

Case No. 132527

In the
Supreme Court of Illinois

HUSKY TRANS, INC., an Illinois corporation,
and HUSKY 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.

APPELLANTS' REPLY BRIEF

Jonathan B. Amarilio
Karl D. Camillucci
Benjamin S. Morrell
TAFT STETTINIUS & HOLLISTER LLP
111 East Wacker Drive, Suite 2600
Chicago, IL 60601
Tel.: (312) 527-4000
jamarilio@taftlaw.com
kcamillucci@taftlaw.com
bmorrell@taftlaw.com

Attorneys for Plaintiffs-Appellants

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CYNTHIA A. GRANT
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ARGUMENT

This case presents a straightforward question: should the limitations the General Assembly placed on the use of forcible annexation be enforced or are they mere guidance to be set aside when expedient? Section 7–1–13(a) of the Municipal Code, which governs forcible annexation, says that unincorporated territory cannot be forcibly annexed unless it is “wholly bounded” by certain enumerated land types. The Village admits that its annexation of the Subject Property at issue here does not satisfy that requirement. The statute contains no *de minimis* exception, and no party contends its language is ambiguous. This means the Village’s annexation is void for violating the statute, as the circuit court held. A012.

The Village nevertheless asks this Court to look everywhere but the statutory text when interpreting its meaning and proper application. In doing so, the Village makes incorrect factual statements, misstates black-letter law, and casts about for authority only to find cases that are readily distinguishable or show why its annexation is impermissible, or both. But nothing the Village argues can change the fact that its forcible annexation of the Subject Property violated Section 7-1-13(a), and there is no authority from this Court even suggesting the Village should be exempted from the limitations the General Assembly placed on municipalities’ forcible annexation power.

Husky thus asks this Court to follow the “cardinal rule of statutory interpretation, to which all other rules are subordinate”: specifically, “ascertain and give effect to the intent of the legislature” by looking to the

statutory text as “the best means of determining the legislative intent.” *People v. Maggette*, 195 Ill. 2d 336, 348 (2001).

I. The forcible annexation statute is not subject to a *de minimis* exception.

A. The plain language of Section 7–1–13(a) and this Court’s precedent mandates strict compliance with the statutory requirements.

Recognizing that its undisputed violation of Section 7–1–13(a) means it can only argue that strict compliance with the statute is not required, the Village contends that Husky’s characterization of the forcible annexation power as extraordinary and disfavored has “no basis in statute.” Def.’s Br. 16–17. This attempt to reframe the debate is incompatible with the text of the statute and this Court’s interpretation thereof.

As discussed in Husky’s opening brief, the structure of the forcible annexation statute demonstrates the legislature’s intent to limit the ability of municipalities to annex land without the participation or consent of property owners. Pls.’ Br. 24–34. Section 7–1–13(a) delineates the discrete circumstances under which a municipality can forcibly annex unincorporated land. *See generally* 65 ILCS 5/7–1–13(a). The legislature in this way went to exceptional lengths to define when that power may—and may not—be used. This demonstrates that the legislature views forcible annexation as an extraordinary power that must be strictly controlled to protect property owners from municipal overreach.

That is why a substantial body of precedent from this Court—which the

Village ignores—explains that the total acreage and “wholly bounded” requirements are “conditions precedent” to forcible annexation. *People ex rel. Universal Oil Prods. Co. v. Vill. of Lyons*, 400 Ill. 82, 85 (1948). Indeed, this Court said in *City of East St. Louis v. Touchette*, 14 Ill. 2d 243 (1958), that “a municipality has *no power* to extend its boundaries unless and except in the manner authorized by the legislature so to do.” *Id.* at 249 (emphasis added). The Court further explained in *In re Petition to Annex Certain Territory to the Village of North Barrington*, 144 Ill. 2d 353 (1991), that a municipality seeking to annex land “must *strictly* comply with statutory requirements.” *Id.* at 361-62 (emphasis added). The Village not only fails to square this precedent with its attempt to reframe this case, but fails to even acknowledge this authority in its brief.

The Village instead takes aim at the appellate court for decisions like *People ex rel. Village of Northbrook v. Village of Glenview*, 194 Ill. App. 3d 560 (1st Dist. 1989), which it accuses of “graft[ing] the general pronouncements of a nationwide treatise onto Illinois annexation law” “without any statutory guidance whatsoever.” Def.’s Br. 16-17. The appellate court in *Northbrook* correctly explained that “annexation statutes are usually construed liberally in favor of the public,” that “compulsory incorporation is not favored, and therefore the question of annexation is usually referred to the inhabitants,” and relatedly that “[t]here is strong public policy that the land owners of the property to be annexed have the ultimate decision.” *Northbrook*, 194 Ill. App.

