

No. 126444

**IN THE
SUPREME COURT OF ILLINOIS**

BOARD OF EDUCATION OF)	Third Appellate District
RICHLAND SCHOOL DISTRICT)	Court, Appeal from Twelfth
NO. 88A, an Illinois public school district,)	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.)	

BRIEF OF APPELLANT, CITY OF CREST HILL

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CITY OF CREST HILL,



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non-home rule municipal corporation,)	
)	Hon. John C. Anderson
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I
POINTS AND AUTHORITIES

I. The City of Crest Hill correctly relied on Illinois annexation law to define the term “contiguous” when it created the Weber TIF District.

<i>Henry County Board v. City of Orion</i> , 278 Ill. App. 3d 1058 (1996)	3, 6, 7, 8, 9, 10, 11, 14
<i>Michigan Avenue National Bank v. County of Cook</i> , 191 Ill.2d 493 (2000).....	4
Illinois Tax Increment Redevelopment Act, 65 ILCS 74.4-4(a)	2, 7, 8
Illinois Annexation Act, 65 ILCS 5/7-1-1	5, 7, 9
<i>Geisler v. City of Wood River</i> , 383 Ill. App. 3d 828, (2008)	10
Business District Development and Redevelopment Law 65 ILCS 5/11-74.3- 1 <i>et seq.</i>	5, 10, 13
<i>People ex rel. Illinois Department of Labor v. E.R.H. Enters., Inc.</i> , 2013 IL 115106	11
Illinois Comptroller website: https://illinoiscomptroller.gov/financial-data/local-government-division/upload-tif-reports/ retrieved September 17, 2020.....	11

II. Parcels A and Parcel B are contiguous under Illinois annexation law.

<i>People ex rel. Gray v. Village of Hawthorne Woods</i> , 19 Ill.2d. 316 (1960).....	11
<i>People ex rel. Admonowski v. Village of Streamwood</i> , 15 Ill. 2d. 595 (1959)	12
<i>People ex rel. Illinois Department of Labor v. E.R.H. Enters., Inc.</i> , 2013 IL 115106	11
Illinois Public Utility Act, 220 ILCS 5/5-104(c)	13
Illinois Tax Increment Redevelopment Act, 65 ILCS 74.4-3(a)	2
Illinois Annexation Act, 65 ILCS 5/7-1-2(a).....	13

II NATURE OF THE CASE

The City of Crest Hill created the Weber Road Corridor Redevelopment Project Area (“Weber TIF District”) by adopting ordinance numbers 1758, 1759 and 1760 (collectively, “TIF Ordinances”) all of which are required to be enacted by the Illinois Tax Increment Redevelopment Act (TIF Act) for a municipality to use a TIF. In Ordinance no 1759, the City made the required finding that the properties in the Weber Road TIF District were contiguous as required by the Act. (C 1141) The School Board of Richland filed suit, challenging the validity of the TIF Ordinances, claiming that certain parcels of properties in the Weber TIF District were not contiguous because they were separated by a public utility right-of-way, and further, that the City violated the procedural requirements set forth in the Act in relation to its interactions with the Joint Review Board (JRB), which the TIF Act required the City to convene. The parties filed cross-motions for summary judgment and the Circuit Court granted the City’s motion for summary judgment, finding that the properties were contiguous and that the City complied with the procedural requirements of the Act. Richland appealed the Circuit Court ruling to the Third District Appellate Court, which found that the City wrongfully relied on annexation law to define “contiguous,” holding the properties to be non-contiguous and thus, the Weber TIF District to be invalid. Once the Third District determined that the properties were not contiguous, it found no need to address Richland’s procedural claims. *Board of Education of Richland v. City of Crest Hill*, 2020 IL App. (3d) 190225.

III ISSUES PRESENTED

The Illinois TIF Act requires that properties in a Redevelopment Project Area (TIF District) be contiguous, but it does not define the term. This case turns on the question: can a municipality look to the Illinois annexation law to define the term “contiguous” for the purpose of creating a TIF district; and if so, are the properties in the Weber TIF District contiguous when viewed in light of Illinois annexation law?

When the City created the Weber TIF District it found contiguity between all of the properties as required in TIF Act. There are two parcels in the Weber TIF District that are separated by a public utility right-of-way, running parallel and adjacent to both properties for a length of 234.9 feet. (Both of the Parcels are depicted on Exhibit A attached hereto.) Illinois annexation law holds that when parcels of property are separated by a public utility right-of-way they are still contiguous.

In a prior decision (*Henry County v. City of Orion*, 278 Ill. App. 3d 828 [1996]), which the Court reiterated in this case, the Third District held that one should look to annexation law to define “contiguous” within the context of the TIF Act, but in its holding in this case, the Court held that the City can look only to the express language of the Act for a definition of the term and cannot read the provisions of annexation law into the TIF Act. The Third District’s holding if allowed to stand will render the Weber TIF District invalid, along with many other Illinois TIF districts.

IV

STANDARD OF REVIEW

The parties filed cross-motions for summary judgment, thereby agreeing that there is no dispute of fact in this case, only questions of statutory interpretation. Statutory interpretation is to be reviewed *de novo* by this Court. *Michigan Avenue National Bank v. County of Cook*, 191 Ill.2d 493, 503, 247 Ill. Dec. 473, 732 N.E.2d 528 (2000).

V

JURISDICTION

This Court has jurisdiction in this case pursuant to Rule 315. On March 28, 2019, Judge John C. Anderson of the 12th Judicial Circuit Court granted the City's motion for summary judgment, finding the TIF Ordinances adopted by the City to be valid because the properties within the Weber TIF District were in fact contiguous and that the City complied with the procedural requirements of the Act. Richland appealed the Circuit Court's decision to the Third District Appellate Court which overturned the ruling of the Circuit Court in its decision dated July 24, 2020. *Board of Education of Richland v. City of Crest Hill*, 2020 IL App. (3d) 190225. On October 3, 2020 the City filed a timely petition for Leave to Appeal with this Court, which this Court granted on November 18, 2020.

