No. 126444

IN THE
SUPREME COURT OF ILLINOIS

BOARD OF EDUCATION OF RICHLAND SCHOOL DISTRICT NO. 88A, an Illinois public school district,	)	Third Appellate District Court, Appeal from Twelfth Judicial Circuit, Will County
Appellee,	)	
	)	Case No. 3-19-0225
v.	)	Case No. 2018 CH 19
CITY OF CREST HILL, an Illinois non-home rule municipal corporation,	)	Hon. John C. Anderson Judge Presiding
Appellant.	)	

REPLY OF THE CITY OF CREST HILL TO THE BOARD OF EDUCATION OF RICHLAND SCHOOL DISTRICT'S BRIEF

CITY OF CREST HILL,

Scott Hoster

One of the Attorneys for Appellant

Mary J. Riordan – 6196209
Mary Riordan, Ltd.
980 N. Michigan Ave., Suite 1400
Chicago, IL 60611
312-214-4950
mary@riordanltd.com

Scott Hoster – 06190498
Castle Law, LLC
2 N. 129th Infantry Drive
Joliet, IL 60435
815-744-6550
shoster@castlelaw.com

E-FILED
3/12/2021 12:50 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

ARGUMENT

The City of Crest Hill ("City") submits this reply brief in response to the Board of Education Richland School District ("Richland"). Richland brought this litigation challenging the validity of the City's three TIF Ordinances ("TIF Ordinances") that were adopted by the City to create the Weber Road Corridor Redevelopment Project Area ("TIF District"). Richland claims that the City created the TIF district in violation of the Illinois Tax Increment Allocation Act, 65 ILCS 5/74.4-1 *et seq.* ("TIF Act" or "Act") by including parcels of property in the TIF District that were not contiguous and failing to follow the procedural requirements of the Act. As the record shows, the City strictly complied with the Act.

I
CONTIGUITY

Richland and the City agree that in this case, the City established contiguity in establishing the TIF District only by "jumping" a natural gas right-of-way ("ROW") that runs adjacent and parallel between two properties for a distance of 234.9 linear feet. (C1036) The Parties also agree that because the TIF Act requires but does not define "contiguous," the term should be have the same definition in Illinois annexation law.

At a hearing before the Circuit Court, on January 18, 2018, counsel for Richland argued to the trial court that, "Contiguity in this context for a TIF District follows the same case law interpretations that courts use in the annexation context." (SupR18) Richland's counsel cited the Third District's decision in *Henry County Board, et al. v. Village of Orion*, 278 Ill. App.3d 1058 when he stated to the Court that, "The ***statute*** does not apply in this case. The case law, particularly *Henry County v. Village of Orion,* says that judicial interpretations of contiguity may be considered by the Court in the TIF context. Contiguity

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

is determined for parcels within the TIF District using the same standards as in an annexation." (Sup R20)

In *Henry*, the Court held that:

> . . . . *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, 167 N.E.2d 169, 174-75 (1960). We conclude that this definition of contiguity is well-suited to determine questions arising under the [TIF] Act for several reasons. Id at 1083

Richland argues that since the *Henry* Court's holding specifically referenced "annexation ***cases***," only the definition of contiguous found in annexation ***case*** law can be used to define contiguity in a TIF district, and that the provisions of the annexation statute do not apply. Richland's argument is based on the assumption that there is a clear distinction between ***statutory*** and ***common*** law, and that this Court can look only exceptions to contiguity contained in annexation case law to define TIF contiguity, but must ignore the exceptions in the actual Annexation statute:

> The City's entire argument rests on the use of statutory exceptions contained in 65 ILCS 5/7-1-1 for purposes of contiguity. Reliance on those specific statutory exceptions not contained in the TIF Act is improper where ***courts have looked solely to the common law definition of contiguity.*** . . (District Response page 10)

The Annexation Act provides that:

> Any territory that is not within the corporate limits of any municipality but is contiguous to a municipality may be annexed to the municipality as provided in this Article. [2] 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 lake, river, or other waterway or the territory is separated from the municipality by a strip parcel, railroad or ***public utility right-of-way*** . . . [emphasis added]

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

In its decision, the Third District accused the City of asking it to ignore the second sentence of the Annexation Act, which defines the meaning of contiguity. But the City did not ask the Court to ignore the second sentence; in fact, the City asked the Court to rely on it. Without the second sentence, contiguity would be undefined in the Annexation Act, as it will be in the TIF Act if the Third District's opinion is allowed to stand.