3d at 565.

The Village dismisses all this as mere “judicial creation,” saying it “has nothing to do with the actual language of Section 7–1–13.” Def.’s Br. 17. Yet, the Village fails to account for the statutory language providing the conditions precedent for forcible annexation. And, ironically, says this while overlooking that the cornerstone of its own case here is also a judicially created doctrine. *People ex rel. Dept. of Public Health v. Wiley*, 218 Ill. 2d 207, 225 (2006) (explaining the *de minimis* doctrine derives from the common law).

The Village is nevertheless mistaken in its critique of *Northbrook*. As discussed in Husky’s opening brief, the statements of law reflected in *Northbrook* are all borne out by the General Assembly’s statutory scheme, which created several ways for municipalities to annex unincorporated territory, but very narrowly cabined the forcible annexation option precisely because it does not require landowner consent or judicial process. Pls.’ Br. 2-5, 32-34. And, as discussed above, these same statements of law find support in this Court’s guidance. Contrary to the Village’s assertions, the relevant statements of law in *Northbrook* have everything to do with the language of Section 7–1–13.

After rejecting the notion that forcible annexation is disfavored, the Village paradoxically argues that because forcible annexation is disfavored, courts should afford municipalities *more* leeway when exercising that power and decline to be “tied down to the strict letter” of the statute. Def.’s Br. 17.

This turns common sense on its head. Constraints delimit action, they do not free it. Disfavored actions are discouraged, not encouraged. The fact that forcible annexation is disfavored invariably leads to the conclusion that municipalities attempting to forcibly annex unincorporated territory are subject to more scrutiny, strict compliance, and *less* leeway from courts evaluating the exercise of that power. Expedience is no substitute for compliance and Section 7–1–13(a) should be enforced in the only manner consistent with its detailed, but plain-meaning text—strictly.

B. The Village misstates the record to downplay the purpose and extent of its statutory violation.

Attempting to minimize its open violation of the forcible annexation statute, the Village states that the Subject Property “is less than 60 acres and not part of a larger 129 acre parcel.” Def.’s Br. 2. This is an argument, not a fact—and a misleading one at that—because it can only be true if one first accepts the Village’s legal argument that the *de minimis* doctrine may be used to ignore the unincorporated land adjacent and directly connected to the Subject Property to the north and south.¹ Irrespective of the length of the Subject Property’s borders with the other contiguous unincorporated territory,

¹ The Village’s record cites for this argument are to the same maps used by Husky, the larger of which reflects that the “[t]otal area of unincorporated land” *that is actually* “wholly bounded by a municipality and a forest preserve” is “approximately 129 acres.” Def.’s Br. 2 (citing C343, C634). The Village asserts that this map is “not to scale,” missing that its preferred measurements take no account of the fact that the railroad right-of-way cuts at angles, not perpendicularly, lengthening the border gaps. Def.’s Br. 5-6. Regardless, it is undisputed that the Subject Property is not wholly bounded as required by the statute.

the facts indisputably show that the Subject Property is part of an assemblage of unincorporated territory that far exceeds 60 acres, which means the Subject Property cannot be forcibly annexed as it is neither wholly bounded nor, consequently, fewer than 60 acres.

The Village provides no authority demonstrating why the Subject Property's contiguity with other unincorporated land should be disregarded merely because some of that unincorporated land consists of a railroad right-of-way. Nothing in the forcible annexation statute treats railroad rights-of-way as barriers to contiguity. Indeed, the opposite is true, as the annexation statute does not view railroad rights of way as interfering with contiguity between adjacent territories. 65 ILCS 5/7-1-1 ("For the purposes of this Article any territory to be annexed to a municipality shall be considered to be contiguous to the municipality notwithstanding that the territory is separated from the municipality by a ... railroad or public utility right-of-way[.]"); *see also* Pls.' Br. 50-55. The Village thus asks this Court to untenably conclude that borders with railroads rights-of-way cannot be used to establish contiguity by a landowner opposing an annexation, but they can be used by annexing municipalities to establish contiguity.

The Village also claims that there is no evidence in the record that it "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." Def.'s Br. 3; *see also id.* at 21 (claiming the Village did not "gerrymander the borders

of the territory” at issue (citation omitted)). Yet in a footnote, the Village acknowledges the publicly available audio recording from its official website of the January 22, 2024 Board of Trustees meeting when this exact plan was discussed. *Id.* at 3, n.1.

