

William A. Price, Attorney

wprice@growthlaw.com  
PO Box 1425  
Warrenville, IL 60555

GrowthLaw

www.growthlaw.com  
800-630-4780

June 6, 2019

Public Works Committee  
City of Warrenville

RE: City Duty To Maintain Storm Sewers In River Oaks Commons Area

As has been discussed in considerable detail in letters sent to counsel for the City, the River Oaks Improvement Association maintains that the City of Warrenville, and not the Association, has the duty to maintain city-owned storm sewers in a public utilities and drainage easement in the common areas of the River Oaks subdivision. The reasons for this are as follows:

a. *There is an open space drainage utility and access easement* in effect for Lot 63, the upper and lower commons area of the River Oaks subdivision, created when the property was subdivided and noted on the plat of subdivision for same. See facsimile of plat attached, and note that the "common area" is defined in the Declaration of Easements, Covenants, Conditions, and Restrictions for River Oaks recorded May 7, 1987, in DuPage County, Illinois, Document R87-060358, conveyed to the Association in Section 1.05 of same subject to easements for public utilities created in Section 3.01 of such dedication, with the developer's "successor" having a continuing right of access to same for "installing, constructing, reconstructing, maintaining, repairing, operating, and inspecting ... stormwater drainage or retention facilities ...". Such easements create public rights and duties, and exclude conflicting private uses, *Nichol v. Village of Glen Ellyn*, 231 N.E.2d 462, 89 Ill.App.2d 251 (Ill. App., 1967). Property dedicated to the public is held by the municipality in trust for the benefit of the public, *Tomkins v. Village of Tinley Park*, 651 F.Supp. 50 (N.D. Ill., 1986).

b. *The Plat Act allows designation of exclusively private uses for easements. Gricius v. Lambert*, 288 N.E.2d 496, 7 Ill.App.3d 716 (Ill. App., 1972). *No such exclusion obtains here.* Instead, the easements and drainage sewers on this site, designed and installed in consultation with the City's engineering staff (see Plan Commission hearing record, December 4, 1984, copy available on request) serve to receive waters from the public streets in River Oaks, from the areas of the city on and across Route 59, from the apartment developments to the south of River Oaks, and from the shopping center (with paved parking that prevents water retention on site) to the south of River Oaks.

c. *The developer of River Oaks deeded "All: sanitary sewer, storm water and potable water pipes, lines, connections, pumps and lift stations; manholes and covers; fire hydrants; street lights; curbs, gutters; pavement and sidewalks located in, on, under or above all public rights-of-way in the River Oaks Subdivision..." to the City of Warrenville. This clearly makes the City of Warrenville the developer's successor in title to this property, located in the public utility drainage and access easement created by the documents noted above. A copy of the deed is attached.*

c. *The city has the duty to properly operate sewers and drains it owns. "Where a municipality has adopted a sewer or drain constructed by a private person and has assumed control over it, the fact that the municipality has not constructed the sewer or drain will not excuse the municipality from liability for negligence in its operation." (Burford v. Village of LaGrange, 234 N.E. 2d 120, 90 Ill. App. 2d 210 (Ill. App. 1967.)*

d. *The maintenance agreement made between the city and the developer created an Association duty with respect to a common area, but not to the city property under same: The developer created the Association pursuant to agreement with the City in 1985, including in its duties "to hold title to and shall maintain the open space and retention areas as designated..." (Feb. 18, 1985, Memorandum from counsel to developer re "Revised agreement approved 5/17/1985 in agreement file #125B." The Association's title, derived from the Declaration of Condominium, does not extend to the property deeded to the City, and is specifically subject to the easement for maintenance and access of the public utilities in the common area, to wit, the stormwater runoff pipes and associated equipment, separately deeded to the City.*

e. *The City and the Association clearly understood this division of labor in their many years of implementation of the Agreement and dedications and deeds to the City when River Oaks was created in 1985. The Association pays for mowing the grass and has rebuilt retention walls around the common area at Association expense, and the City has, over most of the 30 years of this subdivision's existence, routinely maintained all stormwater sewers and manhole covers and pipes and silt traps, etc...*

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "W. A. Price", with a stylized, flowing script.