Even if this Court was to accept Richland's hard line distinction between statutory and common law, the argument is moot. Both the Second and Fifth Districts have rendered opinions recognizing the jumping of privately owned utility right-of-way exceptions in the Annexation Act as a legitimate means of establishing contiguity, thereby incorporating the ROW exception into annexation case law. The Second District, in *Wescom, Inc. v. Woodridge Park District*, 49 Ill 2d 903, 907 (1977), held that corridors of land owned privately by a utility (i.e., right-of-way) are a permitted connective link establishing contiguity between other privately owned tracts for annexation purposes. The Second District also recognized the utility right-of-way exception in its decision in the case of *Freeport Fire Protection District v. City of Freeport*, 58 Ill. App. 3d 314, 319. The *Freeport* Court found no difference between roads and privately owned utility rights-of-way for the purpose of determining contiguity in an annexation. So the right-of-way exception for contiguity is found in the common law per the Fifth and Second Appellate Courts and both of these cases were decided prior to the *Henry* decision and would have been a part of the "cases" that the Third District referred to.

Richland argues that only those contiguity exceptions found common/case law apply when establishing a TIF district. Since the public utility right-of-way exception is found in the common law, applying Richland's reasoning, the ROW in this case does not

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

defeat contiguity. Both Justice Holdridge in his Third District concurrence (Opinion, page 12) and Richland in its response (page ___) claim that the since the right-of-way in this case is privately owned, it cannot serve to connect the properties in the TIF District. But the courts in both *Wescom* and *Freeport* recognized that privately owned utility rights-of-way are a legitimate means of finding contiguity between properties.

The TIF Act and the Annexation Act are both found in the Illinois Municipal Code and the intent of both is to facilitate growth and development, and both require a physical touching of properties for the purpose of establishing boundaries. In its *amicus* brief filed in this case per leave of this Court, the Illinois Municipal League ("IML") cites a ruling of this Court in *Knolls Condominium Association v. Harm*, 202 Ill 2d 450 (2002) in which the Court had to reconcile the Illinois Condominium Act with the Code of Civil Procedure:

> 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.

This Court in *Knolls Condominium* continued, "We instead emphasize that the overall intent of the legislature is of paramount importance, and statutes must be construed in harmony, if possible, citing *Coalition to Let the People Decide in 1989,* 125 Ill.2d at 338-39, 126 Ill. Dec. 175, 531 N.E.2d 802.

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

In its ruling in this case, the Third District held that when defining "contiguous" and any permissible exceptions thereto, for the purpose of creating a TIF district, the definition and exceptions must be expressly stated in the TIF Act, "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." (Third District opinion, page 11) Applying this holding, it is the City's position that existing TIF districts with properties separated by a road, river, forest preserve, railroad or a public utility right of way would become invalid since none of these exceptions are expressly stated in the TIF Act. Richland claims that this statement is "hyperbolic," accusing the City of trying to persuade this Court with fear, rather than law. (District response, page 12)

Richland argues that the City's position that the utility right-of-way in this case is distinguishable from other TIF districts that "jumped" permitted physical barriers because in this case, the utility right-of-way had not been annexed into the City. But the Annexation Act carves out these barriers, e.g., rivers, rights of way, railroad tracks, etc., ***precisely*** because they are not within a municipality's corporate boundaries. If the railroad, forest preserve or interstate utility line was incorporated into the municipality, there would be no need for the carve-outs set out in the Annexation Act. In fact, the Act includes these carve-outs so that these physical barriers cannot act as limitations to a municipality's ability to grow by expanding its municipal boundaries. When annexing property separated by railroads and utility rights of way, municipalities oftentimes do not annex them, they jump over them, as expressly permitted by the Annexation Act and decisions handed down by Illinois courts.

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

Richland also argues that the City failed to raise the potential of these physical barriers invalidating existing Illinois TIF districts and therefore cannot raise them now. But it was not until the Third District issued its opinion in this case holding that unless an exception found in annexation law was expressly restated in the TIF Act, it could not be applied to TIF Districts that this issue came up. Since this issue had not been raised prior to the Third District's opinion, the City addressed it for the first time in its petition for leave to appeal submitted to this Court.