The Village says Husky’s characterization of this meeting is “based upon a 15 second audio recording that does not provide what Husky claims.” *Id.* Husky encourages the Court to listen to the entire recording of the trustees’ annexation discussion, which speaks for itself. It contains statements from both the trustees and the Village attorney that, after forcibly annexing the Subject Property, they expect to forcibly annex more unincorporated territory contiguous with the Subject Property, which they must do in separate “phases” to stay under the 60-acre statutory limit. Vill. of Barrington Hills, *Jan. 22, 2024 Bd. meeting audio* at 26:25-46:04; see Pls.’ Br. 10, n.2. Husky cited this evidence below. See C21, C191, C336 C515-16 (for a fuller transcription), C530, C590, C603, C638-39; see also C19, C189, C334 (citing to audio recording of the Board’s December 19, 2023 meeting).

The Village nonetheless argues this recording is not subject to judicial notice because it is a “supposed fact ... subject to reasonable dispute.” Def.’s Br. 3, n.1. It is not. The recording is a public document taken directly from the Village’s website, its authenticity is unquestioned, and its contents are readily verifiable. Taking judicial notice of the recording, which is in any event already of record, is thus perfectly appropriate. *Bd. of Educ. of Richland Sch. Dist. No.*

88A v. *City of Crest Hill*, 2021 IL 126444, ¶ 5.

C. The General Assembly did not acquiesce to the use of the *de minimis* doctrine as a means of diluting the forcible annexation statute’s requirements.

The Village incorrectly argues that the General Assembly “declin[ed]” to amend the Municipal Code following the appellate court’s decision in *People ex rel. Chicago Title & Trust Co. v. City of Des Plaines*, 76 Ill. App. 2d 243 (1st Dist. 1966), which applied the *de minimis* doctrine to Section 7–1–13(a), further arguing this evidences “legislative acquiescence” to the application of that doctrine here. Def.’s Br. 22-26. The interpretive aid the Village points to holds that “where the legislature chooses not to amend a statute after a judicial construction, it is presumed that the legislature has acquiesced in the court’s statement of the legislative intent.” *Ready v. United/Goedecke Servs., Inc.*, 232 Ill. 2d 369, 380 (2008). However, there is more to this principle than the Village acknowledges, and everything the Village omits to discuss demonstrates the irrelevance of that principle here.

To begin, this canon is applied only when the statutory language is ambiguous. “[W]here the meaning of the statute is unambiguous, [this Court] will give little weight to the fact that the legislature did not amend the statute after appellate opinions interpreting the same.” *Blount v. Stroud*, 232 Ill. 2d 302, 325 (2009) (citing 2B N. Singer, *Sutherland on Statutory Construction* § 49.04 (6th rev. ed. 2000)). It is undisputed that Section 7–1–13(a) is unambiguous. And while the Village curiously asserts that the statutory language, even though plain, is only “the starting point of the court’s analysis”

and “not invariably the terminus” (Def.’s Br. 22), this Court has said otherwise. *Ultsch v. Ill. Mun. Ret. Fund*, 226 Ill. 2d 169, 184 (2009) (“We repeat that a court should first look to the statutory language as the best indication of legislative intent without resorting to other aids for construction. Where the language of a statute is plain and unambiguous, a court need not consider other interpretive aids.”). The absence of a *de minimis* exception in Section 7-1-13(a) does not make that statute ambiguous.

Even if the legislative acquiescence principle had some arguable relevance here, it would be slight. As this Court has explained, this interpretive aid “is merely a jurisprudential principle; it is not a rule of law.” *Blount*, 232 Ill. 2d at 324 (cleaned up). “Thus, although the legislature’s failure to amend a statute after a judicial interpretation is suggestive of legislative agreement, it is not conclusive.” *Id.* at 325. The canon is, in other words, a “weak reed on which to base a determination of the drafters’ intent.” *People v. Marker*, 233 Ill. 2d 158, 175 (2009) (citation omitted); *see also Nudd v. Matsoukas*, 7 Ill. 2d 608, 616 (1956) (“We are indeed treading on dangerous ground when we purport to judge the indicial soundness of our prior opinions by the presence or absence of corrective legislation.”), *limited on other grounds by Cates v. Cates*, 156 Ill. 2d 76 (1993).