VI

STATUTES INVOLVED

The City in its appeal asks this Court to determine if the term "contiguous" in the TIF Act has the same meaning as in Illinois annexation law or if it can only be defined by

the express language of the TIF Act. The TIF Act requires that all property in a TIF District be contiguous but does not define the term:

No redevelopment project area shall be designated unless a plan and project are approved prior to the designation of such area and such area *shall include only those contiguous parcels of real property* and improvements thereon substantially benefited by the proposed redevelopment project improvements. 65 ILCS 5/11-74.4(a) [emphasis added]

It is the City's position that if a municipality can look to annexation law, the Annexation Act provides those physical barriers that do not defeat contiguity:

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. 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*, or former railroad right-of-way . . . 65 ILCS 5/7-1-1) [emphasis added]

VII STATEMENT OF FACTS

1. The parcels of property that Richland contends are not contiguous were annexed to the City in 2000 and 2002 pursuant to the following ordinances (collectively referred to as the "Annexation Ordinances"). A map (Map) identifying the three parcels is a part of the record (C 1036):

- A. Parcel A was annexed to the City on July 17, 2000 pursuant to Ordinance No. 1149;
- B. Parcel B was annexed to the City on July 17, 2000 pursuant to Ordinance No. 1150; and,
- C. Parcel C, which Richland refers to as the "Northwestern portion" was annexed to the City on May 20, 2002, pursuant to Ordinance No. 1245.

2. The City of Crest Hill is an Illinois non-home rule municipality located in Will County, Illinois.

3. School Board of Richland School District is an Illinois Public School District serving a portion of the residents of the City of Crest Hill.

4. On November 17, 2017, the City adopted three ordinances: adopting tax increment financing, adopting the Weber Road Corridor Redevelopment Plan and Project and designating the Weber Road Corridor Redevelopment Project Area (“Weber TIF District”) These three ordinances are collectively referred to herein as the TIF Ordinances”. (C: 27-90)

A. Ordinance No. 1758, approving the City of Crest Hill Weber Road Corridor TIF Redevelopment Plan and Project in which the City found all of the properties in the Weber TIF District to be contiguous (C 1141);

B. Ordinance No. 1759, Designating the City of Crest Hill Weber Road Redevelopment Project Area in connection with the approval of the Weber Road Corridor (C 1148); and

C. Ordinance No. 1760, Adopting TIF for the City of Crest Hill, Will County, Illinois in connection with the Designation of the City of Crest Hill Weber Road Corridor TIF Redevelopment Project Area (C 1153)

5. All three of the aforementioned ordinances were adopted by a unanimous vote of the Crest Hill City Council (C 20-90).

6. Richland disputes the contiguity of Parcels A and B, which share a common boundary of 234.9 feet, separated only by a public utility right-of-way as depicted on the map that is included in the record (C 1036) (Map); the original and a clearer copy are attached hereto as Exhibit A for the convenience of the Court. The Parcels are labeled on the Map as “Parcel A” and “Parcel B” and are referred to herein using the same designation.

7. The ROW is owned in fee by Natural Gas Pipeline, a private utility company located in Houston, Texas. (C 1007)

8. The City relied on the Third District’s holding in *Henry* when it created the Weber TIF District and applied the same contiguity analysis between the Parcels that it relied on when it annexed the Parcels into the City in 2000 and 2003 respectively.

9. In arguments before the Circuit Court, Richland’s counsel admitted that the definition of contiguous for the purpose of TIF should be defined as it is in annexation case law, citing *County Board of Henry v. City of Orion*, (R 18-19)

10. The Joint Review Board made a negative recommendation that did not comply with the mandated criteria for a JRB recommendation set forth in the Act. (C 99-117)

11. The Superintendent of Richland admitted in his deposition that Richland had no objection to the City’s Redevelopment Plan; Richland’s Superintendent testified that Richland’s objection to the Redevelopment Plan would go away if the City entered into a revenue sharing agreement with Richland. (C 1059)

12. During the JRB meeting, the City's attorney told the JRB members a negative recommendation on the criteria set forth in the Act, specifically, whether or not the Plan complied with the Act. (C 99-117)
13. The City held and adjourned the public hearing in strict conformance with the provisions of the Act.
14. The parties filed cross-motions for summary judgment; the District Court granted the City's motion and denied Richland's. (C 1475-1476)
15. Richland filed an appeal with the Third District Appellate Court, challenging, *inter alia*, the City's finding that the properties in the Weber TIF District were contiguous and the City failed to satisfy the procedural requirements of the Act.
16. The Third District found for Richland, *Board of Education of Richland v. City of Crest Hill*, 2020 IL App. (3d) 190225, in its opinion dated July 24, 2020 on the issue of contiguity but did not rule on the procedural issue.
17. On October 3, 2020, the City filed a Petition for Leave to Appeal with the Illinois Supreme Court. This Court allowed the Petition on November 18, 2020.

VIII ARGUMENT

I. THE CITY OF CREST HILL CORRECTLY RELIED ON ILLINOIS ANNEXATION LAW TO DEFINE THE TERM "CONTIGUOUS" WHEN IT CREATED THE WEBER TIF DISTRICT.

The City of Crest Hill adopted the TIF Ordinances, finding all of the properties in the TIF district to be contiguous, as required by in section 74.4-4(a) of the TIF Act. The TIF District included two parcels of property, Parcels A and B, which are separated by a public utility right-of-way running parallel and adjacent to both properties for a length of 234.9 feet (as depicted on Exhibit A). The City found these Parcels to be contiguous in accordance with the Third District's holding in *Henry County Board v. Village of Orion*, 278 Ill. App. 3d 1058 (1996) and Illinois annexation law. Richland filed suit, challenging the validity of the City's TIF Ordinances claiming, *inter alia*, that the ordinances were

invalid because properties in the Weber TIF District were not contiguous as required by the Act.

In *Henry*, the Court was asked to determine if certain properties in a TIF district were contiguous. The Third District first noted that the term is not defined in the TIF Act but should be defined as it is in annexation law:

Contiguity has long been defined in annexation cases [and] . . . We conclude that this definition of contiguity is well-suited to determine questions arising under the Act for several reasons.

