

No. 126444

**IN THE
SUPREME COURT OF ILLINOIS**

BOARD OF EDUCATION OF
RICHLAND SCHOOL DISTRICT
NO. 88A, an Illinois public school district,

Plaintiff-Appellee,

v.

CITY OF CREST HILL, an Illinois
Non-home rule municipal corporation,

Defendant-Appellant.

On Appeal from the Appellate Court of Illinois, Third District,
Appeal No. 3-19-0225,
There heard on appeal from the Twelfth Judicial Circuit Court of Will
County, Illinois,
Chancery Division, No. 2018 CH 000019
The Honorable John C. Anderson, Judge Presiding

**BRIEF OF THE ILLINOIS MUNICIPAL LEAGUE, AS *AMICUS
CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT CITY OF
CREST HILL**

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INTEREST OF *AMICUS CURIAE*

The Illinois Municipal League (“IML”) is a not-for-profit, non-political association of the 1,298 municipalities in the State of Illinois. State statute designates IML as an instrumentality of its members. See 65 ILCS 5/1-8-1. IML’s mission is to articulate, defend, maintain and promote the interests and concerns of Illinois municipalities. IML regularly files *amicus curiae* briefs in cases that present questions of interest and concern to IML’s members. The City of Crest Hill (City) is a member of IML.

In addition, Illinois municipalities regularly engage in annexation and the formation of Tax Increment Financing (TIF) districts. More than 500 members of IML have formed more than 1,500 TIF districts and those members’ interests are directly implicated in the outcome of the case on appeal.

ISSUES PRESENTED

Amicus curiae addresses the following issues:

1. Whether the appellate court’s restrictive definition of contiguity for parcels included in TIF districts, requiring that the parcels must touch or adjoin, is obsolete.
2. Whether this Court should reject the strict definition of contiguity for inclusion of parcels in a TIF district, requiring they touch or adjoin one another in a reasonably substantial physical sense as articulated by the appellate court and as proposed by the Plaintiff-Appellee, and instead recognize that contiguity is established when the statutory exceptions to touching or adjoining are met.

ARGUMENT

Statutory provisions regulating annexation of property have been amended to support the orderly, natural development of Illinois municipalities by authorizing the annexations of parcels that are separated by railroad and public utility rights-of-way and are not touching or adjoining parcels within the existing municipality. This allows municipalities to continue growth and development that would have been prevented by virtue of man-made barriers to the physical connection of real property. Those amendments to the Illinois Municipal Code, 65 ILCS 5/7-1-1 (section 7-1-1), which have broadened the statutory definition of contiguity, should be applied to the definition of contiguity when interpreting that term to determine parcels to include within TIF districts.

I. The definition of contiguity for purposes of annexation has been statutorily expanded.

Railroad tracks, pipelines and electric transmission lines crisscross communities and at times transect parcels held by the same owner. When the parcels at issue in this case were annexed into the City of Crest Hill, they were held in a single trust. (C 1037-1044) When those right-of way properties thwarted the orderly growth and development of municipalities, the Illinois General Assembly fashioned amendments to section 7-1-1 that allowed for communities to continue to add territory by annexation, while not incorporating the right-of-way property into the municipality.

Effective January 1, 1980, section 7-1-1 was amended to add the underlined language:

§ 7-1-1. Any territory which is not within the corporate limits of any municipality but which is contiguous to a municipality, may be annexed thereto as provided in this Article. 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 such territory is separated from the municipality by a railroad right-of-way, but upon such annexation the area included within such right-of-way shall not be considered to be annexed to said municipality.

Added by P.A. 81-632, eff. Jan. 1, 1980.

Effective September 22, 1985, section 7-1-1 was amended to add the underlined language:

§ 7-1-1. Any territory which is not within the corporate limits of any municipality but which is contiguous to a municipality, may be annexed thereto as provided in this Article. 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 such territory is separated from the municipality by a railroad or public utility right-of-way, but upon such annexation the area included within such right-of-way shall not be considered to be annexed to said municipality.