The legislative acquiescence principle is also weaker where, as here, the decisions at issue are few in number, from only a lower court, and inconsistent. *See People v. Perry*, 224 Ill. 2d 312, 332 (2007) (declining to apply the canon

where two appellate court decisions “have not been extensively relied upon by Illinois courts”); *John Carey Oil Co. v. W.C.P. Invs.*, 126 Ill. 2d 139, 148 (1988) (same, where “no repeated construction exists”). For example, in *People v. Williams*, 149 Ill. 2d 467 (1992), a party argued legislative acquiescence where this Court had “not authoritatively construed” the statutory provision and there was a split in appellate court opinion. *Id.* at 479. The Court found that “[u]nder these circumstances, it would be irresponsible to decide the issue before us by simply relying upon the absence of corrective legislation.” *Id.*

Each of these factors is present here, severely limiting any arguable usefulness of this interpretative aid in this case. This Court has not had occasion to consider whether the *de minimis* doctrine may be applied to any annexation provision of the Municipal Code, much less the especially restrictive forcible annexation statute at issue here. And while there are a few cases from the appellate court that have considered this question, they have reached disparate conclusions. *See* Pls.’ Br. 40-50. Specifically, the appellate court applied the *de minimis* doctrine to excuse a municipality’s violation of Section 7–1–13(a)’s “wholly bounded” requirement in *Des Plaines*, 76 Ill. App. 2d 243, but refused to do so in *Village of Mundelein v. Village of Long Grove*, 219 Ill. App. 3d 853 (2d Dist. 1991), and *People ex rel. Knaus v. Village of Hinsdale*, 111 Ill. App. 2d 368, 370 (2d Dist. 1969). Pls.’ Br. 40-47. Thus, the Village’s assertion that “the legislature has accepted the existence of the [*de*

minimis] maxim for many decades” is overstated, at best. Def.’s Br. 25.²

In the end, as this Court has said, “[t]here is no rule of construction which authorizes a court to declare that the legislature did not mean what the plain language of the statute imports.” *W. Nat’l Bank of Cicero v. Vill. of Kildeer*, 19 Ill. 2d 342, 350 (1960), *overruled in part on other grounds*, *People ex rel. DuPage Cnty. v. Lowe*, 36 Ill. 2d 372 (1967). And where, as here, the appellate court has failed to heed that admonition, this Court has not hesitated to correct the error. *See, e.g., Blount*, 232 Ill. 2d at 329-30 (abrogating line of at least five appellate court cases as “contrary to [a statute’s] clear language” and refusing to “deem the legislature’s purported silence following these decisions as acquiescence”).

D. The Village’s case analysis is inapposite and only serves to prove the absence of a *de minimis* exception to the forcible annexation statute.

The Village briefly discusses a succession of cases that have little to do with the issue presented and lend no support to its argument.³ The Village begins with *People v. Knapp*, 28 Ill. 2d 239 (1963), where the plaintiffs

² In its discussion of legislative intent, the Village also dismisses the Rockford legislative debate as irrelevant, but it draws the wrong lesson. *See* Def.’s Br. 23. The significance of that debate is that the General Assembly understood the 60-acre limit to be hard and fast, and that legislative action would be required to bend it in specific circumstances. *See* Pls.’ Br. 37-40. This suggests the legislature did not intend these limits to be subject to shortcuts like the *de minimis* doctrine.

³ To the extent the Village relies on *Des Plaines*, 76 Ill. App. 2d 243, Husky has already distinguished that case and incorporates that discussion here to avoid redundancy. Pls.’ Br. 47-50.

challenged the validity of petitions to incorporate a city because the description of land to be incorporated “inadvertently included” a narrow strip of land that was already part of a neighboring city. *Id.* at 240-41, 244. The mistake was cured when the incorporating city passed a successor ordinance expressly disclaiming jurisdiction over the strip. *Id.* at 244. In those circumstances, this Court said the inadvertent inclusion of the strip in the original land description was insufficient to invalidate the entire incorporation. *Id.* Contrary to the Village’s broader characterization, that is the situation in which this Court spoke of “practical matters” being “given a practical, common-sense construction.” *Id.*

Here, in contrast, the Village intentionally excluded portions of contiguous unincorporated land to evade the statutory limits placed on its forcible annexation power, knowing (at least eventually) that the Subject Property is not wholly bounded, and did nothing to cure its overreach, but rather stubbornly defended it. These facts bring this case closer to *Mundelein*, where the appellate court refused to excuse an intentional failure to comply with the “wholly bounded” requirement, even when the annexing municipality argued its noncompliance was *de minimis*. 219 Ill. App. 3d at 863, 866-67; *see also Chi. Title Land Tr. Co. v. Cnty. of Will*, 2018 IL App (3d) 160713, ¶¶ 33-34 (courts may properly consider a municipality’s conduct in seeking “creative” ways to bypass the Municipal Code’s annexation requirements).