But in its decision in this case, the Court first affirmed its holding that annexation case law should define contiguity, but then refused to apply that holding in determining whether the Parcels in the Weber TIF District were contiguous. The Court held that the City of Crest Hill could look only to the express language of the Act for a definition of contiguous but not to annexation law:

. . . depart[ure] from the plain language of [the] statute by reading into it exceptions, conditions, or limitations that the legislature did not express.” [citation] 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. Since our legislature did not signal such an intention, we hold the City cannot “jump” the natural gas right-of-way to establish contiguity between parcels A and B. *Crest Hill* at 11.

The Court held that the Parcels in question in the Weber TIF District were not contiguous because the carve-outs for physical barriers found in annexation cases, such as a public utility rights-of-way, are not expressly set forth in the TIF Act and are therefore inapplicable in determining contiguity in TIF Districts. So while confirming its decision in *Henry*, the Court in this case reached a different result but did not explain how it distinguished the case from *Henry*.

The Third District then went on to state that in order to support its position, the City was asking the Court to “ignore the second sentence of the Annexation Act, found in the Municipal Code in section 7-1-1.” (*Crest Hill*, 11) But not only did the City not want the second sentence to be ignored, the City expressly *relied* on the second sentence of 7-1-1 in finding contiguity in the Weber TIF District. The first sentence of the Act requires that properties be contiguous in order to be annexed but it is the second sentence of 7-1-1 that sets out those physical barriers that do not defeat contiguity, making the second sentence expansive, rather than constrictive. Without these carve-outs, municipal boundaries would be determined and constricted by a public right-of-way, such as a utility right-of-way, just as now TIF Districts will be if this decision is allowed to stand.

Applying the Court’s decision generally, there cannot be a TIF District with properties separated by any physical barrier because none is expressly allowed by the language in the TIF Act. No Illinois TIF District could include properties separated by a railroad, a forest preserve, a river or even a public street or roadway since there is no express language allowing a municipality to “jump” these barriers, causing a major impediment for municipalities looking to use TIF for economic development.

Attached hereto are maps of four existing Illinois TIF districts (attached hereto as Exhibits B, C, D and E), all of which contain some kind of physical barrier that under annexation law do not defeat contiguity, but given the Third District’s ruling in this case, each of these four TIF districts will be invalidated. As depicted on the attached maps, these TIF districts include properties separated by railroad rights-of-way, public roadways and even a river even though there is nothing in the TIF Act that expressly

states that a municipality can “jump” any of these barriers. Therefore, applying the Third District’s holding, these TIF Districts are all invalid.

The Third District’s decision in this case also conflicts with the holding in *Geisler v. City of Wood River*, 383 Ill. App. 3d 828 (2008), in which the Fifth District Court relied on *Henry*. In *Geisler*, the Court was asked to determine if two parcels of property separated by a road were contiguous as required by the Illinois Business District Development & Redevelopment Act, (65 ILCS 5/11-74.3-1 *et seq.*) The Business District Act is another municipal tool for attracting private investment and economic development. The Business District Act, like the TIF Act, requires that property be contiguous but does not define the term. Citing *Henry*, the *Geisler* Court held the meaning of contiguity in a business district should also be determined by annexation case law, a body of law that is “well suited” to define the contiguity.

Both the *Henry* and *Geisler* courts, after holding that the definition of “contiguous” in the TIF Act and Business District Act should be defined by annexation law, went on to analyze the facts of their respective cases and found that based on annexation law, the properties were not contiguous.

It is logical that the term “contiguous” would have the same meaning as both use the term “contiguous” in the context of the physical connection of real property municipal boundaries and the TIF Act for establishing the boundaries of a TIF District. It is not a stretch to assume that since the term used in two sections of the Municipal Code used in the same context, i.e., determining whether parcels of real property adequately touch, are interchangeable. *People ex rel. Illinois Department of Labor v. E.R.H. Enters., Inc.*, 115106 (Ill. Sup. Ct.). It is reasonable to conclude that the use of the same terms in

three sections of the Municipal Code all addressing the touching of parcels of real property, i.e., the Annexation Act, the TIF Act and Business District Act, would all have the same meaning.

Even Richland's counsel acknowledged in its argument before the Circuit Court, that *Henry* stands for the proposition that "contiguous" for the purpose of the TIF Act should be defined with the same meaning it is given in annexation case law:

Contiguity in this context for a TIF district follows the same case law interpretations that courts use in the annexation context. When your Honor is determining whether or not this TIF district contains only contiguous parcels, what the courts have said, including in the *Henry County versus Village of Orion* case, is that you look to judicial interpretations of contiguity from annexation, okay? (R 18-19)

But now, after stating on the record that annexation law should define "contiguous," Richland contends the opposite, that the City of Crest Hill was wrong to look to annexation law to define "contiguous." Like the Appellate Court, Richland provides no reasoning as to why annexation law should define "contiguous" in other TIF districts but not in this case.

The holding in this case will apply to all Illinois municipalities so that no municipality could find contiguity in a TIF District if any of the properties in the TIF District are separated by even a public road or street. The boundaries of every TIF district will be constrained and determined by these barriers, so a municipality could not extend a TIF District beyond a public road, which is not expressly permitted by the express language of the TIF Act. This will result in an absurd result as economic development tends to occur in a herd fashion, in that economic development tends to breed more economic development.

If left to stand, the Third District's decision in the case will strictly limit municipalities' use of TIF to attract economic development. According to the Illinois Comptroller, there are over 1,500 active TIF districts in Illinois. <https://illinoiscomptroller.gov/financial-data/local-government-division/upload-tif-reports/> retrieved September 17, 2020. If any of these 1,500 TIF districts are deemed to be invalid as a result of the Third District's decision, contractual agreements, including redevelopment agreements a municipality entered into or any financial obligations issued from these TIF Districts would also be invalidated. This would be a disastrous outcome for many of those municipalities.