Added by P.A. 84-815, eff. Sept. 22, 1985.

These statutorily created exceptions to physical connection recognize that parcels that become divided by railroad or public utility rights-of-way should not prohibit municipalities from expanding their jurisdictions. The public utility rights-of-way, like railroad rights-of-way, are not annexed into the municipality and are not subject to municipal property taxes. They are effectively ignored, and municipalities develop beyond and around those parcels as if they do not exist.

II. Contiguity for purposes of annexation satisfies contiguity for inclusion within a TIF district.

The appellate court relied on outdated authority when defining contiguity as to TIF district parcels separated by a public utility right-of-way. Contiguity has long been defined in annexation cases as tracts of land which touch or adjoin one another in a reasonably substantial physical sense. *Western National Bank of Cicero v. Village of Kildeer*, 19 Ill.2d 342, 352 (1960). (See *Henry County Board v. Village of Orion*, 278 Ill. App. 3d 1058, 1067 (1996) applying to TIF parcels and *Geisler v. City of Wood River*,

383 Ill. App. 3d 828, 848-849 (2008) applying to business district parcels). As applied to the facts of *Henry County Board*, the definition from *Village of Kildeer* that prohibited connection of TIF parcels with long narrow strips was appropriate because that type of connection was not authorized by section 7-1-1 or the intervening statutory amendments to section 7-1-1 enacted between the decision in *Village of Kildeer* and the decision in *Henry County Board*. Likewise, the attempt to connect business district parcels with long narrow strips was prohibited, supporting the outcome in *Geisler*. However, the definition of contiguity articulated in *Village of Kildeer* no longer correctly states the limits of contiguity for annexation as it fails to incorporate the statutory exceptions to physical connection that have been added to section 7-1-1 in subsequent amendments enacted in 1980 and 1985, after that 1960 decision.

The facts of this case are easily distinguished from *Henry County Board* and *Geisler* as the connection of the City's Weber Road TIF district parcels is supported by a statutory exception to a physical connection for property separated by a public utility right-of-way. As a matter of statutory construction, the amendments to 7-1-1 were not accorded the appropriate weight by the appellate court. If the precedent of *Henry County Board* is faithfully applied, that is, contiguity for purposes of annexation is adequate for purposes of the TIF Act, then parcels divided only by a public utility right-of-way would be properly included in the TIF district.

In declining to apply section 7-1-1 to define the term "contiguous" for purposes of inclusion of parcels within a TIF district, the appellate court cited to *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021 ¶ 15, and stated that "If our legislature intended "contiguous," as used in section 11-74.4-4(a), to include parcels separated by a

public utility right-of-way, as in section 7-1-1 of the Illinois Municipal Code, it would have said so.” *Board of Education of Richland School District No. 88A v. City of Crest Hill*, 2020 IL App (3d) 190225 ¶ 33. But the court in *Skaperdas* was tasked with the need to define the term “insurance producer,” which was not defined in the statute at issue or any other statute, and that had not been previously construed by the court. 2015 IL 117021 at ¶ 18.

The appellate court failed to engage in the appropriate statutory construction analysis as articulated by this court in *Knolls Condominium Association v. Harms*, 202 Ill.2d 450 (2002):

“The controlling principles of statutory construction are well settled. In construing a legislative enactment, a court should ascertain and give effect to the overall intent of the drafters. A court presumes that the legislature intended that two or more statutes which relate to the same subject are to be read harmoniously so that no provisions are rendered inoperative. Statutes relating to the same subject must be compared and construed with reference to each other so that effect may be given to all of the provisions of each if possible. Even when an apparent conflict between statutes exists, they must be construed in harmony with one another if reasonably possible. It is also a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied.” *Id.* at 458-459 (citations omitted).

