Advocate North Development*.
173. As September 2008, Exhibit 1 shows the routing of the Prairie Creek Stormwater Flow from the east boundary at Point A1 of the Main Drain's North Development Segment to the approximate western boundary of the Main Drain Robin-Dee Segment of the Main Drain of the PCSS (Point J) although the Segment extends to Potter Road. Exhibit 1 designates the stormwater structures relevant to understanding the flow of stormwater on September 13, 2008

through the North Development Segment and Robin-Dee Segment of the Prairie Creek Main Drain. The directional arrows in thick white depict the design direction of flow.

174. **The PCSS as a Public Improvement:** The County approved and oversaw the development of the Prairie Creek Main Drain's Robin-Dee Community Segment (Points E through J) through its pre-1960s and 1960s development when the undersized 60" Howard Court Culvert was constructed as was its 60" Dee Neighborhood Stormwater Pipe (Points E-H).

175. The PCSS stormwater improvements constitute "property" or "properties" under the Tort Immunity Act ("TIA").

176. These PCSS Stormwater Improvements include:

176.1. The PCSS North Development Segment consisting of (a) the North Development Main Drain (being at Point A1 and traversing to Point A3), (b) the Ballard Basin which essentially serves as the North Development Main Drain traversing Advocate North Development property, (c) the Pavilion Basin on the Advocate North Development property, (d) all Park Ridge and/or Maine Township tributary stormwater sewers discharging into the North Development Main Drain, and (e) all other stormwater structures and related components on the North Development Property; and

176.2. The PCSS Robin-Dee Community Segment and its Subsystem consisting of (a) the Robin-Dee Main Drain between Points C1-C2 (the twin Robin Alley Culverts) and continuing past Point J (the Rancho Lane Culverts) to Potter Road.

177. Stormwater is also "property" or "personal property" within TIA Article III, § 10/3-101.

III.U. SEPTEMBER 13, 2008 SEQUENCE OF THE FLOODING STAGES

178. On Thursday, September 11, Friday, September 12, 2008 and Saturday, September 13, 2008 before the invasive flooding on the morning of Saturday, September 13, 2008, this

Defendant knew or should have known based upon weather forecasts and readily available actual rainfall data to areas west of Cook County, that the September 12-13, 2008 rain event was certain to exceed a two year return frequency and, with legal certainty, would generate rainfall runoff and stormwater which this Defendant knew or should have known could not properly be collected, stored, transported and/or discharged by the PCSS given this rainfall and given the maintenance and design defects within the PCSS including within the Prairie Creek Main Drain.

179. On Friday, September 12 and Saturday morning, September 13, 2008, rain fell over the PCW, including upstream of the Robin-Dee Community Plaintiffs' Class homes and properties.

180. Because of these known maintenance and design defects in the collection, storage, conveyance, transportation, and discharge structures and components of the PCSS, dangerous accumulations of stormwater developed on Advocate's North Development.

181. On September 13, 2008, these dangerous accumulations of stormwater catastrophically invaded the Robin-Dee Community Area Plaintiff Class' persons, residences, vehicles and other real and personal properties from Advocate's North Development and the Robin-Dee Community Segment of the Prairie Creek Main Drain.

182. On September 13, 2008, neither Advocate's North Development Pavilion Building nor North Development Parking Structure suffered any invasive flooding in any interior space.

183. But for the known maintenance and design defects relating to the collection, storage, transportation, conveyance, and operation of the PCSS, the Robin-Dee Community Area Plaintiff Class would not have sustained catastrophic invasive flooding to their persons and property on Saturday, September 13, 2008.

184. In combination with the rainfall weather conditions, but for the foregoing known and/or discoverable defects in the design, planning, maintenance, collection, storage, transportation,

conveyance, and operation of the PCSS including defects in Advocate's North Development stormwater structures, the Robin-Dee Segment of the Prairie Creek Main Drain, and the Robin-Dee Sanitary Sewerage System, the Robin-Dee Community Area Plaintiff Class would not have sustained catastrophic invasive flooding into their persons and property on September 13, 2008.

185. At no relevant time was the rainfall weather conditions the sole proximate cause of the Robin-Dee Community Area Plaintiff Class' injuries and damages.

186. The rainfall and its associated stormwater which occurred on September 12, 2008 and September 13, 2008 over the Prairie Creek Drainage Area/Watershed and the resulting runoff was a stormwater runoff which could have been properly managed by this Defendant by safe planning, safe engineering, safe collection, safe storage, safe transportation, safe conveyance and/or safe discharge relating to these accumulated stormwaters.

187. This rainfall and its associated stormwater which occurred on September 12, 2008 and September 13, 2008, were not an "Act of God" rainfall or stormwater runoff as defined by Illinois statutory and/or common law.

188. Because of these ongoing maintenance and design defects including but not limited to cleaning the Robin-Dee Segment and to redesigning the known bottlenecks including but not limited to the Ballard Basin Discharge Culvert Bottleneck, Dempster Basin Discharge Culvert Bottleneck and Howard Court Culvert Bottleneck, in both the Advocate North Development and the Robin-Dee Segment of the Prairie Creek Main Drain as set forth in this Complaint, the Robin-Dee Community continues to suffer irreparable harm and shall continue to suffer irreparable harm as evidenced by the September 13, 2008 Invasive Flooding into the Robin-Dee Community.

III.V. GENERAL SUMMARY OF CLAIM

189. On September 13, 2008, during the rainfall, rainfall runoff began collecting in storm sewers upstream of the Robin-Dee Community Area. These storm sewers which are tributary to the Prairie Creek Main Drain began to empty into the PCSS' Upstream Main Drain.
190. Beginning at Points A1 and A3, the Upstream Main Drain began to fill the Ballard and Pavilion Basins until these Basins' stormwater levels rose and discharge into Robin Neighborhood Main Drain at Point C1.
191. Point C2 was receiving stormwater from Points B1, B2 and B3, the Dempster Basin.
192. After the Ballard, Pavilion and Dempster Basins began emptying into the Robin Neighborhood Main Drain at Points C1 and C2, because the Robin Court Culvert is 120", the full flowing 60" Robin Alley Culverts (Points C1 and C2) could safely discharge their dual 60" full flows through the larger 120" Robin Court Culvert at Point D.
193. However, the 60" Howard Court Culvert Bottleneck occurred at Point E because the 120" design full flow of the 120" Robin Court Culvert (Point D) cannot possibly be received by the undersized 60" Howard Court Culvert at Point E. The 120" full flow from Point D is under gravity (rather than pump or other pressure) so that it is physically impossible for the 60" Howard Court Culvert to receive 120" of flow from the Robin Neighborhood Main Drain. Because of this open, obvious, catastrophic undersizing of the Howard Court Culvert, most of the 120" flow floods over the 60" Howard Court Culvert into the lower elevation and lower topography homes (mostly to the south of the Robin Neighborhood Main Drain and Dee Neighborhood Drains. Under no natural circumstance do the laws of physics allow the 120" diameter circular Robin Court Culvert flow to safely bottleneck into the substantially smaller 60" diameter circular Howard Court Culvert.

194. As a direct result of the Howard Court Bottleneck, stormwater invasively flooded the lands and the homes of the Robin-Dee Community Area.
195. Similar bottlenecks exist at both the Ballard and Dempster Basins.
196. The 60" inch Ballard Basin Discharge Culvert at Point A3 is surcharged by a mini-tsunami-like flood wave action from the Ballard Basin which engulfs the culvert, exceeding the banks of the Ballard Basin and invading the Robin-Dee Community (the "Ballard Basin Discharge Culvert Bottleneck").
197. The 60" inch Dempster Basin Discharge Culvert at Point B3 is surcharged by the 84" Dempster Basin Stormwater Sewer Subsystem from Point B2 in a min-tsunami-like flood wave action engulfing this Culvert ("Dempster Basin Discharge Culvert Bottleneck").
198. Further, downstream waters could not be safely conveyed because of other downstream bottlenecks such the Briar Court Elbow where the Main Drain makes a sharp right-turn at Point I and the undersized Rancho Lane Culverts at Point 2, undersized to receive 120" flow.
199. As a result of the bottleneck inability of the Howard Court Culvert and its connected 60" Dee Neighborhood Stormwater Pipe to receive any additional stormwater and other downstream bottlenecks due to defective maintenance and/or design North Development Main Drain Stormwater Complex including the Ballard and Pavilion Basins, the Robin Neighborhood MD and the Dee Neighborhood Main Drain, and the bottlenecks set forth here for description not limitation, stormwater overflows the Robin Neighborhood Main Drain and the Dee Neighborhood Stormwater Pipe and prevents flows from the 60" Ballard Basin Discharge Culvert and the 60" Dempster Basin Discharge Culvert from being conveyed by the Robin Neighborhood Main Drain and the Dee Neighborhood Main Drain.

200. In turn, the Ballard Basin overflows its banks into the Robin Neighborhood. Similarly, the Dempster Basin overflows its banks into the Robin Neighborhood. Further, sheet surface stormwater flow from the Dempster Parking Lot which is at a higher elevation and contiguous to the Robin Neighborhood discharges into the Robin Neighborhood.
201. Because minimal or no stormwater can flow through the Main Drain's Robin-Dee Segment of the PCSS, as the rainfall runoff stormwater continues to reach the Robin-Dee Community, more and more excess accumulated stormwater overflows from the North Development into the Robin-Dee Community until the entire lower-elevation surface areas of the Robin-Dee Community invasive flooded.
202. Sanitary sewers are becoming full because the stormwater is infiltrating sanitary sewers not designed to receive flows of stormwater let alone dozens of 4" or 6" flows from basements filled with water. The stormwater enters the Robin-Dee Community Sanitary Sewer systems through (a) basements through breaking basement windows, doors and other areas of the residences which are not water-tight and (b) manholes, loose sanitary sewer joints and other sources of inflow and infiltration (such as holes in the manholes or such as significant gaps between the manhole lids and manhole chimneys).
203. The Robin-Dee Community Area Plaintiffs reside in areas where the sanitary sewers are separated from the stormwater sewers. Under applicable design standards, a sanitary sewage system is a "closed" sewage system which means that stormwater is not introduced into the sanitary sewer system as a matter of design. The Robin-Dee Community Area Plaintiffs were not served by a "combined" system of stormwater-sanitary common sewers.
204. As the Robin Neighborhood's basements fill with stormwater, and as stormwater invades the sanitary sewer system through manholes and broken pipe joints, this stormwater then

surcharges the Sanitary Sewerage System resulting in sewage backups into homes which are at higher surface elevations and not receive direct stormwater intrusion*. These sewage backups continue in areas which did not experience surface flooding so long as their basement are below the highest elevations of stormwater in the Robin-Dee Community's basements and first floors. such at higher elevations than the surface flooded areas.

205. This surface water flooding continues until reduced flows gradually drain the Main Drain's Robin-Dee Segment.
206. The sewage backups in the Robin-Dee Community Area continue until the downstream local sanitary sewers and regional interceptors were able to receive the flows from the Robin-Dee Community Area Sanitary Sewers.
207. Around or by September 14, 2008, the residual flow capacity of the Main Drain's Robin-Dee Community Segment was able to safely receive and transport residual accumulated stormwater stormwater form the Robin-Dee Community Area, thereby draining the surface ponding within the Robin-Dee Community Area.

III.W. CAUSATION: FLOODING STAGES SEQUENCE

208. "This Defendant" means Advocate, Berger, the District, Park Ridge, Maine Township and the County in this Subpart.
209. The approximate order of the surface-water invasive and sewer-water invasive floodings occurred generally along the following stages on September 13, 2008. Depending upon a resident's proximity to Dee Road, the Berger obstructions of the stormwater culvert inlets played a role in the inability to drain stormwater from those areas.
- 209.1. **STAGE 1: Basins begin to fill to their discharge elevations:** The Ballard, Pavilion, and Dempster Basins fill to the discharge elevations of their respective discharge culverts: the

Ballard Basin Discharge Culvert (**Point A3**) and the Dempster Discharge Culvert (**Point B3**). No surcharging of the Robin Neighborhood Main Drain or Dee Neighborhood Stormwater Pipe/Main Drain has occurred.

209.1.1. **Filling of Ballard-Pavilions Basins:** Upstream Prairie Creek Watershed stormwater ("Upstream PCW stormwater") begins discharge into the Ballard Basin Stormwater System through **Points A1 and A2**. Local Advocate North Development stormwater ("**Advocate North stormwater**") from its streets, parking lots, buildings and other impervious areas and its saturated pervious grounds drain into the Ballard Basin Stormwater Subsystem which includes the interconnected **Pavilion Basin**. Besides **PWC upstream stormwater** under **District** and/or **County** control, and **Advocate North Development** stormwater under **Advocate** control, **Park Ridge** stormwater from the **Park Ridge North Ballard Neighborhood** flows into the **Ballard Basin***. Similarly, **Maine Township** stormwater from Maine Township north of the **Ballard Basin** flows into the **Ballard Basin***.

209.1.2. **Filling of Dempster Basin:** Advocate South Development stormwater discharges through **Point B2** into the Dempster Basin. Possibly Park Ridge stormwater from its municipal sewers around the Advocate South Development also discharge to the Dempster Basin *.

209.2. **STAGE 2: Basins begin to discharge through basin culverts to the PCSS Robin Neighborhood Main Drain:** Upon the water elevation within a basin rising to the invert/bottom elevation of its discharge culvert, this stormwater flows into the the basins reach their discharge elevation, they discharge stormwater from the the Ballard Basin at Point C3 and Dempster Basins. The second stage before the invasive flooding is that the Ballard and Dempster Basins then begin discharging water to **Points C1-C2**. No surcharge of the Robin-

Dee Community Main Drain occurs until the combined flows at Points C1-C2 (the two 60" culverts) are bottleneck and surcharge the single 60" Howard Court Culvert at **Point E**.

209.3. **Stage 3: Basin's surcharge PCSS's Howard Court Culvert, Dee Neighborhood Pipe and Robin Neighborhood Main Drain and Overflow:** As the rate and volume of stormwater increase in the north 60" Ballard Basin Robin Alley Culvert and the south 60" Dempster Basin Robin Alley Culvert, these two culverts' combined flows exceed the capacity of the single 60" downstream Howard Court Culvert. Consequently, bottleneck surcharging occurs at the Howard Court Culvert resulting in a backing-up of the stormwater and overflow of the Robin Neighborhood and Dee Neighborhood Main Drains.

209.4. **Stage 4: Ballard and Dempster Basins Overflow:** Because the discharge culverts are blocked from discharging by backwater and other fluid dynamics involving the Howard Court Culvert bottleneck and Robin Alley Culverts backwater obstruction, there is no method of discharging water by design from these Basins. The Basins rise and overtop the basin banks/berms. Because there is no barrier such as sandbags, the Basin Overflow overtops Advocate's North Development and sheet flows along the surface, invading the Robin-Dee Community with all excess upstream stormwaters.

209.5. **Stage 5: Surface-Water Home Invasions:** Surface-water home invasions occur when the invading stormwaters, sometimes at mini-tsunami wave action rates, inundates the Robin-Dee Community. Stormwater invades through basement windows and first floor doors and other penetrable openings to a home's envelop.

209.6. **Stage 6: Sanitary Sewer Subsystems Surcharge and Sewage Backups:** Stormwater is traveling over manholes besides into basements' sanitary drains. Because sanitary sewers are smaller in diameter than stormsewers, the sanitary sewer subsystems surcharge and sanitary

sewer backups occur. This phenomenon occurs even in homes with no surface water invasions because water seeks its own equilibrium level within a closed system such as the sanitary sewer systems. These invasions affect the performance of the District's sanitary sewer interceptors besides the performance of the Glenview and Park Ridge local municipal sanitary sewer systems: these systems including the interceptors (depending upon flow permissions) surcharge and backup the entire Regional Sewage System operated by the District. The District causes upstream backups by failing to deploy temporary pumpage systems to remove sanitary sewage such as into unsurcharged stormwater drains or tanker trucks.

210. This Defendant failed to exercise ordinary care to increase either temporarily or permanently the storage capacity of the North Development by the following actions:

210.1. This Defendant failed to make any effort at calculating the amount of stormwater from the September 13, 2008 storm although this storm was predicated and known days in advance of its arrival to affect the Chicago Region; if the Defendant had attempt to know how much stormwater could be generated, then the Defendant would know how many flood protection actions were necessary.

210.2. This Defendant failed to deploy temporary pumps to pump down and empty the Ballard Basin, Pavilion Basin and Dempster Basin before the September 13, 2008 storm. This Defendant could have began pumping on Thursday, September 11 and Friday, September 12 and completely emptied these Basins so that these Basins could be used for their maximum stormwater storage.

210.3. This Defendant failed to either temporarily or permanently increase the storage capacity so that these Basins had adequate storage capacity to receive the excess stormwater from

Advocate Properties and the Upstream Prairie Creek Watershed; this Defendant could have increased storage in at least the following two methods:

210.3.1. This Defendant failed to use standard temporary flood prevention barriers such as sand bags or inflatable water systems with or without machines with capacities of 5,000 sand bags/hour to create a water-impervious barrier between the Robin-Dee Community including but not limited to the Robin Alley and the North Development and/or storing all of the excess stormwater on the North Development. These stormwater barriers would serve two purposes: (a) prevent North Development excess stormwater from invading the Robin-Dee Community and (b) increase temporary storage capacity when used in conjunction with plugging or raising the elevations of the Ballard Basin and Dempster Basin discharge culverts; or

210.3.2. This Defendant failed to raise the banks of the Ballard, Pavilion and Dempster Basin with additional dirt berms in conjunction with raising the elevations of the Ballard and Dempster Basin discharge culverts.

211. The above staging sequence was affected by Berger's obstruction of the Dee Road stormwater inlets with fabric.

212. If the Defendant would have completely pumped down the Basins or either temporarily or permanently raised the Basins' bank elevations in conjunction with raising their discharge culverts, all stormwater from the September 13, 2008 storm would have been stored on North Development Property and the Plaintiffs would not have sustained their invasive flooding.

213. Comingling of Stormwater: Because the invading stormwater comingled and mixed together regardless of ownership and/or control, and cannot be readily apportioned, this Defendant is liable for all injury and damage caused by the invading stormwater to the Robin-Dee Community Plaintiff Class.

MWRD Permit No. 06-032, said permit conditions apply to Detention Basins such as Advocate's Basin Structures.

235. Breach of Maintenance: This Defendant breached this duty to properly maintain the stormwater systems and stormwater facilities by the following conduct *:
236. This Defendant failed to maintain the plan depth of its retention basins by failing to desilt *; and
237. This Defendant failed to maintain the stormwater systems and facilities in compliance with reasonable standards*.

**IV.C. COMMON NEGLIGENT STORMWATER SYSTEM MAINTENANCE
BREACHES BASED UPON FORESEEABLE HARM LEGAL AVERMENTS**

238. For this subpart, "this Defendant" means: the District, in its capacity as stormwater manager of the Prairie Creek Stormwater System (PCSS), and Maine Township in its capacity as stormwater manager of the PCSS within its jurisdiction.
239. This Defendant owed the following maintenance duties relating to Stormwater Structures within the Prairie Creek Stormwater System.
240. **Cleaning:** This Defendant owed a non-delegable duty to clean, maintain, and/or repair drainage structures within the Prairie Creek Stormwater System under its ownership, possession, control, management, supervision and/or jurisdiction. This duty to clean included:
- 240.1. Removing of natural obstructions such as trees, tree trunks, tree limbs and other natural developing or growing obstructions to flow;

240.2. Removing man-made obstructions to flow such as collapsed banks, collapsed walls which previously provided lateral support, debris discharged into drains and sewers and similar man-made obstructions to flow; and/or

240.3. Repairing and/or restoring banks and bankwalls to design standards.

241. This Defendant breached these duties by the following acts and conduct:

242. This Defendant failed to remove natural obstructions such as trees, tree trunks, tree limbs, and other natural developing or growing obstructions to including within the Main Drain Robin-Dee Community Segment of the Prairie Creek Stormwater System (PCSS);

243. This Defendant failed to remove man-made obstructions to flow including the areas of the Robin-Dee Segment where the brick bank walls collapsed into the Main Drain Robin Neighborhood Subsegment and where other man-made debris collects within the Main Drain Robin Neighborhood Subsegment; and

244. This Defendant failed to reconstruct the bank walls so as to prevent earth and other debris such as the bank brick walls themselves from obstructing flows through the Main Drain Robin-Dee Community Segment.

IV.D. COMMON NEGLIGENT SANITARY SYSTEM MAINTENANCE BREACHES OF DUTY BASED UPON 35 ILL. ADM. CD. SEC. 306.303 LEGAL AVERMENTS

245. For this subpart, "this Defendant" means: the Glenview, ~~Park Ridge in its capacity as local sanitary sewage owner and manager,~~ and the District, in its capacity as regional sanitary sewage owner and manager.

246. 35 Ill.Adm.Cd. Sec. 306.303 imposes duties upon this Defendant for the benefit of the Plaintiffs to properly operate and manage sanitary sewage under its control and/or ownership.

247. **Breaches:** This Defendant breached these duties include but not limited to the following:

**IV.E. COMMON NEGLIGENT SANITARY SYSTEM MAINTENANCE BREACHES OF
DUTY BASED UPON FORESEEABLE HARM LEGAL AVERMENTS**

248. For this subpart, "this Defendant" means: the Glenview, ~~Park Ridge in its capacity as local sanitary sewage system owner and manager,~~ and the District, in its capacity as regional sanitary sewage system owner and manager.

249. **Duty to Properly Manage Sanitary Sewage:** Based upon the Earlier Floodings and the Earlier Flooding Studies, this Defendant owed duties to the Plaintiffs to properly operate and manage sanitary sewage under its control and/or ownership so as to prevent foreseeable harm to Plaintiffs.

250. **Breaches:** This Defendant breached these duties include but not limited to the following:

250.1. This Defendant knew in the past stormwater invasive flooding of the Robin-Dee Community area by surface stormwater that stormwater invades the entire area sanitary sewers through floor drains in individual units yet this Defendant failed to temporarily bulkhead branches of its sanitary sewer system with sandbags or other systems to prevent sanitary sewerage home invasions upstream of the immediately-affected Robin-Dee Community and use pump(s) upstream of the bulkhead to discharge any sanitary sewage collecting during the storm in breach of its duty to do so.

250.2. This Defendant knew of the existence of holes in the manhole lids in the Robin-Dee Community Area and that these holes in the manhole covers impermissibly permits stormwater to enter the Sanitary Sewerage System during flooding yet failed to seal these holes its manholes in breach of its duty to do so;

250.3. This Defendant knew of the absence of water-tight seals between the manhole lid and its seating ring in the manholes and that this lack of a water-tight seal impermissibly

permitted stormwater to enter the Sanitary Sewerage System yet this Defendant failed to seal these lids in breach of its duty to do so;

250.4. Defendant knew that its manholes are not properly maintained including properly sealed and properly rendered water-tight from stormwater, yet this Defendant failed to render water-tight its manholes in breach of these duties impermissibly permitting stormwater inflows into the Sanitary Sewerage System*; and

250.5. This Defendant knew or should have known of impermissible levels of inflow and infiltration in violation of application state, regional, county and local standards, yet this Defendant failed to correct these inflow/infiltration defects, thereby impermissibly allowing stormwater to invade the sanitary sewage system in violation of its duty*.

**IV.F. COMMON NEGLIGENT STORMWATER OPERATIONAL CONTROL
BREACHES BASED UPON CONTRACTUAL/ASSUMED DUTIES LEGAL
AVERMENTS**

251. For this subpart, this "Defendant" means Advocate ~~and Gewalt~~.

252. The standard District "Sewerage System Permit" in its "General Conditions of the Permit" relating to said Plans and Permits discussed above and herein contained the following relevant paragraph or similar relevant paragraph applying to Permittees such as Advocate and agents or representatives of Permittees ~~such as Gewalt~~.

253. The following term and condition is set forth in District Permit No. 06-032 and is an example of an identical and/or a substantially identical Permit Term and Condition agreed to by Advocate ~~and Gewalt~~ relating to the issuance of the District's Permits based upon the Plans submitted for approval as listed herein.

254. Paragraph 5 of each of these Plans and Permits relates to operation besides maintenance and identically or substantially identically provides as follows:

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262. emergency plugging of the Dempster Basin Discharge Culvert Culvert with sandbags or another system upon discovering that the Main Drain Robin-Dee Community Segment was nearly running full and about to overtop its banks and bottleneck at the Howard Court Culvert;
263. temporarily erecting before the storm and/or during the earlier stages of the storm an impervious stormwater barrier such as sandbags, sand barrels, and/or the Aqua Barrier Inflatable Dam system or similar systems to act a barrier between the Robin-Dee Community and the North Development to prevent the release and escape of excess accumulated stormwater from the North Development and retain stormwater on the North Development.

**IV.G. COMMON NEGLIGENT STORMWATER OPERATIONAL CONTROL
BREACHES OF DUTY BASED UPON FORESEEABLE HARM LEGAL AVERMENTS**

264. For this subpart, this “Defendant” means Advocate, ~~Gewalt~~, Berger, the District, Park Ridge, Maine Township and the County.
265. IV.G.1. OPERATIONAL CONTROL BREACHES BEFORE THE 2008 STORM
266. Planning Duty to Know Effects of Stormwater Release on Lower Elevation Homes:
When planning operational practices for managing stormwater, this Defendant owed a duty to know the reasonably foreseeable harmful consequences and/or effects which stormwater that accumulates on and then discharges and/or releases from the North Development and/or South Development Properties would have on downstream, contiguous and/or lower elevation property owners and/or occupants including the risks of surface flooding to downstream, contiguous property owners such as the Plaintiffs.
267. Breach: This Defendant breached this duty by failing to investigate or properly investigate downstream flooding of the Plaintiffs’ Robin-Dee Community Area.

plan to prevent invasive flooding from Advocate Development Properties or property under its ownership, operation, control, management or jurisdiction.

280.1. **Breach:** This Defendant failed to develop an emergency plan of action to prevent invasive flooding into the Robin-Dee Community Area.

281. **Notify and Complain to Responsible Officials to Remedy Downstream Defects:** This Defendant owed a non-delegable duty to notify and/or complain to responsible persons about the lack of cleaning, lack of maintenance, and/or lack of repair and/or disrepair of drainage structures not on property under its ownership, operation, control, management or jurisdiction which unmaintained drainage structure(s) affects the ability to discharge and/or drain and/or optimally drain drainage structure(s) on Advocate Development Properties or property under this Defendant's ownership, operation, control, management or jurisdiction.

282. **Breach:** This Defendant breached this duty by failing to contact the responsible party(ies) for the proper cleaning, maintenance and/or repair of Stormwater Structures including the Robin Neighborhood Main Drain and the MD Dee Neighborhood Stormwater Pipe Subsegment within the Prairie Creek Stormwater System.

IV.G.2. OPERATION CONTROL BREACHES AS THE 2008 STORM APPROACHES AND DURING THE 2008 STORM

283. **Pre-Storm Preparation Duties:** Based upon the Earlier Floodings and Earlier Flooding Studies, this Defendant owed the following specific duties of due care to the Plaintiffs relating to Pre-Storm Preparation Duties so as to prevent invasive flooding from excess accumulated stormwater discharging into the Robin-Dee Community Area from Advocate Development Properties.

284. Estimating Likely Rainfall Runoff: Relating to likely, approaching rainfall in the PCW, this Defendant owed a non-delegable duty to know or reasonably estimate or predict the amount or volume of an impending, estimated rainfall in the vicinity of or approaching the PCW, including the North Development Property, the South Development Property, the Upper Prairie Creek Watershed, and the Lower Prairie Creek Watershed, or other property under this Defendant's ownership, operation, control, management or jurisdiction and Upstream Property so as to predict the likelihood of invasive flooding and to initiate emergency action to prevent invasive flooding;

285. Breach: This Defendant breached the above duty by failing to estimate the rainfall to occur within the Prairie Creek Watershed including the areas of the Prairie Creek Watershed upstream from the Plaintiffs' Robin Dee Community Area.

286. Estimate Stormwater: Relating to stormwater generated by an approaching rainfall, a non-delegable duty to know or reasonably estimate the stormwater from an impending, approaching rainfall including knowing all relevant characteristics to calculate stormwater on This Defendant's property, property under its ownership, operation, control, management or jurisdiction or Upstream Property so as to predict the likelihood of invasive flooding and to initiate emergency action to prevent invasive flooding.

286.1. Breaches: This Defendant breached these above duties by failing to learn of and/or to know of the reasonable estimates of stormwater including critical stormwater characteristics such as volume, intensity and times of concentration to be generated by the September 13, 2008 and to take actions appropriate to a proper calculation of anticipated stormwater and the timing of its collection and transportation.

287. **Pre-Storm Planning Duty to Mobile Temporary Pump Stations:** This Defendant owed a non-delegable duty to plan substantially before a storm to have stormwater pump stations with adequate stormwater pumps available to, first, pump down the Basin Structures to maximize stormwater storage of these Basins and, second, to pump away from the Robin-Dee Community including onto the North Development and South Development parking lots and parking structure(s) and to the High School Recreational Areas south of Dempster so as to maximize surface storage.

288. **Breaches:** On or shortly before September 13, 2008, this Defendant breached the above duty because the Defendant failed to set up pumps stations to (a) pump down the existing Basin Structures and /or (b) pump stormwater into other areas such as North and/or South Development parking lots and/or parking garages and/or the Recreational Areas of the East Maine High School south of Dempster Road.

289. **Duty to divert Ballard and Dempster Basin Stormwater water flows to other areas of Advocate Property:** This Defendant was under a duty to deploy stormwater pumps to pump away from the Robin-Dee Community and the Prairie Creek Main Drain into other areas of the North Development Property and/or the South Development Property including but not limited to the Advocate's North Development Parking Structure Basement and/or other below grade parking structures.

290. **Breaches:** This Defendant failed to divert stormwater away from the Robin-Dee Community Area including failing to divert stormwater from the Ballard Basin to other areas of the North Development and South Development through pumping from the Ballard Basin into those areas including parking lot areas and parking structures.

291. Mobilize Tanker Trucks to Receive Excess Flow: This Defendant owed a duty to rent and/or deploy tanker trucks to receive the overflow or excessive flow from the Ballard, Pavilion and Dempster Basins so as to avoid invasive flooding into the Robin-Dee Neighborhood.
292. Breach: This Defendant failed to rent and/or deploy tanker trucks to receive the excess stormwater accumulating in the Ballard, Pavilion and Dempster Basins.
293. **Pre-Storm Pumping Down of Basin:** This Defendant owed a duty to pump down the Basin Structures before the storm arrives or in the very early stages of the storm.
294. Breach: This Defendant breached the above duty by failing to pump down the Ballard Basin, Pavilion Basin and Dempster Basin so as to increase these Basins storage capacities to equal the anticipated storage volume necessary for the September 13, 2008 rainfall.
295. **Stormwater Temporary Storage Systems:** This Defendant owed a non-delegable duty to have temporary stormwater storage systems available to store stormwater on the North Development including but not limited to:
- 295.1. Using Sandbagging Trucks with a capacity of 10,000 sandbags per hour or similar capacity to create a sandbag barrier between the Robin Neighborhood and the North Development;
 - 295.2. Using temporary, rapid-erection stormwater barrier systems such as the inflatable dams used in the Aqua Barrier System or similar systems to temporarily and timely increase storage capacity on the North Development and South Development;
 - 295.3. Using below-Robin-Neighborhood-flooding-hydraulic-grade-line parking structures and other non-habitable spaces for pump storage;
 - 295.4. Using tank trucks to store pumped stormwater;

- 295.5. Using other pre-storm or earlier storm methods such as barriers and pumps to prevent invasive flooding.
296. Breaches: This Defendant breached these above duties including but not limited to the following conduct:
- 296.1. This Defendant failed to deploy a work force to create a sandbag barrier using a Sandbagging Truck with a capacity of 10,000 sandbags per hour or similar capacity trucks or machines to create a sandbag/sand barrel barrier between the Robin Neighborhood and the North Development;
 - 296.2. This Defendant failed to deploy a temporary, rapid-erection stormwater barrier systems between the North Development and the Dee Neighborhood;
 - 296.3. This Defendant failed to block or restrict flows with sandbags or other systems at the Ballard Basin Discharge Culvert;
 - 296.4. This Defendant failed to block or restrict flows with sandbags or other systems at the Dempster Basin Discharge Culvert;
 - 296.5. This Defendant failed to use inflatable dams used in the Aqua Barrier System or similar systems including sandbags and sand barrels to temporarily and (a) increase storage capacity on the North Development and South Development and (b) erect a stormwater barrier between the Robin Neighborhood and North Development at the east Robin Alley street line so as to store stormwater upstream;
 - 296.6. This Defendant failed to use below-Robin-Neighborhood-flooding-hydraulic-grade-line parking structures and other lower non-habitable spaces for pumping stormwater for storage; and
 - 296.7. This Defendant failed to use tank trucks to store excess stormwater.

296.8. This Defendant failed to use other pre-storm or earlier storm methods such as barriers and pumps to prevent invasive flooding.

297. **Pumping Down Before Storm:** This Defendant owed a non-delegable duty to provide proper and adequate pumping capacity to increase stormwater storage capacity on this Defendant's property or property under its ownership, operation, control, management or jurisdiction including but not limited to pumping down the Ballard, Pavilion and Dempster Basin into the Robin-Dee Segment of the Prairie Creek Main Drain before or in the early stages of a rainfall accumulated and/or accumulating stormwater in the Advocate Primary Basin Structures and/or other watershed storm sewers and/or storm sewer systems so that all pre-existing, then-accumulated, pre-rainfall stormwater in retention basins, sewers and other stormwater structures on this Defendant's property or property under its ownership, operation, control or jurisdiction before this rain event would be drained so as to maximize the storage capacity and storage ability of all retention and/or detention basins, sewers and/or other stormwater structures and systems to receive and store stormwater from the imminent, impending significant rainfall and all implicit duties including but not limited to seeking and obtaining any necessary permissions and/or permits to permit such pumping.

297.1. **Breaches:** This Defendant breached these duties by failing to pump down the Ballard, Pavilion and Dempster Basins before the storm so as to maximize stormwater capacity of these retention/detention basins.

298. **Pumping during the storm away from Robin-Dee Community:** This Defendant owed a duty to pump into below-flood-hydraulic-grade-line depressions on Advocate Development Properties such as below-flood-hydraulic-grade-line parking structures and other similar temporary storage.

299. Breaches: This Defendant breached the above duties by failing to pump stormwater away from the Robin-Dee Community to other areas of the North and South Development including into parking garage(s) and other lower elevation areas than the Robin-Dee Community and into temporary storage areas created by rapid-erection stormwater containment systems such as the inflatable Aqua Barrier Dam.
300. Temporary Storage: This Defendant owed a non-delegable duty to temporarily increase stormwater storage capacity on Advocate North Development Properties or property under its ownership, operation, control and/or jurisdiction. This duty included but was not limited to:
301. A duty to employ temporary stormwater management and flood prevention systems such as sandbagging and/or temporary sand or water barrels, bins and/or similar sand or water stormwater container systems positioned at the perimeters of the Advocate Primary Basin Structures, and the Advocate Southwest Parking Lot north of the Dempster Basin; and
302. A duty to temporarily store excess accumulated water on Advocate North Development Property or Advocate South Development Property so as to temporarily increase the stormwater storage capacity of the Prairie Creek Stormwater System on the North and South Development.
303. Breaches: This Defendant breached these duties by failing (a) to create temporary storage capacity for excess stormwater on this Defendant's property or property under its control, supervision, management or jurisdiction and (b) to pump excess stormwater into this temporary storage system.
304. Duty to Prepare Emergency Flood Plan: This Defendant was under a non-delegable duty to prepare an Emergency Flood Plan to implement before and/or during a storm in the Prairie Creek Watershed in order to prevent invasive flooding into the Robin-Dee Community.

305. Breaches: This Defendant breached this above duties when it failed to prepare an emergency flood prevention action plan including by the failing to set or define a triggering rainfall event such as the likely or estimated rainfall amounts that mandate the activation of the emergency flood prevent action plan to prevent foreseeable invasive flooding into the Robin-Dee Community.

**IV.H. COMMON NEGLIGENT SANITARY SYSTEM OPERATIONAL CONTROL
BREACHES OF DUTY LEGAL AVERMENTS**

IV.H.1. OPERATIONAL CONTROL BREACHES BEFORE THE 2008 STORM

306. As used in this Subpart, "this Defendant" means Glenview, ~~Park Ridge~~ and the District.

307. As a service provider receiving fees from the Plaintiffs, and as operator of its sanitary sewage disposal system, or that subsystem of the larger District System within its jurisdiction, this Defendant owed a duty to prevent foreseeable harm to its Plaintiff customers from sewage backups invading customers' homes from this Defendant's sanitary sewage disposal system.

308. Breaches: This Defendant breached these duties by failing to prepare a sewage flood prevention plan for the highly-foreseeable flooding of its sanitary sewers from invading stormwater from the Prairie Creek Stormwater System including invading water from the Robin Neighborhood Main Drain and the MD North Development Subsegment.

**IV.H.2. OPERATIONAL CONTROL BREACHES AS THE 2008 STORM
APPROACHES AND DURING THE 2008 STORM**

309. Duty: As the September 13, 2008 storm approached and during the early stages of the storm, this Defendant had a duty to mobilize its equipment and forces to prevent sanitary sewage backup flooding through the basement floor drains of the Robin-Dee Community Area.

310. Breaches: On September 12 and 13, 2008, this Defendant breach this duty (a) by failing to temporarily bulkhead and separate from the remainder of its system those municipal lateral sanitary sewage sewers which become surcharged with stormwater during these stormwater invasive floodings; and (b) by failing to mobilize sewage pumps to pump out excess stormwater invading its sanitary sewage system, either pumping this sewer water into tanker trucks or another source for receiving this sanitary sewer water.

IV.I. COMMON NEGLIGENT STORMWATER SYSTEM DESIGN BREACHES OF DUTY LEGAL AVERMENTS

IV.I.1. NEGLIGENT STORMWATER SYSTEM DESIGN BREACHES BASED UPON CONTRACT

311. As used in this Subpart, "this Defendant" means Advocate and Gewalt, the District, and Park Ridge.

312. Advocate was the Permittee and Gewalt was the Permittee's representative and/or agent relating to District Stormwater Permit Applications and Permits issued relating to stormwater management on the North and South Developments including but not limited to District Permit Nos. 06-032, 05-438, 04-557, 04-040, 00-643, 94-530, 94-243, and 94-084.

313. This Defendant undertook and agreed to a general non-delegable duty of due care towards the plaintiffs as the foreseeable persons to be injured by unreasonably dangerous designs relating to Advocate's Ballard, Pavilion and Dempster Basins and related Stormwater Structures, Systems and Subsystems.

314. ~~This Defendant owed a specific non-delegable duty to Plaintiffs to adequately design the Ballard Basin, the Pavilion Basin and the Dempster Basin and to adequately design other land on the North Development and the South Development as mandated in Paragraph 1 of the General~~

Defendant owed a specific non-delegable duty to Plaintiffs to adequately design its PCSS Stormwater Public Improvements including the Ballard and Pavilion Basins and other private improvements such as the Dempster Basin **affecting the performance of the PCSS** and to adequately design other stormwater structures and/or to properly review, reject with necessary revisions, compel modification, and take other action to prevent the design flooding occurring on the North Development into the Robin-Dee Community Plaintiff Class.