It is the potential impact the Third District's ruling will have on TIF districts throughout the State that motivated the IML, representing 1,298 municipalities with 1,500 TIF districts, to file its amicus brief. (IML brief, page 1) In its response, District states that, ". . . . a TIF District cannot exclude an area that cuts a TIF District in half, and then rely on statutory annexation exception to jump that excluded right-of-way and assert contiguity." (Richland response, page 13) This statement by Richland supports the City's argument that existing Illinois TIF districts could be rendered invalid by the Third District's opinion: if there is a physical barrier permitted by the Annexation Act but not the case law that cuts through a TIF district, the property in that TIF district would not be considered as contiguous. Hence, the City's contention that the Third District's decision will invalidate many existing TIF District.

II
PROCEDURAL CLAIMS

A. THE CITY WAS IN STRICT COMPLIANCE WITH THE REQUIREMENTS OF THE ACT IN ITS INTERACTIONS WITH THE JOINT REVIEW BOARD.

The TIF Act requires that a municipality contemplating the adoption of TIF must begin by preparing a "Redevelopment Plan," ("Plan") and sets forth the specific required

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

elements of a Redevelopment Plan.. (65 ILCS 74.4-3[n]) The Act requires that a Plan include an eligibility study, stating how the area satisfies the detailed eligibly criteria set forth in the Act and that the Plan complies with the goals of the Act. When it was first considering creating the TIF District, the City engaged Camiros, Ltd., a nationally recognized planning firm with extensive municipal and TIF planning experience to conduct a parcel by parcel assessment of the eligibility factors mandated by the Act and prepare a Redevelopment Plan.

Once completed, the Act requires a municipality to make the draft Plan available to the public, and via ordinance, set the dates and times for a public hearing and a meeting of the joint review board ("JRB") comprised of representatives of certain taxing bodies. The City mailed a copy of the ordinance and a draft Plan via certified mail to members of the JRB prior to convening the JRB meeting:

> Prior to holding a public hearing to approve or amend a redevelopment plan or to designate or add additional parcels of property to a redevelopment project area, the municipality shall convene a joint review board. 65 ILCS 74.4-5(a)

The Act also mandates with specificity the basis on which a JRB recommendation must be based:

> The board **shall** base its recommendation to approve or disapprove the redevelopment plan and the designation of the redevelopment project area or the amendment of the redevelopment plan or addition of parcels of property to the redevelopment project area on the basis of the redevelopment project area and redevelopment plan ***satisfying the plan requirements, the eligibility criteria defined in Section 11-74.4-3, and the objectives of this Act.*** 65 ILCS 11-74.4-3 [emphasis added]

The City convened the first meeting of the JRB on October 10, 2017. (C1090) The Plan included a 29 page eligibility study outlining in significant detail the factors required

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

by the TIF Act to qualify for TIF and assess each of the parcels in the proposed TIF District to see if the statutory factors were present. (C34-C76) The planner from Camiros, Ltd. who had prepared the Plan made a detailed presentation at the October 6th meeting, specifically reviewing for the JRB members:

a. The role of the JRB
b. An overview of the proposed Redevelopment Project Area
c. A review of the eligibility factors set out in the TIF Act
d. A discussion of the factors present in the RPS, stating that 6 factors were present qualifying the improved property in the RPA as "blighted improved" and 3 factor, including chronic flooding as confirmed by a licensed engineer, were present qualifying the vacant property as "blighted."
e. The requirements for a plan as set forth in the Act, and a review of the City's Redevelopment Plan confirming that all of the required elements had been included. (C1090)

This presentation was documented exactly as set forth above in the minutes of the October meeting that were sent to every member of the JRB (C1090). No JRB members contacted the City to object to or challenge anything stated in the minutes.

At the end of the City's presentation and discussion of members, the City Manager made a motion to approve the Plan, which the majority of the seven members in attendance voted against. The members then agreed to set a date for another JRB meeting on November 6, 2017, to prepare a final recommendation from the JRB. (C1090) At that November JRB meeting, the five members in attendance submitted the following recommendation they had prepared in advance of the meeting:

> The Joint Review Board recommends that the Crest Hill Weber Road Corridor Tax Increment Financing District not be created because the proposed Redevelopment Project Area ***does not meet the criteria*** for designation as a TIF District under the TIF Act. The Joint Review Board finds that tax increment ***financing is not needed to encourage redevelopment*** within the redevelopment Project Area, and the Redevelopment Project Area would experience redevelopment in the absence of tax increment financing. The Joint Review Board finds that the

