

Case No. 132527

**In the
Supreme Court of Illinois**

HUSKY TRANS, INC., an Illinois Corporation,
HUKY TRUCK REPAIR, INC., an
Illinois Corporation,

Plaintiffs-Appellants

v.

THE VILLAGE OF BARRINGTON HILLS,
an Illinois Municipality,

Defendant-Appellee

On Appeal from the Appellate Court of Illinois,
First Judicial District, Case No. 1-24-1346.
There on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, Case No. 2024-CH-01302,
The Honorable Thaddeus L. Wilson, Presiding.

APPELLEE'S BRIEF

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NATURE OF THE ACTION

By ordinance, the Village of Barrington Hills (“Village”) annexed certain property pursuant to 65 ILCS 5/7-1-13(a). Some of the annexed property is owned by Husky Trans, Inc. and Husky Truck Repair (“Husky”), and Husky filed a lawsuit to invalidate the annexation. No other landowners filed suit or joined Husky’s suit. The Village and Husky both moved for summary judgment and the trial court granted summary judgment for Husky. On appeal, the appellate court reversed the grant of summary judgment for Husky and granted summary judgment in favor of the Village. This Court granted Husky’s petition for leave to appeal.

ISSUE PRESENTED FOR REVIEW

Whether the appellate court was correct in granting summary judgment in favor of the Village finding that the Village’s annexation ordinance under 65 ILCS 5/7-1-13(a) is valid.

STATUTE INVOLVED

Whenever any unincorporated territory containing 60 acres or less, is wholly bounded by (a) one or more municipalities, (b) one or more municipalities and a creek in a county with a population of 400,000 or more, or one or more municipalities and a river or lake in any county, (c) one or more municipalities and the Illinois State boundary, (d) except as provided in item (h) of this subsection (a), one or more municipalities and property owned by the State of Illinois, except highway right-of-way owned in fee by the State, (e) one or more municipalities and a forest preserve district or park district, (f) if the territory is a triangular parcel of less than 10 acres, one or more municipalities and an interstate highway owned in fee by the State and bounded by a frontage road, (g) one or more municipalities in a county with a population of more than 800,000 inhabitants and less than 2,000,000 inhabitants and either a railroad or operating property, as defined in the Property Tax Code (35 ILCS 200/11-70), being immediately adjacent to, but exclusive of that railroad property, (h) one or more municipalities located within a county with a population of more than 800,000 inhabitants and less than 2,000,000 inhabitants and property owned by the State, including without limitation a highway right-of-way owned in fee by the

State, or (i) one or more municipalities and property on which a federally funded research facility in excess of 2,000 acres is located, that territory may be annexed by any municipality by which it is bounded in whole or in part, by the passage of an ordinance to that effect after notice is given as provided in subsection (b) of this Section. Land or property that is used for agricultural purposes or to produce agricultural goods shall not be annexed pursuant to item (g). Nothing in this Section shall subject any railroad property to the zoning or jurisdiction of any municipality annexing the property under this Section. The ordinance shall describe the territory annexed and a copy thereof together with an accurate map of the annexed territory shall be recorded in the office of the recorder of the county wherein the annexed territory is situated and a document of annexation shall be filed with the county clerk and County Election Authority. Nothing in this Section shall be construed as permitting a municipality to annex territory of a forest preserve district in a county with a population of 3,000,000 or more without obtaining the consent of the district pursuant to Section 8.3 of the Cook County Forest Preserve District Act¹ nor shall anything in this Section be construed as permitting a municipality to annex territory owned by a park district without obtaining the consent of the district pursuant to Section 8-1.1 of the Park District Code.

65 ILCS 5/7-1-13(a).

STATEMENT OF FACTS

On February 26, 2024, the Village's Board of Trustees adopted an ordinance (the "Annexation Ordinance") to annex a 44.52 acre territory that was located in unincorporated Cook County, and containing the common addresses of 15 Old Sutton Road, 188 Old Sutton Road, 190 Sutton Road, 191 Penny Road, 193 Penny Road, 545 Penny Road, 545 Penny Road, and a specific portion of railroad property (the "Territory"). The Territory is less than 60 acres and not part of a larger 129 acre parcel. (C343, 634) The Territory includes property owned by, and/or occupied by, Husky. (C97-100)

The Husky property has several structures that are or have been used for different purposes. (C22-23) There is a 3-story restaurant and pub, a house, a double-wide trailer, a single-wide trailer, a barn, and a storage container. (C 22-23) A caretaker for the Husky

Property, resides in the farmhouse, and Husky is letting the single-wide trailer function as housing for two employees and a family member. (C23). The double-wide trailer is leased to a family of two. (C23). The barn serves as storage space for equipment including tires for semi-truck trailers and the storage container is rented to a third-party for storage. (C23). Husky was (or still is) under contract to sell the Husky Property to Paintball Explosion Partners, LLC, a company who would turn the Husky Property into a paintball recreational facility for paying customers. (C135-38).

As required by law, in advance of adoption of the Annexation Ordinance, the Village issued written notice of the proposed action, by certified mail to all taxpayers of record. (373-380). Husky received the notice on February 15, 2024, and on the same day, through its legal counsel, sent a seven page letter to the Village contesting the legality of the annexation, and notice. (C386-392). Husky was aware of the proposed annexation as early as December 19, 2023. (C 334). The Village Board has not “hatched a plan to avoid the 60-acre statutory limit” on annexations under Section 7-1-13 by annexing a larger assemblage of property in phases, and there is no evidence in the record that this is true.¹

The Village annexed the Territory pursuant to Section 7-1-13 of the Illinois Municipal Code, 65 ILCS 5/7-1-13. *Id.* This statutory section is just one option on the menu of annexation options available to municipalities and provides in pertinent part that “[w]hensoever any unincorporated territory containing 60 acres or less, is wholly bound by ... (e) one or more municipalities and a forest preserve district or park district ... that

¹ Husky’s “hatched a plan” assertion is based upon a 15 second audio recording that does not provide what Husky claims and judicial notice is not appropriate under Ill. Rule Evid. 201 because, among other reasons, the supposed fact is subject to reasonable dispute.

territory may be annexed by any municipality by which it is bounded in whole or in part, by the passage of an ordinance to that effect after notice has been given as provided in subsection (b) of this Section ...” 65 ILCS 5/7-1-13(a). While Husky suggests otherwise, nowhere in section 7-1-13 or anywhere else in the Illinois Municipal Code is it stated that the section 7-1-13(a) method of annexation is “extraordinary,” that it is “not favored,” or that there is “strong public policy” against using or employing section 7-1-13(a) annexations.

