



12 South Center Street
Bensenville, IL 60006

Office: 630.350.3404
Fax: 630.350.3438
www.bensenville.il.us

VILLAGE BOARD

President

Frank DeSimone

Board of Trustees

Rosa Carmona

Ann Franz

Agneszka "Annie" Jaworska

McLara Lomax

Nicholas Panicola Jr.

Armando Perez

Village Clerk

Nancy Quinn

Village Manager

Evan K. Summers

February 25, 2019

Mr. James Brill
White Pines Community Alliance

Re: February 22, 2019 FOIA Request

Dear Mr. Brill:

I am pleased to help you with your February 22, 2019 Freedom of Information Act ("FOIA"). The Village of Bensenville received your request on February 22, 2019 and extended by the Village on February 18, 2019. You requested copies of the items indicated below:

"Any legal documents or correspondence that were served upon or sent to the Village, its Officials or employees by or from Gina Mellenthin, the White Pines Civic Association or any attorney or individual claiming to represent them within the time period of February 19, 2019 through the date of this request."


After a search of Village files, the following information was found responsive to your request:

- 1) Circuit Court of the Eighteenth Judicial District, DuPage County Case No. 18CH001065. (19 pgs.)

These are all the records found responsive to your request.

Do not hesitate to contact me if you have any questions or concerns in connection with this response.

Very truly yours,


Corey Williamsen
Freedom of Information Officer
Village of Bensenville

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL DISTRICT
DUPAGE COUNTY, WHEATON, ILLINOIS**

GINA MELLENTIN, KURT IGLEMAN,
CELESTE SHAW, PHIL ADCOCK, AND
GARRY GARDNER

Plaintiffs,

v.

FRANK DESIMONE, ROSA CAMONA, ANN
FRANZ, ANGIESZKA JAWORSKA,
MCLANE LORAX, NICHOLAS PANICOLA,
JR., AND ARMANDO PEREZ

Defendants.

No.: 18 CH 001065

Judge Bonnie Wheaton



AMENDED COMPLAINT

NOW COMES, the Plaintiffs, GINA MELLENTIN, KURT IGLEMAN, CELESTE SHAW, PHIL ADCOCK, AND GARRY GARDNER, by and through their attorneys, Matton and Werwas, P.C., with their Amended Complaint, and in support thereof state as follows:

PARTIES

1. Frank Desimone is Village of Bensenville President and a resident of DuPage County.
2. Rosa Camona is a Village of Bensenville Trustee and a resident of DuPage County.
3. Ann Franz is a Village of Bensenville Trustee and a resident of DuPage County.
4. Angieszka Jaworska is a Village of Bensenville Trustee and a resident of DuPage County.
5. Mclane Lorax is a Village of Bensenville Trustee and a resident of DuPage County.
6. Nicholas Panicola is a Village of Bensenville Trustee and a resident of DuPage County.
7. Armando Perez is a Village of Bensenville Trustee and a resident of DuPage County.

8. Gina Mellenthin is a resident of unincorporated Bensenville of DuPage County.
9. Kurt Igleman is a resident of unincorporated Bensenville of DuPage County.
10. Celeste Shaw is a resident of unincorporated Bensenville of DuPage County.
11. Phil Adcock is a resident of unincorporated Bensenville of DuPage County.
12. Garry Gardner is a resident of unincorporated Bensenville of DuPage County.

FACTS

13. The Plaintiffs in this lawsuit are similarly situated Plaintiffs and are all unincorporated owners within the Village of Bensenville.
14. The Village of Bensenville is in charge of the unincorporated owners water service.
15. The Plaintiff unincorporated owners cannot vote for the Village of Bensenville representatives and trustees.
16. The Plaintiff unincorporated owners have been contributing funds through their water bill to a capital fund called "Unincorporated Utility Fund" for capital improvements to the unincorporated owners water system.
17. The Unincorporated Utility Fund is defined as "accounts for deposits made by the unincorporated water and sewer utility users with the intent of providing various water and sewer system improvements that would directly benefit those depositors. See Exhibit A.
18. The Village of Bensenville trustees and representatives are supposed to put the funds received from the unincorporated owners into the Unincorporated Utility Fund.
19. The Village of Bensenville trustees and representatives have not been putting the funds received from the unincorporated owners into the Unincorporated Utility Fund. See Group Exhibit B.