Knapp is also distinguishable because the statute at issue there governs

incorporation of a new municipality, not forcible annexation of land by an existing municipality and the necessity for strict compliance that accompanies that narrowly defined power. 28 Ill. 2d at 240-41. Incorporation and annexation are governed by completely different statutes and requirements, and the Village does nothing to square the two. *Compare* 65 ILCS 5/Art. 2 (organization of municipalities) *with* 65 ILCS 5/Art. 7 Div. 1 (annexation). *Knapp* thus bears no similarity to this case.

People ex rel. Village of Northbrook v. City of Highland Park, 35 Ill. App. 3d 435 (1st Dist. 1976), does not help the Village, either. There, Highland Park claimed that a forcible annexation by Northbrook violated Section 7–1–13 because the annexation area included a 33-foot strip of road that Highland Park had previously annexed. *Id.* at 440. Relying on *Knapp*, the appellate court held that Northbrook’s inclusion of the strip was *de minimis* based on findings that Northbrook and the trial court had, in effect, cured the defect—Northbrook by disclaiming any right to the strip of land and the trial court by crafting its judgment of ouster against Highland Park to exclude that land. *Id.* at 442. The overlap was thus treated as an inadvertent and inconsequential error that did not void the annexation. *Id.* Like *Knapp*, and for the same reasons, this case has no arguable application here.

The Village also looks to *Spaulding School District No. 58 v. City of Waukegan*, 18 Ill. 2d 526 (1960), for the idea that “[a]llowing annexation in the face of *de minimis* gaps upholds legislative policies behind section 7–1–13.”

Def.'s Br. 11. The Village describes the *Spaulding* decision as “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.*

That may be so, but it is a *non-sequitur* to say that this justifies the application of the *de minimis* doctrine to forcible annexations. The language in *Spaulding* relied on by the Village says nothing about whether the limits the legislature placed on forcible annexation may be chipped away by application of the *de minimis* doctrine. Indeed, the appellate court in *Mundelein* looked to this same language in *Spaulding* and reached the opposite conclusion, explaining:

While the [*Spaulding*] court’s remarks constitute *dicta*, we nevertheless find them persuasive that the legislature devised and intended section 7–1–13 to be a mechanism whereby relatively small, unincorporated parcels, left over after the incorporation of surrounding property, could be easily annexed by a contiguous municipality. Implicit in the “wholly bounded” language used by the legislature is the intent that such annexations should swallow up *all* of the unincorporated land sandwiched in amongst already existing municipalities. Thus, it appears the “wholly bounded” language *serves a distinct purpose and should be given full effect*. Accordingly, under the circumstances of this case, we decline to disregard the lack of compliance with the statute on the *de minimis* grounds urged by Long Grove.

Mundelein, 219 Ill. App. 3d at 866-67 (emphases added).

The appellate court thus understood from *Spaulding* that although forcible annexation is a tool municipalities can use to absorb small, leftover

pockets of unincorporated land that are wholly surrounded by incorporated territory, the “wholly bounded” requirement must be given its “full effect” when doing so. Section 7–1–13 exists to allow municipalities to “swallow up *all* of the unincorporated land sandwiched in amongst already existing municipalities” when the requirements for doing so are satisfied. *Id.* But this does not mean that municipalities may cherry-pick portions of a larger unincorporated area while ignoring or gerrymandering around contiguous unincorporated land that does not provide the conditions precedent for forcible annexation. *Id.* at 867. If a parcel of unincorporated territory does not meet the conditions precedent for forcible annexation, then that form of annexation is simply not an option for an acquisitive municipality.

The Village’s reading of *Spaulding* inverts this logic. Rather than treating the “wholly bounded” language as a meaningful limitation that must be given full effect, the Village would reduce it to a suggestion that municipalities may set aside when they consider it inconvenient and they do not want to employ other annexation options that would necessitate engaging with landowners or providing them with judicial process.