336. Breach: Despite the foregoing knowledge of defects throughout the Prairie Creek Stormwater System (PCSS), this Defendant failed to correct defective designs and reconstruct the public improvements on Advocate's North Development including (a) failing to enlarge all these Basins to increase storage capacity and (b) failing to use all parking lots and the parking garage near the Dempster Basin as additional, emergency storage areas.

337. Duty to Plan and Design Multi-use Areas and Structures for Temporary Stormwater Usage: Given the known flooding, the known stormwater transportation and conveyance downstream defects especially in the Main Drain's Robin-Dee Community Segment and the lack of adequate stormwater storage capacity based upon Earlier Floodings, Earlier Flood Studies and inspections and study of the then-existing Prairie Creek Stormwater System, this Defendant was under a duty to increase the storage capacity on available land including Advocate North Development and the Advocate South Development by converting all open areas and parking lots into temporary emergency stormwater detention basins for receive excess accumulated stormwater.

338. Breaches: This Defendant breached this duty by failing to design all available open areas and parking lots as temporary emergency stormwater detention basins for receiving excess

accumulated stormwater from both Advocate's properties and areas of the Prairie Creek Watershed upstream of the Robin-Dee Community.

339. This Defendant failed to design and plan its parking lots for multi-use strategies (such as both a parking lot during dry weather conditions and retention basin during wet weather conditions) of Advocate North Development and South Development such as to design, excavate and/or creation depression areas within parking lots for retaining excess stormwater; and

339.1.1. This Defendant failed to design and plan its parking structures for multi-use strategies (such as both a parking structure during dry weather conditions and retention basin during wet weather conditions) for parking structures of Advocate North Development and South Development such as to design, excavate and/or create depression areas within parking structures for retaining excess stormwater.

340. Negligently Failure to Remedy Imminent, Foreseeable Invasive Flooding Risk: Despite the foregoing knowledge of defects throughout the PCSS, before September 13, 2008, this Defendant owed a duty to improve the Advocate's North Development, its drainage structures, and/or other drainage structures of the PCSS on the Advocate's North Development and South Development so as to prevent reasonably foreseeable damage to the Plaintiffs.

341. Breach: This Defendant breached this duty: (a) failed to redesign the Ballard, Pavilion, and Dempster Basins including but not limited to (i) failing to increase the invert elevations (that is, the elevation at which basin stormwater begins drain through the Ballard Discharge Culvert and the Dempster Discharge Culvert into the Robin Neighborhood Main Drain, (ii) failing to elevate the culvert inflow elevation such as by a horizontal surface culvert design rather than a vertical surface culvert design at higher elevations commensurate with increases in Basins' bank elevations, (iii) increasing the bank elevations of the Basins together with corresponding culvert

discharge elevations, (iv) failing to create a permanent barrier berm between the Robin-Dee Community and the North Development Property perimeter so that all excess stormwater is stored on the North Development rather than discharging westward from the North Development either at the Robin Alley border or from Dempster Avenue or other areas; and (v) in general, failing to increase detention basin storage on the North Development and/or the South Development to receive and store stormwater from storms such as the September 13, 2008 storm.

IV.J. COMMON NEGLIGENCE-RES IPSA LOQUITUR-STORMWATER SYSTEM-BREACHES OF DUTY LEGAL AVERMENTS

342. As used in this Subpart, “this Defendant” means Advocate, the District, Park Ridge and Main Township.

343. **Exclusive Ownership/Control:** This Defendant exclusively controlled and/or operated the following properties and the stormwater on these properties: (i) the Advocate Main Drain North Development Segment of the PCSS; (ii) the Advocate North Development Property including but not limited to the Ballard, Pavilion and Dempster Basins and related Stormwater Subsystem and Structures and all other drainage components and structures on said Property; (iv) the North Development parking lots and parking structures; (v) Advocate South Development Property including all Stormwater Subsystems and Structures and all other drainage components and structures on said Property; (vi) all other stormwater drainage components and/or stormwater drainage structures on said North and South Development Properties; and (vii) all parking lots and parking structures on the South Development.

344. **Knowledge of Plaintiffs’ Downstream:** This Defendant knew that, in relationship to the properties described in the previous paragraph, the Robin-Dee Community Area Class Plaintiffs’ homes and properties were downstream and/or tributary, many at lower elevations and many at lower topographies than the above properties.

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quiet enjoyment of their land, homes and properties by causing an instrumentality, namely “Stormwater”, to enter upon the property of the Plaintiffs without their consent.

415.

IV.R. COMMON NEGLIGENT TRESPASS VIOLATIONS FROM MAINE TOWNSHIP STORMWATER LEGAL AVERMENTS

416. In this Subpart, “this Defendant” means the District, Maine Township and the County.

417. But for this Defendant’s failures to act set forth in the Subparts relating to Common Negligent Stormwater System Maintenance, Operation and Design including (a) the failure to remove both natural and man-made obstructions from the Main Drain’s Robin Neighborhood Subsegment, Dee Neighborhood Main Drain, MD Briar Neighborhood Subsegment and MD Rancho Lane Subsegment and (b) the failure to redesign and reconstruct the Main Drain’s Robin Neighborhood Subsegment, Dee Neighborhood Main Drain, MD Briar Neighborhood Subsegment and MD Rancho Lane Subsegment, this Defendant failed to reasonably control and manage stormwater on September 13, 2008, proximately causing the Plaintiffs’ invasive flooding.

418. As a direct, immediate and foreseeable result of the foregoing acts and/or omissions of this Defendant, this Defendant caused stormwater to invade the Plaintiffs’ persons, homes and properties.

419. This Defendant had exclusive possession and control over the trespassing instrumentality of the excess accumulated stormwater from the Robin-Dee Community Segment of the Main Drain and its tributary stormwater sewers.

420. The Plaintiffs were entitled to the exclusive enjoyment of their properties, including enjoyment exclusive of any invasive flooding caused by this Defendant’s stormwater or

stormwater under this Defendant's control from the Robin-Dee Community Segment of the Main Drain and its tributary stormwater sewers.

421. This Defendant knew or should have known that its actions and/or inactions would result in invasive flooding into the Plaintiffs' homes during a significant rainfall such as the September 13, 2008 rainfall based upon Earlier Flooding and Earlier Flooding Studies.

422. This Defendant negligently failed to monitor, investigate, study, inspect, clean, maintain, repair, improve, design, redesign, plan and/or operate the Main Drain's Robin-Dee Community Segment between Robin Alley on the east and Rancho Lane to the west and possibly to Potter Road on the east including failing to replace and/or supplement the 60" Dee Neighborhood Stormwater Piper with a pipe of additional size and/or larger to convey additional flows, which failures proximately caused the invasive floodings into the Plaintiffs' persons, homes and properties.

423. As a direct and proximate result of the foregoing conduct by this Defendant, this Defendant's instrumentality of excess accumulated stormwater physically invaded the Plaintiffs' persons, homes and properties including from the Main Drain's Robin-Dee Community Segment from Robin Alley on the east to the Briar Court Elbow on the west.

424. As a direct and proximate result of the foregoing conduct of this Defendant, on September 13, 2008, the Plaintiffs suffered injuries and damages to their persons, homes and properties from invasive flooding from these above Properties.

425. The Plaintiffs did not consent for this Defendant's excess stormwater to physically invade and interfere with the exclusive use and occupancy of the Plaintiffs' persons, homes and property.

426. The Plaintiffs' injuries and damages were caused by the dangerous and calamitous occurrence of these Saturday, September 13, 2008 invasive stormwater floodings from the Main Drain of the Robin-Dee Community Segment and its tributary stormwater sewers.

427. The excess accumulated stormwater which entered, settled and physically invaded Plaintiffs' homes and properties interfered with the Plaintiffs' interests in the exclusive possession of their homes.

428. The excess accumulated stormwater which entered, settled and physically invaded Plaintiffs' homes and property constituted a negligent trespass upon and into the Plaintiffs' persons and homes.

429. This Defendant is liable to the Plaintiffs for negligent trespass because this Defendant caused harm to the legally protected interests of the Plaintiffs including harm to the exclusive, quiet enjoyment of their land, homes and properties by causing an instrumentality, namely "Stormwater", to enter upon the property of the Plaintiffs without their consent.

430.

IV.S. COMMON NEGLIGENT TRESPASS VIOLATION-SANITARY SEWER BACKUPS LEGAL AVERMENTS

431. In this Subpart, "this Defendant" means the Glenview, ~~Park Ridge~~ and the District.

432. But for this Defendant's failures to act set forth in the Subparts relating to Common Negligent Sanitary Sewer System Maintenance and Operation including (a) the failure to bulkhead upstream municipal sanitary sewers to prevent downstream sanitary sewers from surcharging and (b) the failure to pump out excess sanitary sewer water including pumping out into tanker trucks, this Defendant failed to reasonably control and manage sanitary sewer water

from this Defendant's sanitary sewer system on September 13, 2008, proximately causing the invasive floodings with sewer water and sewage of some Plaintiffs' homes.

433. As a direct, immediate and foreseeable result of the foregoing acts and/or omissions of this Defendant, this Defendant caused sanitary sewer water to invade some of the Plaintiffs' persons, homes and properties.

434. This Defendant had exclusive possession and control over the trespassing instrumentality of the sanitary sewer water and sewage from this Defendant's sanitary sewers.

435. These Plaintiffs who suffered sanitary sewer water invasions were entitled to the exclusive enjoyment of their properties, including enjoyment exclusive of any invasive sewer water flooding caused by this Defendant's sanitary sewer water and sewage or sanitary sewer water and sewage under this Defendant's control from this Defendant's sanitary sewers.

436. This Defendant knew or should have known that its actions and/or inactions would result in sanitary sewer water invasive flooding into some Plaintiffs' homes during a significant rainfall such as the September 13, 2008 rainfall based upon Earlier Flooding and Earlier Flooding Studies.

437. This Defendant negligently failed to monitor, investigate, study, inspect, clean, maintain, repair, improve, design, redesign, plan and/or operate this Defendant's sanitary sewers or sanitary sewers under its control such as by (a) bulkheading with sandbags certain surcharged sanitary sewers so further sanitary sewage invasions would not occur and (b) pumping out excess sanitary sewage into tanker trucks, which failures proximately caused the invasive sewer water floodings into some of the Plaintiffs' persons, homes and properties.

438. As a direct and proximate result of the foregoing conduct by this Defendant, this Defendant's instrumentality of excess accumulated stormwater physically invaded some of the

Plaintiffs' persons, homes and properties from this Defendant's sanitary sewers or sanitary sewers under its control.

439. As a direct and proximate result of the foregoing conduct of this Defendant, on September 13, 2008, some of the Plaintiffs suffered injuries and damages to their persons, homes and properties from invasive sewer water flooding from this Defendant's sanitary sewers or sanitary sewers under its control.

440. The Plaintiffs did not consent for this Defendant's excess sanitary sewer water to physically invade and interfere with the exclusive use and occupancy of the Plaintiffs' persons, homes and property.

441. Some of the Plaintiffs' injuries and damages were caused by the dangerous and calamitous occurrence of these Saturday, September 13, 2008 invasive sewer water floodings this Defendant's sewers or sewers under its control.

442. The excess accumulated sanitary sewer water which entered, settled and physically invaded some of the Plaintiffs' homes and properties interfered with some of the Plaintiffs' interests in the exclusive possession of their homes.

443. The excess accumulated stormwater which entered, settled and physically invaded some of the Plaintiffs' homes and property constituted a negligent trespass upon and into the Plaintiffs' persons and homes.

444. This Defendant is liable to the Plaintiffs for negligent trespass because this Defendant caused harm to the legally protected interests of the Plaintiffs including harm to the exclusive, quiet enjoyment of their land, homes and properties by causing an instrumentality, namely "Stormwater", to enter upon the property of the Plaintiffs without their consent.

445.

480. Given this Defendant's actual or constructive knowledge of the Earlier Flooding and Earlier Flooding Studies, including earlier floods which had caused sanitary sewer water to accumulate and surcharge sewers which it owned and/or controlled, this Defendant recklessly, willfully, wantonly and with a conscious disregard for the rights and safety of Plaintiffs created a dangerous nuisance of excess accumulated sanitary sewer water in its sewers or sewers under its control.

481. This excess accumulated sanitary sewer water invaded and flooded some of the Robin-Dee Community Area Class and substantially and unreasonably interfered with some Plaintiffs' exclusive private use and enjoyment of their homes and properties.

IV.X. COMMON INTENTIONAL TRESPASS VIOLATIONS- STORMWATER WITHIN PARK RIDGE LEGAL AVERMENTS

482. In this Subpart, "this Defendant" means Advocate, ~~Cowart~~ the District, Park Ridge, and the County and excludes Berger, Glenview and Maine Township.

483. Plaintiffs restate and incorporate all averments under the Subpart of this Part entitled "Common Gross Negligence Violations."

484. This Defendant knew to a substantial legal certainty and to a high degree of certainty that its actions and/or inactions would result in invasive flooding into the Plaintiffs' homes during a rainfall from (a) Advocate's North Development Property, specifically the Ballard Basin and the Dempster Basin, (b) the Main Drain Advocate North Development Segment, (c) the Main Drain Robin-Dee Community Segment and (d) the Robin-Dee Community Sanitary Sewerage System.

485. But for this Defendant's (a) intentional decisions including but not limited to (a) not pumping down the Primary Basin Structures before the storm, (b) not erecting temporary flood protection barriers on its property or property under its control and (c) not redesigning the

Primary Basins Structures after actual or constructive knowledge of their highly-foreseeable danger to Plaintiffs of overflow from these Basins during a rain such as the September 13, 2008 rainfall, and (d) other acts and omission set forth in the prior Subparts of this Part, this Defendant intentionally decided not to reasonably manage the excess stormwater on September 13, 2008, proximately causing the catastrophic invasive flooding sustained by the Robin-Dee Community Area Class Plaintiffs.

486. As a direct, immediate and foreseeable result of the foregoing intentional acts and omissions by this Defendant, this Defendant caused excessive stormwater from Advocate's North Development and Advocate's South Development to invade the Robin-Dee Community Plaintiffs' Class neighborhoods, homes and properties.

487. This Defendant had exclusive possession and control over the trespassing instrumentality of the excess stormwater from Advocate's North Development Property and Advocate's South Development Property, including the Drainage Structures, on said North and South Development Properties and the stormwater in such structures.

488. The Robin-Dee Community Area Plaintiff Class was entitled to the exclusive enjoyment of their homes and property, including enjoyment exclusive of any invasive flooding from excess stormwater from (a) Advocate's North Development Property including Stormwater Drainage Structures and Subsystems, (b) Advocate's South Development Property including Stormwater Drainage Structures and Subsystems, and (c) the Robin-Dee Segment of the Prairie Creek Main Drain.

489. Based upon Earlier Flooding Studies and Earlier Invasive Flooding, this Defendant knew to a substantial legal certainty and with a high degree of certainty that its intentional omissions and intentional actions including its failure to redevelop the Advocate's North and South

ongoing threat of man-made home-invasive and land-invasive flooding caused and continues to cause ongoing fear, apprehension, anxiety and other emotional distress experiences besides other non-economic and economic losses such as reduced market value set forth herein within the Plaintiff Class.

539. Equitable relief is appropriate for the ongoing, omni-present fear, anxiety and apprehension within the Plaintiffs of another catastrophic flood arising usually anytime it rains and especially if severe storms are predicted or forecasted for the Chicago Region.

540. As a proximate cause of the repetitive invasions, property values have been affected and the reputation relating to the value of property in Plaintiffs' neighborhoods have been damaged.

541. These repetitive tortious acts by this Defendant have caused and continue to cause irreparable harm to the Plaintiffs' Class, entitling the Plaintiffs to equitable relief.

IV.AB. COMMON LPE- GENERAL ADDITIONAL AVERMENTS

542. These averments apply to each Local Public Entities and should be answered as to this LPE Defendant's knowledge only. This is not intended to be a pleading of a "Joint Count".

543. Stormwater as Property: As used herein, stormwater is "property" or "personal property" as those terms are used in Chapter 745, Act 10, Article III at Section 10/3-101.

544. Contractual Relationship With LPEs: The Plaintiffs residences were serviced by the Prairie Creek Stormwater System or segments or components thereof based upon the responsible jurisdiction pursuant to a contractual, quasi-contractual relationship with the District, Glenview, Park Ridge and/or Maine Township.

545. The District is ultimately responsible for stormwater management within Cook County based upon Public Act 93-1049 of the Illinois General Assembly.

546. The District set forth in the Cook County Water Management Plan that it was vested with powers to assure coordination between jurisdictions relating to the management of multi-jurisdictional watersheds/stormwater management drainage areas.

547. Control of PCSS Components within Park Ridge Jurisdiction: If this defendant (the District, Park Ridge, Maine Township or County) had jurisdiction over the Prairie Creek Stormwater System including its real property public improvement components in Park Ridge, by its undertaking and/or exercise of control (by statute, ordinance or other act with the force of law besides actual control) and/or other acts of dominion, this Defendant owned, possessed and controlled the real property and related estates and interests in these Prairie Creek Stormwater System properties within Park Ridge: (a) the North Development Main Drain and its connected, related stormwater sewer components; (b) the Ballard Basin and the Pavilion Basin which are the North Development Main Drain's primary structures; and (c) (as to Park Ridge or Maine Township and not the District or County) tributary stormwater sewers to the Ballard and Pavilion Basins and/or North Development Main Drain. .

548. Control of PCSS Components within Maine Township Jurisdiction: If this defendant (the District, Park Ridge, Maine Township or County) had jurisdiction over the Prairie Creek Stormwater System (PCSS) including its real property public improvement components in Maine Township, by its undertaking and/or exercise of control (by statute, ordinance or other act with the force of law besides actual control) and/or other acts of dominion, this Defendant owned, possessed and controlled the real property and related estates and interests in these PCSS properties Maine Township: (a) the Robin-Dee Community Main Drain including the Robin Neighborhood Main Drain and the Dee Neighborhood Main Drain and their Subsegment systems; and (c) (as to Park Ridge or Maine Township and not the District or County) tributary

stormwater sewers to the Robin-Dee Community Main Drain including the Robin Neighborhood Main Drain and Subsegment system components and the Dee Neighborhood Main Drain and Subsegment system components..

549. Ownership of Stormwater: By its undertaking and/or exercise of control (by statute, ordinance or other legal document with the force of law besides actual control), jurisdiction, causing the accumulations through its overt acts or other acts pursuant to authority under law and/or other acts of dominion, this Defendant owned, controlled and operated in its entirety or partially or jointly the stormwater which was accumulated upon, received by, collected on, stored on or discharged through the PCSS real property public improvement components of the Prairie Creek Stormwater System over which it has jurisdiction.

550. Drainage Planning and System Engineering: This Defendant planned or caused to be planned and designed or caused to be designed the PCSS stormwater structures and components within its jurisdiction.

551. The Stormwater Plans for the North Development resulting in the existing drainage design and operation of the Ballard Basin and related drainage alterations was approved by this Defendant prior to 1998 and any changes to said Plans were approved by this Defendant substantially before September 13, 2008.

552. The application for the Plan for the drainage alterations to the North Development resulting in the existing drainage design and operation of the Pavilion Basin and related drainage alterations was and approved by this Defendant prior to 1998 and any changes to said Plans were approved by this Defendant substantially before September 13, 2008.

553. The Plan for the existing drainage of the Dempster Basin and related drainage alterations was approved by this Defendant before 2007.

554. Knowledge-Harza Study: In 1990, Harza reported that "... the flow capacity ... has been seriously eroded ... through the effects of inadequately designed modifications including undersized culverts, tortuous channel realignments, etc." This Defendant knew or should have known of these defects.

555. Knowledge that Maintenance Program Not Implemented: Based upon the Harza Study, the 2002 invasive flooding, and reasonable inquiry if undertaken, this Defendant knew or should have known that the responsible parties were not undertaking the "extensive cleaning program" recommended by the Harza report, thereby reducing the flow capacity of the Robin-Dee Community Main Drain of the PCSS.

556. Knowledge of Bottlenecks: Substantially before September 13, 2008, and with adequate time to plan, design, redesign or reconstruct its drainage structures so as to avoid foreseeable injury to the Robin-Dee Community Class, this Defendant knew or should have known based upon the facts evident from the (1) the Prior Invasive Floodings in 1987, 2002 and near invasive flooding on other dates before September 13, 2008 and (2) Earlier Flood Studies including the 1990-91 Harza Study of multiple bottlenecks and restrictions to flow within the North Development Main Drain including the Ballard Basin Discharge Culvert Bottleneck and the Robin-Dee Community Main Drain Bottleneck.

557. Known of 2-Year-Flooding-Frequency: Substantial before September 13, 2008, for a period of time during which sufficient to remedy the relevant stormwater conveyance and storage dangerous conditions set out in the Harza 1990 and the IDNR preliminary investigations, this Defendant knew or should have known that the Robin-Dee Community Segment and Advocate Corporation North Development Segment of the Prairie Creek Main Drain invasively floods into the Robin-Dee Community statistically every two years.

IV.AC. COMMON-LPE AVERMENTS: ARTICLE III. SEC. 3-102A STATUTORY DUTY
TO MAINTAIN PROPERTY

558. Article III, Section 102(a) (745 ILCS 10/3-102(a)) governs.
559. Property Defined: Article III, Sec. 3-101 of the Tort Immunity Act governs.
560. **Property:** The Prairie Creek Stormwater System and all of its components like the Ballard Basin and the Howard Court Culvert are specific property as “property” is used within the meaning of Sec. 10/3-102(a).

IV.AD. COMMON LPE AVERMENTS: ARTICLE III. SEC. 103 STATUTORY DUTY
TO REMEDY A DANGEROUS PLAN

561. LPE-Approved Plan Creating Dangerous Condition: Article III, Section 102(a) of the Tort-Immunity Act (745 ILCS 10/3-103(a)) governs..
562. This Defendant above all Plans: This Defendant approved all Prairie Creek Stormwater System Plans including the North Development Main Drain with the Ballard and Pavilion Basin, the Dempster Basin, the Robin Neighborhood Main Drain, the Howard Court Culvert, the Dee Neighborhood Stormwater Pipe and all other public improvements to the Prairie Creek Stormwater System including its Main Drain and all tributary sewers. This Defendant approved the RN Plat Plan and the DN Plat Plan in 1960-1961.
563. Duty to Redesign and Reconstruct to Remedy Dangerous Condition: By September 13, 2008, it was open and obvious that this Defendant’s approved Plans for the Prairie Creek Stormwater System’s public improvements including the Ballard, Pavilion and Dempster Basins were dangerously defective as ongoing flooding, including home-invasive flooding in 1987 and 2002, and other land-invasive flooding before September 13, 2008 had occurred showing the defectiveness and dangerousness of these approved Plans.

564. Duty to Correct Dangerous Plans: Pursuant to 745 ILCS 10/3-103, this Defendant owed a general duty to correct known unsafe conditions related to the design and/or engineering of the Prairie Creek Stormwater System

565. Before September 13, 2008, this Defendant knew or should of known of the unreasonable and defective conditions set forth in prior paragraphs herein which could be altered or changed by a redesign and/or replanning of the Prairie Creek Stormwater System.

566. In addition to the unreasonable and defective conditions set forth previously herein, this Defendant knew or should of known of the existence of the foregoing unsafe, unreasonable and dangerous conditions relating to the design and/or engineering of the Robin-Dee Community Segment and Advocate Corporation North Development Segment which segments were unsafe, unreasonable and dangerous conditions posed an unreasonable risk of foreseeable harmful invasive flooding to the Plaintiffs and included:

566.1. This Defendant knew or should have known that the Robin-Dee Community Segment, and the Advocate Corporation North Development Segment including the Ballard, Pavilion and Dempster Basins were defective relating to the collection, storage, transportation and/or discharge of stormwater during a rainfall; and/or

567. Reasonable Inspection: This Defendant could have discovered the foregoing unsafe conditions and their character by the use of reasonable inspections and/or investigations relating to the Robin-Dee Community Segment and the Advocate Corporation North Development Segment of the Prairie Creek Main Drain and connected and/or tributary drainage structures including the Ballard, Pavilion and Dempster Basins.

568. This Defendant knew or should have known of the inadequate design and/or engineering relating to the Robin-Dee Community Segment and the Advocate Corporation North

Development Segment of the Prairie Creek Main Drain and connected and/or tributary drainage structures including the Ballard, Pavilion and Dempster Basins given the prior flooding and prior governmental reports and the likelihood and magnitude of potential danger from failing to take corrective action to remedy such defectively designed and/or engineered Stormwater System.

569. Failures to Exercise Due Care: This Defendant failed to exercise due care in the redesign and reconstruction or in failing to cause redesign or reconstruction of the Defendant's properties or drainage structures under its management, control, and supervision including but not limited to the following failures to exercise due care over the Ballard Basin, Pavilion Basin and Dempster Basin and North Development Main Drain, drainage components of the Prairie Creek Stormwater System, and stormwater from private development on Advocate's North and South Developments.

570. Relating to the Prairie Creek Main Drain, its Segments and Subsegments, this Defendant failed exercise due care to reconstruct its Main Drain and in-line, immediately connected Retention Basins such as the Ballard Basin, the Pavilion Basin and, through the 60 inch Robin Alley Stormwater Sewer, the Dempster Basin, including but not limited to the following failings and omissions to act:

570.1. Failing to enlarge or require others including Advocate, or others to enlarge the Ballard Basin, Pavilion Basin and Dempster Basin including temporary enlargement by the use of sand bags, sand bins, water tubes or other storage or flood prevention systems around the perimeter of these basins;

570.2. Failing to raise the discharge elevations for these Basins by raising the discharge culvert elevations; and

570.3. Failing to increase the berms around the Basins' perimeters to increase storage.

571. **Proximate Cause:** As a proximate cause of these breaches of duties owed to the Plaintiff Class, these breaches of duties by this Defendant proximately caused damages to Plaintiffs set forth in this Complaint's "Damage" Part.

~~**IV.AE. COMMON LPE AVERMENTS: 70 ILCS 2605/19: SANITARY DISTRICT LIABILITY**~~

572. ~~70 ILCS 2605/19 governs.~~
573. ~~The Plaintiffs' homes constituted "real estate" within the meaning of 70 ILCS 2605/19.~~
574. ~~The Plaintiffs' homes were "within the district" within the meaning of 70 ILCS 2605/19.~~
575. ~~The governmental owned and operated tributary or lateral municipal sanitary street sewers to which the Plaintiffs' residences were connected by lead lines from their residences constituted a "channel, ditch, drain, outlet or other improvement" within the meaning of 70 ILCS 2605/19.~~
576. ~~The governmental owned and operated sanitary street sewers to which the Plaintiffs' homes were connected were provided "under the provisions of this Act" as that phrase is used within the meaning of 70 ILCS 2605/19.~~
577. ~~On September 13, 2008, sewer water overflowed the sanitary sewerage system sewers under the ownership, jurisdiction and/or control of a local public entity, said control being total, partial or joint.~~
578. ~~The sewer water overflow was an "overflow" as that term is used in 70 ILCS 2605/19 in violation of 70 ILCS 2605/19.~~

~~**IV.AF. COMMON LPE AVERMENTS: ILLINOIS CONSTITUTION, ART. I. SEC. 15: TAKING REAL AND PERSONAL PROPERTY**~~

579. Article I, Section 15 of the Illinois Constitution prohibits the taking of private property for public use without payment of just compensation to the victims of the taking.

580. Pursuant to Article I, Section 15 of the Illinois Constitution, this Defendant was under a duty to provide just compensation to the Plaintiffs for this Defendant's taking of Plaintiffs' real property and personal property.

581. The Plaintiff Class are parties beneficially interested to maintain this action because they are entitled to just compensation from this Defendant relating to the Defendants' taking of Robin-Dee Community Plaintiffs' real property including their homes and personal property without just compensation in violation of Article I, Section 15 of the Illinois Constitution.

582. This Defendant planned, supervised, designed, management, and/or caused to be constructed the straightening and widening of PCSS's Robin Neighborhood Main Drain and the installation of the 60" Dee Neighborhood Stormwater Sewer as a public improvement for the benefit of the public within the PCW.

583. This Defendant planned, supervised, designed, management, and/or caused to be constructed the PCSS's North Development Main Drain including the Ballard Basin, Pavilion Basin and Dempster Basin as a public improvement for the benefit of the public within the Prairie Creek Watershed.

584. Because stormwater from these public improvements invaded the Robin-Dee Community Plaintiff Class repeatedly, the catastrophic repeated physical overflows and invasions into Plaintiffs' homes, residences and properties by stormwater water unjustifiably and unlawfully, interfered, hindered, and prevented Plaintiffs from their exclusive right to use Plaintiffs' properties for their intended purposes as homes.

585. The repeated presence of accumulated water in Plaintiffs' home and the ongoing threat during rainfalls of the significant risk of additional invasions has resulted in a permanent and substantial interference with the Plaintiffs' use and enjoyment of their real properties including

but not limited to a permanent and substantial reduction if not total destruction of the market value of the Plaintiffs' real property including homes and personal property.

586. On September 13, 2008, the Robin-Dee Community Plaintiffs suffered a direct encroachment upon their real properties when stormwater invaded their real properties and which subjected Plaintiffs' real properties including homes to a public use as retention basins and/or detention basins of this Defendant's stormwater and/or stormwater under this Defendant's ownership, control, management, supervision and/or jurisdiction.

587. Despite these destructive invasive floodings, Plaintiffs have not received just compensation for this substantial interference of their real properties including their homes and residences.

588. This Defendant has proximately caused the Plaintiffs' real properties including their homes to become partial and/or totally uninhabitable by this Defendant's actions and/or inactions as set forth herein resulting in invasive floodings into the Plaintiffs' real properties including homes and residences.

589. This Defendant has proximately caused the stormwater invasive floodings from (a) the PCSS's Robin-Dee Community Main Drain, and (b) the PCSS's North Development Main Drain Segment including the Ballard Basin and the Dempster Basin, into Plaintiffs' real properties, thereby destroying and/or impairing the usefulness and market value of the Plaintiffs' real properties including homes and residences.

590. Given the repeated invasive floodings, including in 1987 and 2002, and the government reports including the Harza Study, the IDNR Study and the FEMA FIRMs, these acts by this Defendant were made with a conscious disregard for the rights and safety of Robin-Dee Community Plaintiffs being gross negligence.

591. The repeated invasive flooding and the repeated government studies show that this Defendant has unconstitutionally taken the Robin-Dee Community Plaintiffs' real property and real property interests including their residences and homes and personal property without just compensation being paid to the Plaintiffs as required by Article I, Section 15 of the Illinois Constitution, thereby requiring this Defendant now to pay just compensation for the permanent injury to the real property and personal property interests to the Class Plaintiffs.

IV.AH. COMMON LPE AVERMENTS: U.S. FIFTH AMENDMENT: TAKING OF AND PERSONAL REAL AND PERSONAL PROPERTY

592. The Plaintiffs incorporate the prior averments in the Subpart entitled "Illinois Constitution Art. I, Sec. 15-Taking of Real and Personal Property."

593. The Fifth Amendment of the United States Constitution prohibits the taking of private property for public use without payment of just compensation to the citizen-victim of the taking.

594. Pursuant to the Fifth Amendment of the United States Constitution, this Defendant was under a duty to provide just compensation for this Defendant's taking of Plaintiffs' real and personal property including residences and homes.

595. The Plaintiffs are parties beneficially interested to maintain this action because they are entitled to just compensation from this Defendant relating to the Defendants' taking of Plaintiffs' real and personal property .

596. This Defendant took Plaintiffs' homes and real property and personal property without just compensation in violation the Fifth Amendment to the U.S. Constitution.

597. Because stormwater from these public improvements for public uses invaded the Robin-Dee Community Plaintiff Class repeatedly, the catastrophic repeated physical overflows and invasions into Plaintiffs' homes, residences and properties by stormwater water unjustifiably and

V. PART V: CLAIMS AGAINST ADVOCATE

V.A. OVERVIEW-ADVOCATE-CAUSATION AND RESPONSIBILITY

620. **CAUSATION:** Advocate North Development stormwater and Advocate South Development stormwater catastrophically invaded the Robin-Dee Community Area on September 13, 2008.

620.1. The Medical Pavilion Building on the North Development did not sustain a **single drop** of invasive stormwater flooding on September 13, 2008.

620.2. All stormwater which invaded the Plaintiffs' homes originated from Advocate property with the exception of insignificant tributary stormwater to the Robin-Dee Main Drain.

620.3. Advocate knows of this repetitive flooding history.

620.4. Advocate refused to take any action including creating a sandbag barrier between Robin Alley and the North Advocate Development and raising its discharge culvert elevations.

621. **RESPONSIBILITY:** The Advocate North Development is a completely man-made development complex with private improvements such as the Medical Pavilion and public improvements (or improvements for the benefit of the PWC public) such as the and

621.1. Not even a single drop of water invaded the Medical Pavilion located less than 15 yards from the Pavilion Basin during the September 13, 2008 storm while at less 500 citizens were sustaining catastrophic home-invasive flooding, in some cases completely filling their basements and flooding up into the first floor.

621.2. Nor did a single Advocate Building anywhere on the sustain **any** invasive flooding on September 13, 2008.

621.3. It is not an accident that (a) the Plaintiffs sustained catastrophic full-basement flooding in most cases and (b) Advocate did not: the same rain fell on each property. The

rain did not miraculously stop at Robin Court to spare Advocate North Development from flooding

V.B. ADDITIONAL FACTS RELATING TO ADVOCATE

622. As used here, unless otherwise evident from the context, “this Defendant” or “Defendant” means Advocate and “its” means “Advocate’s”.

623. Plaintiffs restate and incorporate all these paragraphs as the first paragraphs of this Part: (a) all paragraphs in Part I: Jurisdiction, Venue and Class Averments; (b) all paragraphs in Part II: Definitions including Stormwater Structures and Bottlenecks; and (c) all paragraphs in Part III: State of Common Facts.

624. **Real Property Ownership and Control:** Advocate owned, possessed, controlled, managed and/or controlled both the real property itself and the real property estates and interests in the following properties immediately contiguous to, upstream from and, generally, at higher elevations in relationship to the Plaintiff Robin-Dee Community Class’ homes, lands and properties:

624.1. **Advocate’s North Development Property** including but not limited to: (i) the Ballard Basin; (ii) The Ballard Basin Discharge Culvert; (iii) the Pavilion Basin; (iv) the Pavilion Basin Discharge Culvert(s); (v) the Dempster Basin; (vi) the Dempster Basin Discharge Culvert; (vii) Advocate’s Dempster Basin Stormwater Subsystem (the 84 “ stormwater sewer receiving, in part, stormwater from Advocate’s South Development Property); (viii) Advocate’s parking lots and parking garages immediately adjacent to and contiguous to the Robin-Dee Community, north of the Advocate’s Dempster Basin; and (ix) all drainage and stormwater sewer subsystems on Advocate’s North Development Property; and

624.2. **Advocate’s South Development Property** including but not limited to: (i) All tributary,

PART VIII: CLAIMS AGAINST DISTRICT

VIII.A. OVERVIEW-DISTRICT-CAUSATION AND RESPONSIBILITY

967. **Causation:** Of any entity in Cook County, the District and is in the best position and superior position to control design flooding (that is, flooding by design). The District has specialized engineers whose job is to make certain that submitted designs do not cause flooding. The District has authority to set all guidelines for stormwater management design including the return frequency of design storms which all stormwater management plans must satisfy.

967.1. The most fundamental and highest priority of the District in reviewing stormwater plans is to make certain that foreseeable home-invasive or structurally-invasive flooding is prevented.

967.2. The District has final authority to approve all stormwater management Plans including those submitted by Gewalt and Advocate relating to the Prairie Creek Stormwater System.

967.3. The District failed to meet its statutory design by (a) approving the Gewalt and Advocate designs for the Prairie Creek Stormwater System's Advocate North Development Stormwater Subsystem-Segment and (b) approving Gewalt-Advocate designs for

967.4. The District by either design control or operation control affects all upstream sanitary sewerage systems. The District failed to pump out its sanitary sewers during the September 13, 2008 event to increase its sanitary sewer capacity to allow upstream sanitary sewage from ~~Park Ridge and Glenview~~ to safely discharge. Specifically, the District failed to pump its sewage into tanker trucks, adjacent stormwater drains, adjacent rivers, adjacent area depressions or into another independent system for

drainage. If it did not have such authority, the District failed to obtain permanent, temporary or emergency sanitary sewerage by-pass authority for the purpose of preventing serious harm to persons and property from the U.S. EPA or the IDNR as permitted by law*.

968. **Responsibility:** In 2004, stormwater responsibility was imposed upon the District by Public Act 93-1049 of the Illinois General Assembly. The Preface to the Cook County Stormwater Management Plan (CCSMP) developed by the District vested sole power in the District to supervise and coordinate stormwater management across jurisdictions.

968.1. ~~Sanitary Sewage Responsibility: 70 ILCS 2605/19 imposed upon the District the responsibility to control its sanitary sewage.~~

VIII.B. FACTS RELEVANT TO THE DISTRICT

969. **The PCSS as a Public Improvement:** As the regional local public entity charged with multi-jurisdiction operation of stormwater management, the District owns and/or controls all drains, basins, structures, components and other stormwater improvements within the public improvement referred to herein as the "Prairie Creek Stormwater System" ("PCSS") of the Prairie Creek Watershed ("PCW").

970. The PCSS stormwater improvements constitute "property" or "properties" under the Tort Immunity Act ("TIA").

971. These PCSS Stormwater Improvements include:

971.1. The PCSS North Development Segment consisting of (a) the North Development Main Drain (being at Point A1 and traversing to Point A3), (b) the Ballard Basin which essentially serves as the North Development Main Drain traversing Advocate North Development property, (c) the Pavilion Basin on the Advocate North Development property, (d) all Park

Ridge and/or Maine Township tributary stormwater sewers discharging into the North Development Main Drain, and (e) all other stormwater structures and related components on the North Development Property; and

971.2. The PCSS Robin-Dee Community Segment consisting of (a) the Robin-Dee Main Drain between Points C1-C2 (the twin Robin Alley Culverts) and continuing past Point J (the Rancho Lane Culverts) to Potter Road;

972. Stormwater is also “property” or “personal property” within TIA Article III, § 10/3-101.

973. **District Services for Sanitary Sewage Disposal:** The Plaintiffs residences were serviced by the District’s interceptors which received sanitary sewage from either Glenview or Park Ridge’s local sewage sewer system. The District which also owned and operated the interceptors which receive the sewage from local sanitary sewers such as those owned and controlled by Glenview and Park Ridge and transport it for treatment to one of the District’s wastewater treatment plants.

974. The District is liable for the sewage backups because the District controls the interceptors and, if the local sewers cannot discharge into the District interceptors, then sewage will backup into the Plaintiffs’ homes *.

975. **Glenview, Park Ridge and/or Maine Township** owned and/or operated the local sanitary tributary municipal sewers which drained to the District’s sewers and interceptors.

976. The District receives compensation for sewage disposal pursuant to a contractual, quasi-contractual relationship with Plaintiffs.

977. The District receives compensation for stormwater management services pursuant to a contractual, quasi-contractual relationship with Plaintiffs.

978. The District is ultimately and solely responsible for stormwater management within Cook County based upon Public Act 93-1049 of the Illinois General Assembly.