20. The amount that is showing at the end of year 2017 in the Unincorporated Utility Fund is \$912,081. See Group Exhibit B.

21. From at least 2013 through 2017, the receivables are \$0 that have been attributed by the Village of Bensenville to the Unincorporated Utility Fund. See Group Exhibit B.

22. There should be approximately an additional \$300,000.00 in the Unincorporated Utility Fund because for the years 2013 through 2017, \$0 were attributed by the Village of Bensenville to the Unincorporated Utility Fund.

23. There should be approximately an additional \$60,000.00 of funds attributed each year for years 2013 through 2017 by the Village of Bensenville to the Unincorporated Utility Fund.

BREACH OF FIDUCIARY DUTY

24. Plaintiffs restate and incorporate paragraphs 1 through 23 herein.

25. Defendants have knowingly and recklessly and in bad faith violated fiduciary duties of care, loyalty, good faith, and independence owed to the Plaintiff unincorporated owners.

26. Defendants have breached their fiduciary duties of loyalty, good faith, and independence owed to the Plaintiffs because they did not place the funds received from Plaintiffs into the Unincorporated Utility Fund.

27. As a result of the Defendants' breaches of their fiduciary duties, Plaintiffs have and will continue to suffer irreparable injury in that the moneys that have been paid to the Unincorporated Utility Fund have disappeared.

28. At least \$300,000.00 that is supposed to be used to pay for capital improvements to the unincorporated residents' water system is missing from the Unincorporated Utility Fund.

29. Unless enjoined by this Court, the Defendants will continue to breach their fiduciary duties owed to Plaintiffs to the irreparable harm of Plaintiffs and will continue to do so until Defendants conform with the intention of the Unincorporated Utility Fund.

WHEREFORE, Plaintiffs, GINA MELLENTHIN, KURT IGLEMAN, CELESTE SHAW, PHIL ADCOCK, AND GARRY GARDNER, ask this court to enter an Order against Defendants for a full accounting and return of the funds to the Unincorporated Utility Fund and for whatever else this Court deems just.

Respectfully submitted,

/s/ Keith H. Werwas

Keith H. Werwas

Matton and Werwas, PC
Attorneys for Plaintiff, Mellenthin
134 N. LaSalle Street
Suite 1040
Chicago, IL 60602
(312)236-6800
kwerwas@mattonandwerwas.com
DuPage Attorney No.: 328992

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL DISTRICT
DUPAGE COUNTY, WHEATON, ILLINOIS

GINA MELLENTIN, KURT IGLEMAN,
CELESTE SHAW, PHIL ADCOCK, AND
GARRY GARDNER

Plaintiffs,

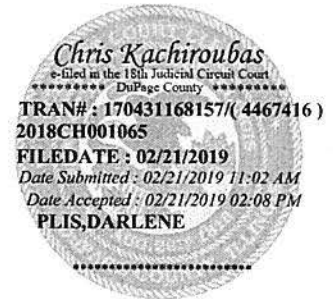
v.

FRANK DESIMONE, ROSA CAMONA,
ANN FRANZ, ANGIESZKA JAWORSKA,
MCLANE LORAX, NICHOLAS PANICOLA,
JR., AND ARMANDO PEREZ

Defendants.

No.: 18 CH 001065

Judge Bonnie Wheaton



NOTICE OF FILING

TO: Richard F. Bruen, Jr.
Montana & Welch, LLC.
11950 S Harlem Ave, Suite 102
Palos Heights, IL 60463
rbruen@montanawelch.com

Please take notice that on February 21, 2019, there will be filed with the Clerk of the Circuit Court of DuPage County, County Department, Chancery Division, the Plaintiffs' Amended Complaint.

MATTON and WERWAS, P.C.