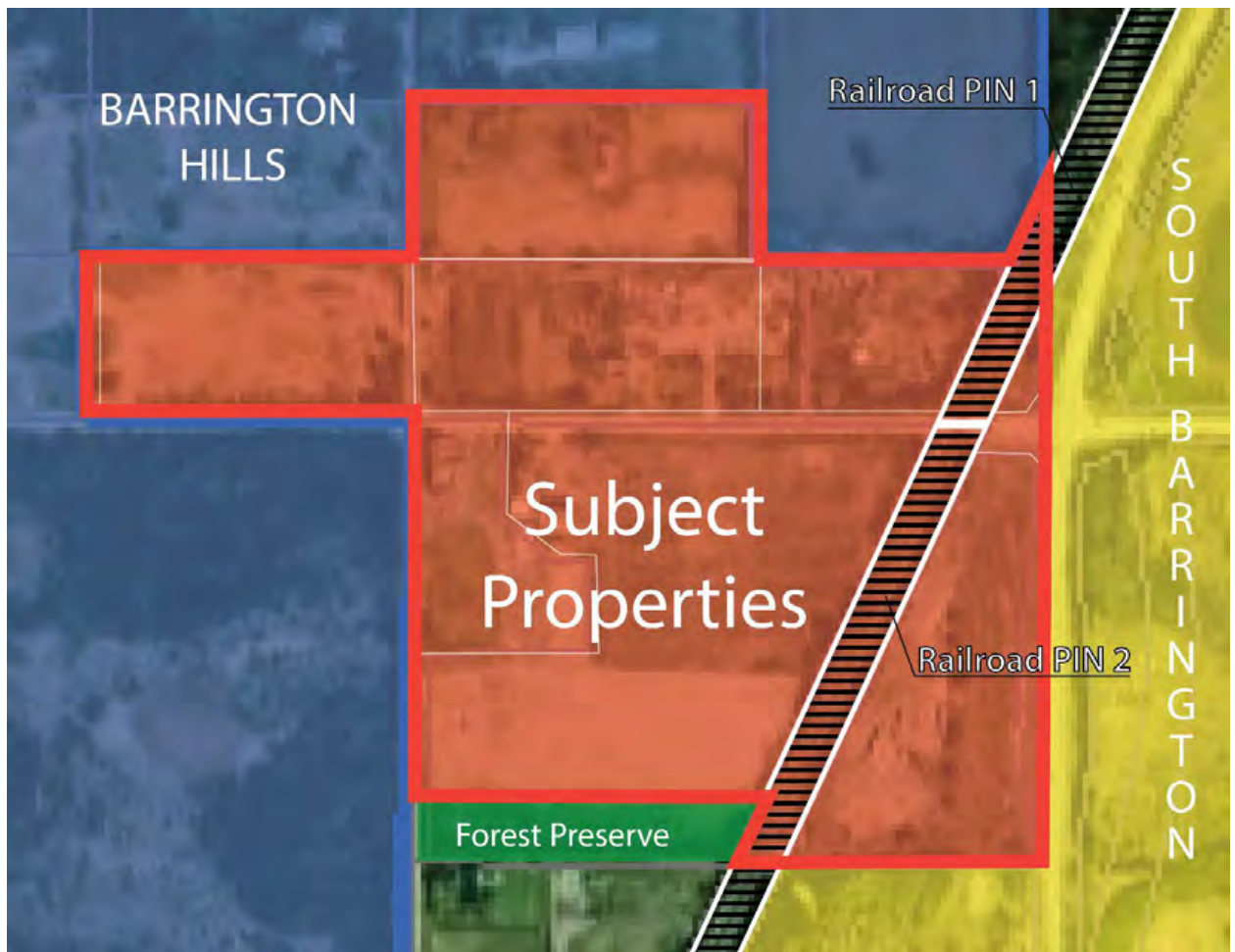
The Annexation Ordinance’s delayed effective date was March 8, 2024. (C98). The very next day after the Village passed the Annexation Ordinance, Husky filed a verified complaint in the Circuit Court of Cook County seeking injunctive relief and declaratory judgment. (C15-100). Immediately after filing its complaint, Husky filed an emergency motion for entry of a temporary restraining order, seeking a court order to block Village Board action to annex its property. (C106-152). On March 6, 2024, the trial court granted Husky’s motion and entered a temporary restraining order thereby blocking the effectuation of the Annexation Ordinance adopted by the Village. (C324-329). On the same day, Husky sought leave of court to file an amended complaint for purposes of asserting a *quo warranto* action, seeking to invalidate the Annexation Ordinance. A verified amended complaint was filed with two Counts: Count I, declaratory judgment pursuant to the Code of Civil Procedure, 735 ILCS 5/2-701, *et seq.*, and, alternatively, in Count II, *quo warranto*, pursuant to the Code of Civil Procedure, 735 ILCS 5/18-101, *et seq. Id.* (C330-458).

In addition to challenging the Village's right to annex under Section 7-1-13(a), Husky also challenged the legality of notice given, as required under Section 7-1-13(b), which provides that notice "shall be given to the impacted landowners. The corporate authorities shall also, not less than 15 days before the passage of the annexation ordinance, serve written notice, either in person or, at a minimum, by certified mail, on the taxpayer of record of the proposed annexed territory as appears from the authentic tax records of the county." *Id.* The trial court observed that the issue of service of the notice was not material, based on the trial court's finding that the Annexation Ordinance was improper and, in any event, determined that Husky was not harmed by any notice issue. (A012). Husky did not contest the notice issue in the appellate court.

Husky and the Village agree that the Territory includes a portion of railroad right-of-way, which travels in a north-south direction through the Territory, and continues outside the Territory for several thousand feet both north and south. The Village did not annex that portion of the railroad right-of-way lying outside the boundary of the Territory. The rail right-of-way running through the Territory results in two approximately 100-foot wide sections remaining bounded by the railroad right of way in unincorporated Cook County. (C99-100, 342). Husky states that describing the sections as 100-foot wide is an incorrect characterization, but the Village supplied legal descriptions of the Territory in the Annexation Ordinance stating that the property owned by the Canadian National Railway Co. is a "100.0 foot right of way." (C99-100). Husky's assertion of larger gaps is supported only by hand drawings on maps not to scale, state on their face that they are "for illustration only," and were supplied with no accompanying affidavit, rendering Husky's

assertion conclusory and speculative. (C416, 523).

The Territory to be annexed, shown below in red, and the surrounding properties in color, are shown in the below depiction with the rail right-of-way running in a north-south direction on the east side of the Territory and shown with cross-hatching:



(C343).

The Village and Husky filed cross motions for summary judgment, wherein Husky argued that the existence of the railway right of way created “gaps” which resulted in the Territory not being wholly bounded as required by the Illinois Municipal Code, Section 7-1-3(a). (C514-536). The Village argued that the two minor “gaps” were *de minimus* and,

as such, did not invalidate the annexation. (C539-568). As noted, Husky also disputed the legality of the Village's notice to Husky. (C514-536, C 539-568).