II. PARCELS A AND PARCEL B ARE CONTIGUOUS UNDER ILLINOIS ANNEXATION LAW.

If this Court affirms that annexation case law is still "well suited" to look to for definition of "contiguous" for the purpose of TIF, Parcels A and B in the Weber TIF District must be found to be contiguous. Parcels A and B abut one another for a length of no less than 234.9 linear feet, which Illinois Courts have found to be more than adequate to find contiguity. In *People ex rel. Gray v. Village of Hawthorne Woods*, 19 Ill.2d 316, 318 (1960), this Court found contiguity, ". . . when the territory sought to be incorporated was composed 'roughly of three areas, the two largest of which have a connecting common boundary for a distance of only 128.7 feet.'" *Hawthorne*, at 319. In this case, Parcels A and B have a common boundary of 234.9 feet separated only by a public utility right-of-way, which is both adjacent and parallel as required by this Court in *People Ex. Rel. Admonowski v. Village of Streamwood*, 15 Ill. 2d. 595 (1959). There can be no question as to the two Parcels being contiguous if assessed under annexation law.

In his concurrence, Justice Holdridge stated that the Court need not even address whether the parcels were contiguous because the utility right-of-way in this case is privately owned and therefore the “public” utility right-of-way carve-out does not apply. However, the Illinois Public Utility Act defines the term “public utility” as *not* including any “public utilities that are owned and operated by any political subdivision.” *E.R.H.* citing 220 ILCS 5/5-104(e). So a “public” utility by definition under the Illinois Public Utilities Act must be privately owned. So the term “public” utility right-of-way does not mean that the utility is owned by a public entity.

Both Richland and Justice Holdridge also took note of the fact that the utility right-of-way was not included in the Weber TIF District, which the City could not include in the TIF District because it is not within the “territorial limits” of the City, as required by the TIF Act. 65 ILCS 5/11-74.4-3(a) The Parcels that Richland contends are not contiguous were annexed into the City in 2000 and 2002 when the City adopted ordinance numbers 1150 and 1245. When the City annexed Parcels A and B, it “jumped” the same utility right-of-way at issue in this case to establish contiguity. The City did not annex the right-of-way at that time, because the owner of the right-of-way, a natural gas company in Texas, had no interest in annexing to the City and the Annexation Act requires the consent of an owner for annexation unless certain conditions are present that allow a municipality to forcibly annex properties, conditions that are not present in this case. 65 ILCS 5/7-1-2(a) Thus, the right-of-way is not in the City’s territorial limits or the Weber TIF District.

While the Third District also addressed point-to-point touching noting that it will defeat contiguity, point-to-point touching is not an issue in this case. In its original

complaint, Richland argued that the City had found point-to-point touching to create the Weber TIF District, an argument that was abandoned somewhere along the way in this litigation. The Appellate Court stated in its opinion, the “only way to get contiguity to parcel B from parcel A [actually parcels A and B as noted in the record at C 1036] was by jumping the 234.9 foot portion of the natural gas right-of-way,” (*Crest Hill*, at 10) thereby acknowledging in its decision that the two Parcels touched for a length of 234.9 feet, a distance that precludes a claim of point-to-point touching.

Finally, after reviewing *Henry* and the other issues cited in its decision, the Court concluded:

This appeal boils down to one question - does the [TIF] Act allow the City to “jump” the 234.9 foot portion of the natural gas right-of-way to establish contiguity and for the reasons discussed below, we conclude the answer to this question is ‘no.’” *Crest Hill* at 10.

The Court gave no explanation as to how or why it distinguished this case from its holding *Henry*.

CONCLUSION AND RELIEF REQUESTED


For the reasons stated herein, the City hereby asks this Court to reverse the decision of the Appellate Court and affirm the decision of the Circuit Court upholding the validity of the City’s TIF Ordinances. Unless it is overturned by this Court, the Third District’s decision will have a material detrimental impact on existing TIF districts and municipalities’ ability to use TIFs in the future and on any financial obligations issued or contractual obligations entered into from these TIF districts.

In its complaint, Richland also challenged the City’s compliance with the procedural requirements of the TIF Act in terms of its interactions with the JRB, a

determination that was based on the facts presented by the parties to the Circuit Court. After reviewing the facts, the Circuit Court found that the City complied with the procedural requirements of the Act finding that “If anything, the evidence suggests that the school board took an obstructionist position but Crest Hill did everything it was required to do, and everything that was reasonable to do. In short, Crest Hill complied with the TIF Act.” (C 1475-76)

And now, the City of Crest Hill respectfully asks this Court to reverse the judgment of the Appellate Court and affirm the holding of the Circuit Court.

Respectfully submitted,

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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 17 pages.

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

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Hon. John C. Anderson
Judge Presiding