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

> creation of the Crest Hill Weber Road Corridor Tax Increment Financing District would have a ***significant negative impact on the affected taxing*** districts, by the redirection of critical property taxes away from the affected taxing districts into a TIF fund for up to twenty three (23) years. (C 1101-1102)

In spite of all the materials the City distributed and presented to the JRB members outlining the statutory mandates for a JRB recommendation, the JRB simply ignored the Act's mandated criteria and submitted the above statement making ***no mention*** whatsoever of the Redevelopment Plan. As quoted above, the JRB recommendation must be based the three specific criteria only: (i) the Redevelopment Plan fails to meet the requirements for a Plan as set forth in the Act, (ii) the property fails to meet the eligibility criteria set forth in the Act, and (iii) the Redevelopment Plan fails to meet the objectives of the Act. (74.4-3) But even Richland admits, "The procedural requirements of the Act are all jurisdictional and **mandatory requirements,**" conceding that the criteria for a JRB recommendation are mandatory and not mere suggestions. (District response, page 13) At the October 6th JRB meeting, the City had distributed a handout outlining the necessary elements of a Redevelopment Plan and the goals of the Act (C1473), which the City's planner discussed in detail (C 1473). But the JRB members ignored these materials and the mandated criteria for a JRB statement when it crafted their negative recommendation.

Rather than addressing the criteria in the Act in assessing the City's Plan, the JRB's negative recommendation was based on these findings: (i) the property was not eligible for TIF (ii) TIF was not needed to spur development and (iii) the proposed TIF District would have a negative impact on the taxing districts finances, none of these being a valid criteria for rejecting the Plan as discussed below.

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

(i) The property was not eligible: The City's Plan included a 29 page eligibility report, reviewing in detail each eligibility factor set out in the Act as to each parcel of property in the TIF District. Richland's Superintendent, Joe Simpkins, was asked during his deposition if he had any disagreements with the findings about the eligibility of the property in the proposed TIF district, he answered, "We maybe disagreed with some of their methodology, but you know, we did not conduct the surveys so we didn't have as detailed information as they did." (C1382) Simpkins was asked if at the October 10th JRB meeting, he had any concerns about the contiguity of properties in the TIF District:

> Q: Do your recall whether you had any concerns about the issue of contiguity at that October 10th Meeting?
> A. Me, specifically?
> Q: Yes. You personally, yes.
> A: Can you rephrase the question?
> Q: Sure. Let me -maybe I didn't ask it very well. You went to the October 10th, 2017 meeting as a member of the Joint Review Board, right?
> A: Correct. That was the first meeting, correct?
> Q: Yes.
> A: Yes
> Q: And Jeanne made a presentation, the lady from Camiros, right?
> A: Correct. I don't know her name, but I know it was Camiros.
> Q: When she made her presentation, was there anything in the presentation that concerned you personally about contiguity?
> A: Not that I recall. (C1053-1054)

When Simpkins was asked, "in what way did it [TIF District] not meet the criteria?" Simpkins replied, "Well, after further study those other things came up about contiguousness and whatnot, but it backed our point that we just felt it was not necessary economically." (C1066)

(ii) TIF is not needed to encourage development. The JRB's second objection, that TIF was not needed to spur private investment, is not a determination within the

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

purview of the JRB. The Act reserves the determination as to whether or not TIF was needed to the municipality:

> No redevelopment plan shall be adopted unless a municipality complies with all of the following requirements:
>
> (1) The ***municipality*** finds that the redevelopment project area on the whole has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of the plan. (74.4-3J)

(iii) The TIF would have a significant negative impact on the affected taxing districts. As the Henry Court held, "The Act enables municipality to eliminate present and future blighted conditions from within its boundaries ***by diverting incremental property tax revenues from taxing districts, e.g., school*** . . . " *Henry* at 1076. The JRB's objection to the TIF was that it would divert revenue from the taxing district is exactly what the TIF Act is intended to do and is not a reason to reject a municipality's Redevelopment Plan.