On June 12, 2024, the trial court entered a final order in this matter holding that the Territory was not "wholly bounded" as required pursuant to Section 7-1-13(a) because of the "gaps" created by the existence of the railroad right of way. (C654-662). Accordingly, the trial court held that the Annexation Ordinance was null and void and of no legal effect. *Id.* On these findings, the trial court granted Husky's motion for summary judgment and declared the Annexation Ordinance null and void. *Id.* The Village appealed the trial court order, and the appellate court reversed the grant of summary judgment for Husky and granted summary judgment for the Village. (A013-025). The appellate court reasoned that the gaps created by the railroad right-of-way are *de minimis* and that the trial court erred in invalidating the Village's Annexation Ordinance. (A025).

Prior to this litigation commencing, there was formed an "Unincorporated Cook County Task Force," which has suggested that Cook County's long-term goal should be to eliminate all unincorporated land in the County to keep unincorporated land from being a strain on the County's resources. See <https://www.cookcountyil.gov/news/task-force-recommends-eventual-elimination-unincorporated-cook> (C 547) (last visited April 7, 2026). The Task Force recommended that municipalities be encourages to annex unincorporated parcels, with a specific focus on parcels under 60 acres. *Id.*

This Court granted Husky leave to appeal on January 28, 2026.

ARGUMENT

There is nothing extraordinary about involuntary annexation under Section 7-1-13. Forced annexation is simply one option on the menu of a municipality's annexation options in the Illinois Municipal Code and the Village pursued and accomplished annexation under that section. Here, the small gaps in the boundary of annexed territory caused by a rail corridor that is just passing through are *de minimis* and should not defeat an otherwise unobjectionable annexation. A narrow rail corridor should not dictate municipal annexation policy.

I. Standard of Review

This matter is before the Court on the entry of summary judgment in the Village's favor by the appellate court and a reversal by the appellate court of the trial court's entry of summary judgment for Husky. (A013-025). Given the filing of cross motions for summary judgment at the trial court level, the Village and Husky conceded that no material questions of fact are at issue and that only a question of law remained based on the record. Summary judgment "is appropriate where there are no genuine issues of material fact, and the movant is entitled to judgment as a matter of law." *Owen v. Vill. of Maywood*, 2023 IL App (1st) 220350, ¶¶ 17-18. Such relief "should be granted only if the movant's right to judgment is free and clear from doubt." *Id.* Review of an entry of summary judgment is *de novo*. *Land v. Board of Education of the City of Chicago*, 202 Ill.2d 414, 421 (2002). Moreover, because the trial court and appellate court analyzed questions of statutory interpretation, review is *de novo*. *Elementary School District 159 v. Schiller*, 221 Ill.2d 130, 142 (2006); *City of Champaign v. Torres*, 214 Ill.2d 234, 241 (2005).

II. The Village's annexation is valid under Section 7-1-13 and the appellate court was correct to not allow it to be invalidated by the existence of a *de minimis* gap created by a train line that is just passing through the annexation territory.

A. The maxim of *de minimis non curat lex*.

Illinois courts have long recognized the maxim *de minimis non curat lex*, and this maxim is fully applicable to the instant case. This maxim is defined to state “[t]he law does not concern itself with trifles” and “[t]he law does not care for, or take notice of, very small or trifling matters.” See Black's Law Dictionary, p. 443 (7th ed.1999) and Black's Law Dictionary, p. 431 (6th ed.1991). The maxim “retains force even in constitutional cases, even in civil rights cases” and it functions “to place outside the scope of legal relief the sorts of intangible injuries normally small and invariably difficult to measure that must be accepted as the price of living in society rather than made a federal case out of.” *Pacini v. Regopoulos*, 281 Ill. App. 3d 274, 280 (1st Dist. 1996), quoting *Swick v. City of Chicago*, 11 F.3d 85, 87 (7th Cir.1993); see also *Smith Oil and Refining Company v. Department of Finance*, 371 Ill. 405 (1939); *Sebastian v. Gorecki*, 339 Ill. 393 (1930); *Freese v. Glos*, 248 Ill. 280 (1910); and *People v. Durham*, 391 Ill. App. 3d 1100, 1103 (4th Dist. 2009).

B. Caselaw is replete with examples of courts using the *de minimis* maxim and otherwise refusing to be hamstrung by a rigid application of annexation statutes to unique real-world situations like the one here.

Since no two parcels of real property are the same, every annexation scenario is inherently different. It is thus no surprise that courts in Illinois have used the *de minimis* maxim for unique annexation situations, and furthermore courts have not applied an unbending rigidity in every annexation scenario encountered. Here, the appellate court

properly applied the *de minimis* maxim. The happenstance of a train line and a resulting *de minimis* gap in the wholly bounded territory should not defeat an otherwise valid annexation.

More than sixty years ago, this Court in *People v. Knapp*, 28 Ill.2d 239 (1963) was faced with issues concerning proceedings to incorporate the City of Crest Hill. The law required that the property proposed to be incorporated by Crest Hill had to be unincorporated and the issue faced by the Court was whether the incorporation petition was fatally defective where the description of the territory to be incorporated was in error for including land already incorporated into the City of Joliet. The Court held that while the statute “contemplates that the territory to be incorporated will not be already incorporated” it also observed that the statute “deals with practical matters and must be given a practical, common-sense approach.” *Id.* at 244. For the parties in *Knapp*, this practical approach meant that inclusion of the incorporated strip of land, even though the inclusion of the strip of land was not allowed by statute and could be deemed to invalidate the incorporation proceeding under strict construction of the law. Nevertheless, the Court found compliance with the statute sufficient, and, further, found the *de minimus* rule applicable in boundary cases. Under *Knapp* “jurisdictional requirements” of Illinois annexation statutes are not excluded from application of the *de minimis* rule.

Sixty years ago, in *People ex rel. Chicago Title & Trust Co. v. City of Des Plaines*, 76 Ill.App.2d 243 (1st Dist. 1966) there was a 49-foot gap in the continuity of the boundary of the municipality with the land proposed to be annexed. After noting that “[t]he law has long treated the trivial with appropriate disdain, and the common sense maxim *De minimis*

non curat lex has often been invoked in this state” the court found the gap to be *de minimis* and held that the annexed property was “wholly bounded” for purposes of Section 7-1-13 even though the property was not wholly bounded in actuality. *Id.* at 249-50.

In *People ex rel. Northbrook v. City of Highland Park*, 35 Ill. App. 3d 435 (1st Dist. 1976), the Village of Northbrook annexed property that included a strip of land that had been previously annexed to the City of Highland Park. And even though the annexation statutes prohibit already incorporated land from being annexed by another municipality, the appellate court did not invalidate Northbrook’s annexation but simply reduced the area of the annexation by eliminating the already incorporated strip from Northbrook’s annexation.