The Village next argues that *West Suburban Bank v. City of West Chicago*, 366 Ill. App. 3d 1137 (2d Dist. 2006), supports the notion that strict compliance with the 60-acre and wholly bounded requirements is unnecessary. Def.’s Br. 11-12. Not so. The city of West Chicago in that case sought to forcibly annex 57.14 acres, while an additional 5.61 acres of highway was also

automatically annexed by operation of law under Section 7–1–1 of the Municipal Code, which independently requires the boundary of all annexations “extend to the far side of any adjacent highway.” *W. Suburban*, 366 Ill. App. 3d at 1139, 1141-42. Although the plaintiff argued that the annexation violated Section 7–1–13(a) because the combined annexation area exceeded 60 acres, the appellate court concluded that because the 5.61 acres were annexed by operation of law under Section 7-1-1, that portion of land should not count toward the 60-acre limit under Section 7-1-13. *Id.* at 1141-42.

The appellate court reasoned that treating the 5.61 acres separately from the 57.14 acres “honors the intent of section 7–1–1,” while preserving an otherwise valid annexation pursuant to Section 7–1–13. *Id.* at 1142. The “purpose of requiring the annexation of an adjacent highway to the far side of the highway is to prevent any question regarding jurisdiction, maintenance, financing, and traffic control once the annexation has taken place.” *Id.* at 1142; *see also id.* at 1143. Given this intent, said the court, “we do not think plaintiff should be able to use [the highway] to defeat an otherwise valid annexation simply because that highway borders its property.” *Id.* at 1143. In doing so, the court focused on the interpretation and legislative intent of Section 7–1–1 and strived to harmonize it with Section 7–1–13(a)’s 60-acre limit, reasoning that it was not the municipality’s annexation itself that pushed the total acreage annexed past the limit, but rather the statute’s own requirements.

Read and understood in context, as it should be, *West Suburban* does

nothing to support the Village’s remarkably broad contention that the limitations the legislature placed on municipalities’ forcible annexation power are somehow optional. *See Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 30 (judicial opinions must be read in the context of the specific problem that was before the court and “general language in an opinion must not be ripped from its context to make a rule far broader than the factual circumstances which called forth the language”) (cleaned up). Whereas *West Suburban* turned on the fact that Section 7–1–1 required the annexation of an adjacent highway, no comparable provision applies here. No statutory provision requires the Village to annex territory in excess of the 60-acre limit, or authorizes the Village to disregard the “wholly bounded” requirement, or allows it to carve up contiguous unincorporated territories to work around those limitations. Unlike highways, the Municipal Code does not treat railroad rights-of-way any differently than other types of land for purposes of enforcing the 60-acre and “wholly bounded” requirements for forcible annexation. *See* Pls.’ Br. 50-55.

The Village similarly draws the wrong lesson from *Chicago Title Land Trust Co. v. County of Will*, 2018 IL App (3d) 160713, citing it as evidence that courts “will not let rigid statutory interpretation interfere with appropriate outcomes” and application of the *de minimis* doctrine. Def.’s Br. 13. But the appellate court in *Chicago Title* actually *invalidated* an annexation because the municipality used subterfuge to accomplish it, notwithstanding facial

compliance with the statute. 2018 IL App (3d) 160713, ¶¶ 34-35, 46. The Village spins this as the court “not let[ting] itself be hamstrung” by adherence to the annexation statute, adding the outcome had no basis in statute. Def.’s Br. 14. The appellate court obviously disagreed, grounding its decision in the General Assembly’s deliberate effort not to allow municipalities to misuse the forcible annexation power. 2018 IL App (3d) 160713, ¶ 34.

The decision in *Chicago Title* in fact undermines the validity of the Village’s annexation here, demonstrating that forcible annexations are invalid if the municipality “manipulates the annexation statute in ways the legislature never intended,” even when the municipality superficially complies with the statutory requirements. *Id.* ¶ 34 (cleaned up). In other words, neither open nor veiled violations of the statute are tolerated. The letter *and* spirit of Section 7–1–13(a) must be respected. Here, of course, the Village openly violated the “wholly bounded” requirement while attempting to circumvent the 60-acre limit by carving up contiguous unincorporated territory, and thereby violated both the letter and spirit of the statute.