/s/Keith H. Werwas

By:

Keith H. Werwas

Matton and Werwas, P.C.
Attorneys for Plaintiffs
134 N. LaSalle Street
Suite 1040
Chicago, IL 60602
(312)236-6800
Attorney No.: 328992
kwerwas@mattonandwerwas.com

CERTIFICATE OF SERVICE

I, Christopher Dempsey, a non-attorney, under penalties as provided in 735 ILCS 5/1-109, certify that I caused to be served a copy of the above Notice, together with its referenced documents to be served upon those persons delineated above by e-mail on February 21, 2019.

/s/Christopher Dempsey

Christopher Dempsey

Matton and Werwas, P.C.
Attorneys for Plaintiffs
134 N. LaSalle St., Suite 1040
Chicago, IL 60602
(312) 236-6800
Attorney No.: 328992
kwerwas@mattonandwerwas.com

STATE OF ILLINOIS

UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

COUNTY OF DU PAGE

GINA MELLENTHIN, ET AL.

Plaintiff,

v.

FRANK DESIMONE, ET AL.

Defendant,

18 CH 001065

Case Number

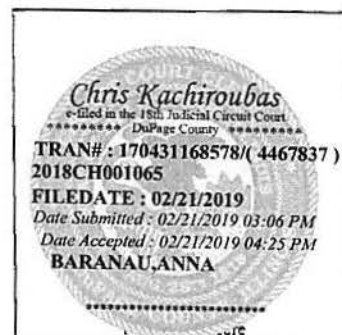


EXHIBIT COVER SHEET

Local Court Rules 5.06 and 5.09

EXHIBIT NAME: EXHIBIT A

TITLE OF DOCUMENT THIS EXHIBIT BELONGS WITH:

AMENDED COMPLAINT

Document File Date: 2/21/2019

(The file date of the document this exhibit belongs with)

EXHIBIT FILED ON BEHALF OF: GINA MELLENTHIN

(Case Party Name)

Submitted by: Keith H. Werwas

Name: Matton and Werwas, PC ☐ Pro Se

DuPage Attorney Number: 328992

Attorney for: Plaintiff, Mellenthin

Address: 134 N. LaSalle Street

City/State/Zip: Chicago, IL 60602

Telephone Number: (312) 236-6800

Email: kwerwas@mattonandwerwas.com

CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT COURT©
WHEATON, ILLINOIS 60187-0707

EXHIBIT A

NON-MAJOR SPECIAL REVENUE FUNDS

A SPECIAL REVENUE FUND IS USED TO FINANCE PARTICULAR ACTIVITIES AND IS CREATED OUT OF REVENUE OF SPECIFIC TAXES OR OTHER EARMARKED REVENUE. SUCH FUNDS ARE AUTHORIZED BY STATUTORY PROVISIONS TO PAY FOR CERTAIN ACTIVITIES WITH SOME SPECIAL FORM OF CONTINUING REVENUE. THE FOLLOWING ARE THE VILLAGE'S ACTIVE SPECIAL REVENUE FUNDS:

Dial-A-Bus Fund - Accounts for the subsidies received from PACE and bus fares collected to fund operating costs of the local transit system.

Motor Fuel Tax Fund - Accounts for the state allotments used to fund street maintenance approved by the State of Illinois.

Illinois Municipal Retirement Fund - Accounts for the specific levy of taxes to fund payments to the state controlled Pension Fund.

Social Security Retirement Fund - Accounts for the specific levy of taxes to fund payments to the federal controlled Pension Fund.

Police Forfeiture Fund - Accounts for monies received from drug seizures to fund drug prevention programs.

Unincorporated Utility Fund - Accounts for deposits made by the unincorporated water and sewer utility users with the intent of providing various water and sewer system improvements that would directly benefit those depositors.

STATE OF ILLINOIS

UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

COUNTY OF DU PAGE

GINA MELLENTHIN, ET AL.

Plaintiff,

v.

FRANK DESIMONE, ET AL.