Allowing annexation in the face of *de minimus* gaps upholds the legislative policies behind section 7-1-13, as set forth by this Court in *Spaulding School District No. 58 v. City of Waukegan*, 18 Ill.2d 526 (1960), where Waukegan sought to annex property that would have left an unincorporated island surrounded by Waukegan and the area sought to be annexed. Although *Spaulding* involved the issue of contiguity, the Court explained the involuntary annexation statute, saying the “wholly bounded” language of the involuntary annexation statute reflected an acknowledgement by the legislature that unincorporated islands of property existed, and provided for the ultimate absorption of such areas into a municipality. *Id.*

Concerning the statutory requirement in Section 7-1-13(a) that the involuntary annexation of property be 60 acres or less, in *West Suburban Bank v. City of West Chicago*, 366 Ill. App. 3d 1137 (2d Dist. 2006) the court was faced with an annexation that contained

more than 60 acres as a result of highway right-of-way acreage that was required to be included. Excluding the highway right of way resulted in the acreage at issue in the annexation being 57.14 acres but inclusion of the right of way made it 62.75 acres. The plaintiff called for the court to adhere to the “plain, unambiguous language” of the statute and for strict enforcement of the 60-acre limit. *Id.* at 1143. The appellate court refused to adopt the rigid approach plaintiff suggested, and the result was an annexation that included 62.75 acres even though the plain language of the statute caps involuntary annexations at 60 acres.

In *Village of North Barrington v. Village of Lake Barrington*, 8 Ill.App.3d 50 (2d Dist. 1972), the court was called upon to determine whether signatures on a petition to annex complied with the requirements of 65 ILCS 5/7-1-8. The statutory language requires signatures to be made under oath, but the signatures on the annexation petition were not. Once again, the Court was not rigid in its application of the law but, instead, had the real-world flexibility to allow the signatures to count because “the petitioners signed the document intending to sign under oath.” *Id.* at 51.

At issue in *People ex rel. St. Clair County v. City of Belleville, St. Clair County*, 81 Ill.App.3d 379 (5th Dist. 1980) was the sufficiency of notice of an annexation to fire protection district trustees pursuant to 65 ILCS 5/7-1-8. Due to an error in identification of one of the fire protection district trustees, only two of the three trustees received notice. The court disagreed with the plaintiff that the annexation should be invalid, holding that notice was sufficient, if not in full statutory compliance. Similarly, in *In re Annexation of Village of Wadsworth v. Humrich*, 35 Ill. App. 3d 957 (rev’d on other grounds), 65 Ill.2d

148 (1976), the court also refused to invalidate an annexation for failure to serve all three fire protection district trustees. And in *People ex rel. Northbrook v. Village of Glenview*, 194 Ill. App. 3d 560 (1st Dist. 1989), the court held that personal service to the fire protection district trustees, though it was not by means of certified or registered mail as required by law, did not invalidate the annexation proceeding. *Id.* at 563-64.

That Husky finds a way to distinguish some of these cases is not surprising given that each involves unique facts, but the number of cases involved demonstrates that courts will not be hamstrung and will give each scenario a practical common-sense approach.

Even the case of *Chicago Title Land Trust Co. v. County of Will*, 2018 IL App (3d) 160713, which Husky discusses extensively, shows that the Court will not let rigid statutory interpretation interfere with appropriate outcomes in real-world applications and is consistent with the *de minimis* case law. In *Chicago Title*, the Village of Bolingbrook fully *complied* with the requirements of the annexation statute but nevertheless had its annexation invalidated. In order for the involuntarily annexed property to be wholly bounded it was necessary for Bolingbrook to first annex a separate ComEd property. Bolingbrook annexed the ComEd property by a statutorily correct voluntary annexation that was subject to certain provisions of an agreement that would have allowed ComEd to disconnect in the future. Still, the court invalidated the ComEd annexation concluding that it was done exclusively for the purpose of allowing Bolingbrook to reach the target property for involuntary annexation. Once the ComEd voluntary annexation was invalidated, the target property for involuntary annexation was no longer “wholly

bounded.” The dissent of Justice Holdridge noted Bolingbrook’s strict compliance with the annexation statute:

[I]t is undisputed that (1) ComEd voluntarily submitted a petition for annexation pursuant to section 7–1–8 of the Code, (2) the Village subsequently passed an ordinance to annex the ComEd property, as required by section 7–1–8 of the Code, (3) the Village subsequently passed a separate ordinance to involuntarily annex the James property, as required by section 7–1–13(a) of the Code, (4) the Village authorities published timely notice to the impacted landowners as directed by section 7–1–13(b) of the Code, and (5) the Village's annexation of the ComEd property, if effective, would have created contiguity with the James property sufficient to allow the Village's subsequent involuntary annexation of the James property under section 7–1–13 of the Code. It is also undisputed that James had the opportunity to file objections to the Village's annexation of his property, and did so. *Accordingly, the parties do not dispute that the letter of all the applicable statutory requirements were observed.*

Chicago Title Land Trust Co., 2018 IL App (3d) at ¶ 53 (emphasis added).

The applicable statutory requirements were undisputably satisfied by Bolingbrook in *Chicago Title*, yet the court would not let itself be hamstrung and proceeded to invalidate the statutorily correct annexation because it viewed the annexation as being accomplished by subterfuge. It was a practical approach by the court to be sure, but not one with a basis in statute.

Husky surely recognizes that all real property is unique and that courts have not viewed themselves as hamstrung in the annexation context, so it sets about trying to put itself in the most favorable light possible. It basically describes itself as a peaceable landowner getting pulled into the boundaries of the Village in order for its business activities past and present to be crushed by Village regulation. (Appellant’s Brief, p. 12). In what is a misunderstanding on the law, Husky say that it “discovered that [Village zoning and building] restrictions would prohibit it and its employees from using and occupying

the Husky Property until that property was brought into compliance with the Village's restrictive zoning and building regulations." *Id.* But dislike of a municipality's regulations and regulatory framework is not a legal basis to contest an involuntary annexation. To be sure, this is not a case about takings.

Still, to establish the narrative that annexation by the Village is unjust, Husky relates facts unique to the Husky Property including that Husky and its predecessor have at various times used the property as a pub, restaurant, landscaping business, tree nursery, equipment storage including tire storage for Husky's semi-truck trailer business, and a place for third-parties to rent storage space in a storage container. (C 479-80). Also on the Husky Property is a single-wide trailer serving as living quarters for two Husky employees and two other individuals, and also a double-wide trailer serving as a residence for two acquaintances of the Husky employees. (C 480). Husky was (or still is) under contract to sell the Husky Property to Paintball Explosion Partners, LLC, a company who would turn the Husky Property into a paintball recreational facility. (A 070).