APPENDIX TO BRIEF OF APPELLANT

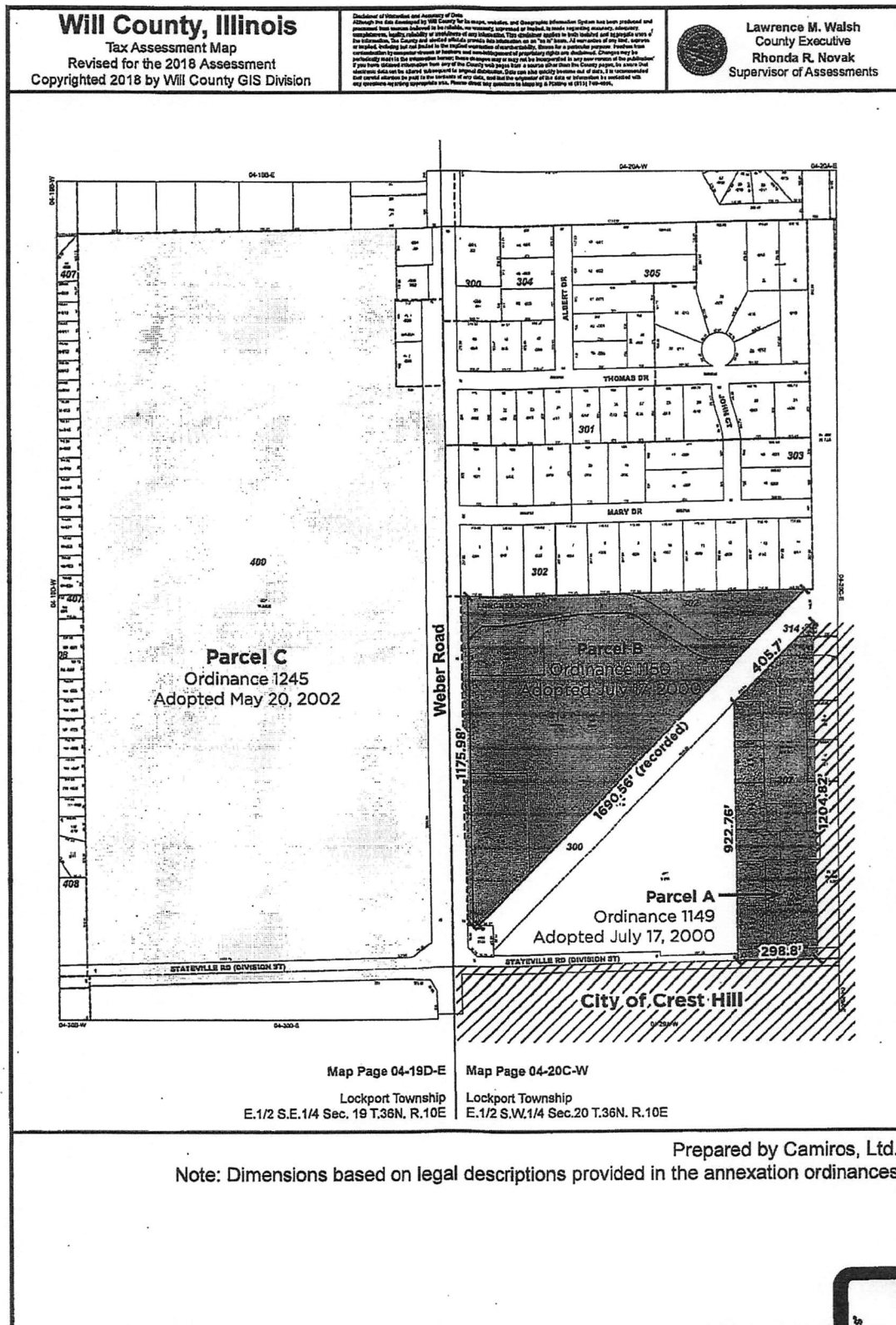
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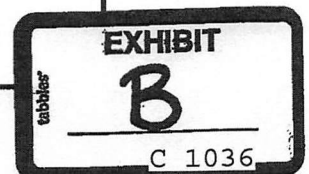
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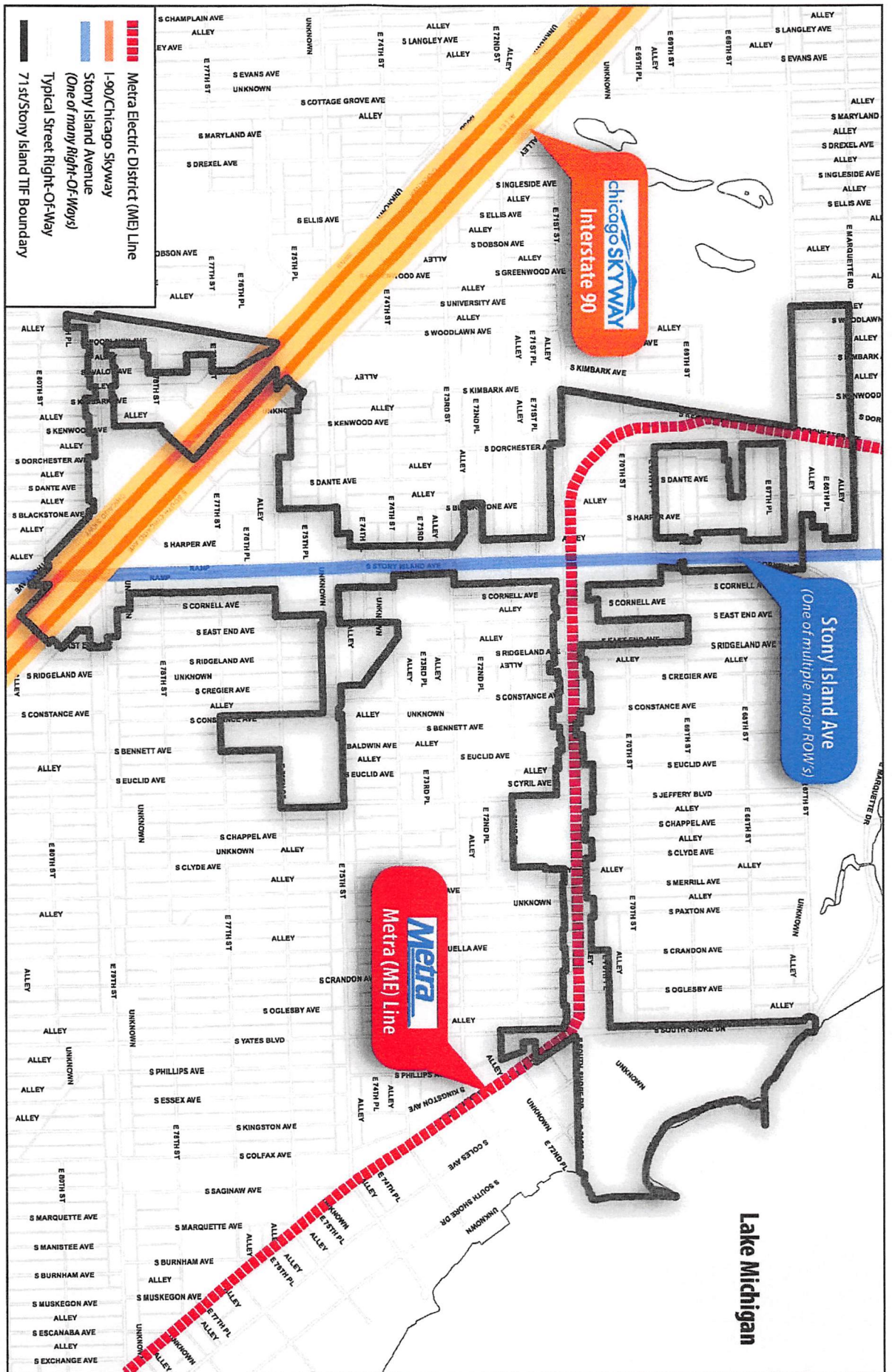
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A002