The two statutory provisions at issue in this case are both codified within the Illinois Municipal Code and relate to municipal operations. Those related statutes share the common term “contiguous.” Those terms must be construed in harmony with one another if reasonably possible. The appellate court made no attempt to do so. The specific terms in section 7-1-1 may be harmonized with the TIF Act. Those provisions in section 7-1-1 further illuminate the nature of parcels that may be included within a municipality

and, given the purposes of the TIF Act, it is reasonable to apply the provisions in section 7-1-1 to the inclusion of parcels within a TIF district.

Transection of parcels into odd shaped parcels is one of the blighting conditions that TIF provisions were established to address. (See 65 ILCS 5/11-74.4-3(a)(1)(I), (L), and 65 ILCS 5/11-74.4-3(a)(2)(A)). A natural gas pipeline transects the Weber Road TIF district and creates odd shaped parcels on both sides of the pipeline that are potentially in need of the type of economic support that TIF districts are specifically intended to provide.

TIF provisions do not conflict with this interpretation of contiguity. 65 ILCS 5/11-74.4-4(q):

[A municipality with a TIF District may] [u]tilize revenues, other than State sales tax increment revenues, received under this Act from one redevelopment project area for eligible costs in another redevelopment project area that is: (i) contiguous to the redevelopment project area from which the revenues are received; (ii) separated only by a public right of way from the redevelopment project area from which the revenues are received; or (iii) separated only by forest preserve property from the redevelopment project area from which the revenues are received if the closest boundaries of the redevelopment project areas that are separated by the forest preserve property are less than one mile apart.

TIF district boundaries are selected by the municipality and may terminate at any point or parcel. If the boundary of one TIF district ends with the parcels on the north side of a public right-of-way, and another TIF district boundary ends with the parcels on the south side of the right-of-way, then neither district would include the right-of-way. In that instance, the separation may be ignored for purposes of the two TIF districts sharing revenues for eligible redevelopment costs because they can be considered as adjoining. There is no basis within the TIF Act to conclude that these provisions impact the analysis of the contiguity of parcels to be included within a TIF district. Provisions for sharing

revenues between TIF districts are distinct from and more restrictive than the provisions for the formation of such districts.

The connection between the two parcels in this case, a 234-foot shared border along opposing sides of a natural gas pipeline, is a substantial connection. TIF districts may be as small as 1 1/2 acres in size. 65 ILCS 5/11-74.4-3(p). That is equivalent to a square parcel of slightly less than 260 feet on each side. Therefore, for purposes of a TIF district, and specifically in this matter, a shared border connection of 234 feet is substantial.

Considering the statutory provisions as a whole, the mutual purposes of the annexation provisions of section 7-1-1 of the Illinois Municipal Code and the TIF provisions within that same code, it is entirely reasonable to interpret contiguity consistently as to both enactments.

CONCLUSION

This court should reject the appellate court's restrictive definition of "contiguous" for purposes of inclusion of parcels in a TIF district and construe the term "contiguous" in harmony with section 7-1-1. Therefore, the court should reverse the judgment of the appellate court and affirm the judgment of the circuit court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms with the requirements of Rules 341(a) and (b). The length of this brief, excluding the 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 2027 words.

/s/ Patrick W. Hayes
Patrick W. Hayes, Attorney

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct. On December 24, 2020, the foregoing *Amicus Curiae* Brief of the Illinois Municipal League in support of the City of Crest Hill and Certificate of Compliance were electronically filed with the Illinois Supreme Court using the GreenFiling system. I further certify that the other participants in this appeal, as registered service contacts on the GreenFiling system, will be served via the GreenFiling System at the email addresses indicated.

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) The Honorable John C. Anderson,
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NOTICE OF FILING

To: Please see attached service list.

Please take notice that on December 24, 2020, the Illinois Municipal League e-filed with the Illinois Supreme Court, this Notice of Filing, *Amicus Curiae* Brief in support of Defendant-Appellant City of Crest Hill and Certificate of Compliance, true and correct copies of which are hereby served upon you.

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