It is not a reasonable view of the law to basically equate annexation of property with a regulatory taking of property, as Husky does here. This is not a case about regulatory takings. If Husky's property is annexed and Husky thinks regulation of its private property is so onerous so as to deny it all economically beneficial or productive uses of its land, Husky is not without the ability for judicial redress. *See Strauss v. City of Chicago*, 2021 IL App (1st) 191977 at ¶ 56. In any event, Husky's view of zoning law impacts on its property is misinformed. When a property is annexed with an established use, as long as that use continues it cannot be adversely affected by the new zoning restrictions imposed

by the municipality that annexes the property. *Giannakopolous v. Adams*, 2018 IL App (1st) 162364 at ¶ 38. The Village’s zoning authority would therefore be limited. The Village would be able to enforce its building maintenance and life safety codes with respect to newly annexed Husky property, but that certainly should not be objectionable to any land user who is following standard safety and construction practices. If Husky opposes the annexation because it wants to evade building safety regulations, that certainly raises red flags and should garner Husky no sympathy with the Court.

In the unique circumstances here, a corridor of train tracks runs through property that could otherwise be annexed into the Village without controversy or basis for legal challenge. (C 223). There is no public policy consideration or regulatory reason why a train line that is just passing through and creating small breaks in the wholly bounded territory should be allowed to defeat sound local annexation planning. The court should not allow train tracks to dictate municipal annexation policy.

C. Husky’s often stated refrain that compulsory incorporation is “extraordinary” and “not favored” has no basis in statute.

On numerous occasions in its brief and in this litigation, Husky makes sure to remind the Court that annexations under Section 7-1-13 of the Municipal Code are an “extraordinary method” of annexation, that “compulsory incorporation is not favored, and therefore the question of annexation is usually referred to the inhabitants,” and that “[t]here is a strong public policy that the land owners of the property to be annexed have the ultimate decision.” See Appellant’s Brief at p. 3-4, 30 citing *People ex rel. Village of Northbrook v. Village of Glenview*, 194 Ill. App. 3d 560, 565 (1st Dist. 1989) (citing 1 and 2 E. McQuillin, *Municipal Corporations*, (1988)). The problem with these assertions is that

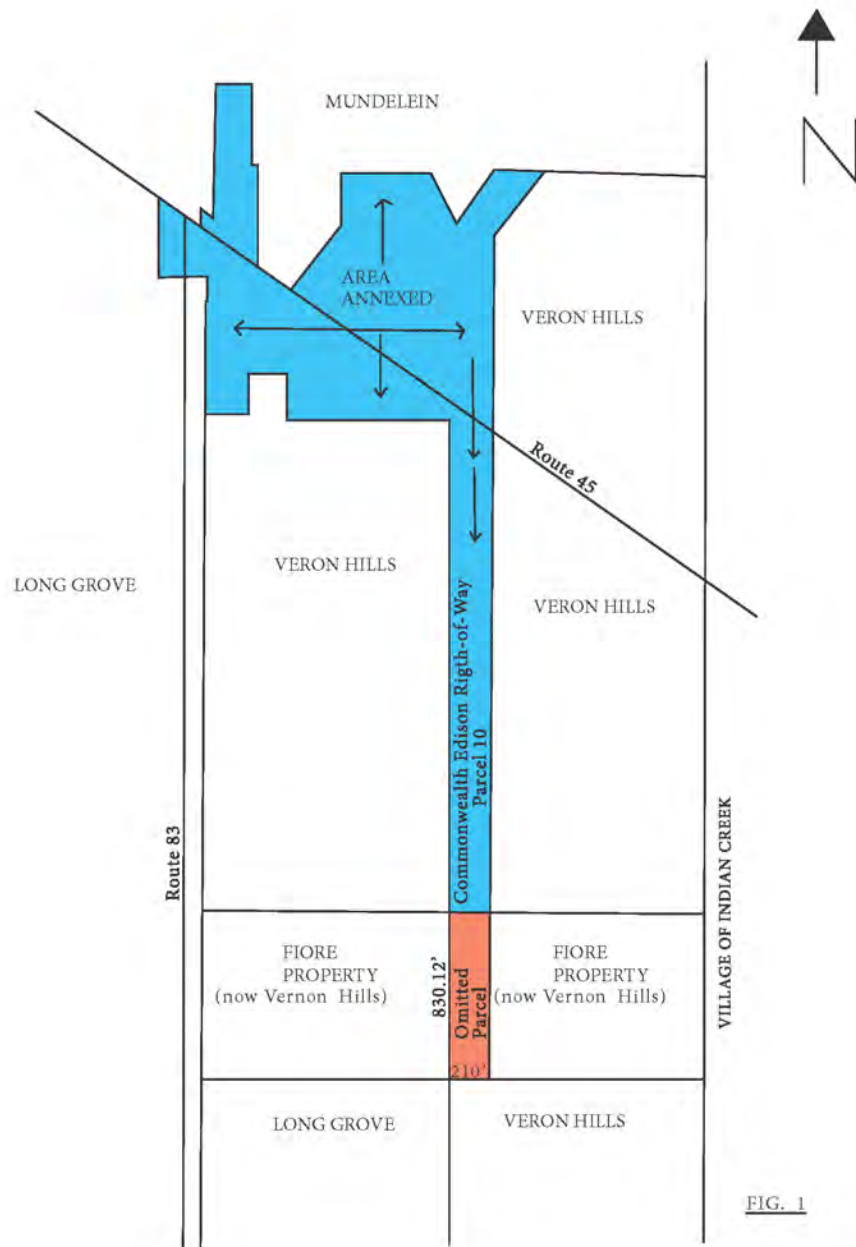
there is no basis in statute for them. To be clear, without any statutory guidance whatsoever, the *Northbrook* court grafted the general pronouncements of a nationwide treatise onto Illinois annexation law. *Northbrook* at 565-66.

Ignoring the incongruity of its arguments, Husky cites *Northbrook*'s recitation of McQuillin to make an argument that has no basis in statute while criticizing the Village use of the *de minimis* argument for not being an explicitly statutory maxim. Husky is wrong with its *de minimis* argument and it is wrong to not at least attempt to harmonize its conflicting approach to statutory interpretation. *Northbrook* tells us that "compulsory incorporation is not favored," but this comment is yet more indication that courts will not be tied down to the strict letter of the annexation statute when flexibility is called for in real-world applications. *Northbrook*'s conclusion that Illinois does not favor compulsory incorporation has nothing to do with the actual language of Section 7-1-13, but, rather, is a judicial creation that affords flexibility to the courts. Similarly, the *de minimis* maximum in the annexation context affords the flexibility to the courts to not let trifles rule the day and destroy measured decisions made by public bodies.

D. The *Village of Mundelein v. Village of Long Grove* case does not control the outcome here, as Husky claims, and public policy favors Barrington Hills in this situation.