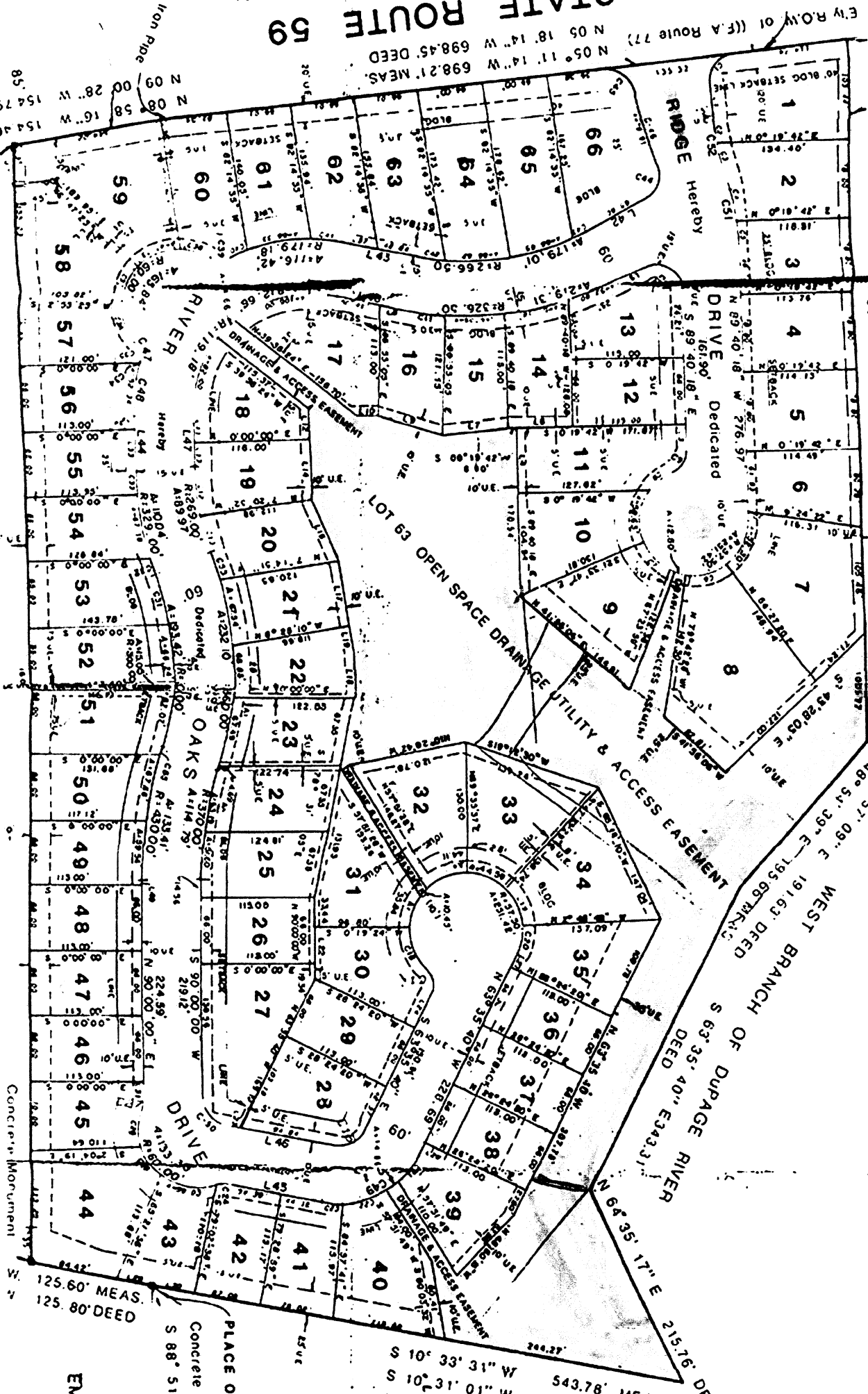
William A. Price  
Attorney at Law  
wap/pc

STATE ROUTE 59

COMMUNICATED BY DOC No R71-24124  
N 05° 11' 14" W 698.21' MEAS.  
N 05° 18' 14" W 698.45' DEED

Run Pipe  
171/2 Line Lot 1 Robert Bartlett's Riverside Subdivision Doc No 5437718

\*FACSIMILE - NOT A COPY OF\*



CAUTION: Consult a lawyer before using or acting under this form. All warranties, including merchantability and fitness, are excluded.

Seller, Anden Corporation, a corporation  
of California having its principal place of business at Hoffman Estates,  
Illinois, in consideration of Ten (\$10.00)  
dollars, receipt whereof is hereby acknowledged, does hereby sell, assign,  
transfer and set over to Buyer, City of Warrenville, an Illinois municipal  
corporation of \_\_\_\_\_  
the following described personal property, to-wit:

All: sanitary sewer, storm water and potable water pipes,  
lines, connections, pumps and lift stations; manholes and  
covers; fire hydrants; street lights; curbs, gutters; pavement  
and sidewalks, located in, on, under or above all public rights-  
of-way in the River Oaks Subdivision, Warrenville, Illinois

Seller hereby represents and warrants to Buyer that Seller is the absolute owner of said property, that  
said property is free and clear of all liens, charges and encumbrances, and that Seller has full right, power  
and authority to sell said personal property and to make this bill of sale. ~~All warranties of quality, fitness~~  
~~and merchantability are hereby excluded.~~

IN WITNESS WHEREOF, Seller has caused this bill of sale to be signed and sealed in its name by  
its officers thereunto duly authorized this 11th day of January,  
19 89.