After being given the JRB statement at the November 6th meeting, the City's attorney stated that it would be difficult for the City to make any changes to the Plan, based on the reasons for rejection contained in the JRB statement. (JRB transcript, C 99-117) The City's attorney told the JRB members that their statement needed to address the criteria mandated by the TIF Act and that without more specificity, the City could not make changes to the Plan to respond to their concerns, and repeatedly asked if the members could provide more specificity to their objections, particularly as to eligibility. The JRB members and Richland's counsel, who attended the meeting, offered no additional recommendations as to how the City could amend the Plan, with District's counsel stating, ". . . what's

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

reflected in the proposed recommendation is the rationale, as I understand it of the Joint Review Board at this time. I have no further explanation." (C 1096-1097) The City's attorney told the members that she would submit the statement to the City to consider what changes could be made to the Plan based on the JRB statement. As Simpkins testified:

> There was discussion I remember back and forth about Mary [the City's counsel] was asking if there were specific reasons other than those stated in the letter for why the group was not supporting the TIF, and we stated the letter stood for what are reasons were. (C1059)

The TIF Act contemplates that once a municipality receives a statement from the JRB, it has thirty days to make changes to the ***Plan*** to address the issues raised by the JRB and to resubmit the amended Plan to the JRB for review.

> If the board recommends rejection of the matters before it, the municipality will have 30 days within which to ***resubmit the plan or amendment.*** During this period, the municipality will meet and confer with the board and attempt to resolve those issues set forth in the board's written report ***that led to the rejection of the plan*** or amendment. . 65 ILCS 74.4-5(b)

Richland makes the claim that City failed to "meet and confer" with the JRB during that thirty day window. But the JRB statement made no mention of the Plan, so it was obvious that there were no amendments the City could make to the Plan to resubmit to the JRB members about which the City and JRB could "meet and confer."

During his deposition, Simpkins admitted that he had no real problem with the Plan and that what he really wanted was for the City to enter into a revenue sharing agreement with his school district. When he was asked what changes the City could have made to the Plan to satisfy the JRB, Simpkins responded:

> Q. And I know you can only speak for your taxing body as a member of the Joint Review Board, but did you have any ideas as to what could be done

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

to work things out?
A. Absolutely.
Q. What were your ideas?
A. Our ideas were to enter into some kind of intergovernmental agreement of some sort, with us as a taxing body for, you know, at least portions of the proceeds, should there be any, from the TIF, so that we wouldn't go 23 years with no increase. (C 1059)

When asked what District's reasons for opposing the Plan, Simpkins answered, "The concern about the impact financially it would have on Richland." (C1382) The superintendent's concern for his district's finances is admirable, it is not a legally permitted basis for rejecting a Redevelopment Plan.

Simpkins' testimony makes clear that Richland's real objection to the TIF District had nothing to do with the contents of the Plan or the TIF District's eligibility. Richland objected to the City's Weber Road TIF District because it would divert revenue from the school district for 23 years, which is how the Act operates as explained by the *Henry* Court. And, Simpkins admitted that District had no interest in amending the Redevelopment Plan, he was only looking to force the City into an inter-governmental revenue sharing agreement:

Q: Okay. What was it you thought would go in that 30-day window?
A: A chance for, again, as I stated before, a discussion to come to an agreement of something we could do to avoid any other conflicts.
Q: Okay. And that was you were still hoping in the 30-day window to maybe reach an intergovernmental agreement with City?
A. Correct.
Q. . . . just for the record, what is a surplus agreement?
A: The agreement we were discussing, the intergovernmental, trying to -- if there was surplus, that it could be given back to Richland at a certain rate, whatever rate was negotiated. (C1064)

As Simpkins testified, Richland had no problem with the Plan - - the school district just wanted a revenue sharing agreement. In his deposition Simpkins was asked, "What

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

were the reasons for opposing the TIF?" to which he answered, "The concern about the impact financially that it would have on Richland and students." (C1058) But financial impact is not one of the statutorily mandated criteria for rejection a Redevelopment Plan. Richland simply wanted to use this litigation to force the City to enter into a revenue sharing agreement. As Simpkins testified, the only "amendment" the City could make would be to agree to give District money from the TIF District. Simpkins testified that the Plaintiff school district had decided to oppose the TIF in August of 2017, well before any JRB meetings or presentations by the City. (C- 1058)

Moreover, the Act makes clear that the recommendation of the JRB is only advisory, "The JRB is only an advisory board and its . . . recommendation shall be ***an advisory, non-binding recommendation***." 65 ILCS 74.4-5(a). If this Court accepts Richland's assertion that any time a JRB submitted a negative statement for any reason a municipality would be required to meet with that JRB and to hold off taking any action on the TIF for an additional 30 days, no municipality could ever create a TIF District unless it was approved by the JRB; a JRB could just keep issuing negative recommendations every 30 days while the municipality tried to make the JRB members happy by conceding to the demands of its members. This would change the role of a JRB from being an advisory one, as the TIF Act clearly provides, to a body having total control over the TIF process - a result that would be a complete opposite of that intended by the plain language of the Act.