979. The District set forth in the Cook County Water Management Plan that it was vested with powers to assure coordination between jurisdictions relating to the stormwater management.

980. **Control of PCSS Components within Park Ridge Jurisdiction:** As PCSS owner, manager, operator and/or person in control, the District controlled the Prairie Creek Stormwater System including its real property public improvements in Park Ridge such as the North Development Main Drain and its attached Basins. By its undertaking and/or exercise of control (by statute, ordinance or other act with the force of law besides actual control) and/or other acts of dominion, the District owned, possessed and/or controlled the real property and related estates and interests in the Prairie Creek Stormwater System's public improvements within Park Ridge.

981. **Control of PCSS Components within Maine Township Jurisdiction:** As PCSS owner, manager, operation and person-in-control, the District had jurisdiction over the Prairie Creek Stormwater System (PCSS) including its real property public improvements in Maine Township, including the Robin-Dee Main Drain. By its undertaking and/or exercise of control (by statute, ordinance or other act with the force of law besides actual control) and/or other acts of dominion, District owned, possessed and/or controlled the real property and related estates and interests in PCSS stormwater improvements in Maine Township as described earlier herein.

982. **Drainage Planning and System Engineering:** This Defendant planned or caused to be planned and designed or caused to be designed the PCSS stormwater structures within its jurisdiction including all relevant PCSS North Development and Robin-Dee Segments' improvements.

983. The Stormwater Plans for the North Development resulting in the existing drainage design and operation of the **Ballard Basin, Pavilion Basin and Dempster Basin** and related drainage alterations was **approved by this Defendant** prior to 2008 and any changes to said Plans were approved by this Defendant substantially before September 13, 2008.

COUNT 25: DISTRICT: NEGLIGENCE: DOMINANT ESTATE OVERBURDENING-STORMWATER

984. Plaintiffs restate and incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the following Subparts in Part IV, these Subparts being: **IV.A., IV.C., IV.F., IV.G. and IV.I. and IV.AB.**

985. Defendant knew or should have known of the foreseeable harm of invasive flooding into the Area given Earlier Floodings and Earlier Flooding Studies.

986. Defendant knew, agreed to and undertook to receive Upstream PC Watershed stormwater.

987. Based upon this actual or constructive knowledge of reasonably foreseeable flooding harm to Plaintiffs as contiguous downstream property owners and possessors, Defendant owed non-delegable duties as a owner, manager and/or party in control to properly manage stormwater under Defendant's ownership, control, supervision, and/or management so as to prevent foreseeable overburdening harm to foreseeable plaintiffs from excessive, overburdening stormwater exceeding the capacity of its PCSS stormwater main drains and basins to capture and maintain storage of excess stormwater

988. As an owner, possessor, operator, manager and party-in-control of the PCSS stormwater structures or the PCSS stormwater structures within its jurisdiction, this Defendant was under a non-delegable duty not to increase or accelerate or the volume, flow, and other physical characteristics of stormwater from its property or otherwise overburden with stormwater the

Plaintiffs' homes and properties, either with overburdening its Property Stormwater, overburdening PWC Upstream Stormwater or both.

989. Defendant knew or should have known that the overburdening stormwater was generated by This Defendant Property Stormwater and/or PWC Upstream Stormwater and/or both combining.

990. Before 9-13-2008, Defendant had reasonably adequate time, opportunity and ability to take corrective measures to remedy and/or protect the Plaintiffs against the foreseeable dangerous conditions existing on its PCSS Properties posed by excess stormwater.

991. On September 13, 2008, excess accumulated stormwater from its PCSS property including its stormwater structures catastrophically invaded the Plaintiffs.

992. Defendant breached its duty not to overburden downstream Plaintiffs including by the following omissions: (a) failing to pump down the Basins before the September 13, 2008 storm; (b) failing to erect flood protection barrier systems between its property and the Plaintiff's properties and (c) failing to detain stormwater until it could safely drain to the Main Drain.

993. As a proximate cause of these breaches of duties by Defendant, the Plaintiffs suffered and sustained actual injuries and damages set forth under in this Complaint's "Damage" Part.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

~~COUNT 26: DISTRICT NEGLIGENCE BASED UPON FORESEEABLE HARM
STORMWATER AND SANITARY SEWER WATER~~

994. ~~Plaintiffs restate and incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and~~

994.1. ~~Relating to stormwater: (i) "IV.C. Common Negligent Stormwater System Maintenance Breaches based upon Foreseeable Harm Legal Awerments"; (ii) "IV.G. Common Negligent~~

properties which flooded its exclusively controlled interceptors, resulting in interceptor cause sewage backups *.

1028. Its negligent operation of its exclusively controlled sanitary sewers proximately caused the stormwater invasive flooding sustained by the Plaintiffs. The Plaintiffs did not contribute to the flooding.

1029. As a proximate cause of these breaches of duties by this Defendant, the Plaintiffs suffered and sustained the injuries and damages set forth under the "Damage" Part of this Complaint.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

COUNT 31: DISTRICT: NEGLIGENT NUISANCE

1030. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in Part IV.N., IV.O and IV.P.

1031. This Defendant owned, operated, managed, maintained and/or controlled the Basins and its other PCSS Stormwater Structures.

1032. Stormwater: As set out in the prior negligence Counts in this Part, this Defendant failed to reasonably design, engineer, maintain, and/or operate the Basins and its other PCSS property.

1033. This Defendant negligently caused an accumulation of stormwater from the Basins and its Stormwater Structures Property to invade and interfere with the Plaintiffs on 9-13-2008.

1034. By causing stormwater accumulated and controlled by this Defendant to physically invade the Plaintiffs' homes, this Defendant negligently created a dangerous nuisance of excess accumulated stormwater which substantially and unreasonably interfered with Plaintiffs.

1035. Sanitary Water: As set out in the prior negligence Counts in this Part, this Defendant failed to reasonably maintain, and/or operate its sanitary sewer interceptors.

1036. This Defendant negligently caused an accumulation of sanitary sewer water into citizens' homes from its sanitary sewage system to invade and interfere with the Plaintiffs on 9-13-2008.

1037. By causing sanitary sewer water accumulated and controlled by this Defendant to physically invade the Plaintiffs' homes, this Defendant negligently created a dangerous nuisance of excess sanitary sewer water which substantially and unreasonably interfered with Plaintiffs.

1038. As a proximate cause of this nuisance caused and/or created by this Defendant, the Plaintiffs suffered damages set forth under the "Damage" Part of this Complaint.

WHEREFORE, the Plaintiffs request against Defendant the relief in the "Relief" Complaint Part.

COUNT 32: DISTRICT: NEGLIGENT TRESPASS

1039. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subparts IV.Q., IV.R. and IV.S.

1040. Stormwater: Because Defendant failed to act as set forth in this Part including failed to discharge by pumping existing, accumulated stormwater before the storm, before the Robin-Dee Community Main Drain runs full and before the surcharging of the Ballard, Pavilion and Dempster Basins and Howard Court Culvert, this Defendant failed to reasonably manage stormwater on September 13, 2008, proximately causing the Plaintiffs' invasive flooding.

1041. Sanitary: Because Defendant's failed to act as set forth in this Part including (a) failed to prevent stormwater from inflowing into the sanitary sewers and (b) failed to pump out the sanitary sewers, this Defendant failed to reasonably manage stormwater on September 13, 2008, proximately causing the Plaintiffs' invasive flooding.

1042. As a direct, immediate and foreseeable result of the foregoing acts and/or omissions of this Defendant, this Defendant caused stormwater to invade the Plaintiffs' persons and homes.

1043. This Defendant had exclusive possession and control over the trespassing instrumentality of the excess accumulated PCSS stormwater and its sanitary sewer water.
1044. The Plaintiffs were entitled to the exclusive enjoyment of their properties.
1045. This Defendant knew or should have known that its actions and/or inactions in failing to control stormwater and sanitary water would result in invasive flooding.
1046. This Defendant negligently failed to monitor, investigate, study, inspect, clean, maintain, repair, improve, design, redesign, plan and/or operate its properties as set forth in this Part.
1047. As a direct and proximate result of the foregoing conduct by this Defendant, its instrumentality of excess accumulated stormwater physically invaded Plaintiffs' homes on 9-13-2008, proximately causing the Plaintiffs' Damages set forth in the Damage Part.
1048. The Plaintiffs did not consent for its excess stormwater to physically invade and interfere with the exclusive use and occupancy of the Plaintiffs' homes and property.
1049. The Plaintiffs' injuries and damages were caused by the dangerous and calamitous occurrence of invasive stormwater floodings on 9-13-2008 from its properties.
1050. The stormwater and sanitary water which entered and physically invaded Plaintiffs' homes interfered with Plaintiffs' interests in the exclusive possession of their homes.
1051. The stormwater and sanitary sewer water which entered, settled and physically invaded Plaintiffs' homes constituted a negligent trespass upon and into the Plaintiffs' homes.
1052. This Defendant is liable to the Plaintiffs for negligent trespass because this Defendant caused harm to the legally protected interests of the Plaintiffs including harm to the exclusive, quiet enjoyment of their land, homes and properties by causing an instrumentality, namely "Stormwater", to enter upon the property of the Plaintiffs without their consent.

1053. As a proximate cause of this trespass caused and/or created by this Defendant, the Plaintiffs suffered damages set forth under the "Damage" Part of this Complaint.

WHEREFORE, the Plaintiffs request against Defendant the relief in the "Relief" Complaint Part.

COUNT 33: DISTRICT: GROSS NEGLIGENCE

1054. ~~Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subpart IV.T. entitled "IV.T. Common Gross Negligence Violations Legal Averments".~~

1055. ~~The Districts' acts and omissions were committed under circumstances exhibiting a reckless disregard for the Plaintiffs' safety, which acts include but its deliberate and intentional failures to act to increase, either temporarily through pumping down and temporary barriers, or permanently, with a pump station and high berms, storage to receive the September 13, 2008 rainfall, which acts would have prevented both stormwater and sewer water flooding.~~

~~WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.~~

COUNT 34: DISTRICT: INTENTIONAL NUISANCE

1056. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subpart IV.U., IV.V. and IV.W..

1057. Defendant owned, operated, managed, maintained and/or controlled its PCSS Public Improvement including the Ballard, Pavilion and Dempster Basins from which the excess accumulated stormwater nuisance invaded Plaintiffs' persons and homes.

1058. Defendant failed to reasonably design, engineer, maintain, and/or operate the PCSS public improvements including the Ballard and Pavilion Basins and its sanitary sewers.

1059. Defendant owned its sanitary sewers including the downstream interceptors.

1060. Defendant failed to reasonably operate its sanitary sewers including failing to prevent stormwater invasion from its PCSS basins from inflowing into the sanitary sewers and failing to pump out its sanitary sewers.

1061. Defendant intentionally stormwater from these the PCSS and its sanitary sewers interfere with Plaintiffs' persons and homes.

1062. As a direct and proximate result of the Defendant's intentional failures to act to pump down the Basins, and to increase temporary storage through temporary barrier methods such as sandbags, Plaintiffs suffered damage set out in this Complaint "Damages" Part.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

COUNT 35: DISTRICT: INTENTIONAL TRESPASS

1063. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subpart IV.X, IV.Y, and IV.Z.

1064. Defendant knew to a substantial legal certainty and to a high degree of certainty that its actions and/or inactions would result in invasive flooding into the Plaintiffs' homes during a rainfall like the September 13, 2008 rainfall from its PCSS including the Ballard Basin and the private improvement Dempster Basin and its sanitary sewers.

1065. Defendant proximately caused the Plaintiffs' Damages by its intentional omission to discharge by pumping pre-existing stormwater before the 2008 storm and its intentional omission to capture and store stormwater in temporary barriers around the Basins and its intentional omission not to pump out its sanitary sewers to prevent sanitary sewer surcharging.

1066. Defendant knew to a substantial legal certainty and a high degree of certainty that its intentional omissions would result in water invasively flooding Plaintiffs' homes from the PCSS Basins and its sanitary sewers.

1067. With a high degree of certainty to cause injury to Plaintiffs, on September 13, 2008, Defendant permitted storm and sanitary water to escape and invade Plaintiffs' homes.

1068. Based upon the legal certainty of knowledge of invasive flooding as set forth herein, Defendant intentionally trespassed upon Plaintiffs' persons, homes, and properties.

1069. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Defendant's intentional conduct.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

**COUNT 36: DISTRICT: ARTICLE III. SEC. 3-102A STATUTORY DUTY TO
MAINTAIN PROPERTY**

1070. The Plaintiffs restate the preceding paragraphs.

1071. **Article III, Section 102(a)** (745 ILCS 10/3-102(a)) provides that a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition.

1072. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Defendant's conduct (a) relating to stormwater, in failing to redesign its PCSS Public Improvements including the Basins to store adequate amounts of water and (b) relating to its sanitary sewers, failing to prevent its own stormwater or stormwater under its control from invading the sanitary system into Plaintiffs' homes.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

**COUNT 37: DISTRICT: ARTICLE III. SEC. 103 DUTY TO REMEDY DANGEROUS
PLAN**

1073. The Plaintiffs restate the preceding paragraphs.

1074. **LPE-Approved Plan Creating Dangerous Condition:** Article III, Section 102(a) of the Tort-Immunity Act (745 ILCS 10/3-103(a)) provides that a local public entity is liable for an

approved plan, if after the execution of such plan or design, the planned improvement's use has created a condition that it is not reasonably safe.

1075. This Defendant approved all defective Prairie Creek Stormwater System Plans including the North Development Main Drain with the Ballard and Pavilion Basin, the Robin Neighborhood Main Drain, the Howard Court Culvert, the Dee Neighborhood Stormwater Pipe and all other public improvements to the PCSS including its Main Drain and all tributary sewers.

1076. By September 13, 2008, it was open and obvious that its approved Plans for the Prairie Creek Stormwater System's public improvements were dangerously defective as ongoing flooding, including home-invasive flooding in 1987 and 2002, and other land-invasive flooding before September 13, 2008 had occurred.

1077. Pursuant to 745 ILCS 10/3-103, this Defendant owed a general duty to correct known unsafe conditions related to the design and/or engineering of the PCSS and breached these duties by not redesigning or compelling Advcoate-Gewalt to resign the PCSS Basin Plans and other PCSS Plans relating to Advocate's North and South Development Properties so as to prevent the Plaintiffs' invasive flooding.

1078. The Plaintiffs' damages set forth in this Complaint's "Damage" Part were caused as a substantially proximate result of Defendant's conduct in failing to maintain its PCSS Properties.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

~~COUNT 38: DISTRICT: 70 ILCS 2605/19: SANITARY DISTRICT LIABILITY~~

1079. ~~The Plaintiffs restate the preceding paragraphs.~~

1080. ~~70 ILCS 2605/19 provides that a sanitary district is liable for sanitary sewerage backups.~~

1081. ~~The Plaintiffs' homes constituted "real estate" within the meaning of 70 ILCS 2605/19.~~

1082. ~~The Plaintiffs' homes were "within the district" within the meaning of 70 ILCS 2605/19.~~

1083. ~~The Park Ridge and/or Glenview owned and operated tributary or lateral municipal sanitary street sewers to which the Plaintiffs' residences were connected by lead lines from their residences and the District's receiving interceptors constituted a "channel, ditch, drain, outlet or other improvement" within the meaning of 70 ILCS 2605/19.~~

1084. ~~The District approved both Park Ridge and Glenview's sanitary sewer plans and permits and all sanitary sewers were provided "under the provisions of this Act" as that phrase is used within the meaning of 70 ILCS 2605/19.~~

1085. ~~On 9-13-2008, sewer water overflowed the sanitary sewerage system sewers under the ownership, jurisdiction and/or control of the District, said control being total, partial or joint.~~

1086. ~~The sewer water overflow was an "overflow" as that term is used in 70 ILCS 2605/19 in violation of 70 ILCS 2605/19.~~

1087. ~~The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially proximate result of Defendant's conduct in failing to maintain its Properties.~~

~~WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part~~

COUNT 39: DISTRICT: ILLINOIS CONST. ART. I. SEC. 15: TAKING REAL AND PERSONAL PROPERTY

1088. The Plaintiffs restate the preceding paragraphs.

1089. Article I, Section 15 of the Illinois Constitution prohibits the taking of private property for public use without payment of just compensation to the victims of the taking.

1090. Per Article I, Section 15 of the Illinois Constitution, this Defendant was under a duty to provide just compensation to the Plaintiffs for its taking of Plaintiffs' real and personal property.

1091. This Defendant has proximately caused the Plaintiffs' real properties including their homes to become partial and/or totally uninhabitable by its actions and/or inactions as set forth

herein resulting in invasive floodings into the Plaintiffs' real properties including homes and residences.

1092. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Defendant's conduct in failing to redesign its PCSS Properties after knowing that the design and construction was dangerous.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part

**COUNT 40: DISTRICT: U.S. FIFTH AMENDMENT: TAKING OF REAL AND
PERSONAL PROPERTY**

1093. The Plaintiffs incorporate the prior averments in the Subpart entitled "Illinois Constitution Art. I, Sec. 15-Taking of Real Property."

1094. The Fifth Amendment of the United States Constitution prohibits the taking of private property for public use without payment of just compensation to the citizen-victim of the taking including both real and personal property.

1095. This Defendant violated the U.S. Constitution's 5th Amended by its conduct.

1096. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Defendant's conduct in failing to redesign its PCSS Properties after knowing that the design and construction was dangerous.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part

COUNT 41: DISTRICT: 42 USC SEC. 1983

1097. The Plaintiffs incorporate the preceding subparts entitled: "U.S. Fifth Amendment-Taking of Real Property", "U.S. Fifth Amendment-Taking of Personal Property", "Ill. Const. Art. I, Sec. 15-Taking of Real and personal property" and "Ill. Const. Art. I, Sec. 15-Taking of Personal Property."

PART IX. CLAIM AGAINST PARK RIDGE

IX.A. OVERVIEW-PARK RIDGE-CAUSATION AND RESPONSIBILITY

1104. Causation: Despite having the most actual knowledge of Advocate flooding among the LPEs and in the best position to make changes to the Advocate-Gewalt Plans given the serious repetitive flooding history, Park Ridge did not compel Advocate and Gewalt to revise their North and South Development Plans to provide more stormwater storage on the North Development or South Development*. Nor did Park Ridge advise the District of the serious repetitive flooding problems.

~~1104.1. Causation Park Ridge Plaintiffs Sanitary Sewage Invasions: The Park Ridge North Ballard Neighborhood sustained sewage invasions during this event by Park Ridge's failure to sand bag around the Basins and raise the Basins' discharge elevations, thereby causing stormwater to inflow into the Park Ridge sanitary sewers and Park Ridge Plaintiffs' basements.~~

IX. B. FACTS RELEVANT TO THIS DEFENDANT

1105. On September 13, 2008, Park Ridge deployed its police and/or Department of Public Safety to Dempster Road near the Plaintiffs' Robin-Neighborhood.

1106. On prior dates during flooding, Park Ridge deployed its police and/or Department of Public Safety to Dempster Road near the Plaintiffs' Robin-Neighborhood*.

1107. Before September 13, 2008, Park Ridge was well aware of the repetitive invasive flooding into the Robin-Dee Community Area because prior storms had generated sufficient stormwater to produce street flooding including street flooding on Dempster Road and Robin Alley.

1108. **Property under TIA:** The Prairie Creek Stormwater System including the Ballard Basin, Pavilion Basin are within the jurisdiction of Park Ridge and are public improvements and properties as defined in TIA Article III, Sec. 3-101. As used herein, stormwater is “property” or “personal property” per Chapter 745, Act 10, Article III at Section 10/3-101.

1109. ~~Services for Sanitary Sewage Disposal: The Park Ridge Plaintiffs residences in the Park Ridge North Ballard Neighborhood were serviced by a sanitary sewage disposal sewer system owned and/or operated by Park Ridge.~~

1110. ~~Park Ridge owned and/or operated the local sanitary tributary municipal sewers in the Park Ridge North Ballard Neighborhood which drained to the District’s sewers and interceptors.~~

1111. ~~Park Ridge and the District assumed responsibilities for sewage disposal pursuant to a contractual, quasi contractual relationship with Plaintiffs.~~

1112. Park Ridge is responsible for stormwater management within Park Ridge as it supervises all stormwater management projects including projects to public improvements such as the PCSS’s Ballard Basin and Pavilion Basin.

1113. **Control of PCSS Components within Park Ridge Jurisdiction:** Park Ridge had and has jurisdiction over the Prairie Creek Stormwater System within Park Ridge including its real property public improvement components in Park Ridge, by its undertaking and/or exercise of control (by statute, ordinance or other act with the force of law besides actual control) and/or other acts of dominion, Park Ridge owned, possessed and/or controlled the PCSS Basins and North Development Main Drain and other related real property and related estates and interests in the Prairie Creek Stormwater System stormwater structures within Park Ridge.

1114. **Drainage Planning and System Engineering:** Park Ridge planned or caused to be planned and designed or caused to be designed the public improvements of the PCSS stormwater

structures within its jurisdiction, namely the Ballard Basin, Pavilion Basin and North Development Main Drain and possibly the Dempster Basin if it receives Park Ridge stormwater*.

1115. The Stormwater Plans for the North Development resulting in the existing drainage design and operation of the **Ballard Basin, Pavilion Basin and Dempster** and related drainage alterations was **approved by Park Ridge** before 2008 and any construction changes to said structures were approved by Park Ridge substantially before September 13, 2008 with construction occurring substantially before that date and time.

COUNT 45: PARK RIDGE: NEGLIGENCE: DOMINANT ESTATE OVERBURDENING

1116. Plaintiffs restate and incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subparts in Part IV, these Subparts being entitled: IV.A., IV.C., IV.G., and IV.I. and IV.AB.

1117. Park Ridge knew or should have known of the foreseeable harm of invasive flooding into the Plaintiffs' Area given Earlier Floodings and Earlier Flooding Studies. Park Ridge knew of the earlier floodings as it deployed its police and/or public safety department to Dempster where it installed road blocks to prevent traffic from driving through Dempster south of the Advocate North Development and at the eastern border with Maine Township at Robin Alley*. Park Ridge police employees deploy saw or should have seen the invasive flooding into the Robin Neighborhood*.

1118. Park Ridge knew, agreed to and undertook to receive Upstream Prairie Creek Watershed stormwater into its North Development Segment including its North Development Main Drain and attached Basins including the Ballard and Dempster Basins.

1119. Based upon this actual or constructive knowledge of reasonably foreseeable flooding harm to Plaintiffs as contiguous downstream property owners and possessors, Park Ridge owed non-delegable duties as a owner, manager and/or party in control of the PCSS within its jurisdiction (that is, the PCSS North Development Stormwater Public Improvements of the Basins and Main Drain) and under its control to properly manage stormwater so as to prevent foreseeable overburdening harm to foreseeable plaintiffs from stormwater exceeding the capacity of its PCSS stormwater main drains and basins to capture and store
1120. As an owner, possessor, operator, manager and party-in-control of the PCSS Stormwater Public Improvements within Park Ridge, Park Ridge was under a non-delegable duty not to increase or accelerate or the volume, flow, and other physical characteristics of stormwater from its property or otherwise overburden with stormwater the Plaintiffs' homes and properties, either with overburdening Park Ridge North Ballard Neighborhood Stormwater, PWC Upstream Stormwater or both.
1121. Park Ridge knew or should have known that the overburdening stormwater was generated by its Stormwater and/or PWC Upstream Stormwater and/or both combining.
1122. Before 9-13-2008, Park Ridge had reasonably adequate time, opportunity and ability to take corrective measures to remedy and/or protect the Plaintiffs against the foreseeable dangerous conditions existing on its PCSS Stormwater Public Improvements posed by excess stormwater.
1123. On September 13, 2008, excess accumulated stormwater from Park Ridge's PCSS Stormwater Public Improvements including its stormwater structures from these Basins catastrophically invaded the Plaintiffs.

1124. Park Ridge breached its duty not to overburden downstream Plaintiffs including by the following omissions: (a) failing to pump down the Basins before the September 13, 2008 storm; (b) failing to erect flood protection barrier systems with raised discharge culvert elevations between its PCSS Stormwater Public Improvements of the Basins on the North Development and the Plaintiff's properties and (c) failing to detain and store stormwater until it could safely drain to the Main Drain.

1125. As a proximate cause of these breaches of duties by Park Ridge, the Plaintiffs suffered and sustained actual injuries and damages set forth under in this Complaint's "Damage" Part.

WHEREFORE, Plaintiffs request against Park Ridge the relief in this Complaint's "Relief" Part.

~~COUNT 46: PARK RIDGE: COMMON LAW NEGLIGENCE BASED UPON
FORESEEABLE HARM~~

1126. ~~Plaintiffs restate and incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in Subparts in Part IV.C., IV.G. and IV.I.~~

1127. ~~Park Ridge owed non-delegable legal duties to the Plaintiffs to properly manage PCSS stormwater under Park Ridge's ownership, management, supervision and/or control so as to prevent foreseeable harm to foreseeable plaintiffs such as the Plaintiffs from excessive stormwater exceeding the capacity of the PCSS to capture in storage in the Basins.~~

1128. ~~Before September 13, 2008, Park Ridge had reasonably adequate time, opportunity and ability to take corrective measures to remedy and/or protect the Plaintiffs against the foreseeable dangerous conditions existing on PCSS Stormwater Structures Property posed by stormwater.~~

1129. ~~On September 13, 2008, stormwater from its Stormwater Structures Property including the the Ballard and Dempster Basins catastrophically invaded the Plaintiffs.~~

1130. ~~Park Ridge breached its duty including but not limited to the following acts: (a) failing to pump down the Basins before the September 13, 2008 storm; (b) failing to temporarily erect~~

1156. ~~Park Ridge exclusive owned, controlled and operated the sanitary sewers servicing Park Ridge residents including the Park Ridge North Ballard Neighborhood.~~

1157. ~~The sewer water basement floor invasive flooding suffered by the Park Ridge Plaintiffs would not have ordinarily occurred but for the negligence of Park Ridge relating to its negligent inspection, study, maintenance, design, engineering, and/or operation of its exclusively controlled sanitary sewers.~~

1158. ~~Park Ridge's operation of its exclusively controlled sanitary sewers proximately caused the invasive flooding sustained by the Plaintiffs. The Plaintiffs did not contribute to the flooding.~~

1159. ~~As a proximate cause of these breaches of duties by Park Ridge, the Plaintiffs suffered and sustained the injuries and damages set forth under the "Damage" Part of this Complaint.~~

~~WHEREFORE, the Park Ridge Plaintiffs request against Park Ridge the relief in this Complaint's "Relief" Part.~~

COUNT 52: PARK RIDGE: NEGLIGENT NUISANCE

1160. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in Part "IV.N. Common Negligent Stormwater Nuisance Violations-from Properties under Park Ridge's Jurisdiction-Legal Averments" and Part IV.P. "Common Negligent Sanitary Nuisance Violations."

1161. Park Ridge owned, operated, managed, maintained and/or controlled the PCSS Stormwater Improvements, the PCSS stormwater and the Park Ridge sanitary sewers within Park Ridge.

1162. As set out in the prior negligence Counts in this Part, Park Ridge failed to reasonably design, engineer, maintain, and/or operate the PCSS Stormwater Improvements such as the

Basins and its other stormwater improvement property and Park Ridge failed to reasonably operate its sanitary sewers by failing to prevent stormwater inflows and pumping out its sewers.

1163. Park Ridge negligently caused an accumulation of stormwater from the Basins and its Stormwater Structures Property to invade and interfere with all Plaintiffs on September 13, 2008.

1164. Park Ridge negligently caused an accumulation of sanitary sewage to invade Park Ridge residents in the Park Ridge North Ballard Neighborhood on September 13, 2008.

1165. By causing stormwater accumulated and controlled by Park Ridge to physically invade the Plaintiffs' homes, Park Ridge negligently created a dangerous nuisance of excess accumulated stormwater which substantially and unreasonably interfered with all Plaintiffs.

1166. By causing sanitary sewer water accumulated and controlled by Park Ridge to physically invade the Park Ridge Plaintiffs' homes, Park Ridge negligently created a dangerous nuisance of sanitary sewage which substantially and unreasonably interfered with all Plaintiffs.

1167. As a proximate cause of these nuisances caused and/or created by Park Ridge, the Plaintiffs suffered damages set forth under the "Damage" Part of this Complaint.

WHEREFORE, the both Maine Township and Park Ridge Plaintiffs request against Park Ridge the relief in the "Relief" Complaint Part.

COUNT 53: PARK RIDGE: NEGLIGENT TRESPASS

1168. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subparts IV.Q. and IV.S.

1169. Because Park Ridge's failed to act as set forth in this Part including but not limited to the failure to discharge by pumping existing, accumulated stormwater before the storm, before the Robin-Dee Community Main Drain runs full and before the surcharging of the Ballard, Pavilion

and Dempster Basins and Howard Court Culvert, Park Ridge failed to reasonably manage stormwater on September 13, 2008, proximately causing the Plaintiffs' invasive flooding.

1170. Because Park Ridge failed to fix its sanitary sewers from inflow/infiltration and to stop stormwater invasions, Park Ridge caused sanitary sewage invasions into the Park Ridge Plaintiffs' homes.

1171. As a direct, immediate and foreseeable result of the foregoing acts and/or omissions of Park Ridge, Park Ridge caused stormwater to invade all Plaintiffs' persons and homes either through surface water and/or sanitary sewage containing stormwater.

1172. Park Ridge had exclusive possession and control over the trespassing instrumentalities of the PCSS's excess accumulated stormwater from the PCSS' Basins and over its sewage system.

1173. The Plaintiffs were entitled to the exclusive enjoyment of their properties.

1174. Park Ridge knew or should have known that its actions and/or inactions in failing to control stormwater from the Basins and North Development would result in invasive flooding.

1175. Park Ridge negligently failed to monitor, investigate, study, inspect, clean, maintain, repair, improve, design, redesign, plan and/or operate its PCSS Basin and properties and its sanitary sewers.

1176. As a direct and proximate result of the foregoing conduct by Park Ridge, its instrumentality of excess accumulated stormwater physically invaded all Plaintiffs' homes on 9-13-2008, proximately causing the Plaintiffs' Damages set forth in the Damage Part.

1177. As a direct and proximate result of the foregoing conduct by Park Ridge, its instrumentality of sanitary sewage physically invaded Park Ridge Plaintiffs' homes on 9-13-2008, proximately causing the Plaintiffs' Damages set forth in the Damage Part.

1178. The Plaintiffs did not consent for Park Ridge's excess stormwater or sanitary sewer water to physically interfere with Plaintiffs' exclusive use and occupancy of the their homes.
1179. The Plaintiffs' injuries and damages were caused by the dangerous and calamitous occurrence of invasive stormwater floodings on 9-13-2008 from Park Ridge properties both PCSS stormwater structures and its sanitary sewerage system.
1180. The excess accumulated stormwater which entered and physically invaded Plaintiffs' homes and properties interfered with Plaintiffs' interests in the exclusive possession of their homes.
1181. The sanitary sewer water which entered and physically invaded Park Ridge Plaintiffs' homes interfered with Plaintiffs' interests in the exclusive possession of their homes.
1182. The excess accumulated stormwater which entered, settled and physically invaded Plaintiffs' homes and property constituted a negligent trespass upon and into the Plaintiffs' homes.
1183. The sanitary sewer water which entered, settled and physically invaded Park Ridge Plaintiffs' homes and property constituted a negligent trespass upon and into the Park Ridge Plaintiffs' homes.
1184. Park Ridge is liable to the Plaintiffs for negligent trespass because Park Ridge caused harm to the legally protected interests of the Plaintiffs including harm to the exclusive, quiet enjoyment of their land, homes and properties by causing instrumentalities, namely "Stormwater" and/or stormwater-saniary sewer water, to enter upon the property of the Plaintiffs without their consent.
1185. As a proximate cause of this trespass caused and/or created by Park Ridge, the Plaintiffs suffered damages set forth under the "Damage" Part of this Complaint.

WHEREFORE, the Plaintiffs request against Park Ridge the relief in the "Relief" Complaint Part.

~~COUNT 54: PARK RIDGE: GROSS NEGLIGENCE~~

1186. ~~Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subpart IV.T. entitled "IV.T. Common Gross Negligence Violations Legal Averments".~~

1187. ~~Its acts and omissions were committed under circumstances exhibiting a reckless disregard for the Plaintiffs' safety, which acts include but are not limited to its deliberate and intentional failures to act to increase, either temporarily through pumping down and temporary barriers, or permanently, with a pump station and high berms, storage to receive storms such as the September 13, 2008 storm.~~

~~WHEREFORE, Plaintiffs request against Park Ridge the relief in this Complaint's "Relief" Part.~~

COUNT 55: PARK RIDGE: INTENTIONAL NUISANCE

1188. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subparts IV.U. and IV.W.

1189. Park Ridge owned, operated, managed, maintained and/or controlled drainage components and/or drainage structures including the Ballard, Pavilion and Dempster Basins from which the excess accumulated stormwater nuisance invaded Plaintiffs' persons and homes.

1190. As a direct and proximate result of Park Ridge's intentional failures to act to pump down the Basins, and to increase temporary storage through temporary barrier methods such as sandbags, Plaintiffs suffered damage set out in this Complaint "Damages" Part.

WHEREFORE, Plaintiffs request against Park Ridge the relief in this Complaint's "Relief" Part.

COUNT 56: PARK RIDGE: INTENTIONAL TRESPASS

1191. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subpart IV.X. and IV. Z.

1192. Park Ridge knew to a substantial legal certainty and to a high degree of certainty that its actions and/or inactions would result in invasive flooding into the Plaintiffs' homes during a rainfall like the September 13, 2008 rainfall from the Ballard Basin and the Dempster Basin.

1193. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Park Ridge's intentional conduct by intentional failing to collect stormwater from the known dangerous and calamitous storm occurrence of the 9-13-2008.

WHEREFORE, Plaintiffs request against Park Ridge the relief in this Complaint's "Relief" Part.

COUNT 57: PARK RIDGE: ART. III, SEC. 3-102A STATUTORY DUTY TO MAINTAIN PROPERTY

1194. The Plaintiffs restate the preceding paragraphs.

1195. **Article III, Section 102(a)** (745 ILCS 10/3-102(a)) provides that a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition.

1196. Stormwater invaded from Park Ridge's defectively maintained PCSS North Development's Ballard and Pavilion Basins and North Development Main Drain.

1197. ~~Sanitary sewage invaded Park Ridge Plaintiffs' by Park Ridge's defects in its sewers which allowed stormwater to invade and surcharge its sewers.~~

1198. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Park Ridge's conduct in failing to redesign its PCSS Properties after knowing that the design and construction was dangerous.

WHEREFORE, Plaintiffs request against Park Ridge the relief in this Complaint's "Relief" Part

**COUNT 58: PARK RIDGE: ART. III. SEC. 103 STATUTORY DUTY TO REMEDY A
DANGEROUS PLAN**

1199. The Plaintiffs restate the preceding paragraphs.
1200. **LPE-Approved Plan Creating Dangerous Condition:** Article III, Section 102(a) of the Tort-Immunity Act (745 ILCS 10/3-103(a)) provides that a local public entity is liable for an approved plan, if after the execution of such plan or design, the planned improvement's use has created a condition that it is not reasonably safe.
1201. Park Ridge approved all Prairie Creek Stormwater System Plans including the North Development Main Drain with the Ballard and Pavilion Basin and the Dempster Basin Plan.
1202. Park Ridge approved the RN Plat Plan and DN Plat Plan including relating to stormwater management.
1203. Park Ridge approved the Robin Neighborhood Main Drain, the Howard Court Culvert, the Dee Neighborhood Stormwater Pipe per the RN Plat Plan and DN Plat Plan*.
1204. Park Ridge approved all other public improvements to the PCSS including its Main Drain and all tributary sewers *.
1205. Park Ridge approved the RN Plat Plan and the DN Plat Plan in 1960-1961.
1206. By September 13, 2008, it was open and obvious that its approved Plans for the Prairie Creek Stormwater System's public improvements including its initial approved original Ballard Basin design and Pavilion Basin design were dangerously defective as ongoing flooding, including home-invasive flooding in 1987 and 2002, and other land-invasive flooding before September 13, 2008 had occurred.
1207. Pursuant to 745 ILCS 10/3-103, Park Ridge owed a general duty to correct known unsafe conditions related to the design and/or engineering of the PCSS and breached these duties by not redesigning its plans.

1208. Relating to its sanitary sewers, Park Ridge also knew about inflow and infiltration including from stormwater inflow and infiltration during prior storms into its sanitary sewers but failed to eliminate this source of stormwater inflow and infiltration including from stormwater surface flooding which occurred September 13, 2008.

1209. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Park Ridge's conduct in failing to maintain its PCSS Improvements and its sanitary sewerage system.

WHEREFORE, Plaintiffs request against Park Ridge the relief in this Complaint's "Relief" Part.

~~COUNT 59: PARK RIDGE: 70 ILCS 2605/19: SANITARY DISTRICT LIABILITY~~

1210. ~~The Plaintiffs restate the preceding paragraphs including Subparts IV.A., IV.D., IV.E., IV.H., IV.M., IV.S., IV.W., and IV.Z.~~

1211. ~~70 ILCS 2605/19 provides that a sanitary district is liable for sanitary sewerage backups.~~

1212. ~~The Park Ridge Plaintiffs' homes constituted "real estate" within the meaning of 70 ILCS 2605/19.~~

1213. ~~The Park Ridge Plaintiffs' homes were "within the district" within the meaning of 70 ILCS 2605/19.~~

1214. ~~Park Ridge owned and operated tributary or lateral municipal sanitary street sewers to which the Park Ridge Plaintiffs' residences in the Park Ridge North Ballard Neighborhood were connected by lead lines from their residences constituted a "channel, ditch, drain, outlet or other improvement" within the meaning of 70 ILCS 2605/19.~~

1215. ~~Park Ridge owned and operated sanitary street sewers to which the Park Ridge Plaintiffs' homes were connected were provided "under the provisions of this Act" as that phrase is used within the meaning of 70 ILCS 2605/19.~~

1216. ~~On September 13, 2008, sewer water overflowed the sanitary sewerage system sewers under the ownership, jurisdiction and/or control of Park Ridge.~~

1217. ~~The sewer water overflow was an "overflow" as that term is used in 70 ILCS 2605/19 in violation of 70 ILCS 2605/19.~~

1218. ~~The Park Ridge Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Park Ridge's conduct in failing to maintain its sanitary sewers.~~

~~WHEREFORE, Park Ridge Plaintiffs request against Park Ridge the relief in this Complaint's "Relief" Part.~~

COUNT 60: PARK RIDGE: ILLINOIS CONST. ART. I. SEC. 15: TAKING REAL AND PERSONAL PROPERTY

1219. The Plaintiffs restate the preceding paragraphs.

1220. Article I, Section 15 of the Illinois Constitution prohibits the taking of private property for public use without payment of just compensation to the victims of the taking.

1221. Per Article I, Section 15 of the Illinois Constitution, Park Ridge was under a duty to provide just compensation to the Plaintiffs for its taking of Plaintiffs' real and personal property .

1222. Park Ridge has proximately caused the Plaintiffs' real properties including their homes to become partial and/or totally uninhabitable by its actions and/or inactions as set forth herein resulting in invasive floodings into the Plaintiffs' real properties including homes and residences.