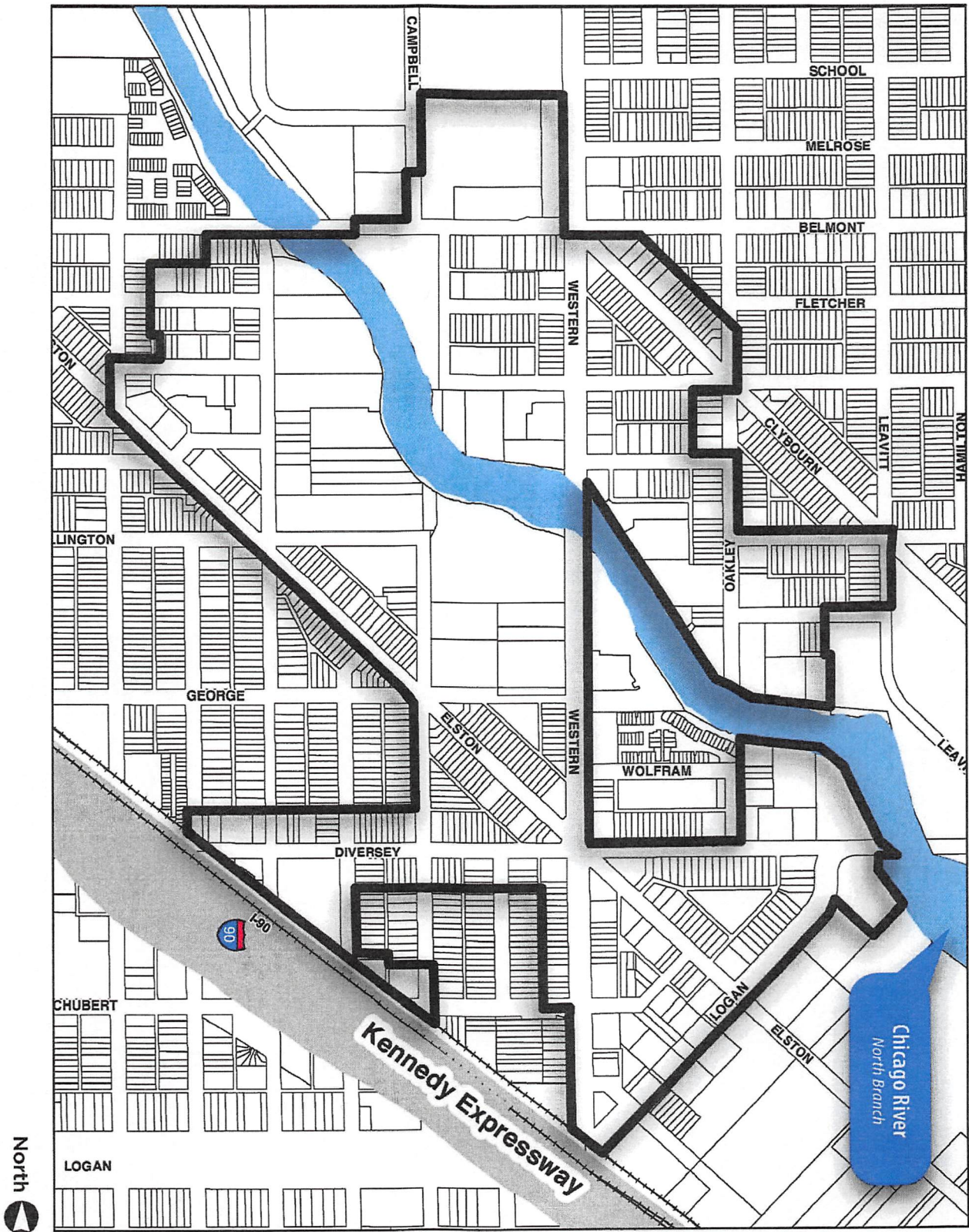


Expiration: 2033

Exhibit B - Chicago 71st/Stony Island TIFNorth
A003

Expiration: 2037

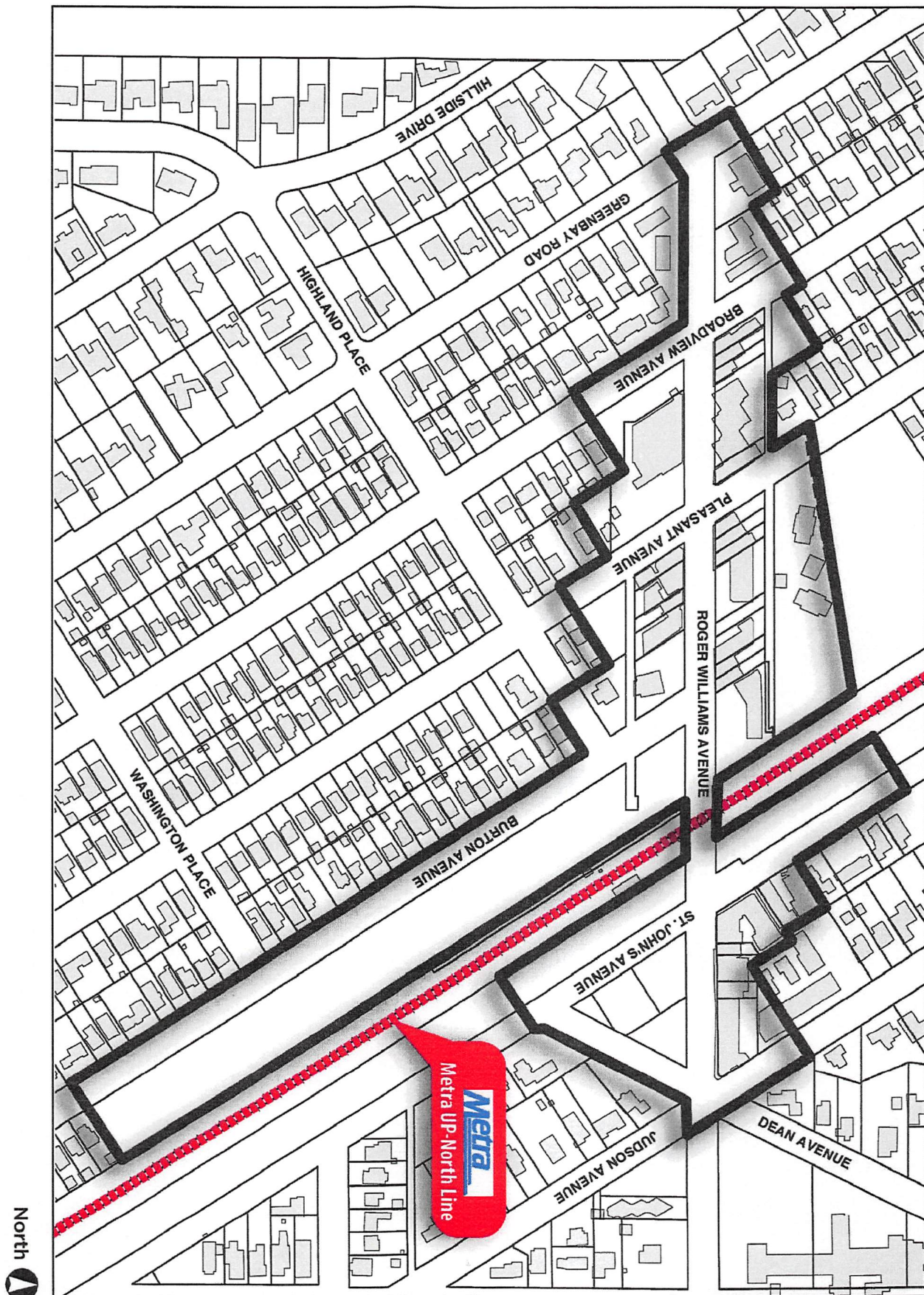
Exhibit C - Chicago Addison South TIF



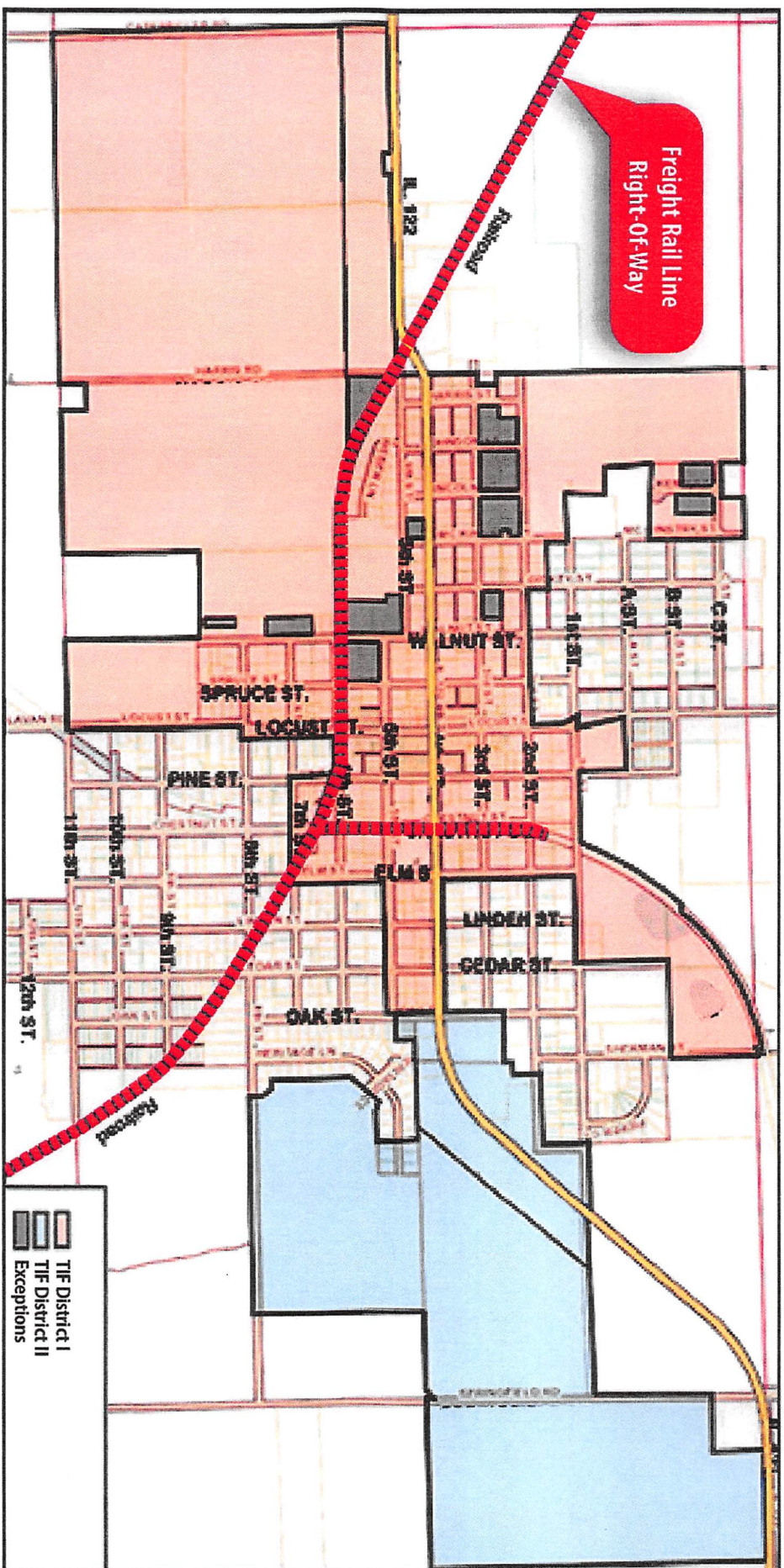
A004

Expiration: 2029

Exhibit D - Highland Park Ravinia TIF



A005



Expiration: 2034

Exhibit E - Delavan TIF

A006

2020 IL App (3d) 190225

Opinion filed July 24, 2020

**IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT**

2020

**THE BOARD OF EDUCATION OF
RICHLAND SCHOOL DISTRICT NO. 88A,
an Illinois Public School District,**

Plaintiff-Appellant,

V.

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

Defendant-Appellee.

**Appeal from the Circuit Court
of the 12th Judicial Circuit,
Will County, Illinois,**

Appeal No. 3-19-0225
Circuit No. 18-CH-19

**Honorable
John C. Anderson,
Judge, Presiding.**

JUSTICE WRIGHT delivered the judgment of the court, with opinion.
Presiding Justice Lytton concurred in the judgment and opinion.
Justice Holdridge specially concurred, with opinion.

OPINION

¶ 1 Plaintiff filed a verified complaint challenging the tax increment financing (TIF) ordinances approved by defendant to establish the Weber Road Corridor TIF District (TIF District) under the Tax Increment Allocation Redevelopment Act (Act), 65 ILCS 5/11-74.4-1 *et seq.* (West 2016). Each party filed a cross-motion for summary judgment. The circuit court granted summary judgment for defendant. Plaintiff appeals.

¶2

I. BACKGROUND

¶3

The material facts are undisputed on appeal. Our resolution turns on an application of those facts to the Act. Before beginning this task, a brief overview of the events culminating in the establishment of the TIF District and the parties' arguments in the circuit court is appropriate.

¶4

A. Establishment of the TIF District

¶5

In July 2017, defendant, the City of Crest Hill (City), requested and received a TIF Redevelopment Plan and Project (Plan), prepared by Camiros, Ltd., under the Act. The Plan included a conclusion that the proposed project area qualified as a redevelopment project area because it was a "blighted area" under the Act. See *id.* § 11-74.4-3(a).¹