B. THE CITY CONDUCTED A PUBLIC HEARING AND ADOPTED TIF ORDINANCES IN STRICT COMPLIANCE WITH THE ACT.

In its response brief in a "Statement of Facts," District makes misrepresentations to this Court as to what the Act requires of a municipality in dealing with the JRB. District quotes the Act as stating:

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

> C. The City must hold a public hearing in regard to the proposed TIF District, ***which public hearing may not be adjourned until the Joint Review Board has finished its work on the TIF District.*** 65 ILCS 5/11-74.4-5(b). (District brief, page 2) [emphasis added]
>
> E. ***The City must wait until the Joint Review Board has completed its work*** on the TIF District before voting on the TIF Ordinances. 65 ILCS 5/11-74.4-5(b) (District brief, page 2)

Both the above statements are the opposite of what the Act actually states, which is:

> If the board recommends rejection of the matters before it, the municipality will have 30 days within which to resubmit the plan or amendment. During this period, the municipality will meet and confer with the board and attempt to resolve those issues set forth in the board's written report ***that led to the rejection of the plan*** or amendment. ***Notwithstanding the resubmission set forth above, the municipality may commence the scheduled public hearing and either adjourn*** the public hearing or continue the public hearing until a date certain. 65 ILCS 74.4-5(b) [emphasis added]

This provision could not be stated more clearly: the TIF Act gives the City the express right to commence, conduct and adjourn the public hearing, ***notwithstanding*** the resubmission of the Plan or the activities of the JRB. When asked during his deposition if he knew if the City had conducted the public hearing, Simpkins responded, "Yes, I believe it was on maybe November 6th where [sic] they had the meeting. I was there." When asked if recalled speaking at the meeting, he replied, "I did not speak." (C1394)

Richland alleges in its response that the Act forbids the City from holding a public hearing or adopting the TIF Ordinances until the JRB finished its "work," which the Act clearly does not. But even if the Act required the City to delay taking action on the TIF District until the JRB finished its work, the only "work" the TIF Act charges the JRB with is to review the record and to submit of a negative or positive recommendation to the City on the criteria stated in the TIF Act. In his deposition, when asked ***by his own attorney***,

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

Simpkins confirmed that the JRB statement submitted to the City at the meeting on the morning of November 6th was in fact the JRB's "final formal" statement:

> Q: And then on November 6th the Joint Review Board then met, correct?
> A: Correct.
> Q: And that's when there was a ***final formal*** vote to issue the written rejection of the TIF?
> A: Correct. (C1393)

By the time the City opened, held and adjourned the public hearing, the JRB had already submitted it "final formal" advisory statement, thereby concluding the "work" of the JRB. And as Simpkins testified, he had been in attendance at the public hearing but chose not to make any comment.

The Act further provides that if the JRB members and the municipality cannot reach agreement as to the Redevelopment Plan, the City may proceed in adopting its TIF ordinances so long as the Corporate Authorities pass the ordinances by a three-fifths vote of the corporate authorities:

> In the event that the municipality and the board are unable to resolve these differences, or in the event that the resubmitted plan or amendment is rejected by the board, the municipality may proceed with the plan or amendment, but only upon a three-fifths vote of the corporate authority responsible for approval of the plan or amendment, excluding positions of members that are vacant and those members that are ineligible to vote because of conflicts of interest. 65 ILCS 5/11-74.4-5(b)

As the record reflects, in accordance with the Act, all three of the City's TIF Ordinances were adopted by a unanimous vote of the corporate authorities on November 20, 2017. (C 27, 80 and 90) The City was in complete compliance with the Act when it held the public hearing adopted the TIF Ordinances.