1223. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Park Ridge's conduct in failing to redesign its PCSS Properties after knowing that the design and construction was dangerous.

WHEREFORE, Plaintiffs request against Park Ridge the relief in this Complaint's "Relief" Part

**COUNT 61: PARK RIDGE: U.S. FIFTH AMENDMENT: TAKING OF REAL AND
PERSONAL PROPERTY**

1224. The Plaintiffs incorporate the prior averments in the Subpart entitled "Illinois Constitution Art. I, Sec. 15-Taking of Real and personal property."

1225. The Fifth Amendment of the United States Constitution prohibits the taking of private property for public use without payment of just compensation to the citizen-victim of the taking real and personal property.

1226. Park Ridge violated the U.S. Constitution's 5th Amended by its repetitive flooding, flooding some plaintiffs twice, three times and more, said repetitive floodings constituting a taking of real and personal property.

1227. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Park Ridge's conduct in failing to redesign its PCSS Properties after knowing that the design and construction was dangerous.

WHEREFORE, Plaintiffs request against Park Ridge the relief in this Complaint's "Relief" Part

COUNT 62: PARK RIDGE: 42 USC SEC. 1983

1228. The Plaintiffs incorporate the preceding subparts entitled: "U.S. Fifth Amendment-Taking of Real and personal property", "U.S. Fifth Amendment-Taking of Personal Property", "Ill. Const. Art. I, Sec. 15-Taking of Real and personal property" and "Ill. Const. Art. I, Sec. 15-Taking of Personal Property."

1229. Relating to 42 Section § 1983, Park Ridge was acting under color of law in violation of these constitutional provisions, thereby violating 42 U.S.C. Sec. 1983.

1230. Park Ridge is a "person" as used in the phrase "(E)very person who, under color of any statute, ordinance, regulation, custom or usage..."

PART X. CLAIM AGAINST MAINE TOWNSHIP

A. FACTS RELEVANT TO MAINE TOWNSHIP

1234. These averments apply to Maine Township (herein "Maine").

1235. In the hours before the September 13, 2008, the Maine Township Highway Department had mobilized and/or readied trucks for sand delivery to the Robin-Dee Neighborhood in anticipation of flooding from this storm. After the rain, Maine Township actual did send trucks with sand and sandbags to the Robin-Dee Community although too late, being sent after the flooding had already occurred.

1236. On many prior occasions, Maine Township was aware of the catastrophic flooding into the Robin-Dee Community and had mobilized its trucks and other vehicles for sandbag delivery.

1237. Maine Township before, during and/or after had plans developed to improve the Robin Neighborhood Main Drain. However, these Plans were abandoned, probably because they did not increase the capacity of the Dee Neighborhood Stormwater Pipe*.

1238. **Property under TIA:** All PCSS Robin-Dee Community Segment Stormwater Improvements (including the Howard Court Culvert and Dee Neighborhood Stormwater Pipe (which was the Robin-Dee Community Main Drain) and connected stormwater structures and drains) are within the jurisdiction of Maine Township and are public improvements and properties as defined in TIA Article III, Sec. 3-101. As used herein, stormwater is "property" or "personal property" per Chapter 745, Act 10, Article III at Section 10/3-101.

1239. Maine is responsible for stormwater management within Maine as it supervises all stormwater management projects including projects to public improvements such as the PCSS's Robin Neighborhood Main Drain (for which it drew up plans but abandoned these plans) and the Dee Neighborhood Main Drain (which is the 60" Dee Neighborhood Stormwater Pipe).

1240. **Control of PCSS Components within Maine:** Maine had and has jurisdiction over the Prairie Creek Stormwater System within Maine including its real property public improvement components in Maine. By its undertaking and/or exercise of control (by statute, ordinance or other act with the force of law besides actual control) and/or other acts of dominion, Maine owned, possessed and/or controlled the PCSS's Howard Court, Dee ~~Neighborhood Stormwater Pipe~~ and other related real property and related estates and interests in the Prairie Creek Stormwater System stormwater improvements within Maine.

1241. **Drainage Planning and System Engineering:** This Defendant planned or caused to be planned and designed or caused to be designed the public improvements of the PCSS stormwater structures within its jurisdiction.

1242. The Stormwater Plans resulting in the existing drainage design and operation of the Robin and Dee Neighborhood Main Drains and related drainage alterations was **approved by this Defendant** before 2008.

1243. No construction changes to said structures have been planned by this Defendant since the initial Howard Court and Dee Neighborhood Stormwater Pipe construction before or in the 1960s.

**COUNT 64: MAINE TOWNSHIP: NEGLIGENCE: DOMINANT ESTATE
OVERBURDENING**

1244. Plaintiffs restate and incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the following Subparts: IV.A., IV.C., IV.F., IV.G., IV.I. and IV.AB.

1245. Defendant knew or should have known of the foreseeable harm of invasive flooding into the Plaintiffs' Area given Earlier Floodings and Earlier Flooding Studies.

1246. Defendant knew, agreed to and undertook to receive North Development and Upstream Prairie Creek Watershed stormwater into the Robin-Dee Community Main Drain between Points C1-C2 and Point J.
1247. Based upon this actual or constructive knowledge of reasonably foreseeable flooding harm to Plaintiffs as contiguous downstream property owners and possessors, Defendant owed non-delegable duties as a owner, manager and/or party in control of the PCSS Robin-Dee Main Drain within its jurisdiction and control to properly manage stormwater under Defendant's ownership, control, supervision, and/or management so as to prevent foreseeable overburdening harm to foreseeable plaintiffs from excessive, overburdening stormwater exceeding the capacity of its PCSS stormwater main drains and basins to capture and maintain storage of excess stormwater
1248. As an owner, possessor, operator, manager and party-in-control of the PCSS stormwater structures within its jurisdiction, this Defendant was under a non-delegable duty not to increase or accelerate or the volume, flow, and other physical characteristics of stormwater from its property or otherwise overburden with stormwater the Plaintiffs' homes and properties, either with overburdening its Property Stormwater, overburdening PWC Upstream Stormwater or both.
1249. Defendant knew or should have known that the overburdening stormwater was generated by its tributary stormwater sewer Stormwater and/or PWC North Development and Upstream Stormwater and/or both combining entering the Robin-Dee Community Main Drain.
1250. Before 9-13-2008, Defendant had reasonably adequate time, opportunity and ability to take corrective measures to remedy and/or protect the Plaintiffs against the foreseeable

dangerous conditions existing on its PCSS Improvements including the Howard Court Culvert and Dee Neighborhood Stormwater Pipe posed by excess stormwater.

1251. On September 13, 2008, excess accumulated stormwater from its PCSS property including its stormwater structures from these Basins catastrophically invaded the Plaintiffs.

1252. Defendant breached its duty not to overburden downstream Plaintiffs including by the following omissions: (a) failed to plug the Robin Alley Culverts, (b) failing to erect flood protection barrier systems between Advocate North Development property and the Plaintiff's property and (c) failing to detain stormwater until it could safely drain to the Main Drain.

1253. As a proximate cause of these breaches of duties by Defendant, the Plaintiffs suffered and sustained actual injuries and damages set forth under in this Complaint's "Damage" Part.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

~~COUNT 65: MAINE TOWNSHIP: NEGLIGENCE BASED UPON FORESEEABLE HARM~~

1254. ~~Plaintiffs restate and incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in IV.A., IV.C, IV.G, and IV.H.~~

1255. ~~Defendant owed non-delegable legal duties to the Plaintiffs to properly manage stormwater under Defendant's ownership, management, supervision and/or control so as to prevent foreseeable harm to foreseeable plaintiffs such as the Plaintiffs from excessive stormwater exceeding the capacity of the PCSSs Robin Dee Community Main Drain to safely transport without flooding into the Robin Dee Community.~~

1256. ~~Before September 13, 2008, Defendant had reasonably adequate time, opportunity and ability to take corrective measures to remedy and/or protect the Plaintiffs against the foreseeable dangerous conditions existing on PCSS Stormwater Improvements such as the Robin Dee Community Main Drain posed by stormwater.~~

1274. ~~Defendant breached these duties including but not limited to the breaches relating the failure to replan, redesign and reconstruct the PCSS Robin-Dee Main Drain.~~
1275. ~~Based upon the 2002 Flooding and other information, Defendant was under a duty to redesign, correct and remedy defects in the Robin-Dee Community Main Drain of the PCSS.~~
1276. ~~Defendant breached these duties by (i) failing to redesign and reconstruct the PCSS Robin-Dee Main Drain and (ii) failing to create a permanent barrier berm between Robin Alley and the North Development.~~
1277. ~~As a proximate cause of these and other breaches of duties by Defendant, the Plaintiffs suffered and sustained the injuries and damages set forth under this Complaint "Damage" Part. WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.~~

COUNT 68: MAINE TOWNSHIP: NEGLIGENCE: RES IPSA LOQUITUR-STORMWATER

1278. Plaintiffs restate and incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subparts IV.J. entitled "IV.J. Common Negligence-Res Ipsa Loquitur-Stormwater System-Breaches of Duty-Legal Averments" and Subpart IV.K. entitled "IV.K. Common Negligence-Res Ipsa Loquitur-Stormwater System-Within Jurisdiction of Maine-Breaches of Duty Legal Averments".
1279. This Defendant exclusive owned, controlled and operated the PCSS Robin-Dee Community Main Drain including the Howard Court Culvert and Dee Neighborhood Stormwater Pipe.
1280. The invasive flooding suffered by the Plaintiffs would not have ordinarily occurred but for the negligence of this Defendant relating to its negligent inspection, study, maintenance, design, engineering, and/or operation of its exclusively controlled PCSS Improvements..

1281. Maine's operation of its exclusively controlled Robin-Dee Main Drain proximately caused the flooding sustained by the Plaintiffs. The Plaintiffs did not contribute to the flooding.

1282. As a proximate cause of these breaches of duties by this Defendant, the Plaintiffs suffered and sustained the injuries and damages set forth under the "Damage" Part of this Complaint.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

COUNT 69: MAINE TOWNSHIP: NEGLIGENT NUISANCE

1283. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in Part IV.O.

1284. This Defendant owned, operated, managed, maintained and/or controlled the stormwater sewers within Maine and the PCSS Robin-Dee Community Main Drain.

1285. As set out in the prior negligence Counts in this Part, this Defendant failed to reasonably design, engineer, maintain, and/or operate the PCSS Robin-Dee Main Drain.

1286. This Defendant negligently caused an accumulation of stormwater from its PCSS Robin-Dee Main Drain to invade and interfere with the Plaintiffs on 9-13-2008.

1287. By causing stormwater accumulated and controlled by this Defendant to physically invade the Plaintiffs' homes, this Defendant negligently created a dangerous nuisance of excess accumulated stormwater which substantially and unreasonably interfered with all Plaintiffs.

1288. As a proximate cause of these nuisances caused and/or created by this Defendant, the Plaintiffs suffered damages set forth under the "Damage" Part of this Complaint.

WHEREFORE, the Plaintiffs request against Defendant the relief in the "Relief" Complaint Part.

COUNT 70: MAINE TOWNSHIP: NEGLIGENT TRESPASS

1289. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subpart IV.R..

1290. Because Defendant's failed to act as set forth in this Part including but not limited to the failure to sandbag the Robin Alley in all of its low elevations between Robin Alley and Advocate's North Development and failing to reconstruct the Robin-Dee Community Main Drain and Howard Court Culvert, this Defendant failed to reasonably manage stormwater on September 13, 2008, proximately causing the Plaintiffs' invasive flooding.
1291. As a direct, immediate and foreseeable result of the foregoing acts and/or omissions of this Defendant, this Defendant caused stormwater to invade all Plaintiffs' persons and homes either through surface water and/or sanitary sewage containing stormwater.
1292. This Defendant had exclusive possession and control over the trespassing instrumentalities of the PCSS's excess accumulated stormwater from the Main Drain.
1293. The Plaintiffs were entitled to the exclusive enjoyment of their properties.
1294. This Defendant knew or should have known that its actions and/or inactions in failing to control stormwater from the Main Drain and the North Development would result in flooding.
1295. This Defendant negligently failed to monitor, investigate, study, inspect, clean, maintain, repair, improve, design, redesign, plan and/or operate its PCSS Main Drain.
1296. As a direct and proximate result of the foregoing conduct by this Defendant, its instrumentality of excess accumulated stormwater physically invaded all Plaintiffs' homes on 9-13-2008, proximately causing the Plaintiffs' Damages set forth in the Damage Part.
1297. The Plaintiffs did not consent for its excess stormwater water to physically invade and interfere with the exclusive use and occupancy of the Plaintiffs' homes and property.
1298. The Plaintiffs' injuries and damages were caused by the dangerous and calamitous occurrence of invasive stormwater floodings on 9-13-2008 from Maine's Main Drain.

1299. The excess accumulated stormwater which entered and physically invaded Plaintiffs' homes and properties interfered with Plaintiffs' interests in their homes' exclusive possession.

1300. The excess accumulated stormwater which entered, settled and physically invaded Plaintiffs' homes and property constituted a negligent trespass upon and into the Plaintiffs' homes.

1301. This Defendant is liable to the Plaintiffs for negligent trespass because this Defendant caused harm to the legally protected interests of the Plaintiffs including harm to the exclusive, quiet enjoyment of their land, homes and properties by causing instrumentalities, namely "Stormwater" to enter upon the property of the Plaintiffs without their consent.

1302. As a proximate cause of this trespass caused and/or created by this Defendant, the Plaintiffs suffered damages set forth under the "Damage" Part of this Complaint.

WHEREFORE, the Plaintiffs request against Defendant the relief in the "Relief" Complaint Part.

~~COUNT 71: MAINE TOWNSHIP: GROSS NEGLIGENCE~~

1303. ~~Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subpart IV.T. entitled "IV.T. Common Gross Negligence Violations Legal Averments".~~

1304. ~~Its acts and omissions were committed under circumstances exhibiting a reckless disregard for the Plaintiffs' safety, which acts include but are not limited to its deliberate and intentional failures to act to increase, either temporarily through pumping down and temporary barriers, or permanently, with a pump station and high berms, storage or protection sandbagging to receive the September 13, 2008.~~

~~WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.~~

COUNT 72: MAINE TOWNSHIP: INTENTIONAL NUISANCE

1305. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subpart IV.O.

1306. Defendant owned, operated, managed, maintained and/or controlled drainage components and/or drainage structures of the Robin-Dee Main Drain which the excess accumulated stormwater nuisance invaded Plaintiffs' persons and homes.

1307. Defendant failed to reasonably design, engineer, maintain, and/or operate the PCSS's Robin-Dee Main Drain (Points C1-C2 through Point J).

1308. Defendant intentionally caused excess accumulated stormwater to invade from upstream stormwater invading and surcharging the Robin-Dee Main Drain..

1309. As a direct and proximate result of the Defendant's intentional failures to act to create a barrier of sand bags between the Dee-Robin Community and Advocate Development Property, Plaintiffs suffered damage set out in this Complaint "Damages" Part.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

COUNT 73: MAINE TOWNSHIP: INTENTIONAL TRESPASS

1310. Plaintiffs incorporate as the first paragraphs of this Count: (a) all prior paragraphs of this Part and (b) all paragraphs set forth in the Subpart IV.V.

1311. Defendant knew to a substantial legal certainty and to a high degree of certainty that its actions and/or inactions would result in invasive flooding into the Plaintiffs' homes during a rainfall like the September 13, 2008 rainfall from the Ballard Basin and the Dempster Basin.

**COUNT 74: MAINE TOWNSHIP: ART. III, SEC. 3-102A STATUTORY DUTY TO
MAINTAIN PROPERTY**

1312. The Plaintiffs restate the preceding paragraphs.

1313. **Article III, Section 102(a)** (745 ILCS 10/3-102(a)) provides that a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition.

1314. Stormwater invaded from Maine's defectively maintained PCSS Main Drain.

1315. Sanitary sewage invaded by Maine's defects in its sewers which allowed stormwater to invade and surcharge its sewers.

1316. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Defendant's conduct in failing to redesign its PCSS Main Drain after knowing that the design and construction was dangerous as lacking conveyance capacity.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part

**COUNT 75: MAINE TOWNSHIP: ARTICLE III. SEC. 103 STATUTORY DUTY TO
REMEDY A DANGEROUS PLAN**

1317. The Plaintiffs restate the preceding paragraphs.

1318. **LPE-Approved Plan Creating Dangerous Condition:** Article III, Section 102(a) of the Tort-Immunity Act (745 ILCS 10/3-103(a)) provides that a local public entity is liable for an approved plan, if after the execution of such plan or design, the planned improvement's use has created a condition that it is not reasonably safe.

1319. This Defendant approved all Prairie Creek Stormwater System Plans relating to Maine Township including the North Development Main Drain with the Ballard and Pavilion Basin, the Robin Neighborhood Main Drain, the Howard Court Culvert, the Dee Neighborhood Stormwater Pipe and all other PCSS public improvements including its Main Drain and tributary sewers *.

1320. By September 13, 2008, it was open and obvious that its approved Plans for the Prairie Creek Stormwater System's public improvements were dangerously defective as ongoing

flooding, including home-invasive flooding in 1987 and 2002, and other land-invasive flooding before September 13, 2008 had occurred.

1321. Pursuant to 745 ILCS 10/3-103, this Defendant owed a general duty to correct known unsafe conditions related to the design and/or engineering of the PCSS and breached these duties by not redesigning its plans.

1322. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Defendant's conduct in failing to maintain and redesign its PCSS Robin-Dee Main Drain.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

COUNT 76: MAINE TOWNSHIP: ILLINOIS CONST. ART. I, SEC. 15: TAKING REAL AND PERSONAL PROPERTY

1323. The Plaintiffs restate the preceding paragraphs.

1324. Article I, Section 15 of the Illinois Constitution prohibits the taking of private property for public use without payment of just compensation to the victims of the taking.

1325. Per Article I, Section 15 of the Illinois Constitution, this Defendant was under a duty to provide just compensation to the Plaintiffs for its taking of Plaintiffs' real and personal property.

1326. This Defendant has proximately caused the Plaintiffs' real properties including their homes to become partial and/or totally uninhabitable by its actions and/or inactions as set forth herein resulting in invasive floodings into the Plaintiffs' real properties including homes and residences.

1327. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Defendant's conduct in failing to redesign its PCSS Robin-Dee Main Drain and in failing to sand bag a barrier to North Development stormwater after knowing that the design and construction was dangerous.

1504. The Fifth Amendment of the United States Constitution prohibits the taking of private property for public use without payment of just compensation to the citizen-victim of the taking including real and personal property. This Defendant violated the 5th Amended by its conduct.

1505. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Defendant's conduct in failing to redesign its PCSS Properties after knowing that the design and construction was dangerous.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part

COUNT 107: COUNTY: 42 USC SEC. 1983

1506. The Plaintiffs incorporate the preceding subparts entitled: "U.S. Fifth Amendment-Taking of Real and personal property", "U.S. Fifth Amendment-Taking of Personal Property", "Ill. Const. Art. I, Sec. 15-Taking of Real and personal property" and "Ill. Const. Art. I, Sec. 15-Taking of Personal Property."

1507. The County's (a) failure to compel the redesign of the PCSS Public Improvements including the Robin-Dee Community & North Development Main Drains and Basins and (b) failure to provide emergency response to Plaintiffs' foreseeable flooding violated 42 USC §1983.

1508. The Plaintiffs' damages set forth in the "Damage" Part of this Complaint were caused as a substantially direct and proximate result of Defendant's conduct in failing to redesign its PCSS Properties after knowing that the design and construction was dangerous.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

COUNT 108: EQUITABLE RELIEF PER TORT-IMMUNITY ACT

1509. Plaintiffs restate all prior paragraphs within this Part as the first paragraphs of this Count.

WHEREFORE, Plaintiffs request against Defendant the relief in this Complaint's "Relief" Part.

PART XIII: DAMAGES

1510. This Part is referred to in other Parts as the “Damages” Parts. This Part and all following averments are incorporated into each Count of this Complaint in all Parts.

1511. As set forth in this Part, each member of the Robin-Dee Community Area Plaintiff Class including each member of the Dee Neighborhood Plaintiff Subclass within the larger Robin-Dee Community Area Plaintiff Class has suffered personal injury (“personal injury” referring herein to a person’s stress, anxiety and annoyance and related emotions) and property damage.

1512. All personal injury and property damage sustained by the Robin-Dee Community Area Plaintiff Class was the result of the sudden, dangerous and calamitous occurrence on September 13, 2008 resulted in personal injury and property damage when flooding stormwater violently invaded each person’s land, residence and other property and violently invaded each person’s life and person, all such persons being members of the Robin-Dee Community Area Plaintiff Class.

1513. As a direct and proximate result of the foregoing sudden, dangerous and calamitous occurrence of the September 13, 2008 Invasive Floodings damaging and injuring each member of the Robin-Dee Community Area Plaintiffs’ Class, Plaintiffs’ persons, homes, residences, real property and personal property were invaded by stormwater and the Plaintiffs suffering the following damages set forth for purposes of description but not limitation and including, but not limited to, the following damages:

1513.1. Stress, annoyance, inconvenience and related emotional harm, past, present and future;

1513.2. Relating to inconvenience, the evacuation of Plaintiffs from their residences, including the related annoyance, stress and inconvenience and the resulting costs related to hotels and other alternative housing and living expenses;

- 1513.3. Relating to inconvenience, the loss of use of all or part of their home for all or part of their ownership or occupancy;
- 1513.4. Structural damage to the foundation and foundation walls of the homes, residences and properties;
- 1513.5. Damages to the interiors walls and partitions, flooring and/or ceiling including but not limited to basement floors, interior walls, interior partitions, interior drywall and/or other wall coverings, flooring, ceilings, and floor joists, in many cases requiring complete tear-out of existing finished basement and/or lower-levels;
- 1513.6. Significant and/or total and/or partial destruction of vehicles of Plaintiffs which vehicles were parked within the Robin-Dee Community Area including on the Plaintiffs' homes and properties;
- 1513.7. Significant damage and/or total destruction to some or all of the Plaintiffs' ordinary personal belongings and other personal property including but not limited to furniture, home electronics, clothing and/or other items of personal property;
- 1513.8. Significant damage to and/or total destruction of some or all of the Plaintiffs' sentimental personal belongings and other personal property including but not limited to photographs of loved ones, photographs of important moments in their lives, family heirlooms and other belongings having sentimental meaning to Plaintiffs;
- 1513.9. Significant expenditure of a substantial amounts of time, effort and money to clean their homes, residences, properties and/or vehicles due to the conditions caused by the invasive flooding into their residences, properties and/or vehicles;
- 1513.10. Diminution and/or total destruction in market value of their homes, residences and properties;

1513.11. Loss of use and enjoyment of their Residences, personal belongings, and property in general;

1513.12. Defendant-caused increased insurance policy and/or premium costs included relating to the repeated invasive floodings including either (a) a requirement from their mortgage company to purchase flood insurance or, if flood insurance was purchased, increased costs for flood insurance; the FEMA Flood Plain Mapping herein is directly caused by the Defendant's tortious conduct as there is no natural flood plain as required by FEMA and the existing Flood Plain Maps and related increased NFIP flooding insurance and other insurance premiums are directly related to this Defendant's tortious conduct in creating a man-made, artificial Flood Plain contrary to law; and

1513.13. Other economic and non-economic losses, past, present and future.

PART XIV: RELIEF

1514. This Relief Part is incorporate in all the earlier Wherefore paragraphs in each County of this Complaint.

Wherefore, the proposed Representative Plaintiffs Dennis Tzakis, Cathy Ponce, Zenon Gil, Zaia Giliana, Julia Cabrales, and Juan Solis, on behalf of themselves and on behalf of all others similarly situated, request the following relief against the Defendants Berger Excavating Contractors, Inc., Advocate Health and Hospitals Corporation d/b/a Advocate Lutheran General Hospital, Cook County, Gewalt Hamilton Associates, Inc., Village of Glenview, Maine Township, Metropolitan Water Reclamation District of Greater Chicago, and the City of Park Ridge, jointly and severally:

1514.1. That this Court grant certification of this case as to the Robin-Dee Community Area Plaintiff Class as to all defendants:

1514.2. That, on behalf of the Robin-Dee Community Area Plaintiff Class, that this Court enter equitable relief against Defendants including but not limited to ordering implementation of (a) temporary pumping stations, (b) temporary barriers around perimeters of the Basins and the North Development, and (c) temporary raising of the discharge culverts until a permanent plan can be implemented.

1514.3. That this Court enter a judgment awarding compensatory damages, actual damages, and incidental damages for all damages, damages and losses sustained by the Plaintiff Classes;

1514.4. That this Court award prejudgment and post-judgment interest;

1514.5. That this Court order Defendants to pay all court costs, court expenses, and related court fees;

4231-4315-6246

ORDER

Att. No. 26052

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

**Dennis TZAKIS et al.,
Plaintiffs**

v.

**BERGER Excavating Cntretrs, et al.,
Defendants**

**HONORABLE SOPHIA H. HALL
NO. 09 CH 6159**

**ORDER RELATING TO JOINT DEFENDANTS'
SEC. 2-606 MOTION TO DISMISS**

UPON THIS CAUSE COMING ON TO BE HEARD based upon Defendants' Joint Motion to Dismiss and/or Strike Averments of the Fifth Amended Complaint; upon full briefing; and upon oral argument on 11/08/2011; and upon the Court being informed:

IT IS ORDERED that:

1. Without ruling whether contracts, permits or other documents are "written instruments" under §2-606, Plaintiffs are given leave to file arguably written instruments such as permits, contracts and other documents as Supplemental Exhibits to the Fifth Amended Complaint.
2. Plaintiffs shall file a Supplemental Exhibits Chart correlating the Fifth Amended Complaint Paragraphs/Averments with the Supplemental Exhibits filed pursuant to this Order. The Plaintiffs shall continue the numbering system beginning with Exhibit 1 such as Exhibit 2-1994 Permit, Exhibit 3-2006 Permit, etc.
3. Plaintiffs shall file these documents by **Monday, November 14, 2011.**
4. Status conference is set for **Friday, November 18, 2011 at 9:30 a.m..**
5. The Plaintiffs' Motion for Entry of an Order Per Transcript to File §2-615 Case Action-Complaint Paragraph Charts is entered and continued to Friday, November 18, 2011 at 9:30 a.m.

Phillip G. Bazzo PHV Counsel for W. Sneckenberg

Firm ID No. 22052

Name SNECKENBERG, WILLIAM

Attorney for Plaintiffs

Address 161 N. Clark Ave., Ste. 3575

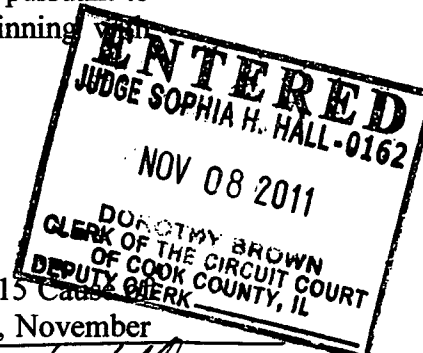
City Chicago, IL 60601

Telephone (312) 782-9320; (248) 321-8600

ENTERED:

JUDGE SOPHIA H. HALL Judge's No.

**DOROTHY A. BROWN, CLERK OF THE CIRCUIT COURT
CIRCUIT COURT OF COOK COUNTY, ILLINOIS**



AMENDED SAC
EXHIBIT CHART

JANUARY 23, 2012

	A	B	C	D	E	F
1	Exh ibit No.	Page No.	Document Name	Exh ibit No.	Page No.	Document Name
2	1	1	Robin-Dee Community Area Map			There is no. page364
3	2	4	Permit 1776-773 Excerpts	15	365	District's Warning to Gewalt
4		41	There is no page 41	16	369	2000 FEMA Flood Ins Rate Map
5	3	42	Permit 1994-084 Excerpts	17	370	2002-2009 IDNR Study Excerpts
6	4	101	Permit 1994-530 Excerpts	18	400	Dispute
7		105	There is no page 105	19	415	2008 FEMA Flood Ins Rate Map
8		106	there is no page 106	20	416	Advocate No-Flood Statement
9		124	There is no page 124	21	417	Plan
10	5	150	Permit 2000-643 Excerpts	22	424	Plan
11	6	175	Permit 2004-040 Excerpts	23	428	1978 Harker Plan
12	7	195	Permit 2004-557 Excerpts	24	430	1994 Watkins Plan
13	8	215	Permit 2005-438 Excerpts	25	431	2004 Gewalt Plan
14	9	225	Permit 2006-032 Excerpts-Part 1	26	432	2007-07-04 Gewalt Plan
15	9	262	Permit 2006-032 Excerpts-Part 2	27	433	2007-04-18 Gewalt Plan
16	10	288	Permit 07-151 Excerpts	28	434	2008 Seton Plan
17		289	There is no page 289	29	435	2010 County Assessor's Plan
18		294	There is no page 294	30	436	District Sewer Ordinance
19	11	297	Berger Contract Exhibits		447	There is no page 447
20	12	325	Co-District Flood Agreement	31	448	Mangement Plan
21		329	There is no. page329	32	476	Park Ridge Stormwtr Ordinance
22	13	330	1976 IDOT Flood Risk Report	33	482	IEPA Sanitary Sewer Adm. Rules
23	14	332	1990 Harza Report Excerpts	34	488	Plan
24			There is no. page364		517	End of Exhibits

Prepared by
Phillip G. Bazzo, Esq.

1/13/2012

TZ 096159-5AC-Exhibits-2011 11-14
00757-00004

76-733

MSDGC Permit No.

IEPA Log No.



SEWERAGE SYSTEM PERMIT

THE
METROPOLITAN SANITARY DISTRICT
OF GREATER CHICAGO
100 EAST ERIE, CHICAGO, ILLINOIS 60611-751-5600

INSTRUCTIONS FOR FILLING FORMS: Submit typed forms of permit and schedules in quadruplicate; complete all information or indicate non-applicability; do not leave any blank spaces; use "X" for checking applicable information. Submit four copies of location map, plans and all applicable schedules. Submit two copies of specifications, where applicable. Address all correspondence to Local Sewer Systems Section; for any inquiries or assistance, telephone 751-5789.

NAME AND LOCATION:

Name of project (as shown on plans): LUTHERAN GENERAL HOSPITAL NORTH CAMPUS DEVELOPMENT

Location of Project (street address or with respect to two major streets): Ballard Rd at Luther Avenue Extended

Municipality (Township, if unincorporated) Park Ridge, Illinois 60068

Section 15, Township 41 N, Range 12 E.

Is project in MSDGC combined sewer area Yes [] No [X]

(OFFICE USE ONLY: X 06,31,3, Y 1,9,5,8,4, Code 0,9,2,

Receiving STP and/or Lift Station WSW)

DOCUMENTS BEING SUBMITTED: If project involves any of the items listed below, submit the corresponding schedule.

<input checked="" type="checkbox"/> Basic Information (Required in all cases)	Schedule A
<input checked="" type="checkbox"/> Sewer Connection(s)	Schedule B
<input checked="" type="checkbox"/> Sewer Extension(s)	Schedule C
<input checked="" type="checkbox"/> Detention Facilities	Schedule D
<input type="checkbox"/> Lift Station and/or Force Main	Schedule E
<input type="checkbox"/> Discharges of wastes other than Domestic	Schedule F
<input type="checkbox"/> Treatment or Pre-treatment Facilities	Schedule G

OTHER DOCUMENTS: Indicate title, number of pages and originator:

AFFIDAVIT OF DISCLOSURE OF PROPERTY INTEREST

SCHEDULE K

NOTICE OF REQUIREMENTS FOR STORM WATER DETENTION

SCHEDULE L

W A R N I N G
FLOOD HAZARD AREA
PERMITTEE ASSUMES ALL LIABILITY

Construction covered by this permit is in an area designated as a Flood Hazard by the U. S. Geological Survey. The indemnity clause of this permit (paragraph 1) shall operate to protect The Metropolitan Sanitary District of Greater Chicago from any claims for damages, expenses incurred or sustained by any person for injury to, or damage to any personal property, caused by flood or high water, the liability for which is hereby assumed by the Permittee.

000010001

TZAKIS09-6159-5AC-

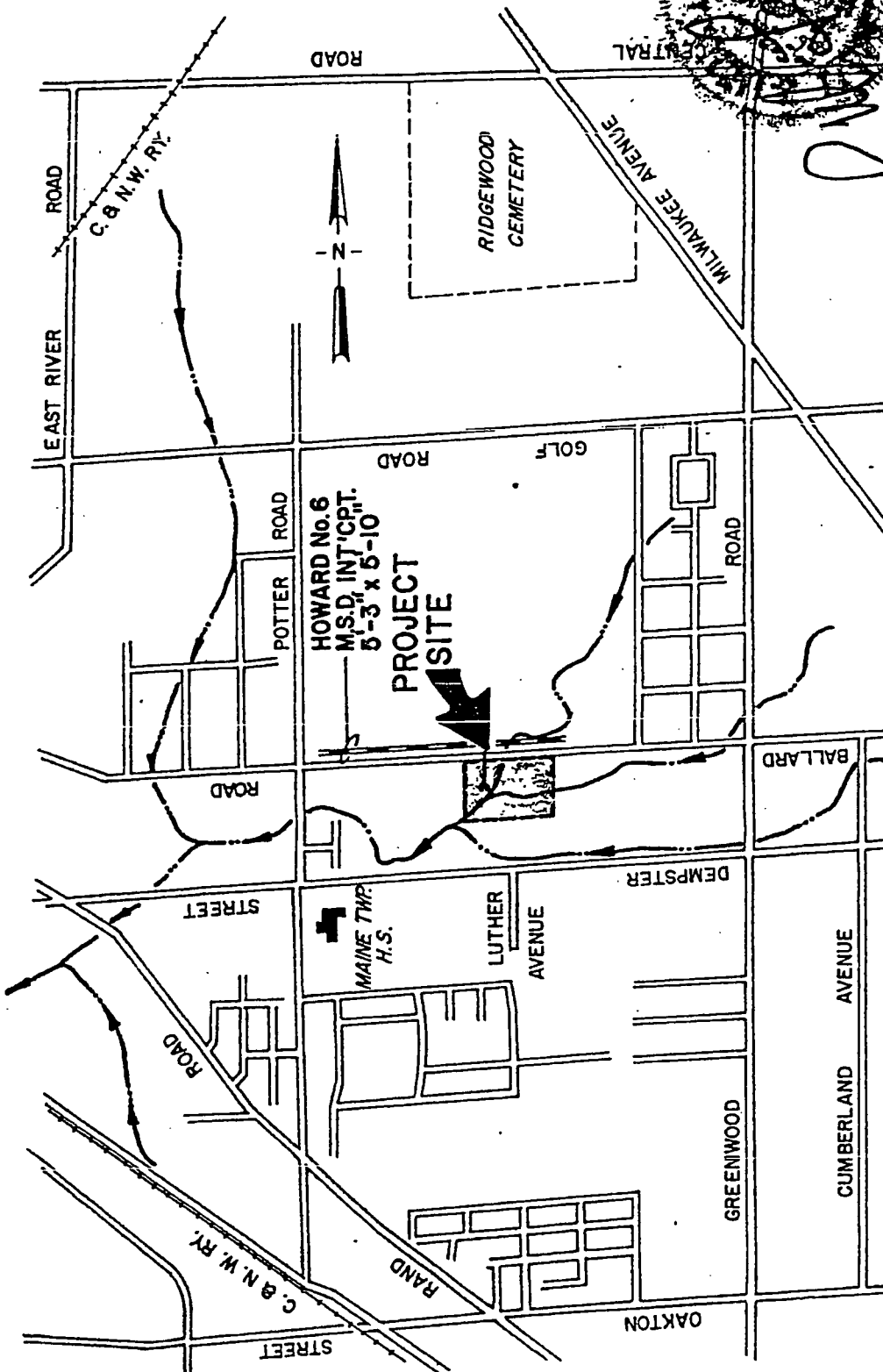
EXH#2: PERMIT1776-773

EXCERPTS

RA139 of 218

SECTION 15, TOWNSH' 41 NORTH, RANGE 12

TO
DES PLAINES RIVER



LEGEND

- M.S.D. INTERCEPTOR
- PROPOSED SANITARY SEWER
- INTERMITTENT WATER COURSE

LOCATION PLAN
LUTHERAN GENERAL HOSPITAL
NORTH CAMPUS DEVELOPMENT
PARK RIDGE, ILLINOIS

LINDLEY & SONS, INC.
10 N. Lincoln St., Hinsdale, Ill. 60521 • (312) 325-0

Tza096159-5AC-Exhibts-2011-11-14
00757-00016

1/13/2012

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1/13/2012

Tza096159-5AC-Exhibts-2011-11-14

00757-00043

Note: Report is in
Village's File

GEWALT HAMILTON
ASSOCIATES, INC.

April 27, 2001

Mr. Robert Kuhl
Engineer Local Sewer System
Metropolitan Water Reclamation District of Greater Chicago
111 East Erie
Chicago, Illinois 60611

Consulting Engineers
and Surveyors

Civil, Municipal, & Traffic

850 Forest Edge Drive
Vernon Hills, Illinois 60061
tel 847 478 9700 fax 847 478 9701

Attention: Mr. M. Patel

Re: Lutheran General Health Systems
Park Ridge, Illinois
MWRD Permits 94-084 & 00-643

00-643

PL 01-084

Dear Mr. Kuhl:

This letter is in response to your correspondence of April 17, 2001. As you are aware, Lutheran General Hospital has requested allocating detention storage for the Victor Yackman Pavilion (MWRD Permit 94-084) and the Emergency Room Renovation (MWRD Permit 00-643) in the surplus detention created on the north campus under MWRD permits 76-733 and 94-530. The purpose of this letter is to document that surplus detention volume is available in that basin, and to demonstrate that storm water from the south campus is tributary to the north campus detention pond during flooding conditions.

Included with this letter are the following materials:

1. Exhibit 1 - Lutheran General Health Systems Drainage Plan
2. Exhibit 2 - FIRM Panel No. 17031C0236 F Effective 11-6-2000
3. Appendix 1 - MWRD Historical Permits for Lutheran General Hospital 1975 through 2000

Surplus Detention

Various improvements have been made on the north campus, north of Dempster Street, since 1975. These improvements were permitted by the MWRD as follows:

Permit 75-666	Lutheran General Hospital Parking Facility & Utility Building
Permit 76-733	Lutheran General Hospital North Campus Development
Permit 81-117	Parkside Center Surface Parking, Areas I, II
Permit 94-530	North Campus Parking Garage - Lutheran General Health Systems

Of significance to the current situation were the improvements undertaken under MWRD permits 76-733 and 94-530. Permit 76-733 constructed an in-stream detention basin which provided 22.06 acre-feet of storm water storage to an elevation of 637.50. That elevation corresponded to the base flood elevation assumed in 1976. As 10.55 acre-feet of storage existed in that area previously, the net increase in storage at that time was 11.51 acre-feet ($22.06 - 10.55 = 11.51$). The required detention for that permit was only 1.8 acre-feet, which left 9.71 acre-feet of surplus storage.

In 1994, this pond was expanded under MWRD permit 94-530. This permit superseded all previous permits for the north campus and significantly expanded the pond constructed under permit 76-733. That permit recomputed the detention required for the entire 28.39 acre north campus and found it to be 4.57 acre-feet. The total storage, to elevation 637.5, was 26.86 acre-feet. Removing the 10.55 acre-feet

District Ordinance requires
that release cannot be
more than 2 year storm.