Other cases the Village cites involving signatures on petitions (*Vill. of N. Barrington v. Vill. of Lake Barrington*, 8 Ill. App. 3d 50 (1972)), notice to fire district trustees (*People ex rel. St. Clair Cnty. v. City of Belleville*, 81 Ill. App. 3d 379 (1980), *aff’d in part and rev’d in part*, 84 Ill. 2d 1 (1981); *In re Annexation to Vill. of Wadsworth*, 35 Ill. App. 3d 957, *rev’d*, 65 Ill. 2d 148 (1976)), and methods of service (*People ex rel. Vill. of Northbrook v. Vill. of*

Glenview, 194 Ill. App. 3d 560 (1989)), examine statutory provisions where strict adherence would not impact the legislature’s motivating policy goals or the overall structure of annexation laws. They do not involve the “wholly bounded” jurisdictional requirement at issue here or the exercise of forcible municipal power over a property owner’s objection. The Village says the fact that Husky “finds ways to distinguish” these case “is not surprising.” Def.’s Br. 13. Husky agrees.

II. The Village’s policy arguments underscore the need for strict compliance with the forcible annexation statute, not adoption of a *de minimis* exception.

The Village’s various arguments for using the *de minimis* doctrine to chip away at the plain language and strict requirements of the forcible annexation statute boils down to an ever dangerous philosophy: the ends justify the means. In support of that justification, the Village argues that adopting a *de minimis* exception to the statute accomplishes “legislative policies,” while failing to clearly identify what those policies actually are beyond the general policy of using forcible annexation to incorporate small pieces of unincorporated land bordering municipalities—an unhelpful truism. Def.’s Br. 11.

To the extent the Village means to reference the recommendations set out by the Unincorporated Cook County Task Force (Def.’s Br. 20), it is again errantly conflating those legally irrelevant policy goals with the controlling legislative judgments of the General Assembly. Pls.’ Br. 27-29. And, in any event, the Task Force did not say its recommendations should be accomplished

at the expense of the limits the General Assembly placed on municipal power.

The Village attempts to advance a number of other explicit or implicit policy arguments, none of which have merit. For instance, in an attempt to downplay the stakes of this dispute and suggest Husky has other legal recourse, the Village characterizes Husky's injury as "intangible" and accuses Husky of equating forcible annexation with a regulatory taking. Def.'s Br. 9, 15. Both characterizations miss the mark, and not just because the degree of actual harm is irrelevant to the validity of the annexation and was more relevant to the injunctive relief at issue below. Regardless, Husky's injury is not intangible. The first section of the first article of the Illinois Constitution provides that that government exists "[t]o secure" among other things "the protection of property," not its diminution. Ill. Const. Art. 1, § 1. Further, Husky faces concrete, significant harms to its property from the forced annexation of its land, including the imposition of restrictive zoning that would prohibit nearly all commercial activity on its property, significant compliance costs, and a substantial loss in property value that will result from these restrictions. Pls.' Br. 12.

On this, the Village assures the Court that Husky need not worry about the rezoning of its property because its current zoning status will be grandfathered. Def.'s Br. 15–16. But grandfathering (or, more formally, the protection of legal nonconforming uses) applies only to uses that were legally established under applicable zoning at the time they were commenced.

Barrington Hills Vill. Code § 5–9–2. Moreover, legal nonconforming use protections are subject to significant limitations, including the rule that if a legally protected use is discontinued or modified or the premises are vacant or not used for a period of time, the nonconforming-use protection is extinguished. *Id.* § 5–9–3(E)(1)-(3). The Village knows this, as it was it discussed at its January 22, 2024 board meeting. Vill. of Barrington Hills, *Jan. 22, 2024 Bd. meeting audio* at 32:20-34:20. The Village’s new promise that Husky’s interests will be grandfathered thus provides no real comfort or security.

The Village also argues throughout its brief that this case turns on its own unique facts, suggesting there are no larger policy concerns at play here and every case may be taken on an *ad hoc* basis. Def.’s Br. 14; *see id.* at 9, 13, 16, 17, 26. This is more than another truism. The Village’s appeal to factual uniqueness is itself the problem as it ignores the lines deliberately and painstakingly drawn by the legislature. Rather than follow the General Assembly’s instructions for the conditions precedent to exercising the forcible annexation power, the Village invites the Court to adopt a standardless doctrine applied with no real predictability for property owners and no meaningful constraints on municipal power. The Village characterizes this as a “scare tactic” and insists that courts are “up for the task” of applying the *de minimis* doctrine case by case. Def.’s Br. 28. But Husky’s position has never been that courts are incapable of applying the *de minimis* doctrine in appropriate contexts, only that the doctrine finds no footing in this context

because the statutory scheme for forcible annexation forecloses it.