¶6

Consistent with its obligation under section 11-74.4-5(b) of the Act, the City convened a joint review board (JRB). See *id.* § 11-74.4-5(b). Section 11-74.4-5(b) states a JRB shall include:

"a representative selected by each community college district, local elementary school district and high school district or each local community unit school district, park district, library district, township, fire protection district, and county that will have the authority to directly levy taxes on the property within the proposed redevelopment project area at the time that the proposed redevelopment project area is approved, a representative selected by the municipality and a public member."

Id.

¶7

Further, section 11-74.4-5(b) states that a JRB reviews "(i) the public record, planning documents and proposed ordinances approving the redevelopment plan and project and (ii) proposed amendments to the redevelopment plan or additions of parcels of property to the

¹Five statutory conditions for "blighted area" existed for the proposed project area's 339 acres of improved property. See 65 ILCS 5/11-74.4-3(a)(1) (West 2016). Three statutory conditions for "blighted area" existed for the proposed project area's 74 acres of vacant property. See *id.* § 11-74.4-3(a)(2), (3).

redevelopment project area to be adopted by the municipality.” *Id.* The JRB then renders “an advisory, non-binding recommendation” on the redevelopment plan and project. See *id.*

¶ 8 Plaintiff, Board of Education of Richland School District No. 88A (School Board), selected Joe Simpkins as its representative on the JRB convened by the City in this case. The JRB met for the first time on October 10, 2017, in the City’s council chambers, where a vote to approve the TIF District failed. Thus, the City’s attorney suggested that the JRB “prepare a statement setting forth the reasons that [the] Plan either failed to comply with the Act or how the property did not meet the [TIF] eligibility requirements.” The JRB continued the meeting until November 6, 2017, at which time the JRB reconvened and adopted a written statement that the TIF 