For 94-084
PL 01-050

of storage available in the same area prior to 1976, and subtracting the recomputed north campus detention volume required, the net surplus storage was 11.74 acre-feet ($26.86 - 10.55 - 4.57 = 11.74$). Table 1 summarizes the storage created in 1976 and the expansion of 1994.

Table 1 North Campus Storage

Permit	Provided Storage * (Acre Feet)	Storage Prior to 1976* (Acre Feet)	Required Detention (Acre Feet)	Surplus Storage* (Acre Feet)
76-733	22.06	10.55	1.8	9.71
94-530	26.86	10.55	4.57	11.74

* Storage volume calculated to elevation 637.50, the assumed BFE in 1976.

For your convenience, we have compiled and bound all of the above noted permits. This information is included in Appendix 1.

South Campus Drainage Path

Both the north and south portions of the Hospital campus are part of the Prairie/Farmers Creek watershed. As noted above, the base flood elevation for this area in 1976 was assumed to be 637.5. Since then, more detailed studies have been conducted of the Prairie/Farmers Creeks watershed. For example, when the Hospital undertook the 1994 north campus improvements, the BFE was assumed to be 640.5. The present BFE, based on the current FIRM panel No. 17031C0236 F effective November 6, 2000, is 641.0.

During lesser rainfall events, the drainage route of the south campus follows a path as identified on Exhibit 1. This route includes the Dempster Street sewer system which empties to an open channel southwest of the north parking garage, enters a 60 inch sewer, and finally joins with the outlet of the north campus detention basin. During severe rainfall events, for which the detention basins are designed, the north and south campuses are joined. Exhibit 1 illustrates the water surface elevation on the north and south portions of the campus during the base flood event. At this condition, the south campus is directly connected and tributary to the north campus detention pond by the nature of the single water surface and overland flow routes.

It is important to note that directly connecting the north and south campuses has been considered in the past. This could simply be done by routing the open channel located southwest of the parking garage directly into the north campus detention pond. In fact, Jim Jackson of the MWRD asked our office to consider such a connection during our 94-530 permit review process. In response to his request, we contacted the Illinois Department of Transportation, Division of Water Resources and asked that they consider such a connection. Their response is included in section 94-530 of Appendix 1.

The DWR studied Mr. Jackson's request and recommended that the interconnection not be made. They found it would reduce downstream water surface levels during storms having a 5 year return frequency and smaller, but would exacerbate flooding during storms having return frequencies greater than the 5 year event, both in terms of magnitude and duration. The increased flood levels are due to the disparity in the tributary areas upstream of the north campus and the south campus. The area upstream of the north campus detention pond, including the north campus itself, is slightly less than one square mile. The area of the south campus and the watershed area upstream of the south campus is a fraction of that area. Routing the south campus directly into the north campus pond depletes storage volume that is more effectively utilized when the peak flow enters from the north. Essentially, the DWR found that from an overall watershed perspective, it was better to immediately convey the runoff from the south

Consulting Engineers

3100 Dundee Road, Suite 404
Northbrook, IL 60062
708-272-7750
FAX: 708-272-9582

Tza096159-5AC-
Exhibts-2011-11-14
Page No. 00101

Date: 1/13/2012

OK as is.
issue permit
JJ

December 19, 1994

Mr. James Jackson
Permit Section
METROPOLITAN WATER RECLAMATION DISTRICT
100 Erie Street
Chicago, Illinois 60611

Re: **MWRD Permit 94-530**
Lutheran General Hospital
North Campus

Dear Jim:

At your request, we have reviewed a number of different alternatives to accommodate your concerns and have the following to report:

Initial Request

Your office was concerned about the reduction in channel storage capacity between the 84 inch diameter discharge and the 60 inch diameter inlet within the southeastern corner of the Lutheran General North Campus. This was prompted by a flood condition which occurred in June of 1994.

At that point, you asked if we would consider constructing an overflow channel between the 84 inch diameter channel and the pond to the north, thereby allowing the excess discharge to fill the pond once the capacity of the 60 inch had been exceeded. The flood storage which was reduced in this area was quite minor, particularly as compared with the size of the contributing watershed, however, you were concerned none the less.

History

This channel was once an open channel flowing west from Greenwood across Lutheran General Hospital on about its current path and continuing west. Three major changes have occurred, changing its character:

1. The upstream channel was enclosed, reducing its storage volume and increasing its velocity. The recent LGH project was a minor continuation of that multi-year project.

TZAKIS09-6159-5AC
EXH#4:PERMIT1994-530
EXCERPTS

GEWALT HAMILTON
ASSOCIATES, INC.
RA143 of 218

Date: 1/13/2012

94-530

2. The downstream housing was constructed directly in the historic drainage path to the north. The structures are on the order of 2 to 3 feet below the Base Flood Elevation (BFE) and the reroute was in a small (60") CMP, with very limited capacity. Other downstream restricted sections were also constructed.
3. The upstream watershed has become increasingly impervious and, to my knowledge, LGH is the only significant site in the 275 acre watershed which provides storm-water detention.

Division of Water Resources Analysis

When we discussed it, I noted that we had worked with the Illinois Division of Water Resources on this watershed and that they had some good watershed data and had analyzed this area previously. I then spoke with Arlan Juhl of IDWR and he assigned Rick Gosch of his office to do the analysis of the potential channel interconnection between the two watersheds.

I have attached copies of the DWR responses of November 23rd and December 1, 1994, both of which note that we should not perform the interconnection. Their analysis shows that by holding the northern storage in reserve, they decrease the crest stage of the major storms and this is their goal.

On the basis of their analyses and recommendation, the Hospital is not interested in an overflow channel which would transmit flow at an elevation below that cresting over the roadway to the west.

Once overflow is reached however, the north pond is connected and available and our alternative grading plan does include a swale at 38.0 flowing north. Overflow along the course of natural drainage to the west is approximately 38.1.

Current Project

The floodplain storage on the North Campus has been increased significantly due to the Park Ridge detention requirements and the Hospitals' voluntary cooperation. North Campus storage has increased from 68.9 acre feet to 71.9 acre feet, although building and parking lot coverage has actually slightly decreased.

Suggested Alternative

Although the preservation of floodplain storage, by basin, is not within the jurisdiction of the MWRD, we appreciate and agree with your concern regarding this situation. For that reason, we have performed an analysis and prepared an alternative grading plan which may substantially return the 84 inch channel to its preconstruction condition. This will not have any significant impact on the flooding experience downstream since the storage area is so small. It is more a matter of perception than anything else.

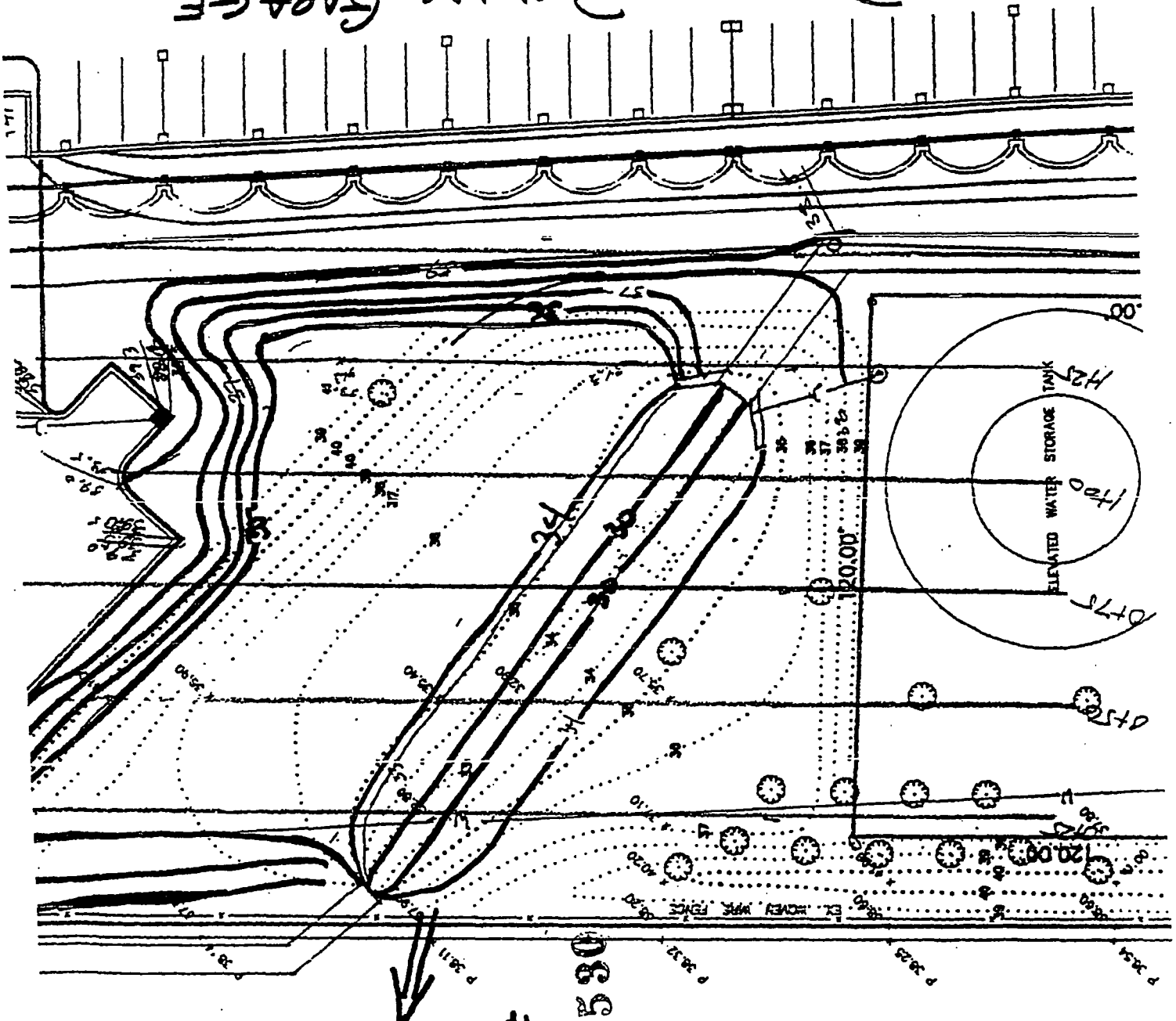
1/13/2012

Tza096159-5AC-Exhibts-2011-11-14

00757-00109

AL0134

Proposed Parking Garage



BLACK FLO

EXISTING

EXISTING

Historical
OverFlow
Route

38.2±

94-530

BRICK & FRAME
TOWNHOUSE

BRICK & FRAME
TOWNHOUSE

Date: 1/13/2012

ENGINEERING CERTIFICATIONS

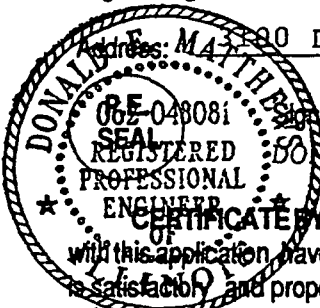
MWRDGC Permit No.

CERTIFICATE BY DESIGN ENGINEER: I hereby certify that the project described herein has been designed in accordance with the requirements set forth in this application and all applicable ordinances, rules, regulations, Local, State and Federal Laws, and design criteria of the issuing authority; that the storm drainage and sanitary sewer system designed for this project are proper and adequate; that, where the design involves one or more connections to an existing local sewer system, the capacity of said system has been examined and the system is found to be adequate to transport the wastewater that will be added through the proposed sewer without violating any provisions of the Illinois Environmental Protection Act or the rules and regulations thereunder.

Comments, if any: _____

Engineering Firm: GEWALT-HAMILTON ASSOCIATES, INC. Telephone: (708) 272-7750

Address: 3100 DUNDEE RD., SUITE 404 City: NORTHBROOK, ILL. Zip: 60062



Signature *Donald E. Matthews* Date: 10.24.94
(Name and Title)
DONALD E. MATTHEWS, P.E.

CERTIFICATE BY MUNICIPAL OR SYSTEM ENGINEER: The application and the drawings, together with other data being submitted with this application, have been examined by me and are found to be in compliance with all applicable requirements. The manner of drainage is satisfactory and proper. The existing local sewer system to which the project discharges has been examined and the system is found to be adequate to transport the wastewater that will be added through the proposed sewer without violating any provisions of the Illinois Environmental Protection Act or the rules and regulations thereunder.

Comments, if any: _____

Owner of Local Sewer System: CITY OF PARK RIDGE

Municipal Engineer: JOE SACCOMANNO Telephone: (708) 381-5246

Address: 505 BUTLER PLACE City: PARK RIDGE, IL. Zip: 60068



Signature *Joe A. Saccomanno* Date: 10/25/94
(Name and Title)
JOE SACCOMANNO, CITY ENGINEER

CERTIFICATE BY INSPECTION ENGINEER: I hereby certify that construction of the project will be in substantial compliance with the data and the plans submitted with this application; that approval will be obtained from the issuing authority prior to making any changes that would affect capacity, maintenance, design requirements, service area or the permit requirements; that a set of RECORD drawings, signed and sealed by the undersigned Engineer will be furnished to the MWRDGC within sixty (60) days after testing and approval by the District of the completed work.

Engineering Firm: GEWALT-HAMILTON ASSOCIATES, INC. Telephone: (708) 272-7750

Address: 3100 DUNDEE ROAD, SUITE 404 City: NORTHBROOK, IL. Zip: 60062



Signature *Donald E. Matthews* Date: 10.24.94
(Name and Title)
DONALD E. MATTHEWS, P.E.

1/13/2012

Tza096159-5AC-Exhibits-2011-11-14

00757-00149

RECOMMENDED CHECK LIST

The following items as applicable should be observed and checked during construction. Check those items that apply to this project.

1. SANITARY/COMBINED SEWERS: N.A. ()

Pipe sizes(✓), Pipe material(✓), Pipe joints(✓), Bedding Material(✓),
Bedding thickness(✓), Line & Grade(✓), Approx. depth of M.H.'s(✓),
Type of frame & cover(✓), Grade of frame & cover with respect to
finished grade(), Manhole location with respect to storm drainage(),
Drop M.H.'s(), Trench conditions(), Water table(), Drainage of area
during construction(), Grade conflict with other underground con-
struction(), Locations & crossings with respect to water mains(),
Inspection Manhole only().

2. STORM SEWERS: N.A. (✓)

Pipe sizes(), Pipe material(), Line & grade(), Grade conflict(),
General drainage(), Inlet & catch basin location().

3. DETENTION/RETENTION FACILITY: N.A. () *DETENTION UNDER PERMITS } 76-733*

- a. ROOF STORAGE: N.A. (), Parapet walls(), Roof restrictors(),
Sizes & installation method()
- b. SURFACE STORAGE: N.A. (), Approx. area(), Finished grades
[high & low points](), Surface drainage(), Pipe restrictors(),
Sizes(), Location(), Installation method(), Location of inlet
structures().
- c. UNDERGROUND STORAGE: N.A. () Verify sizes(),
Pipe restrictors().
- d. DETENTION/RETENTION BASIN: N.A. (), Approx. size & depth of
detention [if not certain, make measurements](✓), If questionable,
request cross-sections & calculations(), Verify area draining
into detention basin(✓), Outlet control structure(✓), Size of
openings(✓), Overflow weir & spillway(), Downstream conditions(),
Erosion(), Paved channels(), Bank slopes(), Bank stabilization:
Seeding(), Sodding(), Rip-Rap().

4. PUMPING STATIONS: N.A. ()

Warning system(), Standby power(), Simulated power failure().

5. RESIDENTIAL PROJECTS: N.A. ()

Single Family(), Multi-family less than 25 units(), Some services
inspected(), Some foundation plumbing inspected(), Swimming pool
discharge().

6. OTHER ITEMS: N.A. ()

Rough grading(), Final grading(), Paving(), Overhead plumbing(),
Separate sumps().

RA146.1

1/13/2012

T2-096159-5AC-Exhibits-2011 11-14
00757-00168

Note: Report is in
Village's file

GEWALT HAMILTON
ASSOCIATES, INC.

April 27, 2001

Mr. Robert Kuhl
Engineer Local Sewer System
Metropolitan Water Reclamation District of Greater Chicago
111 East Erie
Chicago, Illinois 60611

Consulting Engineers
and Surveyors

Civil, Municipal, & Traffic

850 Forest Edge Drive
Vernon Hills, Illinois 60069
tel 847 478 9700 fax 847 478 9701

Attention: Mr. M. Patel

Re: Lutheran General Health Systems
Park Ridge, Illinois
MWRD Permits 94-084 & 00-643

00-643
RL 01-042

OFFICE COPY

Dear Mr. Kuhl:

This letter is in response to your correspondence of April 17, 2001. As you are aware, Lutheran General Hospital has requested allocating detention storage for the Victor Yackman Pavilion (MWRD Permit 94-084) and the Emergency Room Renovation (MWRD Permit 00-643) in the surplus detention created on the north campus under MWRD permits 76-733 and 94-530. The purpose of this letter is to document that surplus detention volume is available in that basin, and to demonstrate that storm water from the south campus is tributary to the north campus detention pond during flooding conditions.

Included with this letter are the following materials:

District Ordinance requires
that release cannot be
more than 2 year storm.

1. Exhibit 1 - Lutheran General Health Systems Drainage Plan
2. Exhibit 2 - FIRM Panel No. 17031C0236 F Effective 11-6-2000
3. Appendix 1 - MWRD Historical Permits for Lutheran General Hospital 1975 through 2000

Surplus Detention

Various improvements have been made on the north campus, north of Dempster Street, since 1975. These improvements were permitted by the MWRD as follows:

Permit 75-666	Lutheran General Hospital Parking Facility & Utility Building
Permit 76-733	Lutheran General Hospital North Campus Development
Permit 81-117	Parkside Center Surface Parking, Areas I, II
Permit 94-530	North Campus Parking Garage - Lutheran General Health Systems

Of significance to the current situation were the improvements undertaken under MWRD permits 76-733 and 94-530. Permit 76-733 constructed an in-stream detention basin which provided 22.06 acre-feet of storm water storage to an elevation of 637.50. That elevation corresponded to the base flood elevation assumed in 1976. As 10.55 acre-feet of storage existed in that area previously, the net increase in storage at that time was 11.51 acre-feet ($22.06 - 10.55 = 11.51$). The required detention for that permit was only 1.8 acre-feet, which left 9.71 acre-feet of surplus storage.

In 1994, this pond was expanded under MWRD permit 94-530. This permit superseded all previous permits for the north campus and significantly expanded the pond constructed under permit 76-733. That permit recomputed the detention required for the entire 28.39 acre north campus and found it to be 4.57 acre-feet. The total storage, to elevation 637.5, was 26.86 acre-feet. Removing the 10.55 acre-feet

of storage available in the same area prior to 1976, and subtracting the recomputed north campus detention volume required, the net surplus storage was 11.74 acre-feet ($26.86 - 10.55 - 4.57 = 11.74$). Table 1 summarizes the storage created in 1976 and the expansion of 1994.

Table 1 North Campus Storage

Permit	Provided Storage * (Acre Feet)	Storage Prior to 1976* (Acre Feet)	Required Detention (Acre Feet)	Surplus Storage* (Acre Feet)
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For your convenience, we have compiled and bound all of the above noted permits. This information is included in Appendix 1.

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Both the north and south portions of the Hospital campus are part of the Prairie/Farmers Creek watershed. As noted above, the base flood elevation for this area in 1976 was assumed to be 637.5. Since then, more detailed studies have been conducted of the Prairie/Farmers Creeks watershed. For example, when the Hospital undertook the 1994 north campus improvements, the BFE was assumed to be 640.5. The present BFE, based on the current FIRM panel No. 17031C0236 F effective November 6, 2000, is 641.0.

During lesser rainfall events, the drainage route of the south campus follows a path as identified on Exhibit 1. This route includes the Dempster Street sewer system which empties to an open channel southwest of the north parking garage, enters a 60 inch sewer, and finally joins with the outlet of the north campus detention basin. During severe rainfall events, for which the detention basins are designed, the north and south campuses are joined. Exhibit 1 illustrates the water surface elevation on the north and south portions of the campus during the base flood event. At this condition, the south campus is directly connected and tributary to the north campus detention pond by the nature of the single water surface and overland flow routes.

It is important to note that directly connecting the north and south campuses has been considered in the past. This could simply be done by routing the open channel located southwest of the parking garage directly into the north campus detention pond. In fact, Jim Jackson of the MWRD asked our office to consider such a connection during our 94-530 permit review process. In response to his request, we contacted the Illinois Department of Transportation, Division of Water Resources and asked that they consider such a connection. Their response is included in section 94-530 of Appendix 1.

The DWR studied Mr. Jackson's request and recommended that the interconnection not be made. They found it would reduce downstream water surface levels during storms having a 5 year return frequency and smaller, but would exacerbate flooding during storms having return frequencies greater than the 5 year event, both in terms of magnitude and duration. The increased flood levels are due to the disparity in the tributary areas upstream of the north campus and the south campus. The area upstream of the north campus detention pond, including the north campus itself, is slightly less than one square mile. The area of the south campus and the watershed area upstream of the south campus is a fraction of that area. Routing the south campus directly into the north campus pond depletes storage volume that is more effectively utilized when the peak flow enters from the north. Essentially, the DWR found that from an overall watershed perspective, it was better to immediately convey the runoff from the south

Tza096159-5AC-Exhibts-2011-11-14
00757-00225

Date: 1/13/2012

GEWALT HAMILTON
ASSOCIATES, INC.

**Consulting Engineers
and Surveyors**
Civil, Municipal, & Traffic
850 Forest Edge Drive
Vernon Hills, Illinois 60061
tel 847 478 9700 fax 847 478 9701

Memorandum

To: Victor Pilar

From: Bob Hamilton *RBH*

Date: 3-17-06

Re: **MWRD Log # 2006-0032**
Advocate Lutheran General Hospital
Park Ridge

Response to: 3/3/06 review letter #1

Dear Victor,

Thanks for the complete review. Following is a response intended to be complete, except for those items which we will submit under separate cover (new Schedule L). If you note any information missing, please call and we will be glad to forward it for your use.

1. Schedule L – I have enclosed 4 originals with revisions (0.44 acres Native planting zone) and signatures by the CEO and Secretary, notarized.
2. Schedule K - The missing area has been added (2.99 acres). New sets are submitted. Schedule L – We weren't sure of the intent and had left this open. We now understand this to target the "Native Planting Area" of 0.44 acres. This is now shown in section D. This is now included in the signed originals.
3. Plats of Survey, 8 copies, supporting Schedule L, including property PIN. I spoke to Joe Rakoczy and he suggested we submit a Plat of Survey of the South Campus, with the limits of the native planting areas shown and the areas displayed. In this manner, it will have the weight of an easement, without burden of an extremely complicated legal description.

I have also added the plant lists, and described the areas by a letter (a, b, or c) on Ex. A to Sch. L. The A list is primarily the Spiral Garden; the B list is the Rain Gardens, and the C list is the south Courtyard.

- PE calcs.*
4. This is a broad estimate of demand. The project adds 28 patient rooms (assuming 100% occupancy = +28 PE), plus 66 new employees (anticipate 0.25 PE/employee, = +17 PE), plus an undefined number of visitors, patients visiting the labs and the MRI (figure 150 per day at 0.15 PE/visit, = +23 PE) for a total of 68 PE. Due to the cyclic nature of the hospital environment, we noted 100 PE. If you'd like to reduce that to the more likely 68 PE, that would be acceptable. Your call on this issue.

The number of services changed also – See response #5, below.

TZAKIS09-6159-5AC

EXH#9:PERMIT2006-032

EXCERPTS

RA148.1

Tza096159-5AC-Exhibits-2011-11-14

00757-00226

5. Length of sewers – This has changed. After we submitted, the mechanical engineer added multiple services, now shown. The new building has 5 new services. We also intercepted existing services going through the work zone, and rerouted them into the system. We have added these profiles, modified Schedule B, recalculated the fee, and included a check for the difference.
6. Added Fee – A check is included.
- | | | |
|--------------------|------------------|-------------------|
| | \$1,100 base fee | |
| 1611 lf x \$5/lf = | <u>\$8,055</u> | sanitary sewer |
| Total Fee: | \$9,155 | |
| Paid to Date: | <u>(\$7,745)</u> | |
| This Check: | \$1,410 | GHA Company Check |
7. ANSI A21.51 is the standard specification for all thickness classes of DIP. Class 55 specifies the wall thickness. Yes, they both describe the same pipe – one as a general standard, and one as a specific wall thickness. Equivalent.
8. Permit 80-296 (for the Parkside Center Professional Office Building) did not provide its own detention, but was served by the 76-733 permit (North Campus Pond).

Permit 81-336 (for the parking garage now referred to as the SouthEast Parking Garage) also did not provide its own detention, but was served by the 76-733 permit (North Campus pond).

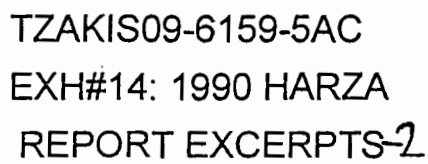
Both of the above permit sites, plus the current one, all drain across Dempster to the 84" diameter storm sewer. As the water surfaces approach flood stage, the water surfaces of the channel from the 84" and the 76-733 pond join and are in common. At low flow, they are separate. Apparently, in 1976-1981, they considered this to be a single pond, since there was one water surface at the 100 year levels.

There is no point in attempting to change a 76-733 restrictor, since the entire area is in flood stage – overbanked in the design condition, as it has been for 30 years.

To simplify things, I have modified page 4 of the permit to delete these two permits, since they don't provide their own detention anyway, but referenced 76-733.

9. Sewer Routing Maps – Show on C1
- I have included the sewer routing map, which is actually a sheet from the 1989 construction plans. The City of Park Ridge officially owns the sanitary sewer, although the Hospital is its sole user and maintains it. This is also added to the Plans, Sheet 1. The entire sanitary sewer, from ALGH to the MWRD, was constructed by ALGH, and is under the jurisdiction of the City of Park Ridge.
 - In both existing and proposed conditions, all storm flow from this project enters the 84" diameter sewer on the north side of Dempster and flows west to the southwest quadrant of the North campus of ALGH. There it discharges and flows via an existing storm sewer to Prairie Creek, which joins with Farmers Creek to the west, and on further west to the Des Plaines River. This is its historical route. A map is provided on the plans.

007570-6060332



1/13/2012

724155thAmCompExhibits 32
Tza096159-5AC-EXHIBITS-2011-11-14
0075700335

Table V-1 (page 3 of 6)

B. Prairie Creek

- | | |
|----|--|
| 23 | Clean, widen and deepen channel. |
| 24 | Modify or replace existing 6.5' x 18.5' culvert to provide equivalent of twin 6.5' x 15' culverts with invert 0.6' lower than existing. |
| 25 | Clean, widen and deepen channel. |
| 26 | Modify or replace existing twin 3' x 4' CMP's to provide equivalent of twin 5' x 10' culverts with invert 0.6' lower than existing. |
| 27 | Clean, widen and deepen channel. |
| 28 | Modify or replace twin 3.5'ø CMP's to provide equivalent of twin 5' x 10' culverts with invert 1.3' lower than existing. |
| 29 | Deepen and concrete line channel or install bypass sewer depending on easement availability. To be finalized in final design. |
| 30 | Modify or replace existing 5.25' RCP to provide equivalent of twin 5' x 8' culvert. |
| 31 | Deepen channel. |
| 32 | Modify or replace existing 6' x 10' culvert to provide equivalent of 8' diameter with invert 3.0' lower than existing. |
| 33 | Deepen channel. |
| 34 | Expand existing reservoir to 64 AF; install diversion structure, connecting channels, dewatering pump station, and modify outlet structures. |

1/13/2012

Tzatzakis Channel Exhibit 1-12-14
00757-00336

Table V-1 (page 4 of 6)

- 35 Modify or replace existing 4.5' diameter CMP to provide equivalent of 8' x 10' box and a portion of open channel with same invert as existing.
- 36 Slightly modify channel to meet reservoir bypass channel.
- 37 Remove and/or replace restricting foot bridge.
- 38 Deepen and reshape channel.
- 39 Modify or replace existing 4' diameter CMP to provide equivalent to 6' x 12' box culvert with invert 1.1' lower than existing.
- 40 Clean and deepen existing channel by 1.0'.
- 41 Replace existing 4' diameter CMP to provide equivalent of 5' x 10' box culvert with same invert as existing.
- 42 Clean and maintain channel.
- 43 Three bridge girder sections restrict flow. Two options available to be determined in pre-final design. Option 1 is to modify or replace bridges with 6' x 10' box culvert with same invert as existing. Option 2 is to install relief sewer on Ballard from 51 to 41. Choice will be determined based on detailed site specific evaluation of utility interferences and feasibility of modifying bridge sections.

Table V-1 (page 5 of 6)

44	No action. Maintain channel.
45	Three bridge girder sections restrict flow. Two options available to be determined in pre-final design. Option 1 is to modify or replace bridges with 6' x 10' box culvert with same invert as existing. Option 2 is to install relief sewer on Ballard from 51 to 41. Choice will be determined based on detailed site specific evaluation of utility interferences and feasibility of modifying bridge sections.
46	No action. Maintain channel.
47	Three bridge girder sections restrict flow. Two options available to be determined in pre-final design. Option 1 is to modify or replace bridges with 6' x 10' box culvert with same invert as existing. Option 2 is to install relief sewer on Ballard from 51 to 41. Choice will be determined based on detailed site specific evaluation of utility interferences and feasibility of modifying bridge sections.
48	Modify or Replace existing 4.5' x 7.0' CMP to provide equivalent of 6' x 10' box culvert with invert same as existing if Option 1 is followed. For Option 2 no action required except cleaning.
49	Modify or replace existing 4.5' x 7.0' CMP to provide equivalent of 6' x 10' box culvert with invert same as existing if Option 1 is followed. For Option 2 no action required except cleaning.
50	Clean and continually maintain channel section.
51	Reshape channel on development project. Riprap bends.

Tzatzaki 555-5146 Comp Exh - 132-14
0075770338

52 Clean culvert.

C. Des Plaines River Backwater Protection

54 Install 1000 lineal feet of flood wall along
 Dempster Street top of wall at elevation 634.0.

1/13/2012

Tz2615955ACmCompExh101a-13214
00757380340

HES HARZA
ENVIRONMENTAL SERVICES, INC.

150 South Wacker Drive Chicago, Illinois 60606-4288
Tel. (312) 855-3300 Telex 25-3540

June 15, 1990

Prairie Farmers Creek Steering Committee
c/o Mr. Tim Oakley
City Engineer
City of Des Plaines
1420 Miner/Northwest Highway
Des Plaines, Illinois 60016-4498

Subject: Prairie/Farmers Creek
Strategic Plan
Draft Report

Dear Mr. Oakley:

We are pleased to submit our draft report on the strategic plan for flood mitigation in the Prairie Farmers Creek watershed. The report quantitatively describes the flooding problems in the watershed and presents an estimate of the monetary value of those problems. Subsequent to defining the problems, the report presents a description of alternative solutions and identifies one of these as a preferred plan.

The report contains a number of self standing appendices that present detailed technical material and computer outputs. The salient results of these technical appendices are summarized in this main body of the report.

Quantifying the Problem

The flooding problems in the study area were quantitatively defined using hydrologic and hydraulic computer models that were calibrated to match actual field conditions.

Flooding Problems

Extensive flooding damages in the Prairie Farmers Creek watershed have occurred in 1986, 1987 and 1989. Additional lesser damages have occurred periodically during less severe runoff events. Overbank flooding along the Des Plaines River with resultant backflow into the watershed was the primary cause of the 1986 flooding episode, while overbank flooding along the Prairie and Farmers Creeks, due to intense local rainfall was the primary cause of the 1987 and the 1989 flooding episodes. Mitigation measures will have to address both of these causes of flooding if they are to be effective.

Prairie Farmers Creek Steering Committee
June 15, 1990
Page 2

Costs and Damages of Flooding

The flooding episodes have resulted in direct damages to structures and contents due to direct flood water entry. Additional direct impacts during these flooding episodes include basement backup of sanitary sewers, impairment of the local surface conveyance systems, disruption of traffic and the need for emergency services.

Accepted Illinois Department of Transportation Division of Water Resources (IDOT-DOWR) procedures were used to develop a statistical estimate of annual average flooding damages in the watershed. Average annual damages were estimated at \$1.16 million/year, which is equivalent to a capitalized value of \$12.9 million. These damage numbers account only for actual costs and damages due to flooding and do not take into consideration the potential increase in property values that may accrue if a project to mitigate flooding were to be implemented.

Identifying Criteria

A critical part of the project development process was to identify the performance criteria that the project should be designed to meet. Project criteria were established based on inputs from the Prairie Farmers Creek Steering Committee, Illinois Department of Transportation-Division of Water Resources (IDOT-DOWR), and engineering judgement, based on the analysis of the problem. The criteria essentially established three general items:

1. Flood protection against the 100 year statistical recurrent event is the minimum acceptable level based on Steering Committee directive.
2. Any proposed project should have no negative impacts on the Des Plaines River mainstem.
3. Solutions should mitigate related problems of local stormwater conveyance systems and sanitary sewer basement backup, insofar as the Prairie and Farmers Creek channels impact these problems.

Figure 1 summarizes the problems, criteria, and structural actions which are necessary to mitigate the problems while at the same time satisfying the criteria.

Identifying Solutions

After defining the problem and criteria, mitigation alternatives were formulated and evaluated. From these alternatives, a recommended plan was identified.

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Prairie Farmers Creek Steering Committee
June 15, 1990
Page 3

Mitigation Alternatives

Five alternatives were formulated to mitigate flooding problems caused by both Des Plaines River backflow and intense local rainfall within the watershed. The alternatives differed in terms of the level of flooding protection offered. The alternatives were evaluated on the basis of benefit/cost ratios and how well the alternatives met the minimum levels of protection established by the Prairie Farmers Creek Steering Committee. A preliminary preferred or recommended plan was identified for the Steering Committee's consideration.

Recommended Plan

The identified recommended plan consists of a flood wall along Dempster, a berm/gate/pump station facility at Busse Highway and Farmers Creek, two flood control reservoirs (one south of Ballard adjacent to I-294 and the second on the site of Lutheran General Hospital), and extensive channel improvements on both the Prairie and Farmers Creek channels. The capital cost of the project, including an allowance for land/easement acquisition and engineering/administration, is estimated to be \$19.2 million in 1990 dollars. Total present worth of the plan, with an allowance for operation/maintenance, is estimated to be \$20.3 million.

Subsequent Actions

This draft report identifies a preferred plan. Because numerous parties will be affected by the plan, review comments are encouraged. Concurrent review by affected agencies (IDOT, Corps of Engineers (COE), Metropolitan Water Reclamation District of Greater Chicago (MWRD), Cook County Forest Preserve District (CCFPD)), as well as by Steering Committee members is recommended.

For this project to move forward to the next step toward implementation, a consensus on the recommended project concept must be achieved. A necessary intermediate step to that consensus is a firmer definition of the financing shares for capital and operation/maintenance costs. Consequently, it is important to define state, regional and federal levels of funding participation as a pre-requisite to defining local funding shares among the Steering Committee members.

The recommended plan was developed at a planning level of detail. To proceed to final design a substantial amount of additional engineering will be required. This engineering will require calendar time. If the time required for project implementation is to be minimized, it is important to proceed with key engineering activities without undue delay.

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(IDOT-DOWR). To document the basis for such financial participation by IDOT-DOWR, this strategic planning study of the entire watershed was required.

Region Wide Des Plaines River Studies

The Corps of Engineers has recently completed a reconnaissance level study of the Upper Des Plaines River. The results of the reconnaissance study have justified moving forward with the feasibility level study which is now in progress by the Corps of Engineers. The feasibility level study is now underway and is scheduled to be completed in 1994. The Prairie Farmers Creek Strategic Planning Study, which is the subject of this report, and any follow up work that may result, will be incorporated into the Corps' feasibility study. As such, it is important that the Prairie/Farmers Creek study be compatible with Corps procedures.

Description of the Basin

Farmers Creek is a tributary of the Des Plaines River. Its confluence with the Des Plaines River lies within the City of Des Plaines, south of Dempster Street. The 3020 acre watershed of Farmers Creek, shown on Figure I-1, extends across the City of Des Plaines, the City of Park Ridge, the Village of Niles, unincorporated Maine Township, and a small portion of the Village of Glenview. About one-third (1152 acres) of this watershed drains to Prairie Creek, a tributary of Farmers Creek.

The watershed is almost fully developed. The eastern half of the watershed (most of the area tributary to Prairie Creek) has been developed with commercial and high density multi-family units. Single family homes dominate the developed area within the City of Des Plaines and the land adjacent to Farmers Creek.

Farmers Creek extends about 10,000 feet from its confluence at the Des Plaines River to Golf Road. Stormwater north of Golf Road is conveyed by a large storm sewer (120 inch) along Golf Road to the Des Plaines River, but a portion of this flow is diverted into Farmers Creek at Golf Road. From Golf Road to Rand Road the channel is a ditch, generally with uniform cross section and straight reaches between road crossings. Conveyance is restricted by dense growth of trees (primarily scrub willows) along both banks; Most of the culvert approaches are abrupt, resulting in excessive contraction losses. Downstream of Rand Road, Farmers Creek is a more natural channel with non-uniform cross sections and a meandering flow path.

Urbanization has eliminated much of the natural drainage system tributary to Prairie Creek. Stormwater is now conveyed primarily in enclosed culverts and storm sewers where drainage was once by open channels. Consequently, Prairie Creek extends as an open channel for only about 3700 feet from Lutheran General

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Characteristics of the two creeks are visually documented in above-referenced previous reports which presented photographs along Prairie and Farmers Creeks. These pictures show examples of channel configuration, culvert approaches, and vegetation growth along the channels.

The total watershed area is 3020 acres, of which 1152 acres are tributary to Prairie Creek. The corporate boundaries are shown in Figure I-2. The tributary areas sorted by corporate entity are tabulated in Table I-1.

The watershed is virtually fully developed. No significant increase in development is anticipated in the future as a result of infilling of undeveloped land. If any changes in development do occur, such changes are expected to be in the form of redevelopment to higher densities. Any redevelopment to higher densities is anticipated to be accompanied by stormwater management practices that would require either a reduction, or at least no increase, in runoff above current conditions.

Prairie and Farmers Creeks generally provide an outlet for surface drainage in the watershed. The various entities within the watershed are served by separate sanitary sewer systems. As such, storm water runoff is collected and conveyed to Prairie/Farmers Creek by means of a combination of storm sewers, surface ditches, and overland flow. Significant stormwater entry points to the creek system are shown on Figure I-3.

I-3'

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In general, the great majority of runoff from the tributary area finds its way to Prairie and Farmers Creeks. The most significant exception to this is the Golf Road Diversion, which conveys a significant quantity of flow away from Prairie Creek.