ATTEST:

Francene D. [Signature]  
Assistant Secretary

Anden Corporation  
By [Signature]  
Vice President

**From:** [Susan Price](#)  
**To:** [Goodman, Leah](#); [Barry, Clare](#); [davidbrummel@warrenville.il.us](mailto:davidbrummel@warrenville.il.us); [fbevier@warrenville.il.us](mailto:fbevier@warrenville.il.us); [saschauer@warrenville.il.us](mailto:saschauer@warrenville.il.us); [bwilson@warrenville.il.us](mailto:bwilson@warrenville.il.us); [bweidner@warrenville.il.us](mailto:bweidner@warrenville.il.us); [kdavolos@warrenville.il.us](mailto:kdavolos@warrenville.il.us); [jkrischel@warrenville.il.us](mailto:jkrischel@warrenville.il.us)  
**Cc:** [roiaboard@riveroakshome.org](mailto:roiaboard@riveroakshome.org)  
**Subject:** ROIA testimony for the public works committee  
**Date:** Friday, June 7, 2019 6:15:43 AM  
**Attachments:** [WAP memo to public works committee.pdf](#)

---

Dear Mayor Brummel and members of the city council:

Attached is Bill Price's summary of our legal argument that the city has not only historically maintained \*all\* the storm sewers and related drains in River Oaks, but is legally obligated to do so according to the original documentation regarding the formation of the subdivision and the subsequent deeding of said drains and sewers, along with all other public utilities, to the city of Warrenville.

I would further note that, in the history of the present disagreement, the original query to the city was not about blockage of the drain from the southern to the northern area of our main common area, but the subsidence of the ground around the beehive cover. We inquired about it because we didn't want to simply dump more dirt on the hole without understanding \*why\* the subsidence had occurred, 20-some years after the area had been landscaped. In the time since our original inquiry, four sinkholes have developed directly over one of the feeder storm sewer lines, leading us to believe that the original worrying subsidence and the current sinkholes all relate to deterioration of the storm sewer lines. We suspect that the blockage of the drain between detention areas that finally needed significant work by the city last November, and for which we just last week received the invoice dated December 2018, resulted in large part from the dirt washed into the system through those degraded lines, because the material that had been in the sinkholes and the area around the beehive cover had to go somewhere.

We look forward to a more thorough review of these concerns with the public works committee this coming Monday, June 10.

Respectfully,

Susan Price  
ROIA President

**From:** [ROIA](#)  
**To:** [cbarry@warrenville.il.us](mailto:cbarry@warrenville.il.us); [lgoodman@warrenville.il.us](mailto:lgoodman@warrenville.il.us); [kdavolos@warrenville.il.us](mailto:kdavolos@warrenville.il.us); [jkrischel@warrenville.il.us](mailto:jkrischel@warrenville.il.us); [bwilson@warrenville.il.us](mailto:bwilson@warrenville.il.us); [bweidner@warrenville.il.us](mailto:bweidner@warrenville.il.us); [fbevier@warrenville.il.us](mailto:fbevier@warrenville.il.us); [saschauer@warrenville.il.us](mailto:saschauer@warrenville.il.us)  
**Cc:** [davidbrummel@warrenville.il.us](mailto:davidbrummel@warrenville.il.us); "ROAI Directors"  
**Subject:** River Oaks Storm Sewers  
**Date:** Tuesday, June 4, 2019 1:28:44 PM

---

To Aldermen Barry, Goodman, Davolos, Krischel, Wilson, Weidner, Bevier, and Aschauer:

I am writing to you as a resident of River Oaks subdivision and as a member of the board of directors of River Oaks Improvement Association, the homeowners' association in the subdivision, regarding the River Oaks storm sewer situation which is on the agenda for the June 10<sup>th</sup> Public Works and Infrastructure Committee of the Whole meeting. River Oaks is now 32 years old, and for the first 30 years of its existence the City of Warrenville has managed, made changes to, re-engineered and serviced all the storm sewers here in River Oaks. Two years ago, the City changed its response to issues with the storm sewers and now claims some sewers are owned by ROIA and must be maintained by the homeowners rather than the City. We are asking that the City not reverse its established maintenance and resume care for all the storm sewers here. Below is some background on the situation.