As it did in the trial and appellate courts below, Husky discusses extensively the case of *Village of Mundelein v. Village of Long Grove*, 219 Ill. App. 3d 853 (2d Dist. 1991), and claims that the outcome of the case is controlling. But the facts of the case were unique, and the court's decision was based on the circumstances before it. *Id.* at 866-67. Long Grove's gap in the otherwise "wholly bounded" territory to be annexed occurred at the tip

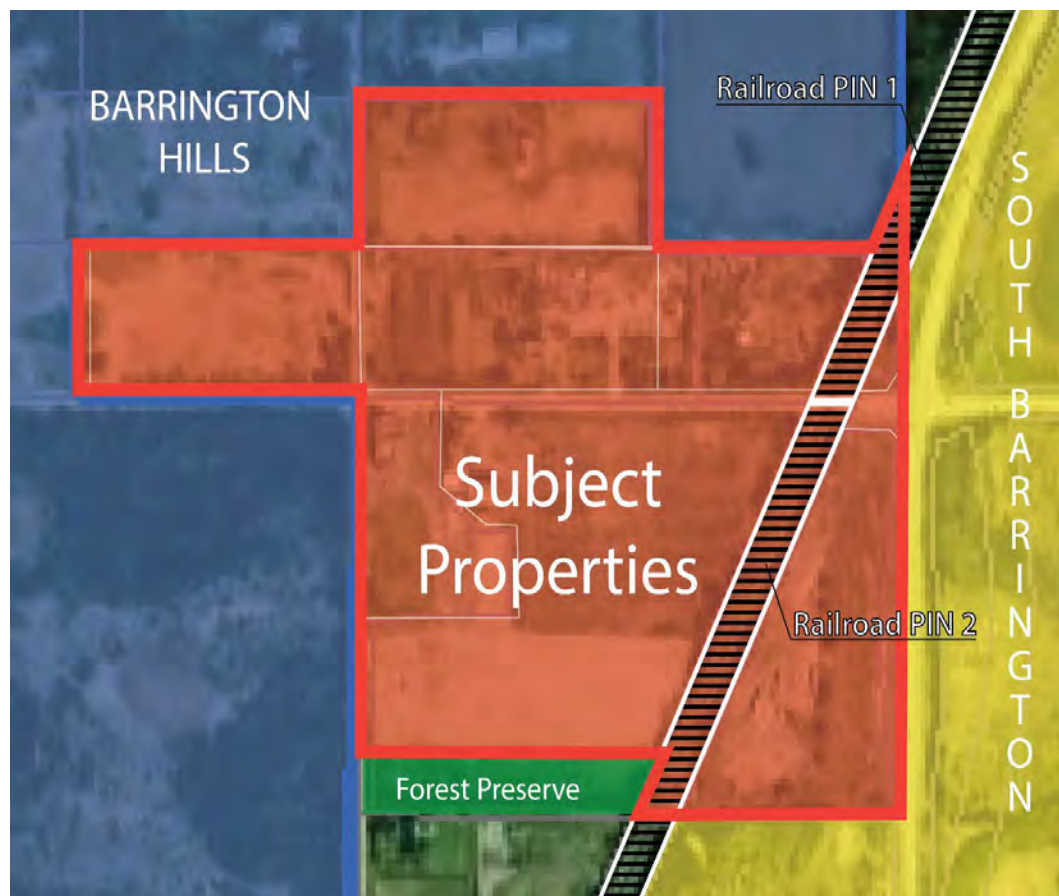
end of a long narrow strip of land which extended out from the bulk of the annexation territory. The *Long Grove* court depicted the subject territory this way:



Long Grove, 219 Ill. App. 3d at 869 (depiction of diagram with color added).

The 210-foot break in the boundary proposed by Long Grove constituted the entire southern edge of the territory sought to be annexed, and the entire strip annexation was surrounded by property incorporated into the Village of Vernon Hills *Id.* at 866. The parcel omitted by Long Grove (the “Omitted Parcel” in the above diagram) resulted in an unincorporated island defeating the public policy that relatively small, unincorporated parcels left over after incorporation of surrounding property be easily annexed to a contiguous municipality. *Id.* at 867.

In contrast, the Barrington Hills annexation boundaries, depicted in color below, looks like this:



(C 550).

Unlike Long Grove, Barrington Hills was not battling another municipality that was trying to voluntarily annex the same contested property. Nor did Barrington Hills gerrymander its boundary by annexing a slender corridor while leaving a break encompassing the entire southern boundary. And, unlike for Long Grove, public policy considerations favor Barrington Hills. Instead of leaving an island in the middle of an incorporated area, the Barrington Hills annexation helped further the recommendation of the Unincorporated Cook County Task Force, which has suggested that Cook County's long-term goal should be to eliminate all unincorporated land in the County to keep unincorporated land from being a strain on the County's resources. See <https://www.cookcountyil.gov/news/task-force-recommends-eventual-elimination-unincorporated-cook> (C 547). Among the immediate recommendations the Task Force made, as reported by the County, was to encourage municipalities to annex unincorporated parcels, with a specific focus on parcels under 60 acres. *Id.* And, to the extent the legislature intended Section 7-1-13 to be “a mechanism whereby relatively small, unincorporated parcels, left over after the incorporation of surrounding property” can be “easily annexed by a contiguous municipality,” the Village's annexation of the 44.52 acres in this case squarely fits the bill. *Long Grove*, 219 Ill. App. 3d at 867.

Husky tries to put Barrington Hills' annexation effort in the same category as Long Grove's failed effort in another way: claiming Barrington Hills' annexation effort was an attempt to evade the 60-acre limitation by stopping its annexation efforts at 44.52 acres. In other words, according to Husky, the very act of minding the 60-acre limitation was actually part of a ploy to avoid the 60-acre limitation because Barrington Hills could have

but did not add more acreage to its annexation. This makes no geographic sense because the additional area is not sufficiently contiguous for an annexation. *See Henry County Board v. Village of Orion*, 278 Ill. App. 3d 1058, 1067 (3d Dist. 1996) (“contiguity has long been defined in annexation cases as tracts of land which touch or adjoin one another in a reasonably substantial physical sense”). The only grounds Husky would have to claim that the annexed 44.52 acres is actually part of a larger 129 acre parcel is because the slender train corridor itself touches other property down the train line. (C 634). Plus, Husky’s factual basis to make the argument is illusory. There are no valid facts in the record that the Village “hatched a plan” and was scheming all along to annex a 129 acre parcel on a piecemeal basis.

Given the boundaries of the Forest Preserve property, and the annexed property being situated between Barrington Hills and South Barrington, the Barrington Hills annexation is clearly not the first step in an end run around the 60-acre limit. Simply looking at the rendering of the Long Grove annexation situation and a rendering of the Barrington Hills annexation shows that there is no comparison in what happened. The appellate court fully agreed with the Village’s distinction of the case, noting that Barrington Hills, unlike Long Grove, did not “gerrymander the borders of the territory to create a slender corridor with a break that included only a portion of a [ComEd] right-of-way” and that unlike Barrington Hills, Long Grove’s annexation resulted “in the creation, rather than elimination, of an island of unincorporated property.” (A025).