Sanitary Sewage Systems

The watershed area is served by separate rather than combined sewage systems. All flow from the area is tributary to the Metropolitan Water Reclamation District of Greater Chicago (MWRD). Of importance to this study is the sanitary sewage collection system in the vicinity of creeks where overbank flooding frequently occurs. The primary systems in the vicinity of the creeks include the City of Des Plaines system and the privately owned North Suburban Public Utilities (NSPU) system. Both of these systems have undergone extensive work to comply with MWRD compliance procedures to eliminate excessive inflow/infiltration. These systems are mentioned because of reports by residents of basement backups of sewage during flooding events. It is believed that there is a cause and effect relationship between surface stormwater flooding, separate sanitary system overloading and basement backup in the area. This assertion is supported by citizen interviews and discussions with NSPU and Des Plaines staff responsible for sanitary system operations.

Chapter III

FLOODING PROBLEM DEFINITION

This chapter describes the flooding problems within the Prairie Farmers Creek watershed. The overbank flooding problems and the damages associated with those flooding events are described quantitatively. Related flooding problems impacted by overbank flooding are also described.

Overview

Flooding in the Prairie/Farmers Creek watershed includes overbank flooding of the main channels of Prairie and Farmers Creeks, backflow from the Des Plaines River into the watershed, ponding resulting from the inability of local drainage systems to convey stormwater to the main stem channels, and basement backup of sanitary sewers.

This study focuses on overbank flooding and backflow from the Des Plaines River. The flooding problems associated with local stormwater conveyance systems transporting storm water to the main stem channels and with basement backup of the sanitary sewage are not the direct subject of this study. These two problems are, however, impacted indirectly by overbank flooding and are discussed in this study to place a perspective on the benefits of mitigation measures.

Overbank Flooding

Overbank flooding episodes in the Prairie/Farmers Creek watershed occur either during intense rainfall events within the watershed itself or during high flood stages on the Des Plaines. These causative factors can occur independently or in conjunction with each other. Three recent major flooding episodes illustrate these causative factors. The September 1986 flood event was primarily the result of high flood stage on the Des Plaines River. The August 1989 event was almost exclusively the result of intense local rainfall. The August 1987 event was primarily the result of intense local rainfall, but was also aggravated to some extent by higher Des Plaines River levels.

It is important to note that floods caused by either factor (intense local rainfall or Des Plaines River flood stages) can have devastating impacts on the watershed. High flood stages on the Des Plaines River results in backwater flowing into unprotected low areas in the watershed. Intense rainfall within the basin results in runoff peak flows in excess of the capacity of the Prairie/Farmers Creek channel system and overbank flooding to adjacent low areas.

sanitary systems. Despite this, there is definitely a correlation between basement backup of sanitary sewage and surface flooding. Stormwater may enter the sanitary system during street ponding periods through manholes or other entry points.

Mitigation of flooding problems on the main stems of Prairie and Farmers Creeks will not directly solve sanitary sewer backup problems. However, it is believed that reducing flooding and surface ponding above manholes will have a beneficial impact in mitigating basement backup problems.

Quantitative Description of Overbank Flooding Problems

Reiterating, overbank flooding problems resulting from either intense local rainfall or backwater from the Des Plaines River are the focus of the study.

Overbank Flooding from Intense Local Rainfall

Intense local rainfall can cause runoff in excess of the capacity of the Prairie and Farmers Creeks channels to convey it within their respective banks.

The frequency of such occurrences was simulated based on a computer model of the watershed conveyance systems. The computer models used were calibrated against actual flooding events to enable the model to reasonably predict actual flooding extents for various storm events.

Flooding associated with rainstorms with statistical recurrence frequencies of 2, 5, 10, 25 and 100 years were simulated assuming that the Des Plaines River level was at the 2 year flood stage. Most recent Corps of Engineers flood levels on the Des Plaines River were used. Bulletin 70 rainfall patterns were used to generate runoff. In addition, the August 1987 flood event was also simulated.

The results of the simulations are shown in Figures III-1, III-2, and III-3. Figure III-1 shows the approximate extent of flooding during the 5 year and 100 year statistical events as well as the 1987 historic event. Figures III-2 and III-3 shows the water surface profiles and the channel bottom for the three events on Farmers and Prairie Creeks respectively.

Also shown is the 100 year Flood Insurance Study (F.I.S.) profile. The 100 year F.I.S. profile, which was developed in the 1970's and the 100 year profile developed under this study differ. The reason for the differences are the changes in runoff and conveyance characteristics and the use of "Bulletin 70" flows in this study.

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There are two other mechanisms that can malfunction during these flooding events. These are:

- Local Stormwater Conveyance System. The defined main stem channels of Prairie and Farmers Creeks represent the receiving points for the stormwater runoff in the watershed. The stormwater is conveyed to the main stem channels by means of a combination of roadside ditches, storm sewers, and street gutters. Localized ponding can occur when the runoff quantities exceed the capacity of the local systems to convey the water to the main stems. These local drainage systems are the responsibility of the local corporate entities. Their capacities can be exceeded regardless of the water levels in the main stems. However, when water levels in the main stems rise to flood stages, the local drainage systems have no positive outlet and become nonfunctional.

- Local drainage systems in some areas may become overloaded before flooding occurs in the main stems because of insufficient design capacity;
- Flooding in the main stems severely impairs local systems by removing the positive outlet for flow;
- Improvements to mitigate main stem flooding will significantly improve local drainage systems by allowing them to function at their capacities more often. However, in areas where local drainage systems are the bottlenecks in the system, mitigation of main stem flooding will help, but not totally solve the localized flooding problems;
- Improvements to local systems conveying stormwater to the main stems will remain the responsibility of local entities.

Surface flooding can be a contributing factor to sanitary sewer conveyance problems. During the flooding events of 1986, 1987, and 1989, numerous reports of basement backup of sanitary sewers occurred. The flooding area is served by separate sanitary sewers with no theoretical connection between stormwater and the

probability of occurrence of that event. A potential capitalized cost was also calculated by performing a present worth analysis using a planning period of 50 years and an interest rate of 8-7/8%. The capitalized cost estimate is important to evaluation of potential benefits of mitigation alternatives.

The various cost components are discussed below.

Flood Damages to Structures and Contents

The methodology used to calculate damages to structures and their contents was essentially the same methodology as used by the Illinois Department of Transportation in assessing regional flood control project feasibility.

The methodology involves first acquiring the following data:

Surveyed elevations of the first floor or low opening for all affected structures, the structure value and an estimate of the value of the contents, depth-damage relationships for each type of structure, and water surface elevations for a number of events with return periods of between 2 years and 100 years.

Water surface elevations for flooding events caused by both intense local rainfall and by Des Plaines backwater were estimated. The 1-foot contour maps of the city were used for a preliminary estimate of the extent and number of buildings to be surveyed. The surveyed elevations were based on the network of benchmarks established by the City of Des Plaines.

The basic flood damage assessment procedure involves three steps. First, a stage-frequency relationship is calculated for each structure using the water surface profiles and the first floor or low opening elevation. This curve is then combined with the appropriate damage coefficient table and the value of the structure and its contents to get a frequency-damage curve. Finally, this curve is integrated to estimate an annual damage for that structure.

Details of the basic data, assumptions, maps of surveyed buildings and computer input and output of the procedure are documented in Appendix B.

The results of the analysis are shown in Table III-3. The total annual average damages to structures and their contents in the watershed is estimated to be \$864,500 per year. The capitalized value of such annual damages is \$9,605,000. Of the damages, approximately 28% is due to flooding events caused by backwater from the Des Plaines River and 72% is due to flooding events caused by intense local rainfall.

Costs Associated with Traffic Disruption

During flooding events in the area, major roadways become submerged and impassable. The most notable of these roadways is Dempster/Miner Street, a major east-west arterial. As a result of a closure of Dempster and other roadways, traffic needs to be rerouted. The actual rerouting depends, to some degree, on whether the flooding event is localized within Prairie/Farmers Creek watershed or is area wide in nature. In either any case, a cost is incurred for such disruption. The major components of the costs are (1) the cost of vehicle operation for additional miles required by the detour and (2) the cost of manhour time for delay in passing through the detour.

Unit costs used in making the estimates included \$0.35/mile for additional vehicle operating costs and \$20.00/hour for the value of time lost in detour traffic. A traffic count of 19,200 vehicles/day (or 800 vehicles/hour) on Dempster was used with a average of 2.0 persons/vehicle. The average detour mileage was estimated to be 5 miles for intense local storms and 10 miles for Des Plaines flooding. Traffic speed was assumed to be reduced from 30 mph to 10 mph through the detours. To account for additional traffic disruption on other streets without available traffic counts (Potter, Ballard, etc.), the costs associated with Dempster were multiplied by a factor of 1.25.

The annual average costs of traffic disruption is estimated to be \$143,600/year. The capitalized value of these costs is \$1,595,000. Of the costs approximately 96% is due to events related to Des Plaines River backwater, with the balance (4%), due to intense local runoff caused flooding events. Assumption and computations are shown in Table III-4.

Costs Associated with Sanitary Sewer Backup,
Secondary Street Ponding

The flooding events along the main stems of Prairie and Farmers Creeks induce additional flooding problems previously described, namely:

- 1) increased surface ponding on streets due to decreased conveyance capacity of local drainage to the main stems channels, and
- 2) basement backup of sanitary sewage.

These effects are reported to be severe in the area based on interviews with residents.

Costs associated with these effects are difficult to quantify precisely. The sanitary sewer backup problem affects residents that may not be damaged by overbank flooding. It is estimated,

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Table III-3
 Flooding Damages to Structures and Contents

Flood Damage in 1990 Dollars Resulting From:

<u>Item</u>	<u>Des Plaines River Backwater Flooding</u>	<u>Intense Local Rainfall Flooding</u>	<u>Total Both Events</u>
Average Annual Damages	240400	624100	864500
Capitalized Damages	2671000	6934000	9605000
October 1986 Damage Estimate	8086000	---	---
August 1987 Damage Estimate	---	7098000	---

Lutheran General Reservoir. A flood control reservoir with a capacity of 64 acre feet is planned for the area south of Ballard on Lutheran General Hospital property as shown on Figure V-5. The facility would include a diversion structure, diversion channel, and a 15 cfs dewatering pump station designed to evacuate the reservoir in a 48 hour period. Based on preliminary analysis of soils conditions, a 3 foot compacted clay liner is anticipated to be required to mitigate seepage and subsidence impacts. The area of the reservoir is 5.5 acres and is planned for side slopes of 4:1. Water depths are shown on Figure V-5.

Similar to the function of the I-294 reservoir, the Lutheran General Reservoir will be held in reserve during moderate runoff events. Note on Figure V-5 that the normal flows are diverted around the reservoir to achieve this purpose.

Pre-final activities should include groundwater level monitoring (for seepage and subsidence) negotiations with Lutheran General Hospital.

Channel Improvements

Channel improvements are designed in conjunction with the reservoirs to convey the 100 year event with water surface elevations at approximately 1.0 feet below street surfaces. Maintenance of such levels will mitigate sanitary sewer basement backup problems and facilitate a positive outlet for local stormwater conveyance systems bringing water to the channels.

Channel improvements are extensive and site specific. The improvements are displayed on Exhibit V-1 by numerical code. Table V-1 presents the required improvements as keyed to Exhibit V-1.

In some areas where easements and construction access are restrictive, final decisions on improvements will be determined during pre-final design.

Pre-final design activities should include identification of property owners, route survey, assessment of easement requirements for construction and for operation/maintenance, and identification of potential utility interferences.

Operation Plan

Effective performance of the structural project will require an operation/maintenance plan with clearly defined responsibility assigned, coupled with adequate funding for operation, routine and preventative maintenance.

As specific operation/maintenance plan will be formulated in the pre-final design stage.

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I. Introduction

A. Overview of Program

Over the years the flow capacity of the Prairie - Farmers Creek system has been seriously eroded through the effects of inadequately designed modifications including undersized culverts, tortuous channel realignments, etc.. It is the intent of this report to address maintenance only, major structural corrections will be handled in the Flood Control Plan currently being prepared.

Prior to the implementation of major structural changes in the channel system a pre-project maintenance program was developed. The program described herein will restore the conveyance capacity to its design capacity and should provide some improvement to the flooding problem especially for the smaller events. In general, Farmers Creek has sufficient capacity, when clean, to convey an event with a recurrence interval of between 5 and 10 years. Prairie Creek, on the other hand, has several serious obstructions which limit its capacity to something less than a 5 year event. Implementation of the program described in this report is not the final solution to the flooding problems experienced, it is only an initial step to improving the system.

The maintenance program described represents bringing the creek system up to a minimum standard of in-channel flow capacity. This will be done through an extensive cleaning program including the removal of trees, brush and debris within the banks of the channel, inspecting and cleaning culverts and minor channel modifications.

B. Report Organization

The report consists of general recommendations followed by specific maintenance items identified for each governmental agency. These recommendations are keyed to photographs, a project map and property maps in the appendices.

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POTENTIAL ALTERNATE GRADING PLAN

G.H.M.
12/19/94
DEM/RJA

94-530

ALTERNATE
Grading
Plan
Overflow
58.0'

HISTORICAL
Overflow
58.2 ±

PROPOSED PARKING GARAGE

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WARNING TO GEWALT

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Consulting Engineers

3100 Dundee Road, Suite 404
Northbrook, IL 60062
708-272-7750
FAX: 708-272-9582

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OK as is.
issue permit
JD

December 19, 1994

Mr. James Jackson
Permit Section
METROPOLITAN WATER RECLAMATION DISTRICT
100 Erie Street
Chicago, Illinois 60611

Re: **MWRD Permit 94-530**
Lutheran General Hospital
North Campus

Dear Jim:

At your request, we have reviewed a number of different alternatives to accommodate your concerns and have the following to report:

Initial Request

Your office was concerned about the reduction in channel storage capacity between the 84 inch diameter discharge and the 60 inch diameter inlet within the southeastern corner of the Lutheran General North Campus. This was prompted by a flood condition which occurred in June of 1994.

At that point, you asked if we would consider constructing an overflow channel between the 84 inch diameter channel and the pond to the north, thereby allowing the excess discharge to fill the pond once the capacity of the 60 inch had been exceeded. The flood storage which was reduced in this area was quite minor, particularly as compared with the size of the contributing watershed, however, you were concerned none the less.

History

This channel was once an open channel flowing west from Greenwood across Lutheran General Hospital on about its current path and continuing west. Three major changes have occurred, changing its character:

1. The upstream channel was enclosed, reducing its storage volume and increasing its velocity. The recent LGH project was a minor continuation of that multi-year project.

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2. The downstream housing was constructed directly in the historic drainage path to the north. The structures are on the order of 2 to 3 feet below the Base Flood Elevation (BFE) and the reroute was in a small (60") CMP, with very limited capacity. Other downstream restricted sections were also constructed.
3. The upstream watershed has become increasingly impervious and, to my knowledge, LGH is the only significant site in the 275 acre watershed which provides storm-water detention.

Division of Water Resources Analysis

When we discussed it, I noted that we had worked with the Illinois Division of Water Resources on this watershed and that they had some good watershed data and had analyzed this area previously. I then spoke with Arlan Juhl of IDWR and he assigned Rick Gosch of his office to do the analysis of the potential channel interconnection between the two watersheds.

I have attached copies of the DWR responses of November 23rd and December 1, 1994, both of which note that we should not perform the interconnection. Their analysis shows that by holding the northern storage in reserve, they decrease the crest stage of the major storms and this is their goal.

On the basis of their analyses and recommendation, the Hospital is not interested in an overflow channel which would transmit flow at an elevation below that cresting over the roadway to the west.

Once overflow is reached however, the north pond is connected and available and our alternative grading plan does include a swale at 38.0 flowing north. Overflow along the course of natural drainage to the west is approximately 38.1.

Current Project

The floodplain storage on the North Campus has been increased significantly due to the Park Ridge detention requirements and the Hospitals' voluntary cooperation. North Campus storage has increased from 68.9 acre feet to 71.9 acre feet, although building and parking lot coverage has actually slightly decreased.

Suggested Alternative

Although the preservation of floodplain storage, by basin, is not within the jurisdiction of the MWRD, we appreciate and agree with your concern regarding this situation. For that reason, we have performed an analysis and prepared an alternative grading plan which may substantially return the 84 inch channel to its preconstruction condition. This will not have any significant impact on the flooding experience downstream since the storage area is so small. It is more a matter of perception than anything else.

FARMERS/PRAIRIE CREEK

STRATEGIC PLANNING STUDY

COOK COUNTY

ABSTRACT

Historically, structures in the Farmers/Prairie Creek watershed have suffered flood damages from two distinct sources: Des Plaines River backwater and flooding from storms that exceed the channel capacity of Farmers/Prairie Creek. Completion of the Rand Park Flood Control and Multi-Use Trail Project (Levee 50) will greatly reduce the risk of Des Plaines River backwater flooding along Farmers and Prairie Creek for floods up to the 100-year¹ frequency flood event. However, the Rand Park Flood Control and Multi-Use Trail Project does not reduce the risk of flood damages from flooding along Farmers and Prairie Creeks. Accordingly, this engineering study was conducted as part of the U.S. Army Corps of Engineers' Des Plaines River Phase 2 study to investigate the feasibility of flood damage reduction alternatives for Farmers and Prairie Creeks. This study incorporates operation of the Rand Park Flood Control Project (Levee 50), and is based on 2004 watershed characteristics, construction costs and property values.

Incorporation of the Rand Park Flood Control Project gate and pump station operation plan into the study means that flood control gates on Farmers Creek close when Des Plaines River Stages exceed elevation 624.0 (approximately a 1-year frequency flood elevation on the Des Plaines River). Gates remain closed and pump operations up to 250 cfs control water surface elevations on Farmers Creek as long as Des Plaines River flood elevations remain higher than flood elevations on Farmers Creek. Based on this operation plan, gates on Farmers Creek are closed (and pumps on) for the 1, 2, 5, 10, and 25-year frequency events and gates are open (and pumps off) for the 50, and 100-year frequency events on Farmers Creek. The Rand Park Pump Station Operation Plan is included in Appendix 3 of this report.

The estimated Farmers/Prairie Creek 100-year frequency¹ floodplain inundation area is illustrated on Exhibit 2. Appendix 3 provides a listing of the 100-year frequency Farmers/Prairie Creek flood elevations at cross section locations in the watershed.

¹An X-year event is defined as a 1/X probability of occurring within any given year.

As shown in Exhibit 1, the study area consists of portions of the city of Des Plaines, the city of Park Ridge, the village of Glenview, the village of Niles, and unincorporated Maine Township in Cook County. The study area is predominantly residential with some commercial and industrial development.

Flooding from Farmers and Prairie Creeks causes \$144,531 of total average annual flood damages. There are 96 structures in the 100-year frequency floodplain. The damages include \$120,442 in average annual structural and contents damages and \$24,089 in average annual indirect flood damages including average annual traffic damage estimates. These damage estimates do not include risk or uncertainty computations. Exhibit 4 identifies the distribution of flood damages in the watershed including: Lake Mary Anne Estates on Farmers Creek, Upper and Lower Farmers Creek, and Upper and Lower Prairie Creek.

The flood damage reduction alternatives developed and evaluated include:

STORAGE IMPROVEMENTS

- Alternative S1 - Dude Ranch Pond Expansion With Lake Mary Anne Pump Station
- Alternative S2 - Good Avenue Pond
- Alternative S3 - Lutheran General Hospital Pond
- Alternative S4 - Lutheran General Hospital Pond and High School Reservoir
- Alternative S5 - High School Reservoir
- Alternative S6 - Belleau Lake Expansion
- Alternative S7 - Lake Mary Anne Pump Station
- Alternative S8 - Belleau Lake Lowered
- Alternative S9 - Dude Ranch Pond With Lake Mary Anne Pump Station, Good Avenue Pond, Lutheran General Hospital Pond, High School Reservoir, and Belleau Lake Lowered
- Alternative S10 - Good Avenue Pond, Lutheran General Hospital Pond, High School Reservoir, and Belleau Lake Lowered
- Alternative S11 - Dude Ranch Pond With Lake Mary Anne Pump Station, Lutheran General Hospital Pond, High School Reservoir, and Belleau Lake Lowered
- Alternative S12 - Dude Ranch Pond Expansion

CONVEYANCE IMPROVEMENTS

- Alternative C1 - Upstream Dempster Storm Sewer Diversion To Tollway
- Alternative C2 - Downstream Dempster Storm Sewer Diversion To Tollway
- Alternative C3 - Dempster Storm Sewer Diversion To Potter Road
- Alternative C4 - Additional Dee Road Pipe

Alternative C5 - Pipe From Lutheran General Hospital Pond Along Ballard To
Potter Road

Alternative C6 - Replace Rancho Lane Culverts

Alternative C7 - Replace Rancho Lane Culverts and Additional Dee Road Pipe

Alternative C8 - Confluence to Belleau Lake Conveyance

OTHER IMPROVEMENTS

Alternative L1 - Parkview Lane Culvert

COMBINATION IMPROVEMENTS

Alternative D1 - Combine Alternatives C2, C6 and S11

Alternative D2 - Combine Alternatives C2 and S11

Alternative D3 - Combine Alternatives C6 and S11

Alternative D4 - Combine Alternatives C7 and S11

Alternative D5 - Combine Alternatives C2 and S8

Alternative D6 - Combine Alternatives C7 and S4

Alternative D7 - Combine Alternatives C4 and S11

Alternative D8 - Combine Alternatives C8 and S8

Alternative D9 - Combine Alternatives C7, C8 and S11

Alternative D10 - Combine Alternatives C6, C8 and S11

Alternative D11 - Combine Alternatives C6, C8, S2, S5 and S8

Alternative D12 - Prairie Creek Channel Improvement and Confluence Reservoir

Alternative D13 - Prairie Creek Culvert/Swale and Confluence Reservoir

Non-structural mitigation measures including such options as acquisition and demolition of flood prone structures, relocation of flood prone structures, elevating flood prone structures, flood insurance, and/or floodproofing of flood prone structures are also considered as a potential flood damage reduction alternative in the report.

Based on the history of recurring Farmers and Prairie Creek flooding and flood damages in the watershed, it is anticipated that substantial flooding and flood damages will continue to occur in Des Plaines, Park Ridge and unincorporated Maine Township unless measures are implemented to prevent such damages. Exhibit 2 illustrates how the Farmers and Prairie Creek floodplains impact each of these communities.

Table 33 provides a break down of estimated project and construction costs as well as what portion of each alternative's construction costs could be covered by the capitalized value of the flood damage reduction benefits potentially produced by that alternative. The capitalized value of the flood damage reduction benefits exceed the costs to

construct addition flood water storage capacity at the Dude Ranch (alternative S1 and S12), Good Avenue Pond (Alternative S2), Lutheran General Hospital Pond (Alternative S3), and at Belleau Lake (Alternative S8). Combined storage alternatives (Alternatives S9 and S11) and some of the combined storage and conveyance alternatives (Alternatives D3, D4 and D7), have capitalized flood damage reduction benefits that exceed 75% of the costs to construct these improvements.

To reduce the risk of flood damages in the watershed, Cook County MWRDGC and/or the city of Des Plaines and/or the city of Park Ridge should:

1. Work with the Illinois Department of Natural Resources, Office of Water Resources to further plan and implement additional flood storage capacity modifications at Belleau Lake, Dude Ranch, Good Avenue Pond, Lutheran General Hospital pond, or a combinations of these sites where the capitalized value of the flood damage reduction benefits exceed 75% the costs to construct addition flood water storage capacity. Such work would be completed in accordance with the terms of a local project sponsorship agreement outlined in this report;
2. Work with the Illinois Department of Natural Resources, Office of Water Resources to further plan and implement combined storage and conveyance alternatives at Rancho Lane and/or Dee Road where the capitalized value of the flood damage reduction benefits exceed 75% the costs to construct the improvements. Such work would be completed in accordance with the terms of a local project sponsorship agreement outlined in this report;
3. Install a flap gate on the downstream (east) end of the 15-inch culvert under Parkview Lane near Busse Highway, and consider raising portions of Parkview Lane and Busse Highway to provide additional freeboard protection against Farmers Creek flooding;
4. Encourage the purchase of National Flood Insurance and enforce local floodplain ordinances in accordance with National Flood Insurance Program guidelines to prevent future floodway encroachments (including temporary storage of equipment and materials), diminish future flood damage potential, and minimize floodplain development in the watershed;
5. Actively remove debris and logs from the Farmers and Prairie Creek to minimize the potential for temporary flood profile increases due to log and debris jams in the channel.

ALTERNATIVE S3 - LUTHERAN GENERAL HOSPITAL POND

Normal water elevations in Lutheran General Hospital Pond, located on Prairie Creek between Dempster Avenue and Ballard Road east of Potter Road, would be lowered 4.4 feet to elevation 627 via a 5cfs pump station to increase flood storage. Normal Prairie Creek flows would bypass the pond via a siphon pipe that would be constructed under the existing pond. Flows in excess of a 2-year frequency event (30cfs), would exceed the capacity of the siphon pipe and flow over a weir and into the pond. Flows tributary to the pond from the north side of Ballard Road would be diverted in a pipe to a junction chamber at the upstream side of the siphon bypass pipe noted above.

Flood stages in the pond above elevation 631.3 would be able to gravity flow out of the pond. Flood water remaining in the pond below elevation 631.3 would be pumped out of the reservoir in about one day using a 5cfs pump station. This alternative would increase the flood storage at the site by approximately 10 acre-feet.

Added flood storage on Prairie Creek at the Lutheran General Hospital Pond created by this alternative would provide \$22,113 in average annual flood damage reduction benefits in the watershed representing a 15% reduction in average annual flood damages. Sixty percent of those flood damage reduction benefits would occur along Lower Prairie Creek between the Lutheran General Hospital Pond and Farmers Creek. This alternative would benefit all 48 floodprone structures along Lower Prairie Creek. All 43 floodprone structures along Farmers Creek would also benefit from this Prairie Creek storage alternative as average annual flood damages drop 15% along Farmers Creek. This alternative would eliminate flood damages for 5 structures currently located in the 100-year frequency floodplain.

Project costs of this alternative are estimated at \$565,574 as detailed on Table 11. The benefit to cost ratio (B/C ratio) for this alternative is 0.63.

1/13/2012

Tza096159-5AC-Exhibts-2011-11-14
00757-00389

Table 11: Alternative S3 - Lutheran General Hospital Pond Cost Estimate

Farmer/Pralrie Creek								
Alternative S3 Cost Estimate Aug 04								
Line				Unit	Total			
Item	Item	Quantity	Unit	Price	Cost			
Siphon Pipe								
54200451	RCCP Pipe Culvert 36"	375	FT	\$160	\$60,000			
Pump								
FR39051	Pumps	2	Each	\$21,910	\$43,820			
FR39057	Pump House w/ Access	1	Each	\$77,880	\$77,880			
Utilities								
82400800	Electric Line Relocation	0	FT	\$2	\$0			
55021800	Sewer Relocation	0	FT	\$25	\$0			
250*****	Seeding/Mulching/Fertilizing	3	Acres	\$2,000	\$6,000			
Contingencies (15%) and Mobilization (6%) of subtotal					\$39,417			
Construction Cost					\$227,117			
Engineering (20%) and Construction Supervision (7.5%)					\$62,457			
Right-of-Way Cost*		276000	SQ FT	\$1	\$276,000			
Total Project Cost					\$565,574			
Alternative Average Annual Cost (5.375% For 50 Years)					\$32,792			
O&M (1%)					\$2,271			
Alternative Average Annual Cost and O&M					\$35,064			
Baseline Average Annual Damages (Direct and Indirect)					\$144,531			
Alternative Average Annual Damages (Direct and Indirect)					\$122,418			
Alternative Average Annual Benefits					\$22,113			
Benefit Cost Ratio					0.63			
Flood Frequency (Years)		1	2	5	10	25	50	100
Existing Damaged Structures		0	1	2	11	38	64	96
Alternative Damaged Structures		0	1	2	9	26	59	91
Structures Removed from Floodplain		0	0	0	2	12	5	5

* Estimated cost of securing a permanent flood easement.

ALTERNATIVE S4 - LUTHERAN GENERAL HOSPITAL POND AND HIGH SCHOOL RESERVOIR

This alternative combines the Lutheran General Hospital Pond Alternative, S3, with an additional 50 acre-feet flood storage provided on the Maine Township East High School campus immediately south of the Lutheran General Hospital Pond and Dempster Avenue. Existing soccer fields located on the southeast corner of the Maine Township East High School campus, would be lowered up to 7.5 feet and the sides graded at a slope of 3:1 to create a new reservoir. These athletic fields currently provide some detention for local storm water runoff. Three soccer fields would still fit in the bottom of the reservoir. A ten foot service road around the perimeter of the area would provide maintenance access to the reservoir. A 60-inch diameter culvert would be installed to connect the new gravity in and gravity out High School Reservoir to an existing 60-inch Dempster Avenue storm sewer, tributary to Prairie Creek, on the Lutheran General Hospital property, north of Dempster Avenue. The existing Dempster Avenue storm sewer system would be restricted to a 24-inch diameter orifice to force excess storm water in the sewer to back flow into the new 60-inch diameter culvert and flow to the reservoir on the high school property. In this alternative, the High School Reservoir is not only intended to reduce peak flows contributed by the Dempster Avenue storm sewer, but to provide additional storage capacity for Lutheran General Pond when flood stages in that pond exceed elevation 636.0 by accounting for overland flow that would back up through the existing outlet pipe at the water tower and back through the junction box into the storage reservoir.

Added flood storage on Prairie Creek at the Lutheran General Hospital Pond and on the high school property created by this alternative would provide \$85,063 in average annual flood damage reduction benefits, representing a 59% reduction in average annual flood damages. Sixty percent of those flood damage reduction benefits would occur along Lower Prairie Creek between the Lutheran General Hospital Pond and Farmers Creek. This alternative would benefit all 48 floodprone structures along Lower Prairie Creek by reducing average annual flood damages 84% overall in that reach. All 43 floodprone structures along Farmers Creek would also benefit from this Prairie Creek storage alternative as average annual flood damages drop 63% along Lower Farmers Creek and 65% along Upper Farmers Creek. This alternative would eliminate flood damages for 37 structures currently located in the 100-year frequency floodplain.

Project costs of this alternative are estimated at \$2,831,063 as detailed on Table 12. The benefit to cost ratio (B/C ratio) for this alternative is 0.47.

1/13/2012

Tza096159-5AC-Exhibts-2011-11-14
00757-00392Table 12: Alternative S4 - Lutheran General Hospital and High School
Reservoir Cost Estimate

Farmer/Pralrie Creek							
Alternative S4 Cost Estimate Aug 04							
Line				Unit	Total		
Item	Item	Quantity	Unit	Price	Cost		
Alt. S3	Lutheran General Project	1	Each	\$227,117	\$227,117		
Alt. S5	High School Project	1	Each	\$1,472,885	\$1,472,885		
	Construction Cost				\$1,700,002		
	Engineering (20%) and Construction Supervision (7.5%)				\$467,500		
Alt. S3	Right-of-Way Cost LGH*	276000	SQ FT	\$1	\$276,000		
Alt. S5	Right-of-Way Cost HS*	387561	SQ FT	\$1	\$387,561		
	Total Project Cost				\$2,831,063		
	Alternative Average Annual Cost (5.375% For 50 Years)				\$164,147		
	O&M (1%)				\$17,000		
	Alternative Average Annual Cost and O&M				\$181,147		
	Baseline Average Annual Damages (Direct and Indirect)				\$144,531		
	Alternative Average Annual Damages (Direct and Indirect)				\$59,468		
	Alternative Average Annual Benefits				\$85,063		
	Benefit Cost Ratio				0.47		
Frequency	1	2	5	10	25	50	100
Existing Damaged Structures	0	1	2	11	38	64	96
Alternative Damaged Structures	0	1	1	3	16	29	59
Structures Removed from Floodplain	0	0	1	8	22	35	37

* Estimated cost of securing a permanent flood easement.

ALTERNATIVE S5 - HIGH SCHOOL RESERVOIR

This alternative provides an additional 50 acre-feet flood storage provided on the Maine Township East High School campus immediately south of the Lutheran General Hospital Pond and Dempster Avenue. Existing soccer fields located on the southeast corner of the Maine Township East High School campus, would be lowered up to 7.5 feet and the sides graded at a slope of 3:1 to create a new reservoir. These athletic fields currently provide some detention for local storm water runoff. Three soccer fields would still fit in the bottom of the reservoir. A ten foot service road around the perimeter of the area would provide maintenance access to the reservoir. A 60-inch diameter culvert would be installed to connect the new, gravity in and gravity out, High School Reservoir to an existing 60-inch Dempster Avenue storm sewer, tributary to Prairie Creek, on the Lutheran General Hospital property north of Dempster Avenue. The existing Dempster Avenue storm sewer system would be restricted to a 24-inch diameter orifice to force excess storm water in the sewer to back flow into the new 60-inch diameter culvert and flow to the reservoir on the high school property. This Alternative is intended to greatly reduce peak flows contributed by the Dempster Avenue storm sewer and would control 15% of the Prairie Creek watershed.

Added flood storage on the high school property for the Dempster Avenue storm Sewer system tributary to Prairie Creek created by this alternative, would provide \$71,666 in average annual flood damage reduction benefits in the watershed representing a 50% reduction in average annual flood damages. Sixty-seven percent of those flood damage reduction benefits would occur along Lower Prairie Creek between the Lutheran General Hospital Pond and Farmers Creek. This alternative would benefit all 48 floodprone structures along Lower Prairie Creek by reducing average annual flood damages 80% overall in that reach. All 43 floodprone structures along Farmers Creek would also benefit from this Prairie Creek storage alternative as average annual flood damages drop 43% along Lower Farmers Creek and 43% along Upper Farmers Creek. This alternative would eliminate flood damages for 37 structures currently located in the 100-year frequency floodplain.

Project costs of this alternative are estimated at \$2,265,489 as detailed on Table 13. The benefit to cost ratio (B/C ratio) for this alternative is 0.49.

Table 13: Alternative S5 - High School Reservoir Cost Estimate

Farmer/Prairie Creek							
Alternative S5 Cost Estimate Aug 04							
Line				Unit	Total		
Item	Item	Quantity	Unit	Price	Cost		
Culvert							
54213723	Precast Reinf. Conc. End	1	Each	\$3,000	\$3,000		
542A0265	Pipe Cul. Class A 1 60"	800	FT	\$200	\$160,000		
60248000	Junction Chamber N1	1	Each	\$12,000	\$12,000		
60221100	Manhole	1	Each	\$2,200	\$2,200		
20800150	Trench Backfill (Road)	72	CY	\$28	\$2,022		
44100100	Pavement Replacement	72	SQ YD	\$75	\$5,417		
250*****	Seeding/Mulching/Fertilizing	0.17	Acres	\$2,000	\$344		
Restrictor							
542D0223	18" Concrete pipe	10	FT	\$24	\$240		
60218400	Manhole	1	Each	\$1,513	\$1,513		
Storage Excavation							
250*****	Seeding/Mulching/Fertilizing	9.00	Acres	\$2,000	\$18,000		
20200100	Excavation	91057	CY	\$11	\$992,524		
Storm Sewer Control							
Design	18" Tide Flex Valves	4	Each	\$5,000	\$20,000		
Utilities							
82400800	Electric Line Relocation	0	FT	\$2	\$0		
55021800	Sewer Relocation	0	FT	\$25	\$0		
	Contingencies (15%) and Mobilization (6%) of subtotal				\$255,625		
	Construction Cost				\$1,472,885		
	Engineering (20%) and Construction Supervision (7.5%)				\$405,043		
	Right-of-Way Cost*	387561	SQ FT	\$1.00	\$387,561		
	Total Project Cost				\$2,265,489		
	Alternative Average Annual Cost (5.375% For 50 Years)				\$131,354		
	O&M (1%)				\$14,729		
	Alternative Average Annual Cost and O&M				\$146,083		
	Baseline Average Annual Damages (Direct and Indirect)				\$144,531		
	Alternative Average Annual Damages (Direct and Indirect)				\$72,865		
	Alternative Average Annual Benefits				\$71,666		
	Benefit Cost Ratio				0.49		
Frequency	1	2	5	10	25	50	100
Existing Damaged Structures	0	1	2	11	38	64	96
Alternative Damaged Structures	0	1	1	3	17	41	59
Structures Removed from Floodplain	0	0	1	8	21	23	37

* Estimated cost of securing a permanent flood easement.

CONCLUSIONS

Farmers and Prairie Creeks flooding causes \$144,531 of total average annual flood damages. There are 96 structures located in the 100-year frequency floodplain. Based on the history of recurring Farmers and Prairie Creek flooding and flood damages in the watershed, it is anticipated that substantial flooding and flood damages will continue to occur in Des Plaines, Park Ridge and unincorporated Maine Township unless measures are implemented to prevent such damages.

PARKVIEW LANE (Alternative L1)

Based on the topography of Busse Highway west of Farmers Creek and survey information of the Parkview Lane culvert near Busse Highway, eleven structures are subject to flood damage risk at the 100-year frequency flood event due to the potential for Farmers Creek floodwater to backflow through a small culvert under Parkview Lane near Busse Highway. A flap gate placed on the downstream (east) end of this culvert would greatly reduce the flood damage risk for this area. Since estimated project construction costs (\$7,800) are less than allowable state bond funding limits (\$25,000), state participation in the implementation of this alternative is not possible.

STORAGE

Providing additional flood water storage capacity in the watershed adjacent to Farmers or Prairie Creeks would yield flood damage reduction benefits downstream of the flood storage site. This study evaluated additional flood water storage benefits at the Dude Ranch and Good Avenue Pond on Upper Farmers Creek, at Lutheran General Hospital Pond and on Maine Township East High School property in the Prairie Creek Watershed, and at Belleau Lake along Lower Farmers Creek.

Expanding the flood storage capacity of any one of the existing small ponds in the watershed (Dude Ranch Pond, Good Avenue Pond, Lutheran General Hospital Pond) would reduce flood damages below that pond by 10 to 15% (see Table 8). Creating additional flood storage capacity on Maine Township East High School property in the Prairie Creek Watershed (Alternative S5) would reduce flood damages in the watershed by almost 50% but requires substantial excavation at significant cost. Expanding the flood storage capacity of all of the existing small ponds in the watershed, plus creating additional flood storage capacity on Maine Township East High School property (Alternative S9) would collectively reduce flood damages in the watershed by a maximum of 84%.

costs to construct these improvements. These alternatives may warrant further consideration for jointly (Federal, state and local) funded construction. Alternatives where the capitalized value of the flood damage reduction benefits do not exceed 75% of the costs to construct the improvements may not warrant further consideration for jointly funded construction.

To reduce the risk of flood damages in the watershed, Cook County MWRDGC and/or the city of Des Plaines and/or the city of Park Ridge should:

1. Work with the Illinois Department of Natural Resources, Office of Water Resources to further plan and implement additional flood storage capacity modifications at Belleau Lake, Dude Ranch, Good Avenue Pond, Lutheran General Hospital pond, or a combinations of these sites where the capitalized value of the flood damage reduction benefits exceed 75% the costs to construct addition flood water storage capacity. Such work would be completed in accordance with the terms of a local project sponsorship agreement outlined in this report;
2. Work with the Illinois Department of Natural Resources, Office of Water Resources to further plan and implement combined storage and conveyance alternatives at Rancho Lane and/or Dee Road where the capitalized value of the flood damage reduction benefits exceed 75% the costs to construct the improvements. Such work would be completed in accordance with the terms of a local project sponsorship agreement outlined in this report;
3. Install a flap gate on the downstream (east) end of the 15-inch culvert under Parkview Lane near Busse Highway, and consider raising portions of Parkview Lane and Busse Highway to provide additional freeboard protection against Farmers Creek flooding;
4. Encourage the purchase of National Flood Insurance and enforce local floodplain ordinances in accordance with National Flood Insurance Program guidelines to prevent future floodway encroachments (including temporary storage of equipment and materials), diminish future flood damage potential, and minimize floodplain development in the watershed;

5. Actively remove debris and logs from the Farmers and Prairie Creek to minimize the potential for temporary flood profile increases due to log and debris jams in the channel.