C. RICHLAND FALSELY CLAIMS THAT THE CITY FAILED TO PROVIDE ADMINISTRATIVE SUPPORT AS REQUIRED BY THE ACT.

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

Richland claims that the City failed to provide administrative support, including posting agendas in compliance with the Illinois Open Meeting Act; failed to provide meeting space for the December 4, 2017 Joint Review Board meeting; and failed to provide minutes of the JRB meetings. But in his testimony, Simpkins acknowledge that these allegation were not true:

1. Simpkins acknowledged that the City provided meeting space for the JRB for the October 10th JRB meeting (C1056)
2. Simpkins acknowledged that the City provided meeting space for the JRB for the November 6th 2017 JRB meeting (C1059)
3. Simpkins admitted that the City provided adequate administrative staff for the October 10th JRB meeting (C1056)
4. Simpkins stated that District published notices of its meetings on its website (C1055) but admitted that he did not check the City's website to see if it has posted notices of the JRB meetings (C-1063)
5. Simpkins admitted that he did not know if the October 10th Agenda had been published (C1055)
6. Simpkins admitted he received an agenda for the October 10th JRB meeting (C1063)

The minutes of the October 10th meeting were distributed to the JRB members (C1090) Between the first and second JRB meetings, on November 1st, Simpkins emailed Heather McGuire, the City Administrator, to ask her if there would be an agenda forthcoming for the November 6th meeting. (C393). McGuire replied via email that since the JRB members opposing the TIF had called the meeting, she assumed that they would be the ones setting the agenda (C393). Simpkins responded via email, "Thanks Heather. Hope you have a nice weekend as well." (C394) So he acknowledged receiving the October 10th agenda and being told why the City did not prepare an agenda for the November 6th meeting, an answer that he happily accepted.

Now Richland is asking this Court to invalidate the City's TIF Ordinances because the City did not meet and confer with the JRB, the City did not provide administrative

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

support and the City closed the public hearing before the JRB finished its work. But District's own superintendent admitted under oath that these claims were not true and that the City had provided meeting space, agendas and minutes and a transcript of the second JRB meeting. Simpkins testified that District has no information that would lead to the conclusion that there was any defect in the City's Plan and that the JRB submitted its final recommendation (i.e., work) on November 6th before the City opened the public hearing.

Richland makes another disingenuous claim when it alleges that the City failed to provide administrative support and meeting space at the December 4th meeting. At the November JRB meeting, City's counsel told the JRB members that the City would look at the JRB's recommendation and see if the City could respond to it, stating that it would be difficult since the recommendation cited no specific reasons as to how the Plan failed to comply with Act. City's counsel then asked:

> Do you want to tentatively schedule it [another JRB meeting] and we'll see if we can respond in writing? I'm not quite, frankly, what we're responding to because it sound like we don't - - the TIF District doesn't meet the criteria, but there is no specificity as to which criteria aren't met . . . and whether it is needed. I'm not sure that's in the purview of the Joint Review Board per the statute." (C1099-C1100)

Richland's attorney responded that the JRB members, "should set a date today when everybody knows they are available . . . " Simpkins then said, "At least ***a tentative date***. Let's get something on the calendar." (C1100) It was clear that the December 4th date was tentative and depended on the City's determination as to how it could respond to the JRB statement and the changes it could make to the Plan to address the issues raised by the JRB.

After reviewing the JRB's negative recommendation, the Mayor of Crest Hill sent a three page letter to each member of the JRB via certified mail explaining in detail the

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

City's inability to amend and resubmit the Plan over which the JRB and City could "meet and confer" and since the Plan could not be amended, there would be no point in convening the tentatively scheduled December meeting with the JRB. (C 1103-1105) Between receipt of the Mayor's letter and December 4th, no one from District or any other taxing body contacted Mayor Soliman to discuss or challenge his cancellation of the December meeting or his contention that the City could not amend the Plan.

There would be no reason for the City to have provided administrative support to a cancelled meeting. Out of the seven JRB members, only three showed up at the December 4th meeting: Simpkins, the superintendent of the Chaney School (another district serving Crest Hill) and a Chaney School board member, who the JRB elected as what was supposed to be a member of the public at large.The facts and the sworn testimony of District's Superintendent do not support District's claims that the City failed to provide administrative support or follow the procedural requirements of the Act. Richland has provided no legal or factual basis for this Court to invalidate the City's TIF Ordinances. And when the Third District overturned the ruling of the Circuit Court, it misinterpreted its previous decision in *Henry*.