Defendant,

18 CH 001065

Case Number

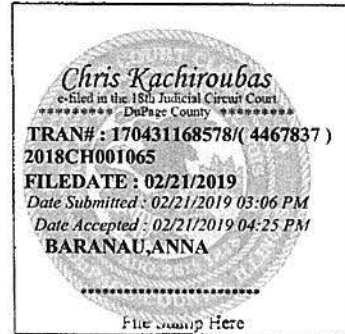


EXHIBIT COVER SHEET

Local Court Rules 5.06 and 5.09

EXHIBIT NAME: GROUP EXHIBIT B

TITLE OF DOCUMENT THIS EXHIBIT BELONGS WITH:

AMENDED COMPLAINT

Document File Date: 2/21/2019

(The file date of the document this exhibit belongs with)

EXHIBIT FILED ON BEHALF OF: GINA MELLENTHIN

(Case Party Name)

Submitted by: Keith H. Werwas

Name: Matton and Werwas, PC ☐ Pro Se

DuPage Attorney Number: 328992

Attorney for: Plaintiff, Mellenthin

Address: 134 N. LaSalle Street

City/State/Zip: Chicago, IL 60602

Telephone Number: (312) 236-6800

Email: kwerwas@mattonandwerwas.com

CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT COURT©
WHEATON, ILLINOIS 60187-0707

GROUP EXHIBIT B

VILLAGE OF BENSENVILLE, ILLINOIS

Nonmajor Governmental Funds

Combining Balance Sheet

December 31, 2013

	Special Revenue Unincorporated Utility	Capital Projects	Totals
ASSETS			
Cash and Investments	\$ 968,723	3,844,180	4,812,903
Receivables - Net of Allowances			
Property Taxes	-	297,064	297,064
Accounts	9,657	70,000	79,657
Total Assets	978,380	4,211,244	5,189,624
LIABILITIES			
Accounts Payable	2,033	108,409	110,442
Accrued Interest	-	8,624	8,624
Due to Other Funds	-	11,354	11,354
Advances from Other Funds	-	1,488,982	1,488,982
Other Payables	-	89,881	89,881
Total Liabilities	2,033	1,707,250	1,709,283
DEFERRED INFLOWS OF RESOURCES			
Property Taxes	-	289,773	289,773
Total Liabilities and Deferred Inflows of Resources	2,033	1,997,023	1,999,056
FUND BALANCES			
Restricted	-	2,182,908	2,182,908
Committed	976,347	-	976,347
Assigned	-	772,844	772,844
Unassigned	-	(741,531)	(741,531)
Total Fund Balances	976,347	2,214,221	3,190,568
Total Liabilities, Deferred Inflows of Resources and Fund Balances	978,380	4,211,244	5,189,624

VILLAGE OF BENSENVILLE, ILLINOIS

Nonmajor Governmental Funds

Combining Balance Sheet
December 31, 2014

	Special Revenue		
	Unincorporated Utility	Capital Projects	Totals
ASSETS			
Cash and Investments	\$ 1,041,374	4,218,527	5,259,901
Receivables - Net of Allowances			
Property Taxes	-	410,045	410,045
Accounts	4,204	35,000	39,204
Prepays	-	37,063	37,063
Total Assets	1,045,578	4,700,635	5,746,213
LIABILITIES			
Accounts Payable	7,032	93,815	100,847
Advances from Other Funds	-	1,500,584	1,500,584
Other Payables	-	54,882	54,882
Total Liabilities	7,032	1,649,281	1,656,313
DEFERRED INFLOWS OF RESOURCES			
Property Taxes	-	410,045	410,045
Total Liabilities and Deferred Inflows of Resources	7,032	2,059,326	2,066,358
FUND BALANCES			
Nonspendable	-	37,063	37,063
Restricted	-	2,360,964	2,360,964
Committed	1,038,546	-	1,038,546
Assigned	-	1,042,530	1,042,530
Unassigned	-	(799,248)	(799,248)
Total Fund Balances	1,038,546	2,641,309	3,679,855
Total Liabilities, Deferred Inflows of Resources and Fund Balances	1,045,578	4,700,635	5,746,213