If the legislature wanted to grant municipalities broad authority to forcibly annex unincorporated land it could have done so. The legislature instead deliberately restricted the forcible annexation power to the discrete circumstances set forth in Section 7-1-13(a), striking a careful balance between the dual policy goals of incorporating small portions of unincorporated land located between municipalities' and protecting property owners' rights. By arguing that the policy goal of incorporating small pieces of land into surrounding municipalities justifies setting aside the restrictions the legislature placed on municipalities' power to do so, the Village asks the Court to expand the means of achieving one legislative policy goal at the expense of the other—a decision that should rest exclusively with the legislature.

The Village's logic also has all the familiar hallmarks of a post-hoc justification without any principled stopping point or limiting principle that can be readily, uniformly, and fairly applied in future cases. Accepting the Village's position would invite a corrosive incentive structure for local governments, encouraging them to violate the letter and spirit of the involuntary annexation statute and then justify their abuses with after-the-fact rationalizations. This is obviously what the General Assembly sought to avoid by carefully delimitating the conditions precedent and requirements for local governments to use that power, wisely preventing local decision makers from having unrestrained discretion over both their own ends and means for

annexing property—precisely the opposite of the Village’s reasoning.

CONCLUSION

The plain statutory language of the forcible annexation statute, as well as this Court’s precedent, provide all the guidance necessary to answer whether the limitations the General Assembly placed on that power should be enforced as written. Section 7–1–13(a) of the Municipal Code explicitly provides that for a territory to be eligible for forcible annexation, it must be “60 acres or less” and “wholly bounded” by one of the combinations of land types enumerated in that provision. These requirements work in tandem and are complementary. A municipality cannot disregard one without fatally undermining the purpose behind both. A municipality that cannot satisfy both conditions precedent therefore cannot use forcible annexation to incorporate a territory on its borders. It must instead use one of the Municipal Code’s other tools for more ambitious annexation proposals, tools that require engaging with landowners or providing them with judicial process. Any other outcome invites abuse of forced annexation at the expense of not only landowners in unincorporated territories, but of the rule of law.

WHEREFORE, and for all the reasons discussed above and in their opening brief, Plaintiffs-Appellants Husky Trans, Inc. and Husky Truck Repair, Inc. respectfully request that the Court reverse the appellate court’s decision, reinstate the circuit court’s judgment, and grant any and all other relief the Court deems appropriate.

Date: May 6, 2026

Respectfully submitted,

HUSKY TRANS, INC. and
HUSKY TRUCK REPAIR, INC.,
Plaintiffs-Appellants,

By: /s/ Jonathan B. Amarilio
One of Their Attorneys

Jonathan B. Amarilio
Karl D. Camillucci
Benjamin S. Morrell
TAFT STETTINIUS & HOLLISTER LLP
111 East Wacker Drive, Suite 2600
Chicago, IL 60601
Tel.: (312) 527-4000
jamarilio@taftlaw.com
kcamillucci@taftlaw.com
bmorrell@taftlaw.com

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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 5,997/6,000 words.

Date: May 6, 2026

/s/ Jonathan B. Amarilio

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Case No. 132527

In the
Supreme Court of Illinois

HUSKY TRANS, INC., an Illinois corporation,
and HUSKY 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, Judge Presiding.

NOTICE OF FILING

TO: See Attached Certificate of Service

PLEASE TAKE NOTICE that on the **6th day of May, 2026**, we caused to be filed (*submitted electronically*) with the Supreme Court of Illinois, ***Appellants' Reply Brief***, a copy of which is hereby served upon you.

Dated: May 6, 2026

Respectfully submitted,

HUSKY TRANS, INC. and HUSKY
TRUCK REPAIR, INC., Plaintiffs-
Appellants,

By: /s/ Jonathan B. Amarilio
One of their Attorneys

Jonathan B. Amarilio
Karl D. Camillucci
Benjamin S. Morrell
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2600
Chicago, Illinois 60601
Tel.: 312.527.4000
Fax: 312.527.4011
Firm ID No. 29143
jamarilio@taftlaw.com
kcamillucci@taftlaw.com
bmorrell@taftlaw.com

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Code of Civil Procedure, and Ill. S. Ct. R. 12 hereby certifies and affirms that the statements set forth in this instrument are true and correct, and that a true and accurate copy of this ***Notice of Filing*** and ***Appellants' Reply Brief***, were served upon the following parties of record via electronic mail, or upon acceptance of the Court, on May 6, 2026:

M. Neal Smith
Bond Conway Law Firm LTD
400 S. Knoll, Unit C
Wheaton, Illinois 60187
nealsmith@bondconway.com

Attorneys for Defendant-Appellee

/s/ Jonathan B. Amarilio

200273772v1