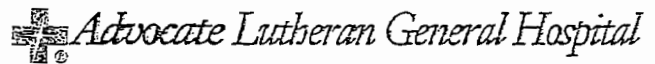
PROJECT SPONSORSHIP

Prior to implementation of a recommended alternative, a local sponsor must agree to participate in the project with the Department of Natural Resources, Office of Water Resources. Cook County MWRDGC and/or the city of Des Plaines and/or the city of Park Ridge could be such a project sponsor. A project sponsorship agreement could be prepared which specifies the duties of each project participant. As a local project sponsor, the local government(s) would agree to obtain all local permits necessary to construct the project, acquire all land rights required for the construction, operation and maintenance of the project, pay for any utility relocations required by the project, operate and maintain the project in a manner determined by the Office of Water Resources, pay any construction costs in excess of those supported by the Illinois Department of Natural Resources and maintain eligibility in the National Flood Insurance Program.

1/13/2012

P416

1775 Dempster Street
Park Ridge, Illinois 60068-1174
Telephone 847.723.2210



July 3, 2009

Phillip G. Bazzo
Macuga, Liddle and Dubin
975 E. Jefferson Ave.
Detroit, MI 48207
Re: Case NO. 09 CH 6159 HON. SOPHIA HALL

Mr. Bazzo:

The South Garage located south of Dempster Street and east of Luther Lane did experience some flooding September 11 – 14, 2008. Two work orders from Martin Peterson Company, Inc. describe the work completed.

1. The floor drains were rodded on September 8, 2008
2. The floor drains were rodded and the sediment basins were cleaned on September 12, 2008.

There are no records of flood damage to cars during this time frame.

The company that did the design, engineering and/or supervision of stormwater drainage systems for Advocate Lutheran General Hospital is Gewalt Hamilton Associates, Inc.

Gewalt Hamilton Associates, Inc.
Consulting Engineers
850 Forest Edge Drive, Suite 5
Gurnee, IL 60031
Phone: 847-478-9700
Fax: 847-478-9701

Jim Lucas, Coordinator, Auto Services/Grounds Maintenance, Advocate Lutheran General Hospital is the person(s) responsible for the operations of the retention basin and storm sewers on the Park Ridge campus.

No maintenance records related to the retention pond exist.

Sincerely,

A handwritten signature in black ink, appearing to read "Ode Keil", written over a horizontal line.

Ode Keil
Director, Facility Operations, Life and Patient Safety
Advocate Lutheran General Hospital

TZAKIS09-6159-5AC
EXH#20: ADVOCATE
NO-FLOOD STATEMENT

RA185 of 218

91700-75700

C 668

1/13/2012

TZAKIS09-6159-5AC
EXH#21: 1960 ROBIN
NGHBRHD(RN)PLAT PLAN

WEST LINE OF SOUTHEAST 1/4 OF SECTION 15 - 4-1-12

EAST LINE OF TRACT CONVEYED BY BARLEY RUKLEMAN TO CHAS. SHUKRECHT BY WARRANTY DEED DATED JANUARY 31, 1902 AND RECORDED FEBRUARY 3, 1902 AS DEC. 18 3202683 AND THE WEST LINE OF TRACT CONVEYED BY BARLEY RUKLEMAN TO WM. EUREL BY WARRANTY DEED DATED APRIL 1, 1901 AND RECORDED APRIL 1, 1901 AS DEC. 18 3081129

NOT INCLUDED
IN THIS
SUBDIVISION

BOBBI

DRIVE

ROBIN

LANE

RA186 of 218

MPSTER

595.24

669

RA187 of 218

ROBIN

NOT INCLUDED
IN THIS
SUBDIVISION

DRIVEN

BOBBI

ROBIN

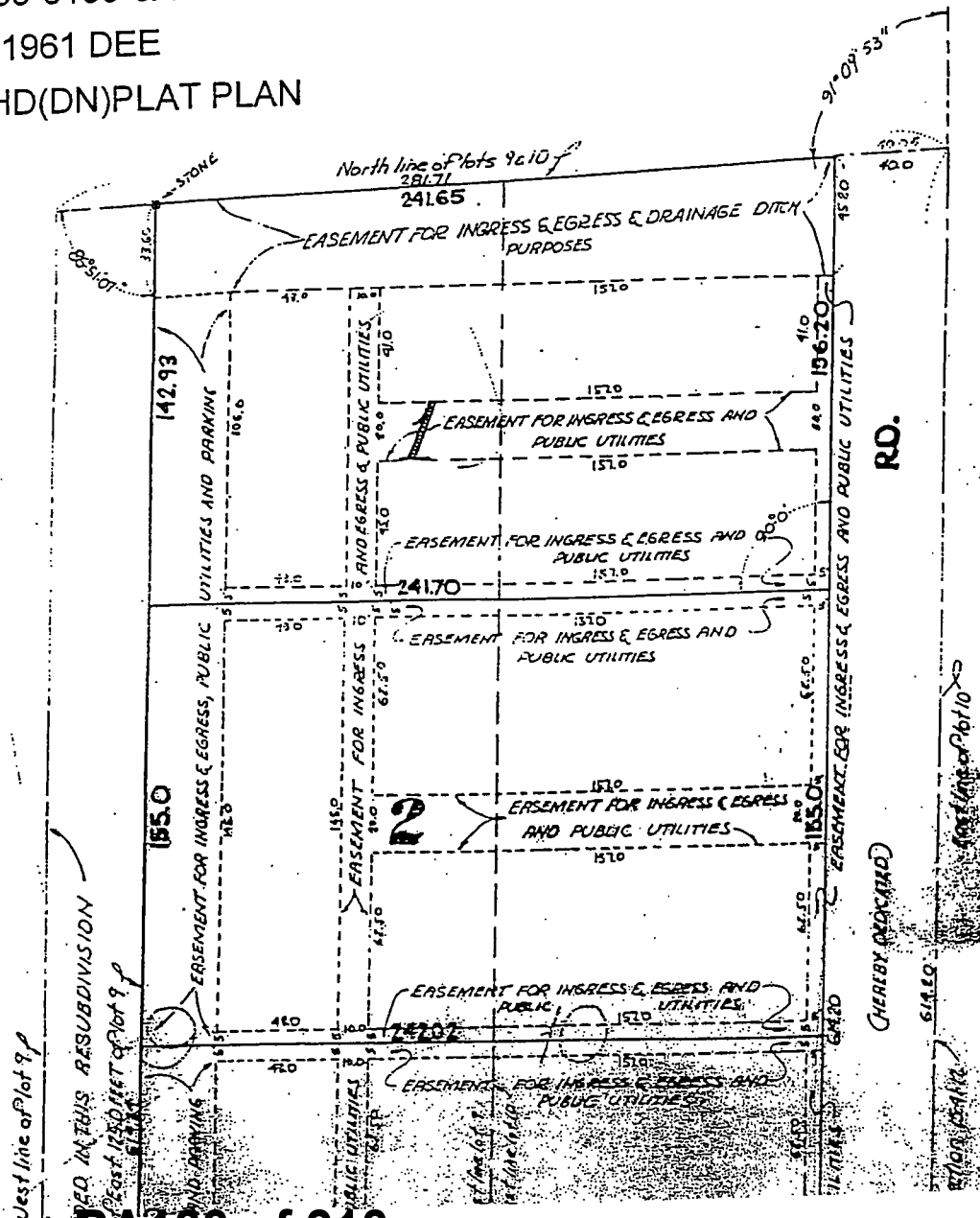
C 6702

C 6702

FIRST ADDITION TO DEMPSTER GARDEN HOMES ~ SUBDIVISION ~

BEING THE RESUBDIVISION OF THE EAST 125.0 FEET OF LOT 9, AND ALL OF LOT 10 IN GOETTS-
THE'S SUBDIVISION OF PART OF THE SOUTH HALF OF SECTION 15, TOWNSHIP 41 NORTH,
RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

TZAKIS09-6159-5AC
EXH#22:1961 DEE
NGHBRHD(DN)PLAT PLAN

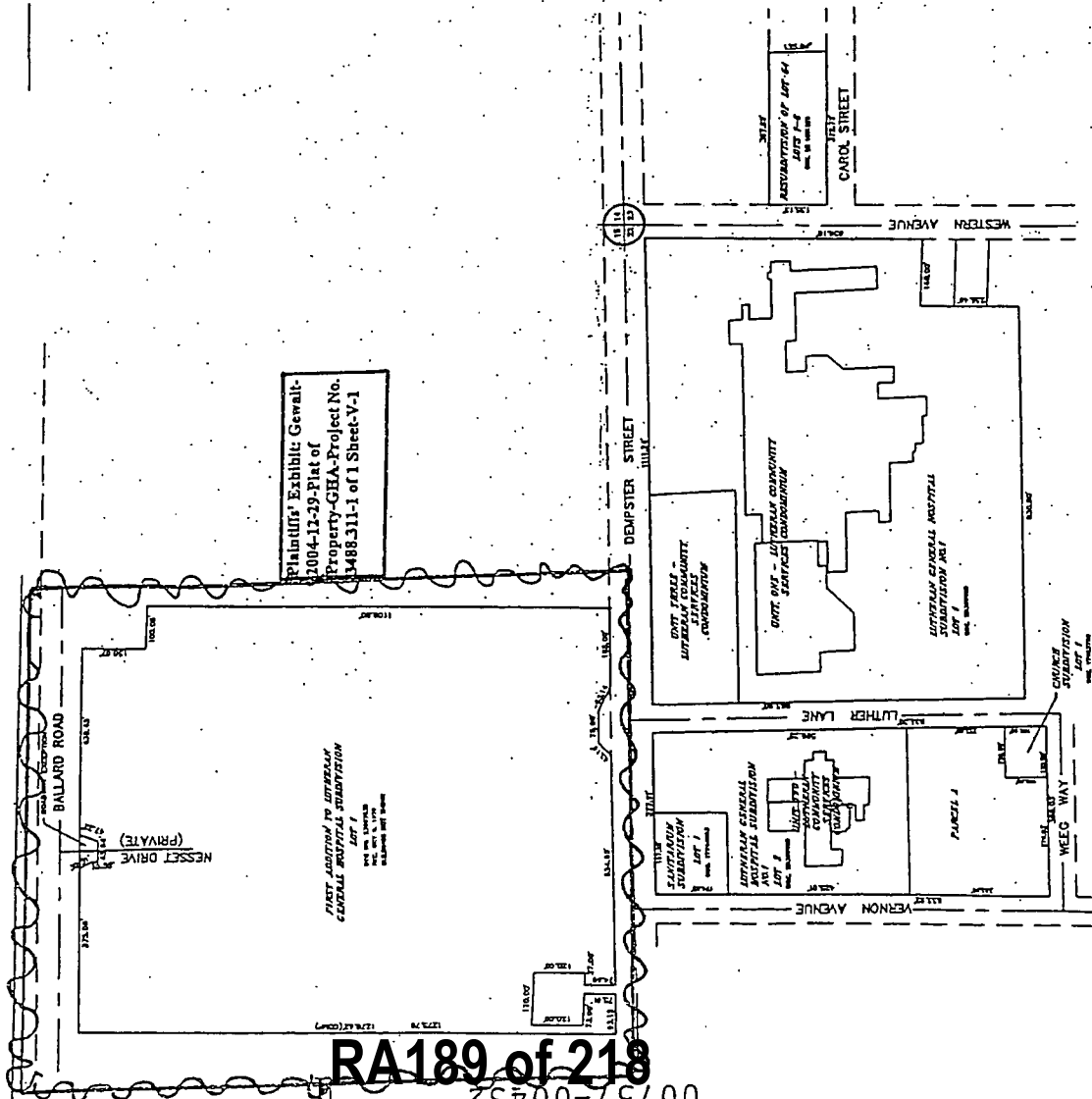


RA188 of 218

PLAT OF PROPERTY
OF

[illegible][illegible]

CONTAINS 11.75 G/100G

[illegible][illegible]

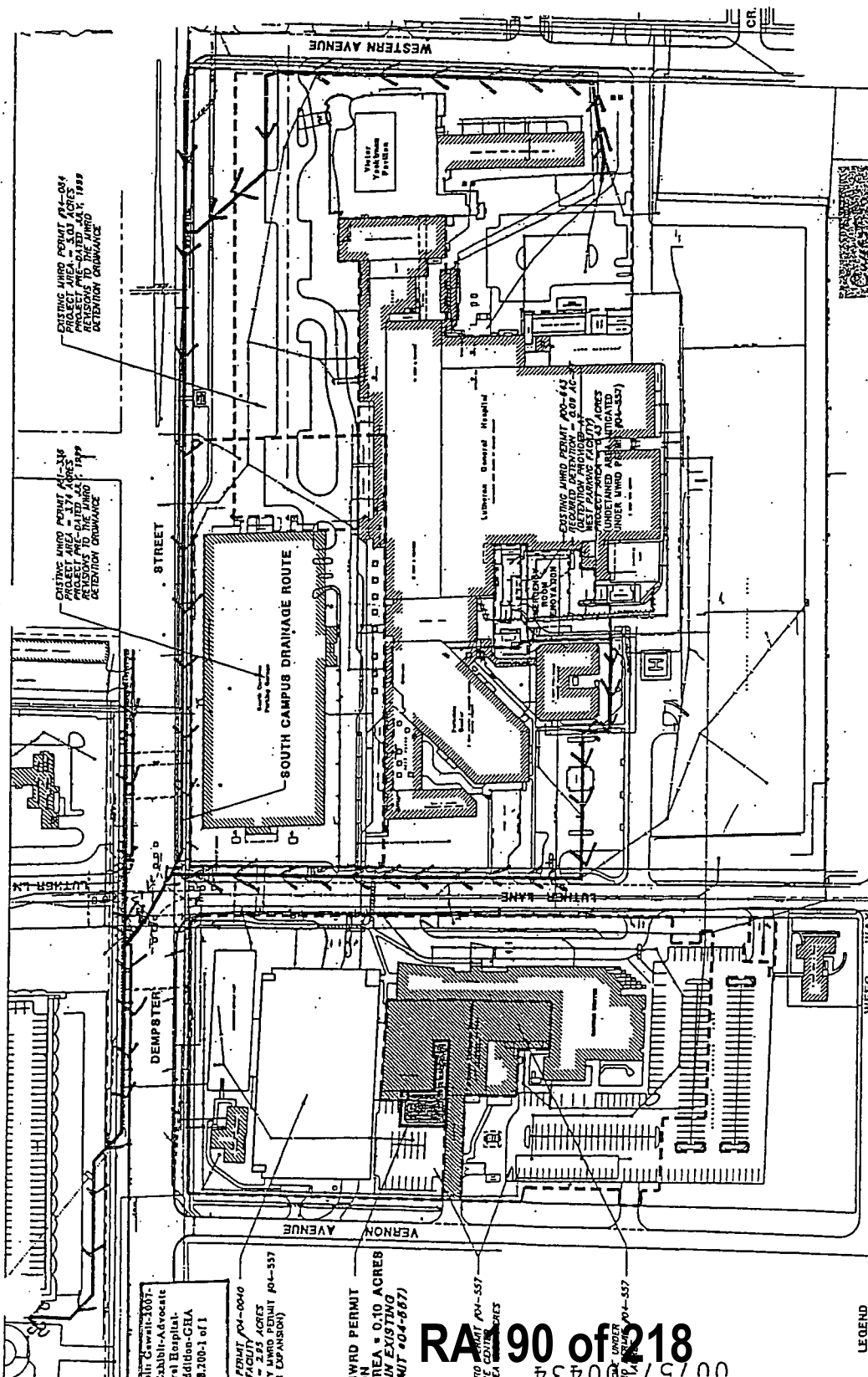
Plaintiffs' Exhibit: Gewalt-
2004-12-29-Plat of
Property-GHA-Project No.
3488.311-1 of 1 Sheet-V-1

NOISE/ACQUISITION TYPING INSTRUMENTS
INVESTIGATION OF NOISE/ACQUISITION INSTRUMENTS

PLAT OF PROPERTY
LUTHERAN GENERAL HOSPITAL
ADVOCATE HEALTH CARE SERVICES
PARK RIDGE, ILLINOIS

**THE WALT HAMILTON
CO. ASSOCIATES, INC.**
Over 40 Years Experience

Tzakis5thAmCompExhibits1-32
024



<div>EWALT HAMILTON ASSOCIATES, INC. Geographic Information Systems 10000 N. 10th St., Suite 100, Lincoln, NE 68504 Tel: 402/441-1111 Fax: 402/441-1112</div>		<div>PROJECT INFORMATION</div> <div>PROJECT NO. 04-034 DATE 11-11-11 SCALE 1" = 80'</div>		<div>MWRD EXHIBIT</div> <div>ADVOCATE LUTHERAN GENERAL HOSPITAL TOMOTHERAPY ADDITION PARK RIDGE, ILLINOIS</div>		<div>LEGEND</div> <div>--- BOUNDARY - - - PERMIT BOUNDARY /// MITIGATION ZONE</div>		<div>PROJECT LOCATION</div> <div>PROJECT NO. 04-034 DATE 11-11-11 SCALE 1" = 80'</div>		<div>PROJECT LOCATION</div> <div>PROJECT NO. 04-034 DATE 11-11-11 SCALE 1" = 80'</div>	
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TZAKIS09-6159-5AC
EXH#27: 2007-04-18
GEWALT PLAN

Gewalt-2007-04-18-MWRD
Exhibit-Advocate Lutheran
General Hospital-Tomography
Addition-GHA Project No.
3488.200-Sheet 1 of 1 Sheet-V-5AC

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DENNIS TZAKIS, ZENON GIL,)
CATHY PONCE, ZAIA GILIANA, JULIA)
CABRALES, and JUAN SOLIS, ON BEHALF)
OF THEMSELVES AND ALL OTHER)
PERSONS SIMILARLY SITUATED, A)
Proposed Class Action,)

Plaintiffs,

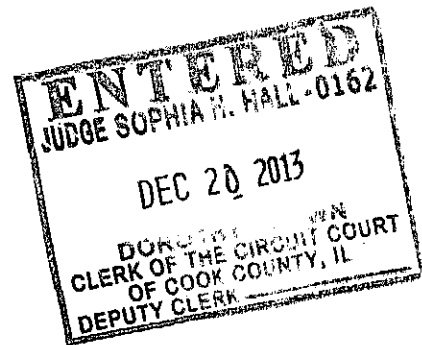
v.

BERGER EXCAVATING CONTRACTORS,)
INC., ADOVCATE HEALTH AND)
HOSPITALS CORPORATION D/B/A/)
ADVOCATE LUTHERAN GENERAL)
HOSPITAL, COOK COUNTY, GEWALT)
HAMILTON ASSOCIATES, INC., VILLAGE)
OF GLENVIEW, MAINE TOWNSHIP,)
METROPOLITAN WATER RECLAMATION)
DISTRICT OF GREATER CHICAGO,)
and CITY OF PARK RIDGE,)

Defendants.

Case No. 09 CH 6159
(Consolidated with 10 CH 38809,
11 CH 29586, 13 CH 10423)

Hon. Sophia H. Hall



DECISION

This case comes on before the court on Defendant Advocate's § 2-615 Motion to Dismiss Plaintiffs' Amended Fifth Amended Class Action Complaint.

Plaintiffs in this case seek to represent a putative class of residents who are referred to in their Amended Fifth Amended Class Action Complaint (A5AC) as the "Robin Court-Dee Road Community Area" ("Robin Dee"). That area is located in the Township of Maine and the City of Park Ridge, Illinois. Plaintiffs, generally, allege that their homes are affected by stormwater and sewage overflows from the "Prairie Creek Stormwater System" (the PCSS). In particular, plaintiffs seek relief in this suit from allegedly significant invasive flooding to their homes in September 2008.

A § 2-615 motion tests the legal sufficiency of a complaint on its face. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). When ruling on such a motion, a court accepts as true all well-pleaded facts, as well as any reasonable inferences that may arise from those facts. However, a court cannot accept as true conclusions unsupported by well-pled facts. *Pooh-Bah Enterprises, Inc. v.*

County of Cook, 232 Ill. 2d 463, 473 (2009). The court views the allegations in the light most favorable to the plaintiff. *Elson v. State Farm Fire & Cas. Co.*, 295 Ill. App. 3d 1, 5 (1st Dist. 1998).

Advocate seeks to dismiss all counts against it: Counts 1, 7-8, and 10-11. This Court grants Advocate's § 2-615 motion in part and denies the motion in part. The Court grants Advocate's motion to dismiss Counts 10 and 11. The Court denies Advocate's motion to dismiss Counts 1, 7, and 8.

I

Allegations in the A5AC

A.

Background and Components of the PCSS

According to the A5AC, the PCSS is a man-made, "stormwater system of public improvements." The PCSS structures alleged in the A5AC span across the towns of Park Ridge, Maine Township, and Glenview. Defendant Metropolitan Water Reclamation District of Greater Chicago ("District") is alleged to own and have control over the entire PCSS. Alternately, other defendants are variously alleged to own and control certain parts of the PCSS. (*See, e.g.*, A5AC ¶¶ 95, 354, 363, 388, 404, 504.) Plaintiffs allege that the PCSS has been developed over decades by the public entity defendants, and partly in coordination with the private defendants. Prior to 1960, there existed, and still exists, a "Main Drain" within the PCSS, which "ultimately receive[s] all Prairie Creek Watershed Stormwater."

Around 1960, plaintiffs allege that defendant Park Ridge and former defendant Cook County approved a "Robin Neighborhood Plat Plan" from the developer of the Robin Neighborhood. Plaintiffs allege that the Plat Plan granted "Drainage Easements" to defendants the District, Park Ridge, Maine Township, Glenview, and/or the County. (¶ 66.3.) Plaintiffs allege that, pursuant to those easements, the following structures were approved that now exist within the PCSS: (1) the "undersized 60" Howard Court Culvert," (2) the 120" Robin Court Culvert, less than 100 yards upstream of the Howard Court Culvert, (3) the 60" Robin Alley Culverts, less than 200 yards upstream of the Howard Court Culvert, (4) the Robin Neighborhood Main Drain, which "flows through the Robin Court Culvert but bottlenecks at the Howard Court Culvert," (5) the 60" Robin Alley Stormwater Sewer, "now connected to the Dempster Basin, transporting stormwater from the Dempster Basin to the Robin Neighborhood Main Drain," and (6) other "stormwater sewers tributary to the Main Drain."

Plaintiffs further allege that, around 1961, Park Ridge and the County approved a similar Plat Plan for the Dee Neighborhood. Again, "Drainage Easements" were granted to the District,

Park Ridge, Maine Township, Glenview, and/or the County. The Plan resulted in construction of what plaintiffs characterize as the “undersized 60” Dee Neighborhood Stormwater Pipe conveying the Dee Neighborhood Subsegment of the Robin-Dee Community Segment of the Main Drain” In addition, “tributary stormwater sewers” to the Main Drain were constructed.

Plaintiffs, later in the A5AC, allege that all of the above-named structures are owned, operated, and maintained by the District, Maine Township, and the County. In addition, plaintiffs allege that those defendants own and control these additional components of the PCSS: (1) the “flow-restricting right-angle Briar County Elbow within the Briar Neighborhood Subsegment,” and (2) the Rancho Lane Subsegment with its “undersized Rancho Lane Culverts.”

At some time before 1987, Park Ridge constructed the “North Ballard Storm Sewers,” which are north of Advocate’s property. Those flowed to the Main Drain. Park Ridge also constructed the “North Ballard Storm Drain,” which drains into the Main Drain.

Plaintiffs allege that Glenview owned and maintained sanitary sewers servicing the Robin-Dee Community area.

B.
Activities of Advocate

Sometime before 1976, defendant Advocate Lutheran General Hospital (“Advocate”) acquired what plaintiffs refer to as Advocate’s “North Development” property. Plaintiffs allege that the Robin-Dee Community is downstream, generally at lower elevations and servient to Advocate’s property. (¶ 148.)

In 1976, plaintiffs allege Advocate made alterations to the natural drainage patterns of the Main Drain. (¶ 102.) Those alterations were allegedly made pursuant to a “1976 North Development Plat Plan.” The only alleged detail of that plan is that it provided for a “Dempster Drainage Ditch” at the site of what is currently the “Dempster Basin.” Plaintiffs allege the 1976 alterations “resulted in increased flows into the servient lands within the Robin-Dee Community.” (¶ 104.2.1.)

In August 1987, plaintiffs allege flood waters “catastrophically invaded” the Robin-Dee Community from Advocate’s North Development. (¶ 113.) The nature and circumstances of that flooding is not particularly alleged.

1. Advocate's Actions After 1987

Sometime after the 1987 flooding, plaintiffs allege that "Advocate[]" initiated the development process for areas of the North Development including the development of the Ballard Basin by retaining [defendant Gewalt Hamilton] to draft Plans including but not limited to drainage engineering plans and topography altering plans altering the topography [sic] and natural drainage of areas of Advocate's North Development." Those plans are alleged to have been submitted to, and approved by, the District and Park Ridge. Plaintiffs further allege that "Advocate constructed the existing North Development Stormwater Subsystem including but not limited to the public improvements and/or quasi-public improvements of the existing Ballard Basin and the Pavilion Basin." (§§ 120, 126.)

Plaintiffs allege that, in August 2002, stormwater accumulated within the Main Drain, including but not limited to the North Development, and "accumulating stormwater flood waves from the Ballard Basin surcharged the undersized 60" Ballard Basin Discharge Culvert and catastrophically overflowed the Ballard Basin and the Robin Neighborhood Main Drain onto the homes of the Robin-Dee neighborhood." (§ 127.) In addition, on the "South Development" of Advocate's property, the "then-existing undersized 60" Dempster Basin Discharge Culvert was surcharged by flows from the Dempster Stormwater Sewer, catastrophically invading the residences in the Robin-Dee community." (§ 128.) Further, "discharging accumulated stormwaters surcharged the undersized 60" Howard Court Culvert, resulting in the Main Drain segment in the Robin Dee Community to become surcharged and catastrophically invading the residences." (§ 129.)

The Howard Court Culvert is not alleged to be on Advocate's property or under Advocate's control. As stated above, it seems to have existed prior to 1976, when the Advocate property was alleged to have been altered.

2. Advocate's Actions After 2002

After the flooding in 2002, plaintiffs allege that Advocate again retained Gewalt, who designed "multiple plans relating to Advocate North Development's stormwater drainage and Advocate South Development's stormwater drainage including relating to the Dempster Basin, the Dempster Basin Stormwater Sewer and other North Development and South Development drainage plans" Those plans were again submitted to the District and Park Ridge, and were approved. (§ 132.)

3. 2008 flooding

Plaintiffs allege that, on September 13, 2008, "excess accumulated stormwater from Advocate's North Development Property catastrophically invaded the Plaintiff Class' homes,

land and properties” Plaintiffs allege that Advocate breached its duty not to overburden the “downstream Plaintiffs” by the following omissions: (a) failing to pump down the Basins before the September 13, 2008 storm; (b) failing to erect flood protection barrier systems between its property and the Plaintiff’s properties; and (c) failing to detain stormwater until it could safely drain to the Main Drain. (¶¶ 639-40.)

C.

Sequence of the 2008 Flooding

In Subpart III.W of the A5AC (¶¶ 208-215), plaintiffs allege what is purported to be a “Flooding Stages Sequence” of the September 2008 flooding. The allegations therein are directed to defendants Advocate, Berger, the District, Park Ridge, Maine Township and the County. Plaintiffs allege, first, that the Ballard, Pavilion and Dempster basins filled to their discharge elevations. Second, the basins began to “discharge through basin culverts to the PCSS Robin Neighborhood Main Drain.” Third, the basins “surcharge PCSS’s Howard Court Culvert, Dee Neighborhood Pipe and Robin Neighborhood Main Drain and Overflow.” Consequently, bottleneck surcharging occurs at the Howard Court Culvert resulting in overflow of the Main Drain. Fourth, the Ballard and Dempster Basins overflow. Fifth, the surface-water home invasions occur. Sixth, the sanitary sewer subsystems surcharge because the District allegedly causes upstream backups by failing to deploy pumpage systems, and sanitary sewer backups occur in some plaintiffs’ homes.

II

Analysis

Advocate seeks to dismiss all counts against it pursuant to 735 ILCS § 5/2-615. Advocate, additionally, seeks to dismiss all counts against it on the basis that plaintiffs have failed to comply with 735 ILCS § 5/2-603, which requires that a complaint set forth “a plain and concise statement of the pleader’s cause of action.” The purpose of § 2-603 “is to give notice to the court and to the parties of the claims being presented.” *Cable Am., Inc. v. Pace Elecs., Inc.*, 396 Ill. App. 3d 15, 19 (1st Dist. 2009). Pleadings are to be “liberally construed with a view to doing substantial justice between the parties.” 735 ILCS 5/2-603(c).

Here, Advocate argues that the A5AC contains a high prevalence of inconsistencies, typographical errors, and confusing and/or misleading language that, on the whole, violates § 603 and renders the A5AC “incomprehensible and unanswerable.” This Court is cognizant of Advocate’s concerns, particularly given the multiple opportunities plaintiffs have had to present a coherent pleading which contains cognizable causes of action against each defendant. However, the Court denies Advocate’s motion to dismiss on the basis of § 2-603.

A.
Count 1 – Negligence: Dominant Estate Overburdening

I.
Duty

Plaintiffs have entitled their negligence cause of action “dominant estate overburdening.” In 2003, the Illinois Supreme Court reaffirmed the basic common law standard applicable to owners of a “dominant estate” with respect to the flow of surface water. *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 369 (Ill. 2003). The Court stated: “At common law, a landowner bears a duty not to increase the natural flow of surface water onto the property of an adjacent landowner.” *Id.* The court cited *Daum v. Cooper*, 208 Ill. 391, 397-98 (1904) and *Templeton v. Huss*, 57 Ill. 2d 134, 141 (1974).

In *Templeton*, the court recognized the “good husbandry” exception to this rule, as to the development of land for agricultural use, and applied it to allow a dominant landowner to change the flow of surface water where farmland was being developed into single-family detached housing. *Templeton*, 57 Ill. 2d at 141. The Supreme Court stated:

The question which must be confronted is whether the increased flow of surface waters from the land of the defendants to that of the plaintiff, regardless of whether it was caused by diversion from another watershed, the installation of septic tanks, the grading and paving of streets, or the construction of houses, basements and appurtenances, was beyond a range consistent with the policy of reasonableness of use which led initially to the good-husbandry exception.

a. Allegations in the A5AC Concerning Advocate’s Duty as a Dominant Landowner

Advocate argues that plaintiffs have not alleged facts to support a legally cognizable duty. In reaching that conclusion, Advocate focuses on the allegations in the A5AC that Advocate “owned, managed, and controlled” stormwater on its property, and owed plaintiffs a duty to “properly manage” the stormwater under their control. Advocate argues that Illinois does not impose a duty based on “ownership and management of rainwater.” This Court agrees with Advocate that no authority supports plaintiffs’ allegations that a duty arises from Advocate’s supposed “ownership” of the stormwater that falls onto its property.

This Court, however, finds sufficient facts alleged in the A5AC which support a conclusion that Advocate owns a dominant (higher) estate, adjacent to plaintiffs’ servient (lower) estate, which is sufficient to support a duty under the standards discussed above. *See Van Meter*, 207 Ill. 2d at 369. Plaintiffs allege that the Robin-Dee Community is “downstream, generally at

lower elevations and servient to the North Development Property, the South Development Property and the Main Drain.” (§ 148.) The North Development and South Development are described as part of Advocate’s property. (§§ 102, 128.) Plaintiffs also allege that “Advocate owned, possessed, controlled, managed and/or controlled [sic] both the real property itself and the real property estates and interests in the following properties immediately contiguous to, upstream from, and generally, at higher elevations in relationship to the Plaintiff Robin-Dee Community Class” (§ 624.)

Accordingly, plaintiffs have sufficiently alleged facts to support a duty that Advocate owed plaintiffs as the owner of a dominant estate not to increase the flow of surface water, and the facts support the application of the exception as to whether an alleged increase is beyond the “policy of reasonableness of use,” as discussed in the *Templeton* case.

b. Things Not Done Called “Duties”

Before addressing whether plaintiff has alleged facts sufficient to support the remaining elements of its negligence cause of action, that is, breach of the duty of reasonable use and proximate cause, the Court addresses plaintiffs’ allegations of other “duties” Advocate owed. Throughout the A5AC, plaintiffs allege a number of additional “duties” it asserts have been breached by Advocate, assumedly independent of its duty as an owner of a dominant estate.

First, plaintiffs allege that Advocate assumed “duties” to foreseeable plaintiffs contained in a “Sewerage System Permit” issued by the District. (§§ 252-53.) Plaintiffs allege that this Permit applies to the “Detention Basin” constructed by Advocate. Plaintiffs allege that the Permit provides that “[t]he sewer connections, lines, systems or facilities constructed hereunder or serving the facilities constructed hereunder shall be properly maintained and operated at all times in accordance with all applicable requirements” (§ 254.)

Second, plaintiffs allege that Advocate, along with the public defendants, had a “duty” to know the effects of stormwater release on “Lower Elevation Homes” when planning operational practices for managing stormwater.

Third, plaintiffs allege that Advocate, along with the public defendants, owed a “duty” to know of the relevant characteristics relating to capacity of and/or lack of capacity of Advocate’s Development Properties and the PCSS upstream and downstream of plaintiffs, so as to predict the timing of pumping and/or implementation of flood protection systems. (§§ 277-78.)

Fourth, plaintiffs allege that Advocate, along with the public defendants, owed a “duty” to complain to “responsible officials” for lack of cleaning, lack of maintenance, and lack of repair of drainage structures not on property under its control. (§§ 281-82.)

Fifth, plaintiffs allege that, based upon the earlier flooding, Advocate and the public defendants owed plaintiffs a number of “duties” at the time that the September 2008 storm approached. Those “duties” include estimating likely rainfall runoff, estimating stormwater generated by the rainfall, planning mobile temporary pump stations, diverting Ballard and Dempster Basin stormwater to other areas of Advocate property, mobilizing tanker trucks to receive excess flow, pre-storm pumping down of the Basin Structures, erecting temporary stormwater storage systems, and using other methods such as barriers and pumps to prevent invasive flooding. (¶¶ 283-95.)

Sixth, as to the design of the stormwater system, plaintiffs make a number of common allegations against Advocate that are jointly made against Gewalt, the District, Park Ridge, and Maine Township as well. Plaintiffs allege those defendants owed a “duty” to plaintiffs to design the “Stormwater Structures” to prevent foreseeable invasive flooding, to investigate the storage needs, to know the flow behavior of PCSS, to know effects of stormwater release on downstream estates, to investigate the capacity of the downstream Main Drain, and to use certain design methods including “state of the art computer modeling” and “state of the art stormwater standards and calculation methods.” Plaintiffs further allege that those defendants had a “duty” to correct known design defects in the Ballard, Pavilion, and Dempster Basins based upon earlier flooding and investigation of that flooding, and to plan and design areas and structures for temporary stormwater. (¶¶ 317-41.)

Advocate argues that no basis exists under Illinois law to support any of these additional “duties.” This Court agrees with Advocate that plaintiffs’ allegations, which characterize various specific things that Advocate did not do as support for claims of additional duties owed to plaintiffs, do not find support in Illinois law.

To determine whether these allegations of actions Advocate should have taken form the basis of additional duties, this Court must determine whether these statements establish a relationship between plaintiffs and Advocate such that the law imposed upon Advocate an obligation of reasonable conduct for the benefit of plaintiffs. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 436 (2006). As this Court has found, Advocate owes plaintiffs a duty by virtue of the parties’ relationship as adjacent dominant and servient landowners. The Illinois Supreme Court, however, has warned against conflating the duty element of a negligence claim, which arises from the parties’ relationship, with the breach element, which involves specific facts of a defendant’s acts or omissions breaching that duty. *Id.* at 443. The court explained:

[C]ourts could, after all, state an infinite number of duties if they spoke in highly particular terms, and while particularized statements of duty may be comprehensible, they use the term duty to state conclusions about the facts of

particular cases, not as a general standard. Thus, the issue in this case is not whether defendants had a duty to install protective poles, or a duty to prevent a car from entering the restaurant, or some such other fact-specific formulation. Because of the special relationship between defendants and the decedent, they owed the decedent a duty of reasonable care.

Id. (quotations and citations omitted).

Similarly here, plaintiffs' fact-specific list of actions Advocate had a "duty" to take, such as estimating rainfall or installing water pumps, does not state a relationship between Advocate and plaintiffs. Rather, it is a list of things which plaintiffs allege Advocate did not do prior to the flooding in 2008. As discussed in *Marshall*, such factual allegations do not give rise to general legal duties arising from a relationship between the parties.

Moreover, the Court has not found, nor have plaintiffs cited, authority that supports plaintiffs' allegation that the permits issued by the District to Advocate are a source of duties owed to plaintiffs. The A5AC does not allege that plaintiffs were parties to or named in the permits. The cited portions of the permits required Advocate to operate and maintain sewer connections in accordance with "applicable requirements." Plaintiffs have not explained how a relationship between Advocate and plaintiffs, by which Advocate owed a legal duty to plaintiffs, was created pursuant to issuance of the permits.

Accordingly, the Court finds that the facts alleged in the A5AC support Advocate's duty to plaintiffs as a dominant landowner, and dismisses any of these other claimed "duties."

2.

Breach and Proximate Cause

To support a negligence cause of action, plaintiffs must allege facts showing that Advocate breached its duty to plaintiffs as a dominant landowner, and that such breach was the proximate cause of plaintiffs' injuries. *Marshall*, 222 Ill. 2d at 430.

The Fourth District Appellate Court, in *Shulte v. Flowers*, succinctly recited the development of Illinois law on the "reasonableness of use" in cases involving dominant and servient landowners. *Shulte v. Flowers*, 2013 IL App 120132 (4th) ¶¶ 26-29. The *Shulte* court cited the Second District case of *Dovin*, which stated that "reasonableness of use" is determined by "balancing the benefit to the dominant estate against the harm done to the servient estate." *Dovin v. Winfield Township*, 164 Ill. App. 3d 326, 335-36 (2d Dist. 1987) (rev'd on other grounds). The *Dovin* Court listed the factors to be considered in that balancing analysis: 1) extent of the harm, 2) character of the harm, 3) social value that the law attaches to the use or

enjoyment invaded, 4) suitability of that use or enjoyment to the character of the locality, 5) burden on the servient estate of avoiding harm, and 6) usefulness of the development of the dominant estate.