III. Husky’s statutory interpretation argument omits any discussion of the critical concept of legislative acquiescence as applied to the *de minimis* maxim in the annexation context.

Husky discusses all the familiar statutory interpretation concepts, and there is no dispute, as a general matter, that “the primary goal of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the intention of the legislature” and that courts look first to the plain language of the statute for legislative intent. *Jackson v. Bd. of Election Comm’rs*, 2012 IL 111928 at ¶ 48. Moreover, there is no dispute, and it is well settled, that courts should not depart from the language of the statute by reading into it exceptions, limitations or conditions that conflict with the intent of the legislature. *Ragan v. Columbia Mut. Ins. Co.*, 183 Ill. 2d 342, 351 (1998).

While these concepts of statutory construction are well settled and not in dispute, it is important to note that the language of a statute is the starting point of a court’s analysis. *Id.* at 350. It is not invariably the terminus, and in this case Husky has failed to make any mention of the critical legislative acquiescence rule of statutory construction. The rule provides that “[w]here the legislature chooses not to amend a statute after a judicial construction, it will be presumed that it has acquiesced in the court’s statement of the legislative intent.” *In re Marriage of O’Neill*, 138 Ill. 2d 487, 496 (1990). The Court has explained the rule this way:

We assume not only that the General Assembly acts with full knowledge of previous judicial decisions, but also that its silence on this issue in the face of decisions consistent with those previous decisions indicates its acquiescence to them.

Palm v. Holocker, 2018 IL 123152 at ¶ 31.

The *de minimis* maxim as applied to the annexation statutes has been part of the judicial cannon for at least sixty years. See *City of Des Plaines*, 76 Ill. App. 2d 243. Meanwhile, Section 7-1-13 of the Municipal Code has been amended many times over the last 60 years, so the General Assembly knows how to amend the statute and could easily have rebuked the judicially created *de minimis* maxim had it chosen to do so. See P.A. 77-1699, § 1, eff. July 1, 1972; P.A. 81-895, § 1, eff. Jan. 1, 1980; P.A. 83-358, § 16, eff. Sept. 14, 1983; P.A. 84-1045, § 1, eff. Nov. 26, 1985; P.A. 86-769, § 2, eff. July 1, 1990; P.A. 87-895, Art. 3, § 3-17, eff. Aug. 14, 1992; P.A. 94-396, § 5, eff. Aug. 1, 2005; P.A. 95-931, § 5, eff. Jan. 1, 2009; P.A. 95-1039, § 5, eff. March 25, 2009; P.A. 96-1000, § 245, eff. July 2, 2010; P.A. 96-1048, § 5, eff. July 14, 2010; P.A. 96-1049, § 5, eff. July 14, 2010; P.A. 97-333, § 165, eff. Aug. 12, 2011; P.A. 97-446, § 5, eff. Aug. 19, 2011 (all are amendments to 65 ILCS 5/7-1-13). Husky itself cites at length to a legislative debate from 2010 where the topic was special legislation to give the City of Rockford extraordinary power to annex territory over 60 acres in certain circumstances. (A028-029, A082-92, A217-21). The Rockford-centric debate (Rockford “hurting for money” and Rockford just “seeking to add to their tax base”) does not shed any light on the provision at issue in the present case. (A088-89, 221). It is, however, further indication that the legislature knows how to take up annexation legislation for consideration.

The legislature declining to eliminate the *de minimis* maxim in the annexation context despite ample opportunity to do so amounts to legislative acquiescence. A recent example of the legislature acting with full knowledge of judicial decisions is the amendment of the TIF Act (Tax Increment Allocation Redevelopment Act) by Public Act

102-818 to restore the understanding of “contiguity” in the TIF Act prior to the Court’s decision in *Board of Education of Richland School Dist. No. 88A v. City of Crest Hill*, 2021 IL 126444. If the legislature wanted to strip out the *de minimis* maxim, one of the ways it could have acted is to pass legislation similar to P.A. 102-818. Yet with full knowledge of the *de minimis* maxim as applied to the annexations statutes, the legislature chose to do nothing and thereby showed that it agrees with courts being able to use sound judicial discretion to make decisions from time to time about whether an annexation situation is *de minimis*. In contrast to P.A. 102-818, and an example of legislative acquiescence is the judicial construction of the term “catastrophic injury” in PSEBA (Public Safety Employee Benefits Act). As this Court has observed, the term was judicially construed by the Court in 2003 and again in 2008 “but the legislature has not altered this court's construction of ‘catastrophic injury’” and the construction becomes part of the statute “until the legislature amends it contrary to that interpretation.” *Village of Vernon Hills v. Heelan*, 2015 IL 118170 at ¶ 27.

Though *Husky* never mentions the legislative acquiescence rule, it does cite several non-annexation cases in support of its argument that there is no statutory basis for imposition of the *de minimis* rule. The first case cited is *People v. Howard*, 228 Ill. 2d 428 (2008) where a public official was convicted of official misconduct in connection with misuse of a government credit card. There, the Court observed that the official misconduct statute provides no basis for the imposition of a *de minimis* maxim and that it is the legislature’s job to decide whether the statute would benefit from such an exception. *Id.* at 437-38. But unlike in *Howard*, where no examples were given of the *de minimis* maxim

being previously applied in the criminal context, much less for the specific crime of official misconduct, in the annexation scenario the *de minimis* maxim is at least 60 years old and counting with no legislative intervention to curtail its use.

Like in *Howard*, in *People ex rel. Department of Public Health v. Wiley*, 218 Ill. 2d 207 (2006) a statute was involved that had never had the *de minimis* maxim applied to it. In *Wiley* the Department of Public Health sued a physician under the Family Practice Residency Act for breach of medical school scholarship contracts. The contractual terms in that case were in place as a result of statutory requirements. And, again, the Act in *Wiley* had no history of the *de minimis* maxim applying to it so the rule of judicial acquiescence was not applicable. That is in contrast to Husky's case here.

Husky also digs deep into the Municipal Code to locate the only section of the Code that uses the words "de minimis." The words are found in Article 8 in a section concerning audits of municipal tax revenue from public utilities. See 65 ILCS 5/8-11-2.5 (e-20)(2). The section certainly shows that the legislature knows how to employ the *de minimis* maxim, but that point is not in contention. The Village does not argue that the legislature is unable to or incapable of specifically inserting a *de minimis* maxim. And, in any event, the specific deployment of a *de minimis* exception buried in a finance section of Article 8 of the Municipal Code has little relevance to the question of whether this Court should strip away the long standing *de minimis* maxim from the annexation sections of the Municipal Code when the legislature has accepted the existence of the maxim for many decades. Husky will surely agree that, just as the legislature is capable of affirmatively employing the *de minimis* maxim as it did in 65 ILCS 5/8-11-2.5(e-20)(2), it is equally capable of

removing a *de minimis* maxim that has been recognized by the judicial branch. Since the legislature has declined to eliminate the maxim for over sixty years subsequent to judicial use and construction this Court should find that the legislature intends the *de minimis* maxim to be in place in the annexation context.