VILLAGE OF BENSENVILLE, ILLINOIS

Nonmajor Governmental Funds

Combining Balance Sheet
December 31, 2015

	Special Revenue		
	Unincorporated Utility	Capital Projects	Totals
ASSETS			
Cash and Investments	\$ 1,025,077	4,481,596	5,506,673
Receivables - Net of Allowances			
Property Taxes	-	320,729	320,729
Accounts	745	34,995	35,740
Total Assets	1,025,822	4,837,320	5,863,142
LIABILITIES			
Accounts Payable	26,824	238,412	265,236
Advances from Other Funds	-	1,500,584	1,500,584
Other Payables	-	19,887	19,887
Total Liabilities	26,824	1,758,883	1,785,707
DEFERRED INFLOWS OF RESOURCES			
Property Taxes	-	319,957	319,957
Total Liabilities and Deferred Inflows of Resources	26,824	2,078,840	2,105,664
FUND BALANCES			
Restricted	-	2,493,820	2,493,820
Committed	998,998	-	998,998
Assigned	-	1,046,364	1,046,364
Unassigned	-	(781,704)	(781,704)
Total Fund Balances	998,998	2,758,480	3,757,478
Total Liabilities, Deferred Inflows of Resources and Fund Balances	1,025,822	4,837,320	5,863,142

VILLAGE OF BENSENVILLE, ILLINOIS

Nonmajor Governmental Funds

Combining Statement of Revenues, Expenditures and Changes in Fund Balances
For the Fiscal Year Ended December 31, 2015

	Special Revenue		
	Unincorporated Utility	Capital Projects	Totals
Revenues			
Taxes	\$ -	1,279,628	1,279,628
Charges for Services	6,579	-	6,579
Interest	-	6,393	6,393
Miscellaneous	-	35,000	35,000
Total Revenues	6,579	1,321,021	1,327,600
Expenditures			
Public Works	46,127	-	46,127
Community Development	-	331,091	331,091
Debt Service			
Principal Retirement	-	822,765	822,765
Interest and Fiscal Charges	-	550,084	550,084
Total Expenditures	46,127	1,703,940	1,750,067
Excess (Deficiency) of Revenues Over (Under) Expenditures	(39,548)	(382,919)	(422,467)
Other Financing Sources			
Transfers In	-	500,090	500,090
Net Change in Fund Balances	(39,548)	117,171	77,623
Fund Balances - Beginning	1,038,546	2,641,309	3,679,855
Fund Balances - Ending	998,998	2,758,480	3,757,478

VILLAGE OF BENSENVILLE, ILLINOIS

Nonmajor Governmental Funds

Combining Balance Sheet
December 31, 2016

	Special Revenue		
	Unincorporated Utility	Capital Projects	Totals
ASSETS			
Cash and Investments	\$ 919,941	4,668,660	5,588,601
Receivables - Net of Allowances			
Property Taxes	-	303,659	303,659
Accounts	431	34,995	35,426
Total Assets	920,372	5,007,314	5,927,686
LIABILITIES			
Accounts Payable	-	172,959	172,959
Advances from Other Funds	-	1,500,584	1,500,584
Other Payables	-	19,877	19,877
Total Liabilities	-	1,693,420	1,693,420
DEFERRED INFLOWS OF RESOURCES			
Property Taxes	-	303,659	303,659
Total Liabilities and Deferred Inflows of Resources	-	1,997,079	1,997,079
FUND BALANCES			
Restricted	-	2,650,423	2,650,423
Committed	920,372	-	920,372
Assigned	-	1,136,526	1,136,526
Unassigned	-	(776,714)	(776,714)
Total Fund Balances	920,372	3,010,235	3,930,607
Total Liabilities, Deferred Inflows of Resources and Fund Balances	920,372	5,007,314	5,927,686

VILLAGE OF BENSENVILLE, ILLINOIS

Nonmajor Governmental Funds

Combining Statement of Revenues, Expenditures and Changes in Fund Balances
For the Fiscal Year Ended December 31, 2016