The Illinois Supreme Court, in *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004), laid out the standard for establishing proximate cause in a negligence suit:

[T]he term “proximate cause” describes two distinct requirements: cause in fact and legal cause. *Galman*, 188 Ill. 2d at 257-58, citing *Lee*, 152 Ill. 2d at 455. A defendant's conduct is a “cause in fact” of the plaintiff's injury only if that conduct is a material element and a substantial factor in bringing about the injury. *Galman*, 188 Ill. 2d at 258; *Lee*, 152 Ill. 2d at 455. A defendant's conduct is a material element and substantial factor in bringing about the injury if, absent that conduct, the injury would not have occurred. *Galman*, 188 Ill. 2d at 258; *Lee*, 152 Ill. 2d at 455. “Legal cause,” by contrast, is largely a question of foreseeability. The relevant inquiry is whether “the injury is of a type that a reasonable person would see as a likely result of his or her conduct.” (Emphasis in original.) *Galman*, 188 Ill. 2d at 260, citing *Lee*, 152 Ill. 2d at 456.

This Court has sifted through the many allegations in the A5AC, which implicate a complicated number of structures that compose the PCSS. Those alleged structures are located over a broad geographic area, were developed over nearly five decades, and have multiple owners and are subject to the authority of several public entities. Several of those structures, which are alleged to have caused the 2008 flooding, are not on Advocate's property or under Advocate's control. In addition, it is alleged that flooding occurred on plaintiffs' property at least two times prior to 2008, in 1987 and 2002, which plaintiffs allege was caused by some PCSS structures which pre-exist Advocate's involvement.

These allegations implicate other factors as material elements and substantial factors in bringing about the 2008 flooding, especially in light of the alleged prior flooding. Before this Court, however, is a § 2-615 motion to dismiss, and the Court must consider all well-pled facts in the complaint and reasonable inferences in the light most favorable to plaintiffs. The A5AC contains some allegations of fact from which reasonable inferences can be drawn that Advocate may have breached its duty of reasonable use, and that may have been a material element and substantial factor in bringing about the flooding. Accordingly, this Court finds that the allegations directed toward Advocate are sufficient to withstand Advocate's motion to dismiss.

Accordingly, Advocate's motion to dismiss Count 1: Negligence: “Dominant Estate Overburdening,” is denied.

B.

Counts 7 and 10 – Negligent Nuisance and Intentional Nuisance

To establish a cause of action for nuisance against Advocate, plaintiffs must show a substantial invasion of plaintiffs' interest in the use and enjoyment of their land. The invasion must be: substantial, either intentional or negligent, and unreasonable. *In re Chi. Flood Litig.*, 176 Ill. 2d 179, 204 (Ill. 1997).

The Illinois Supreme Court has described a nuisance as "something that is offensive, physically, to the senses and by such offensiveness makes life uncomfortable." *Id.* (citation omitted). Typical examples would be "smoke, fumes, dust, vibration, or noise produced by defendant on his own land and impairing the use and enjoyment of neighboring land." *Id.* The physical invasion of water by flood may constitute a nuisance. *See id.*

Advocate, first, argues that plaintiffs cannot state a nuisance cause of action because Advocate does not "own" the rainfall/stormwater that allegedly invaded plaintiffs' property. Second, Advocate argues that the allegations are not sufficient to support a finding that it performed activity on its own property in an "unwarrantable, unreasonable or unlawful manner," which caused the September 2008 flooding. Third, Advocate argues that plaintiffs have failed to allege facts supporting a finding that Advocate intended to invade plaintiffs' property with water, or that Advocate's conduct was negligent.

This Court finds that plaintiffs have alleged facts to support a substantial invasion of their interest in the use and enjoyment of their land by floodwater, which may have been caused by conduct of Advocate that may have been a material element and substantial factor in bringing about the flooding, as discussed in Section A, *supra*. Accordingly, Advocate's motion to dismiss Count 7: Negligent Nuisance, is denied.

However, plaintiffs have not alleged facts from which an inference can be drawn that Advocate's conduct was intentional. Accordingly, Count 10: Intentional Nuisance, is dismissed.

C.

Counts 8 and 11 – Negligent Trespass and Intentional Trespass

The type of invasion that constitutes a trespass differs from the type of invasion that constitutes a nuisance. "A nuisance is an interference with the interest in the private use and enjoyment of the land, and does not require interference with the possession" whereas a "trespass is an invasion of the interest in the exclusive possession of land, as by entry upon it." *In re Chicago Flood Litigation*, 176 Ill. 2d at 204, quoting Restatement (Second) of Torts §821D,

Comment d, at 101 (1979). Trespass can occur through a negligent or an intentional act. *Lyons v. State Farm Fire & Casualty Co.*, 349 Ill. App. 3d 404, 410 (5th Dist. 2004).

To establish negligent trespass, plaintiffs must show an “invasion of the interest in the exclusive possession of land.” Advocate’s conduct is governed by general negligence principles, i.e., “one is liable for negligent . . . intrusion on land if he thereby causes harm to a legally protected interest.” *Dial v. City of O’Fallon*, 81 Ill. 2d 548, 553 (1980).

To establish intentional trespass, plaintiffs must show that Advocate took some action having a “high degree of certainty” that entry of foreign matter on plaintiffs’ property would result. *Id.* at 554. Such degree of certainty is illustrated in the following examples:

[O]ne must pile the sand on his land in such a manner that the force of gravity alone causes it to slide onto adjoining land; or one must build an embankment on his property in such a way that *ordinary* rainfalls wash it upon another’s land; or one must erect a dam across a stream intentionally causing water to back up on another’s property. In each of these examples there is knowledge of a high degree of certainty that the intrusion on another’s land will follow the act.

Id. (emphasis in original). To establish trespass caused by stormwater, plaintiffs must show that Advocate’s activity changed or increased the customary flow of the water. *Montgomery v. Downey*, 17 Ill. 2d 451, 461-62 (1959).

Advocate argues that plaintiffs cannot maintain a cause of action for either negligent or intentional trespass. First, Advocate argues that plaintiffs cannot establish negligent trespass because they have not pled each essential element of a negligence claim. Second, Advocate argues that cannot establish intentional trespass because no well-pled facts show that Advocate’s conduct posed a “high degree of certainty” that an intrusion onto plaintiffs’ property would result.

This Court finds that plaintiffs have alleged facts to establish invasion of the interest in the exclusive possession of their land by the entry of flood waters, which may have been caused by conduct of Advocate that may have been a material element and substantial factor in bringing about the flooding, as discussed in Section A, *supra*. Accordingly, Advocate’s motion to dismiss Count 8: Negligent Trespass, is denied.

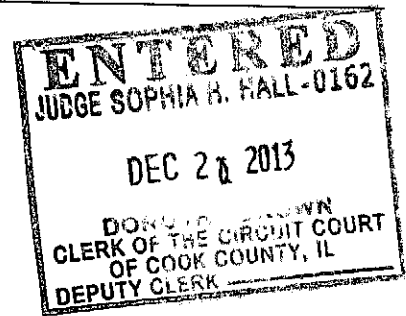
However, plaintiffs have not alleged facts from which an inference can be drawn that Advocate’s conduct was intentional. Accordingly, Count 11: Intentional Trespass, is dismissed.

CONCLUSION

For the foregoing reasons, Advocate's § 2-615 is granted in part and denied in part. Counts 10 and 11 are dismissed with prejudice.

Entered: _____
Judge Sophia H. Hall

Date: _____



COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK.)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
DENNIS TZAKIS, et al.,)
)
Plaintiffs,)
)
vs.) No. 09 CH 06159
)
BERGER EXCAVATING)
CONTRACTORS, INC., et al.,)
)
Defendants.)

REPORT OF PROCEEDINGS had at the
hearing of the above-entitled cause before
Judge Sophia H. Hall, commencing on the 3rd day
of March, A.D., 2011 at the hour of 10:50
o'clock a.m.

Veri

any

312-442-9087

847-406-3200

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THE COURT: The laboring mouths are in the front and the people who are just observing, unless you want to whisper into the ear, if you want to check into the record, you may do so and then please have a seat.

MR. VAN DYKE: David Van Dyke on behalf of Advocate. I'll go back and watch and I did bring popcorn.

THE COURT: It won't be that long.

MR. BAZZO: Phillip Bazzo on behalf of the Plaintiffs.

MS. AVERY: Ellen Avery, your Honor, on behalf of the Water Reclamation District.

MR. ZABEL: Jim Zabel on behalf of the District. Good morning, your Honor.

MS. LEWIS: Julie Lewis on behalf of the City of Park Ridge.

MS. MITCH: Karen Mitch on behalf of Gewalt Hamilton.

MR. SCHROEDER: David Schroeder on behalf of Berger.

MR. JACOBI: Benjamin Jacobi on behalf of Maine Township.

MS. BROWN: Lindsay Brown on behalf

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of Advocate.

MR. AVERY: Jayman Avery on behalf of Cook County.

MR. SPEARS: Scott Spears on behalf of the Village of Glenview. Good morning.

THE COURT: Good morning.

All right. For the Metropolitan Water Reclamation District is?

MS. AVERY: Ellen Avery.

THE COURT: Ellen Avery.

And for Glenview again?

MR. SPEARS: Scott Spears, Judge.

THE COURT: And you're the one that's going to argue?

MR. SPEARS: Yes, Judge.

THE COURT: All right.

In my review of the argument, I thought that today I would just hear argument on the issues around the Public Duty Rule Application and around the Tort Immunity Act. Those are the ones that seem to be most 2-619 like. And with respect to the 2-615 motions I'll hear that at another time.

Anybody else want to sit down?

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MR. AVERY: The County has a 2-615 motion that is like a 2-619 but I took that to mean --

THE COURT: On what subject?

MR. AVERY: That was on the application of the Metropolitan Water Reclamation District Act and the County's code regarding storm water management authority.

THE COURT: So it's not public duty or tort immunity?

MR. AVERY: That's correct.

THE COURT: You're right it's probably 2-619 like, but I'm not going to do it today.

MR. JACOBI: Judge, in the Plaintiffs' response she indicates for no one that these issues are applicable to Maine Township with respect to --

THE COURT: Well, we will clean that up later. You can sit down.

MR. JACOBI: Okay.

THE COURT: Nobody on this side of the church. Oh, there are a couple of people. All right.

Veritext Chicago Reporting Company
800-248-3290

312-442-9087

MS. AVERY: Your Honor, this is the District's 215 motion and combined 2-619 motion. We move pursuant to 2-619.1.

Your Honor, the Plaintiffs have alleged in 15 counts that the Metropolitan Water Reclamation District was deficient several ways related to a significant rainstorm in September 2008. I can outline those counts for you if the Court would like.

THE COURT: No, please don't.

MS. AVERY: Your Honor has heard from us before on these issues. This complaint is only different from the Third Amended Complaint as to the District in that four counts have been added involving a civil rights violation and takings count. So if your Honor would prefer, I can give a brief summary of the previous argument and just kind of address these additional taking counts or I can give you the whole shebang.

THE COURT: I think that it appears to me that these two major questions I mentioned will help the Court to review the counts that are there and rather than

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847-406-3200

1 the capacity when it was originally designed
2 did not meet this storm. I just don't know as
3 a matter of pleadings because it may ultimately
4 be that it's going to have to be a question of
5 evidence. The question is whether he's
6 pleading.

7 MS. LEWIS: Your Honor, I would just
8 point out that none of us received a table of
9 contents. I think it was just the courtesy
10 copy for the Court that had the tables of
11 contents and the table of contents that were
12 provided for the exhibits and the complaint.

13 THE COURT: For the complaint?

14 MS. LEWIS: Yes, ma'am.

15 THE COURT: For a 650 page complaint
16 tables of contents are required so provide them
17 with it.

18 MR. BAZZO: I thought in the
19 documents I gave the Court there was a table of
20 contents I thought with that.

21 MS. LEWIS: You did not provide that
22 until you provided the courtesy copy for the
23 Court.

24 MR. BAZZO: That's fine. I will get

1 you copies.

2 MR. SPEARS: Just on behalf of
3 Glenview, just to clarify -- and this seems to
4 get lost in the mix every time we step up.
5 Glenview owns and operates a sanitary sewer not
6 a storm sewer. Even in argument this morning
7 this issue gets mixed up again that Glenview is
8 somehow involved in storm water design. We did
9 not even come on scene until 1997 when all this
10 stuff was in the ground and we acquired North
11 Main Utility.

12 THE COURT: I noticed that
13 distinction in your briefing when you stated
14 just what you stated now. I wasn't sure
15 because I had not gone through the pages of the
16 complaint to know whether the allegation in the
17 complaint is that both the storm water system
18 and the sewage system were involved in the
19 flooding because apparently there's some issue
20 about sewage backup. And I don't know if the
21 sewage backup is somewhat connected to storm
22 water run off in the storm water system. I
23 don't know if the complaint makes that clear.
24 But to the extent that the complaint suggests

1 that the two are connected -- I don't know that
2 yet -- then that would affect the determination
3 of whether Glenview is responsible for any of
4 it if it's just managing sewage.

5 MR. SPEARS: I understand, Judge.

6 To the extent that Mr. Basso is
7 permitted to file this 30 page response, does
8 Glenview get an opportunity to refile its
9 reply?

10 THE COURT: If you think you need to.
11 I'm hopeful what will happen -- although I
12 heard a couple of new cases, but I don't think
13 the new cases he even just referred to change
14 the ultimate principles stated in Van Meter,
15 which I think is more on point, and Ware. I do
16 not believe that Alexander further the
17 defendants' arguments very far in nature of the
18 limited decision that was presented by the
19 Court.

20 MR. SPEARS: Thank you, Judge.

21 THE COURT: Any other questions?

22 MS. BROWN: Your Honor, it's my
23 understanding --

24 THE COURT: Which one are you

1 representing?

2 MR. BROWN: I'm sorry. Lindsay Brown
3 for Advocate. It's my understanding that
4 Plaintiffs will be redoing his brief in
5 response to the joint motion to dismiss.

6 THE COURT: Correct, because I think
7 that in light of the guidelines that I set up,
8 if he adheres to those guidelines, I'll
9 understand his arguments better and perhaps you
10 will too.

11 MR. BROWN: I agree.

12 And I would just like to ask one
13 thing. I notice that the response brief
14 included a number of exhibits that don't comply
15 with the rules. For instance --

16 THE COURT: Which rule?

17 MS. BROWN: It's a 615 motion. It
18 should be limited to the face of the complaint.

19 THE COURT: Right. And your motion
20 is a 2-615?

21 MS. BROWN: It is.

22 THE COURT: No, you can't file
23 exhibits or responses to a response because the
24 2-615 motion doesn't allow for that. So your

PLAINTIFFS' STATUTORY PROVISIONS APPENDIX

CODE OF CIVIL PROCEDURE PROVISIONS

735 ILCS 5/2-601

Formerly cited as IL ST CH 110 ¶ 2-601

5/2-601. Substance of pleadings

§ 2-601. Substance of pleadings. In all actions, pleadings shall be as specified in Article II of this Act and the rules. This section does not affect in any way the substantial allegations of fact necessary to state any cause of action.

735 ILCS 5/2-603

Formerly cited as IL ST CH 110 ¶ 2-603

5/2-603. Form of pleadings

§ 2-603. Form of pleadings.

(a) All pleadings shall contain a plain and concise statement of the pleader's cause of action, counterclaim, defense, or reply.

(b) Each separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation.

(c) Pleadings shall be liberally construed with a view to doing substantial justice between the parties.

PLAINTIFFS' STATUTORY PROVISIONS APPENDIX

735 ILCS 5/2-604.2

5/2-604.2. Requesting remedies from the court

Effective: January 1, 2020

§ 2-604.2. Requesting remedies from the court.

(a) Except in personal injury actions, every count in every complaint and counterclaim must request specific remedies the party believes it should receive from the court.

In a personal injury action, a party may not claim an amount of money unless necessary to comply with the circuit court rules about where a case is assigned. In a personal injury action, if a complaint is filed that contains an amount claimed and the claim is not necessary to comply with the circuit court rules about where a case is assigned, the complaint shall be dismissed without prejudice on the defendant's motion or on the court's own motion.

(b) A party may request remedies from the court in the alternative. A request for a remedy from the court that is not supported by allegations in the complaint or counterclaim may be objected to by motion or in the answering pleading.

(c) Except in the case of default, the remedies requested from the court do not limit the remedies available. Except in the case of default, if a party seeks remedies other than those listed in the complaint or counterclaim, the court may, by proper order, and upon terms that may be just, protect the adverse party against prejudice by reason of surprise.

In the case of default, if a remedy is sought in the pleading, whether by amendment, counterclaim, or otherwise, that is beyond what the defaulted party requested, notice shall be given to the defaulted party as provided by Illinois Supreme Court Rule 105.

(d) The defendant is not prohibited from requesting from the plaintiff, by interrogatory, the amount of damages sought.

PLAINTIFFS' STATUTORY PROVISIONS APPENDIX

735 ILCS 5/2-612

Formerly cited as IL ST CH 110 ¶ 2-612

5/2-612. Insufficient pleadings

§ 2-612. Insufficient pleadings.

(a) If any pleading is insufficient in substance or form the court may order a fuller or more particular statement. If the pleadings do not sufficiently define the issues the court may order other pleadings prepared.

(b) No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet.

(c) All defects in pleadings, either in form or substance, not objected to in the trial court are waived.

735 ILCS 5/2-617

Formerly cited as IL ST CH 110 ¶ 2-617

5/2-617. Seeking wrong remedy not fatal

§ 2-617. Seeking wrong remedy not fatal. Where relief is sought and the court determines, on motion directed to the pleadings, or on motion for summary judgment or upon trial, that the plaintiff has pleaded or established facts which entitled the plaintiff to relief but that the plaintiff has sought the wrong remedy, the court shall permit the pleadings to be amended, on just and reasonable terms, and the court shall grant the relief to which the plaintiff is entitled on the amended pleadings or upon the evidence. In considering whether a proposed amendment is just and reasonable, the court shall consider the right of the defendant to assert additional defenses, to demand a trial by jury, to plead a counterclaim or third party complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed.

PLAINTIFFS' STATUTORY PROVISIONS APPENDIX

TORT IMMUNITY ACT PROVISIONS

The text highlighted is the relevant text to the Plaintiffs' Response Brief and Cross-Relief Brief and provided by the Plaintiffs' Counsel.

TORT IMMUNITY ACT ARTICLE I

745 ILCS 10/1-101.1 Formerly cited as IL ST CH 85 ¶ 1-101.1

10/1-101.1. Purpose; immunities and defenses

§ 1-101.1. (a) The purpose of this Act is to protect local public entities and public employees from liability arising from the operation of government. **It grants only immunities and defenses.**

745 ILCS 10/1-204 Formerly cited as IL ST CH 85 ¶ 1-204

10/1-204. Injury

§ 1-204. "Injury" means death, injury to a person, or damage to or loss of property. It includes any other injury that a person may suffer to his person, reputation, character or estate which does not result from circumstances in which a privilege is otherwise conferred by law and which is of such a nature that it would be actionable if inflicted by a private person. **"Injury" includes any injury alleged in a civil action, whether based upon the Constitution of the United States or the Constitution of the State of Illinois, and the statutes or common law of Illinois or of the United States.**

TORT IMMUNITY ACT ARTICLE II

745 ILCS 10/2-103; Formerly cited as IL ST CH 85 ¶ 2-103

10/2-103. Adoption or failure to adopt enactment; failure to enforce law

§ 2-103. A local public entity is not liable for an **injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.**

PLAINTIFFS' STATUTORY PROVISIONS APPENDIX

745 ILCS 10/2-104; Formerly cited as IL ST CH 85 ¶ 2-104

10/2-104. Issuance, denial, suspension or revocation of permit.

§ 2-104. A local public entity is not liable for an injury caused by the issuance, denial, suspension or revocation **of**, or by the failure or refusal to issue, deny, suspend or revoke, **any permit, license, certificate, approval, order or similar authorization** where the entity or its employee is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

745 ILCS 10/2-105; Formerly cited as IL ST CH 85 ¶ 2-105

10/2-105. Inspection of property; failure to make or negligent inspection

§ 2-105. A local public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its own, to determine whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

745 ILCS 10/2-201; Formerly cited as IL ST CH 85 ¶ 2-201

10/2-201. Determination of policy or exercise of discretion

§ 2-201. Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the **exercise of discretion** is not liable for an injury resulting from his act or omission in determining policy **when acting in the exercise of such discretion** even though abused.

745 ILCS 10/2-206; Formerly cited as IL ST CH 85 ¶ 2-206

10/2-206. Issuance, denial, suspension or revocation of permit.

§ 2-206. A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

745 ILCS 10/2-207; Formerly cited as IL ST CH 85 ¶ 2-207

10/2-207. Inspection of property; failure to make or negligent inspection

PLAINTIFFS' STATUTORY PROVISIONS APPENDIX

§ 2-207. A public employee is not liable for an injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, **of any property, other than that of the local public entity employing him**, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

TORT IMMUNITY ACT ARTICLE III

745 ILCS 10/3-101; Formerly cited as IL ST CH 85 ¶ 3-101 10/3-101. Definitions

§ 3-101. As used in this Article unless the context otherwise requires “property of a local public entity” and “public property” **mean real or personal property owned** or leased by a local public entity, but do not include easements, encroachments and other property **that are located on its property but that it does not own, possess or lease.**

745 ILCS 10/3-102 Formerly cited as IL ST CH 85 ¶ 3-102 10/3-102. Care in maintenance of property; constructive notice

§ 3-102. (a) **Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition** for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.

(b) A public entity does not have constructive notice of a condition of its property that is not reasonably safe within the meaning of Section 3-102(a) if it establishes either:

(1) The existence of the condition and its character of not being reasonably safe would not have been discovered by an inspection system **that was reasonably adequate** considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property; or

(2) **The public entity maintained and operated such an inspection system with due care and did not discover the condition.**

PLAINTIFFS' STATUTORY PROVISIONS APPENDIX

745 ILCS 10/3-103

Formerly cited as IL ST CH 85 ¶ 3-103

10/3-103. Adoption of plan or design of improvement of property

§ 3-103. (a) A local public entity is not liable under this Article for an injury caused by the adoption of a plan or design of a construction of, or an improvement to public property where the plan or design has been approved in advance of the construction or improvement by the legislative body of such entity **or by some other body or employee exercising discretionary authority** to give such approval or where such plan or design is prepared in conformity with standards previously so approved. **The local public entity is liable, however, if after the execution of such plan or design it appears from its use that it has created a condition that it is not reasonably safe.**

(b) A public employee is not liable under this Article for an injury caused by the adoption of a plan or design of a construction of, or an improvement to public property.

745 ILCS 10/3-105; Formerly cited as IL ST CH 85 ¶ 3-105

10/3-105. Use of streets, etc.

§ 3-105. (a) Neither a local public entity nor a public employee is liable for an injury caused by the effect of weather conditions as such on the use of streets, highways, alleys, sidewalks or other public ways, or places, or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near any of the foregoing or the ways adjoining any of the foregoing. For the purpose of this section, the effect of weather conditions as such includes but is not limited to the effect of wind, rain, flood, hail, ice or snow but does not include physical damage to or deterioration of streets, highways, alleys, sidewalks, or other public ways or place or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near any of the foregoing or the ways adjoining any of the foregoing resulting from weather conditions.

PLAINTIFFS' STATUTORY PROVISIONS APPENDIX

745 ILCS 10/3-105; Formerly cited as IL ST CH 85 ¶ 3-105

10/3-105. Use of streets, etc.

§3-105 (c) Nothing in this Section shall relieve the local public entity of the duty to exercise ordinary care in the maintenance of its property as set forth in Section 3-102.

745 ILCS 10/3-110; Formerly cited as IL ST CH 85 ¶ 3-110

10/3-110. Waterways, etc.

§ 3-110. Neither a local public entity nor a public employee is liable for any injury occurring on, in, or adjacent to any waterway, lake, pond, river or stream not owned, supervised, maintained, operated, managed or controlled by the local public entity.

745 ILCS 10/4-102; Formerly cited as IL ST CH 85 ¶ 4-102

10/4-102. Police protection

§ 4-102. Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals. This immunity is not waived by a contract for private security service, but cannot be transferred to any non-public entity or employee.745 ILCS 10/4-103

Formerly cited as IL ST CH 85 ¶ 4-103; 10/4-103.

Failure to provide jail, detention or correctional facility

§ 4-103. Neither a local public entity nor a public employee is liable for failure to provide a jail, detention or correctional facility, or if such facility is provided, for failure to provide sufficient equipment, personnel, supervision or facilities therein. Nothing in this Section requires the periodic inspection of prisoners.

§10/4-105

§ 4-105. Neither a local public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but this Section shall not apply where the employee, acting within the scope of his employment, knows from his observation of conditions that the prisoner is in need of immediate medical care and, through willful and wanton conduct, fails to take reasonable action to summon medical care. Nothing in this Section requires the periodic inspection of prisoners.

PLAINTIFFS' STATUTORY PROVISIONS APPENDIX

745 ILCS 10/5-101; Formerly cited as IL ST CH 85 ¶ 5-101

10/5-101. Establishment of fire department; fire protection; rescue or other emergency service

§ 5-101. Neither a local public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection, rescue or other emergency service. As used in this Article, "rescue services" includes, but is not limited to, the operation of an ambulance as defined in the Emergency Medical Services (EMS) Systems Act.¹

745 ILCS 10/5-102

Formerly cited as IL ST CH 85 ¶ 5-102

10/5-102. Failure to suppress or contain fire

§ 5-102. Neither a local public entity that has undertaken to provide fire protection service nor any of its employees is liable for an injury resulting from the failure to suppress or contain a fire or from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities.

745 ILCS 10/5-103; Formerly cited as IL ST CH 85 ¶ 5-103

10/5-103. Condition of fire protection or fire fighting equipment or facilities; acts or omissions

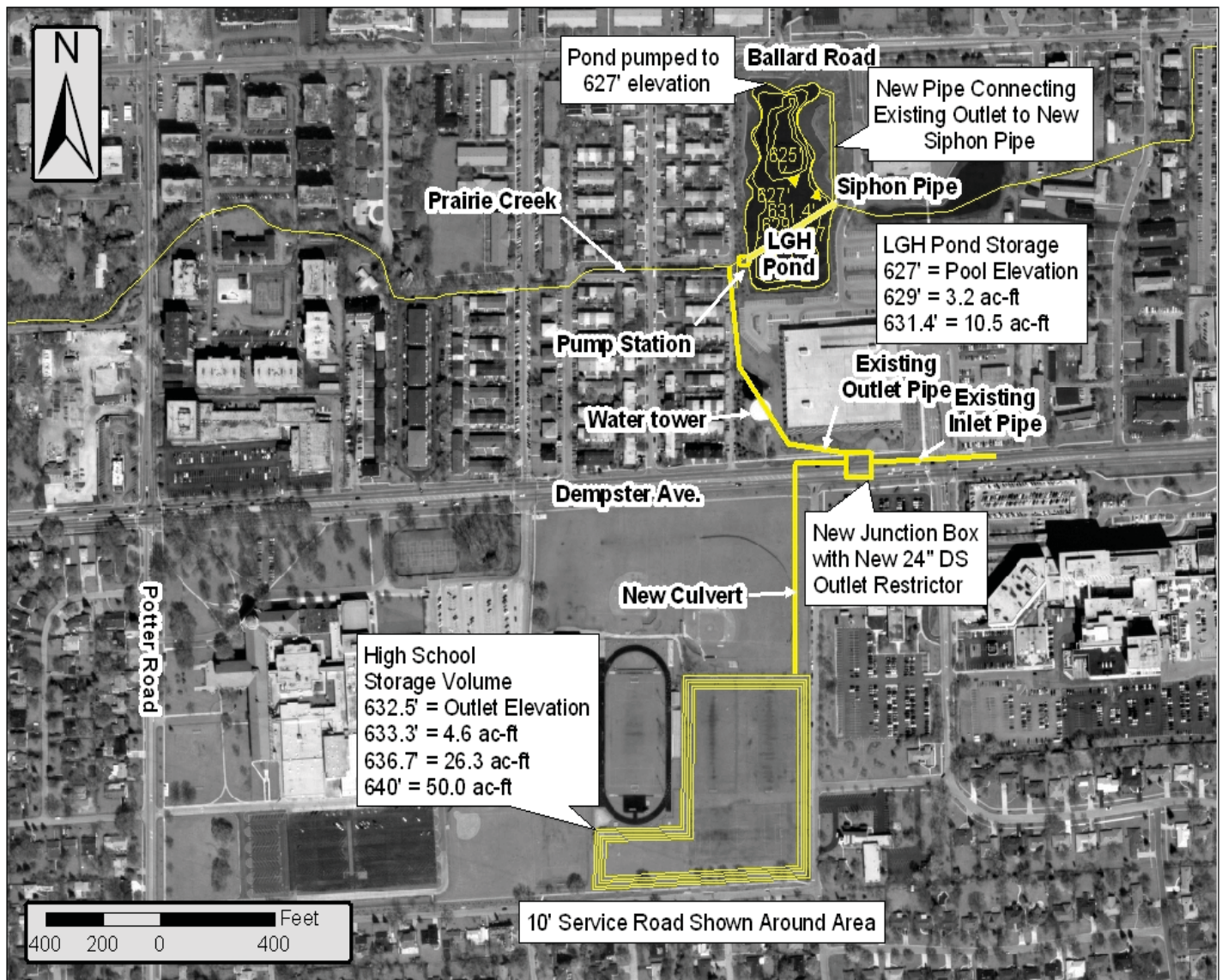
§ 5-103. (a) Neither a local public entity, nor a public employee acting in the scope of his employment, is liable for an injury resulting from the condition of fire protection or firefighting equipment or facilities. **Nothing in this section shall exonerate a public entity from liability for negligence by reason of the condition of a motor vehicle while it is traveling on public ways.**

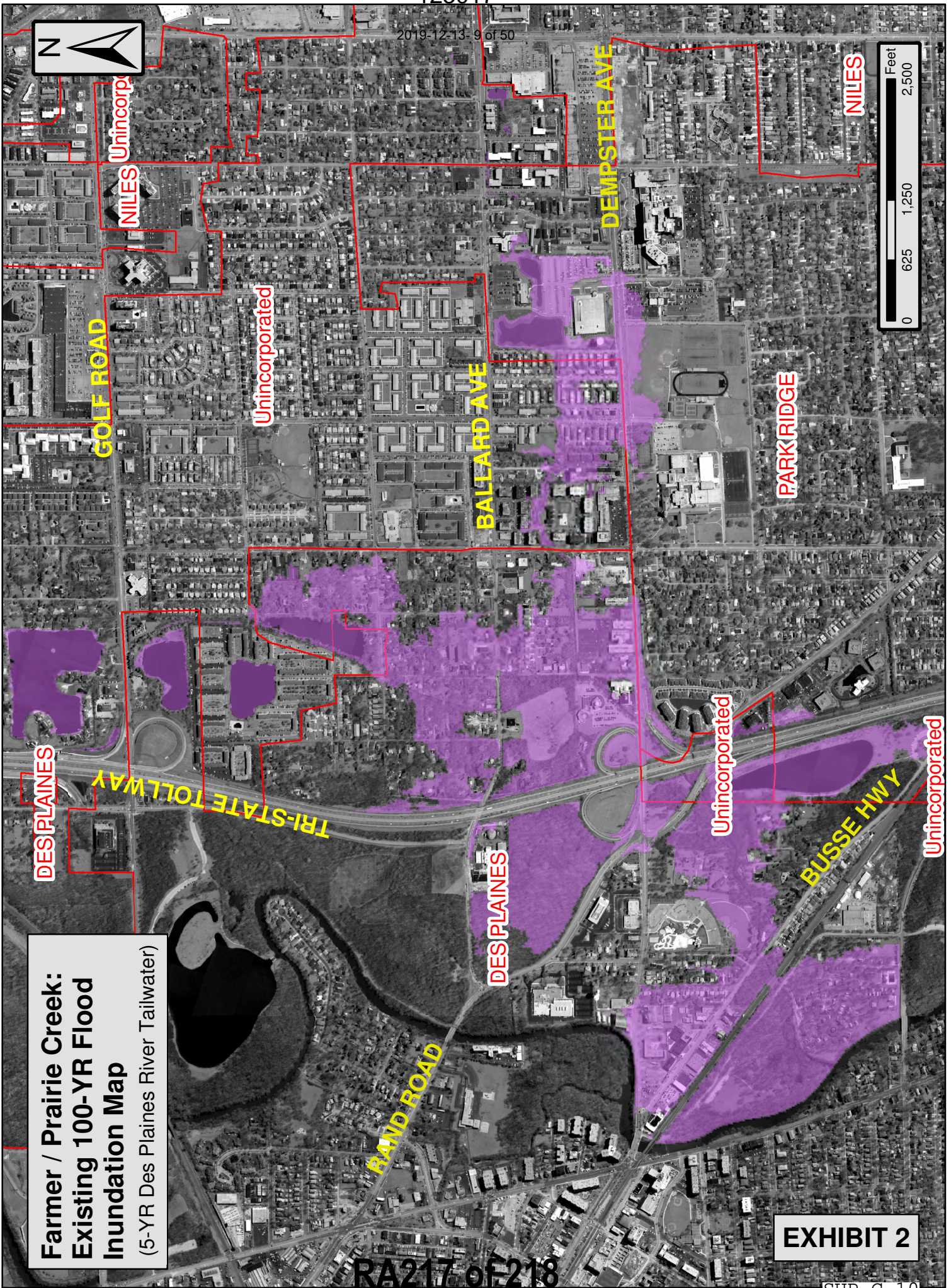
745 ILCS 10/5-106; Formerly cited as IL ST CH 85 ¶ 5-106

10/5-106. Emergency calls

§ 5-106. Except for willful or wanton conduct, neither a local public entity, nor a public employee acting within the scope of his employment, is liable for an injury caused by the negligent operation of a motor vehicle or firefighting or rescue equipment, **when responding to an emergency call**, including transportation of a person to a medical facility.

Exhibit 9: Alternative S4 - Lutheran General Hospital Pond and High School Reservoir







**IN THE SUPREME COURT
OF THE STATE OF ILLINOIS**

SUPREME COURT RULE 341 CERTIFICATION

Pursuant to Supreme Court Rule 341(c), I certify that this brief entitled “**BRIEF OF APPELLEES. CROSS-RELIED REQUESTED**” conforms to the requirements of Rules 341(a) and (b). The length of this brief, including both the Response Brief and the Cross Brief, excluding the pages containing the Rule 341(d) Cover, the Rule 341(h)(1) Statement of Points and Authorities, this Rule 341(c) Certificate of Compliance, the Certificate of Service, and those

NO. 125017

matters to be appended to the brief under Rule 342(a), is **23,669 words**.

February 19, 2020

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**IN THE SUPREME COURT
OF THE STATE OF ILLINOIS**

DENNIS TZAKIS, ZENON GIL, CATHY)	Appellate Court, First Judicial
PONCE, ZAIA GILIANA, JULIA CABRALES,)	District, Case No. 17-0859
and JUAN SOLIS, on Behalf of Themselves and)	
All Other Persons Similarly Situated,)	2019 IL App (1st) 170859
A Proposed Class Action,)	
Plaintiffs- Appellees-Cross-Appellants,)	Circuit Court of Cook County
v.)	Nos. 2009 CH 6159-09/13/2008
MAINE TOWNSHIP, METROPOLITAN)	Cabrales-10CH38809-07/24/2010
WATER RECLAMATION DISTRICT OF)	Huynh-11CH29586-7/23/2011
GREATER CHICAGO, and THE CITY OF)	Giliana-13CH10423-4/18/2013
PARK RIDGE,)	Solis-14CH06755-6/26/2013 and
Defendants-Appellants-Cross-Appellees)	5/12/2014
And)	(consolidated)
ADVOCATE HEALTH AND HOSPITALS)	
CORPORATION d/b/a Advocate Lutheran)	The Honorable Sophia H. Hall,
General Hospital,)	Trial Judge Presiding
Defendant in Trial Court,)	
And)	Prior 1st District Appeal: 1-14-2285
BERGER EXCAVATING CONTRACTORS,)	Prior 1st District Decision:
INC.; COOK COUNTY; GEWALT)	2015 IL App (1st) 142285-U
HAMILTON ASSOCIATES, INC.; THE)	
VILLAGE OF GLENVIEW; and THE)	
VILLAGE OF NILES;	—	Related Petition for Leave to
Dismissed Defendants		Appeal filed by Plaintiffs-
		Appellees - No. 125023

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure and per **Illinois Supreme Court Rule 12**, the undersigned, an attorney, certifies that, **the statements set forth in this instrument are true and correct** including that he served or caused to be served a true and correct copy of the foregoing **“BRIEF OF APPELLEES. CROSS-RELIEF REQUESTED”** and related documents filed herein upon all counsel by e-mail to the

NO. 125017

mail addresses set out in the below E-Mail Service List.

February 19, 2020

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<p>Everett M. Hill & Howard C. Jablecki Klein, Thorpe and Jenkins, Ltd. 20 N. Wacker, Suite 1660 Chicago, Illinois 60606 Ph.: 312/984-6400 Fax: 312/984-6444 E-mail: EMHill@KTJLAW.com E-mail: HCJablecki@KTJLAW.com <i>For City of Park Ridge</i></p>	<p>Benjamin Jacobi OHalloran Kosoff Geitner & Cook, LLC 650 Dundee Road, Fourth Floor Northbrook, Illinois 60062 Ph.: 847/291-0200; 847/291-02011 Ext. 45; Fax: 847/291-9230 E-mail: BJacobi@OKGC.Ccom <i>For Maine Township</i></p>

NO. 125017

**IN THE SUPREME COURT
OF THE STATE OF ILLINOIS**

DENNIS TZAKIS, ZENON GIL, CATHY PONCE, ZAIA GILIANA, JULIA CABRALES, and JUAN SOLIS, on Behalf of Themselves and All Other Persons Similarly Situated, A Proposed Class Action,)	Appellate Court, First Judicial District, Case No. 17-0859
Plaintiffs- Appellees-Cross-Appellants, v.)	2019 IL App (1st) 170859
MAINE TOWNSHIP, METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, and THE CITY OF PARK RIDGE,)	Circuit Court of Cook County Nos. 2009 CH 6159-09/13/2008
Defendants-Appellants-Cross-Appellees And)	<hr/> Cabrales-10CH38809-07/24/2010
ADVOCATE HEALTH AND HOSPITALS CORPORATION d/b/a Advocate Lutheran General Hospital,)	Huynh-11CH29586-7/23/2011
Defendant in Trial Court,)	Giliana-13CH10423-4/18/2013
And)	Solis-14CH06755-6/26/2013 and 5/12/2014
BERGER EXCAVATING CONTRACTORS, INC.; COOK COUNTY; GEWALT HAMILTON ASSOCIATES, INC.; THE VILLAGE OF GLENVIEW; and THE VILLAGE OF NILES;)	(consolidated)
Dismissed Defendants)	The Honorable Sophia H. Hall, Trial Judge Presiding
)	Prior 1st District Appeal: 1-14-2285
)	Prior 1st District Decision:
)	2015 IL App (1st) 142285-U
	—	Related Petition for Leave to Appeal filed by Plaintiffs-Appellees - No. 125023

NOTICE OF FILING

To: All Attorneys on the Foregoing Service List within the Certificate of Service

Please take notice that on February 19, 2020, I caused to be **electronically served upon and filed** with the Clerk of the Supreme Court the “**BRIEF OF APPELLEES.**

NO. 125017

CROSS-RELIEF REQUESTED”, a copy of which is hereby served upon you.

Date: February 19, 2020

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