Given the uniqueness of every single property and every single annexation scenario, and the public policy against leaving isolated pockets of unincorporated territory, it is entirely understandable that the legislature would not try and legislate for every occurrence and would leave the *de minimis* analysis to the sound judicial discretion of the courts of this state to determine what is trifling and what is not (more on this below).

IV. The judicial branch is well equipped to adjudicate disputes on the applicability of the *de minimis* maxim.

Husky criticizes the *de minimus* maxim because it has no “discernable limiting principle” which seems to be another way of saying Husky thinks the judicial branch cannot be counted on to decide what counts as trifling. But courts are up for the task and the maxim itself is the limiting principle: it is the relative smallness and/or insignificance of an injury or condition that a court will necessarily analyze on a fact specific case by case basis. *Pacini*, 281 Ill. App. 3d at 280. For example, the *Long Grove* court performed its function to analyze the case specific facts and decide what is trifling. The *Long Grove* court’s conclusion did not go in the annexing municipality’s favor on the *de minimis* question, but the court was certainly up for the task. The appellate court below was also up for the task and since the Village has favorable facts different from the annexing municipality in *Long Grove* (see *supra*) the outcome was different. An important take-away from the *Long Grove* case is that courts can and do apply the *de minimis* maxim.

Apropos to the argument above, if the legislature did not like the fact that courts are engaging in a *de minimis* analysis, like the court did in *Long Grove*, it could have changed the statute. Courts are not hobbled by a supposed lack of “discernable limiting principles.”

Also demonstrative of judicial deft in analyzing the *de minimis* maxim are *Michigan Boulevard Bldg. Co. v. Chicago Park Dist.*, 412 Ill. 350 (1952) and *County of Lake v. Board of Ed. of Lake Bluff Sch. Dist. No. 65*, 325 Ill. App. 3d 694 (2d Dist. 2001). In *Michigan Boulevard* the Court looked at a park dedication providing the park land was to remain vacant of buildings, and whether several structures protruding five feet above ground to support an underground parking structure would violate the terms of the dedication easements prohibiting buildings. *Michigan Boulevard* at 362. The Court held that the existence of the five-foot protruding structures would be *de minimis* and analyzed why that was so based on what the easements were created to accomplish. *Id.* at 362-63.

In *County of Lake*, a county’s assertion of jurisdiction to enforce its building codes to a school owned building depended on the statutory question of whether the building was “used for school purposes.” *County of Lake*, at 698. The court held that the storage of public school property is a public school purpose but explained that it was not suggesting that *any* storage, no matter how slight, is a public school purpose. *Id.* at 700, 702. The court gave an example: if the school had used the building “to store only one desk, we would not conclude that the building serviced a legally sufficient ‘public school purpose’” and instead “we would invoke the doctrine of *de minimis non curat lex*, which means that the law does not regard trifles.” *Id.* at 702. In so stating, the court was expressing a familiarity and comfort level with applying the *de minimis* exception.

If the *de minimis* maxim is faulty for having no limiting principles, as Husky suggests, then the legislature's intentional placement of the *de minimis* exception in the previously mentioned Article 8 finance section of the Municipal Code becomes superfluous. The language says only that "[n]o penalty shall be assessed by the Department pursuant to this subsection if the Department finds that a delay or omission was immaterial or *de minimis*" so there is no "discernable limiting principle" present. See 65 ILCS 5/8-11-2.5 (e-20)(2). Yet Husky stands up the section as an example of how the legislature can make the *de minimis* principle applicable. Husky seems to be suggesting that the legislature inserted into a statute language that has no viable use or application. Courts presume the legislature does not intend laws to be superfluous or absurd. See *Moore v. Green*, 219 Ill. 2d 470, 488 (2006) (legislature did not intend the Domestic Violence Act to be rendered superfluous or vaguely advisory), and *Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist.*, 238 Ill. 2d 262, 283 (2010) (court construing a statute will assume that legislature did not intend an absurd or unjust result). In passing 65 ILCS 5/8-11-2.5 (e-20)(2), the legislature did not intend or create absurdity or superfluity because the *de minimis* maxim is a familiar concept, not just in the annexation context but throughout the law.

The Court should reject Husky's scare tactic that there is a lack of "discernable limiting principles." The judicial branch is experienced in applying the *de minimis* maxim and has done so on many occasions over a long period of time.

CONCLUSION

A narrow rail corridor should not dictate municipal annexation policy. Here, the boundary gaps caused by the rail corridor passing through the Territory are *de minimis* and should not defeat the Village's Annexation Ordinance. And Husky is wrong in its claim that the Illinois Municipal Code is not subject to the *de minimis* maxim. The General Assembly could have stripped the maxim out of Illinois annexation law at any time in the last sixty years but has never done so. The Court should not now strip out the familiar exception.

For the reasons set forth above, the Village of Barrington Hills respectfully requests that the September 29, 2025 Order of the Appellate Court, First District, be affirmed, and for further relief as appropriate.

Dated: April 8, 2026

Respectfully Submitted,

VILLAGE OF BARRINGTON HILLS

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CERTIFICATE OF COMPLIANCE

I, M. Neal Smith, an attorney, hereby certify that this Appellee Brief conforms to the requirements of Rules 341(a) and (b). The length of this Brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the Brief under Rule 342(a), is 29 pages.

/s/ M. Neal Smith

M. Neal Smith

Case No. 132527

**In the
Supreme Court of Illinois**

HUSKY TRANS, INC., an Illinois Corporation,
HUKY TRUCK REPAIR, INC., an
Illinois Corporation,

Plaintiffs-Appellants

v.

THE VILLAGE OF BARRINGTON HILLS,
an Illinois Municipality,

Defendant-Appellee

On Appeal from the Appellate Court of Illinois,
First Judicial District, Case No. 1-24-1346.
There on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, Case No. 2024-CH-01302,
The Honorable Thaddeus L. Wilson, Presiding.

NOTICE OF FILING

To: See Attached Certificate of Service

PLEASE TAKE NOTICE that on April 8, 2026, we electronically filed with the Supreme Court of Illinois, the **APPELLEE’S BRIEF**, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

THE VILLAGE OF BARRINGTON HILLS

By: /s/ M. Neal Smith (electronic signature)
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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Civil Code of Procedure, the undersigned attorney certifies that the statement set forth in this instrument are true and correct and that he caused the document referred to herein to be served on the attorneys referenced herein via electronic mail to the addresses provided therefore on April 8, 2026.

signature)

/s/ M. Neal Smith (electronic

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