In its ruling granting the City summary judgment to the City, the Circuit Court made the observation:

> The Court likewise rejects the School Board's contention that City improperly closed the public hearing before the JRB concluded its work and further failed to satisfy the "meet and confer" requirements. On the contrary, the Court finds that City made reasonable efforts to conform to the JRB's recommendations, but the JRB's position lacked specificity. Moreover, City's counsel requested more specificity but did not receive it. If anything, the evidence suggests that the ***School Board took an obstructionist position*** but City did everything it was required to do, and everything that was reasonable to do. In short, City complied with the Act. (C1476) (emphasis added)

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

CONCLUSION

The City now respectfully asks this Court to reverse the ruling of the Third District Appellate Court, reinstate the ruling of the Circuit Court and affirm the validity of the City's three TIF Ordinances.

Respectfully submitted,

By: Scott Hoster
One of the Attorneys for Appellant

Mary J. Riordan – 6196209
Mary Riordan, Ltd.
980 N. Michigan Ave., Suite 1400
Chicago, IL 60611
312-214-4950
mary@riordanltd.com

Scott Hoster – 06190498
Castle Law, LLC
2 N. 129th Infantry Drive
Joliet, IL 60435
815-744-6550
shoster@castlelaw.com

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents, 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 10 pages.

THE CITY OF CREST HILL, an Illinois Non-Home Rule Municipal Corporation,

By: Scott Hoster
One of the Attorneys for Appellant

Mary J. Riordan – 6196209
Mary Riordan, Ltd.
980 N. Michigan Ave., Suite 1400
Chicago, IL 60611
312-214-4950
mary@riordanltd.com

Scott Hoster – 06190498
Castle Law, LLC
2 N. 129th Infantry Drive
Joliet, IL 60435
815-744-6550
shoster@castlelaw.com

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

No. 126444

IN THE
SUPREME COURT OF ILLINOIS

BOARD OF EDUCATION OF RICHLAND SCHOOL DISTRICT NO. 88A, an Illinois public school district,	)	Third Appellate District Court, Appeal from Twelfth Judicial Circuit, Will County
Appellee,	)	
v.	)	Case No. 3-19-0225 Case No. 2018 CH 19
CITY OF CREST HILL, an Illinois non-home rule municipal corporation,	)	Hon. John C. Anderson Judge Presiding
Appellant.	)	

NOTICE OF FILING

TO: See Attached Service List

NOTICE IS HEREBY GIVEN, that on the **12th** day of **March 2021**, the undersigned filed with the Clerk of the Supreme Court of Illinois via electronic filing and by mailing, the attached **Reply of the City of Crest Hill to the Board of Education of Richland School District's Brief,** a copy of which is attached hereto.

CITY OF CREST HILL,

Scott Hoster

One of the Attorneys for Appellant

Mary J. Riordan – 6196209
Mary Riordan, Ltd.
980 N. Michigan Ave., Suite 1400
Chicago, IL 60611
312-214-4950
mary@riordanltd.com

Scott Hoster – 06190498
Castle Law, LLC
2 N. Infantry Drive
Joliet, IL 60435
815-744-6550
shoster@castlelaw.com

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

PROOF OF SERVICE

I, Scott M. Hoster, an attorney, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct and that I served the attached Notice and Reply to the Illinois Supreme Court by electronic filing and served a copy by electronic mail upon all parties to this case or to all Counsel of Record as indicated on the attached Service List via email on the 12th day of March 2021.

CITY OF CREST HILL,

Scott Hoster

One of the Attorneys for Appellant

Mary J. Riordan – 6196209
Mary Riordan, Ltd.
980 N. Michigan Ave., Suite 1400
Chicago, IL 60611
312-214-4950
mary@riordanltd.com

Scott Hoster – 06190498
Castle Law, LLC
2 N. Infantry Drive
Joliet, IL 60435
815-744-6550
shoster@castlelaw.com

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM

SERVICE LIST

Howard Charles Jablecki (hcjablecki@ktjlaw.com)
Gregory Smith (gtsmith@ktjlaw.com)
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Dr., Suite 1660
Chicago, IL 60606

Patrick W. Hayes (phayes@iml.org)
Illinois Municipal League, General Counsel
500 E. Capitol Avenue
P.O. Box 5180
Springfield, IL 62705

Ares George Dalianis (agd@franczek.com)
Caroline K. Kane (ckk@franczek.com)
Franczek P.C.
300 S. Wacker Dr., Suite 3400
Chicago, IL 60606

SUBMITTED - 12555834 - Dora Kruger - 3/12/2021 12:50 PM