	Special Revenue		
	Unincorporated Utility	Capital Projects	Totals
Revenues			
Taxes	\$ -	1,343,502	1,343,502
Interest	-	20,037	20,037
Total Revenues	-	1,363,539	1,363,539
Expenditures			
Public Works	78,626	-	78,626
Community Development	-	773,742	773,742
Debt Service			
Principal Retirement	-	909,177	909,177
Interest and Fiscal Charges	-	570,477	570,477
Total Expenditures	78,626	2,253,396	2,332,022
Excess (Deficiency) of Revenues Over (Under) Expenditures	(78,626)	(889,857)	(968,483)
Other Financing Sources			
Debt Issuance	-	570,612	570,612
Transfers In	-	571,000	571,000
	-	1,141,612	1,141,612
Net Change in Fund Balances	(78,626)	251,755	173,129
Fund Balances - Beginning	998,998	2,758,480	3,757,478
Fund Balances - Ending	920,372	3,010,235	3,930,607

VILLAGE OF BENSENVILLE, ILLINOIS
NONMAJOR GOVERNMENTAL FUNDS
COMBINING BALANCE SHEET
DECEMBER 31, 2017

	Special Revenue		
	Unincorporated Utility	Capital Projects	Totals
Assets			
Cash and investments	\$ 911,917	\$ 8,727,458	\$ 9,639,375
Receivables - net of allowances			
Property taxes	164	194,384	194,548
Accounts	-	45,883	45,883
Total assets	<u>912,081</u>	<u>8,967,725</u>	<u>9,879,806</u>
Liabilities			
Accounts payable	-	292,485	292,485
Advances from other funds	-	2,763,397	2,763,397
Other payables	-	19,922	19,922
Total liabilities	<u>-</u>	<u>3,075,804</u>	<u>3,075,804</u>
Deferred Inflows of Resources			
Property taxes	-	194,379	194,379
Total liabilities and deferred inflows of resources	<u>-</u>	<u>3,270,183</u>	<u>3,270,183</u>
Fund Balances			
Restricted	-	5,906,825	5,906,825
Committed	912,081	-	912,081
Assigned	-	1,016,190	1,016,190
Unassigned	-	(1,225,473)	(1,225,473)
Total fund balances	<u>912,081</u>	<u>5,697,542</u>	<u>6,609,623</u>
Total liabilities, deferred inflows of resources and fund balances	<u>\$ 912,081</u>	<u>\$ 8,967,725</u>	<u>\$ 9,879,806</u>

VILLAGE OF BENSENVILLE, ILLINOIS
NONMAJOR GOVERNMENTAL FUNDS
COMBINING STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES
FOR THE YEAR ENDED DECEMBER 31, 2017

	Special Revenue		
	Unincorporated Utility	Capital Projects	Totals
Revenue			
Taxes	\$ -	\$ 2,884,289	\$ 2,884,289
Interest	-	87,334	87,334
Total revenues	-	2,971,623	2,971,623
Expenditures			
Public works	8,291	-	8,291
Community development	-	685,251	685,251
Debt services			
Principal retirement	-	1,231,428	1,231,428
Interest and fiscal charges	-	1,737,438	1,737,438
Total expenditures	8,291	3,654,117	3,662,408
Excess (Deficiency) of Revenues Over (Under) Expenditures	(8,291)	(682,494)	(690,785)
Other Financing Sources (Uses)			
Debt issuance	-	9,945,000	9,945,000
Bond discount	-	(67,129)	(67,129)
Payment to escrow agent	-	(9,787,091)	(9,787,091)
Transfers in	-	350,000	350,000
Transfers out	-	(190,000)	(190,000)
Total other financing sources (uses)	-	250,780	250,780
Net Change in Fund Balances	(8,291)	(431,714)	(440,005)
Fund Balances - Beginning	920,372	6,129,256	7,049,628
Fund Balances - Ending	\$ 912,081	\$ 5,697,542	\$ 6,609,623