River Oaks was built with a detention area occupying several acres in the middle of the subdivision. The basic plan was that storm waters from River Oaks would be collected in this Common Area where they would be released at a controlled rate into the West Branch of the DuPage River. Before building, concerns were raised about how storm water drainage from adjacent areas along Rt. 59 might be affected by the new subdivision. Thus, the initial plans for storm sewers in River Oaks were altered. Waters from the Rt. 59 and Batavia Road area, including the shopping center, and from Rt. 59 north of the subdivision, were routed through River Oaks. The storm sewers were enlarged in diameter to handle the higher volume of water and a restrictor controlling the outflow was changed.

In January 1989 the builder deeded to the City of Warrenville: "All: sanitary sewer, storm water and potable water pipes, lines, connections., pumps and lift stations; manholes and covers; fire hydrants; street lights; curbs, gutters; pavement and sidewalks, located in, on, under or above all public rights-of-way in the River Oaks Subdivision, Warrenville, Illinois". For 30 years the City operated on the idea that all the storm sewers in River Oaks were owned and maintained by the City, including those under the Common Area.

During the first five years after the City took ownership of them, the storm sewer situation was modified several times by the City. The volume of water coming into River Oaks from the Rt. 59 and Batavia Rd area was so great that, during heavy rains, the manhole cover over the point of connection of that branch of the storm sewers to the sewers under the Common Area would blow off. The City solved this by using a beehive cover which allows a geyser to gush out of this joint. During heavy rains, this geyser can be several feet high and gush for over an hour after rains have stopped.

In addition, it became evident that the detention area, although large and deep, was not able to handle both River Oaks and the Rt.59 and Batavia area drainage during heavy rains. The lower cul-

de-sac of River Oaks Drive would flood as drainage from the lower areas of River Oaks into the Common Area system backed up. The City re-engineered the system to reroute the storm sewer drainage from the lower half of the subdivision, disconnecting it from the Common Area system and funneling it directly into the river at a different location. The Common Area now handles more storm drainage from the Rt. 59 and Batavia area than it does from the subdivision.

It was not just the amount of water from outside River Oaks that caused problems that the City took responsibility for. For all of those 30 years, the City would come out when called to unblock the storm sewer at the restrictor under the Common Area, removing trash from the shopping center that was swept into the storm sewers. The City removed, adjusted and replaced the restrictor several times in attempts to prevent these clogs, which still occasionally happen.

Two years ago, signs appeared over the main storm sewer under the Common Area indicating deterioration and subsidence. Sinkholes appeared directly over this main sewer line. When the City was called about this situation, the City engineer (Ms. Kristine Hocking email) responded that the City “couldn’t find a dedicated storm sewer easement to the City that allows the City to do such maintenance.” The Plat of River Oaks, however, duly registered with the County, shows “Open Space Drainage Utility and Access Easement” for the entire Common Area.

In November 2018 when the detention area was blocked yet again, Public Works (Mr. Phil Kuchler email) wrote: “This is the responsibility of the HOA. Public Works is not staffed to maintain private ponds. This detention pond was constructed solely for the benefit of the River Oaks Subdivision. The property is not owned by the City of Warrenville.” ROIA doesn’t dispute that it owns the Common Area land, which is mowed and maintained by the HOA. But to say that the detention pond system was constructed “solely for the benefit of River Oaks” is not true. The City of Warrenville engineered a storm sewer system under the Common Area to benefit the storm drainage from sites outside the subdivision. They engineered this system that now accommodates storm drainage far beyond the amounts of storm drainage it now handles for the subdivision itself. The City has taken ownership and responsibility for this system of storm sewers for 30 years, and we don’t believe that this should change.

We ask for your help to resolve this issue. We ask that the City resume maintenance of the storm sewer system in River Oaks for all storm sewer pipes, whether under a street or under the Common Area, as it has done for over 30 years.

Copies of relevant documents and plats can be found at our website:

Plat of River Oaks showing easements: <http://www.riveroakshome.org/images/roeasements.jpg>

Plat of River Oaks showing early storm sewer plans:

<http://www.riveroakshome.org/images/rostormsewers.jpg>

Plat of River Oaks showing storm sewer with changes and notes:

<http://www.riveroakshome.org/images/roeasmntchanges.jpg>

River Oaks Storm Sewer Info page – includes links to Flood Plain Hearing 1984, City Council Hearing 1985, Transfer of Storm Sewers to City 1989, Common Area Engineering Report Summary 2005 documents: <http://www.riveroakshome.org/stormsewers.html>

Thank you for your attention.

Sincerely,  
Rebecca Christiansen  
Secretary, ROIA  
630-632-2770  
[directors@riveroakshome.org](mailto:directors@riveroakshome.org)