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 [JRB] finds that [TIF] is not needed to encourage redevelopment within the Redevelopment Project Area, and the Redevelopment Project Area would experience redevelopment in the absence of [TIF]. The [JRB] finds that the creation of the *** [TIF] 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.”

¶ 9 According to the transcript of the November 6, 2017, meeting of the JRB, the City’s attorney asked for more “specificity on how [the TIF District] fails to meet the criteria.” Regarding an obligation of the City to respond to the JRB’s written statement, the City’s attorney stated, “I’m not quite sure, frankly, what we’re responding to because it sounds like *** the TIF [D]istrict doesn’t meet the criteria, but there is no specificity as to which criteria aren’t met and whether it is needed.” In response, the School Board’s attorney stated that if the City

“takes the position that it has met all its obligations with regard to [JRB] proceedings and it is going to go ahead any way [*sic*], it can do that *** [but] [t]he more conservative approach for the City would be to interact with the JRB as called for under the TIF [A]ct.”

Thereafter, the JRB voted to reconvene on the tentative date of December 4, 2017. Also on November 6, 2017, after receiving the JRB’s written statement, the City held and adjourned a public hearing on the TIF District.

¶ 10 On November 20, 2017, the City’s mayor, Raymond Soliman, wrote a letter to the School Board’s JRB representative, Simpkins, asserting that the JRB did not cite “any specific challenges to the [P]lan” and any determination regarding the need for redevelopment was “a finding to be made by the municipality.” In the letter, the mayor stated, “there is no reason for the City to meet with the JRB members on December 4th.” According to the mayor, the JRB’s written statement recommending a rejection of the TIF District was “legally deficient to the point that there [we]re no amendments the City c[ould] make to address the JRB objections.” On this same day, the City unanimously approved three TIF ordinances establishing the TIF District.

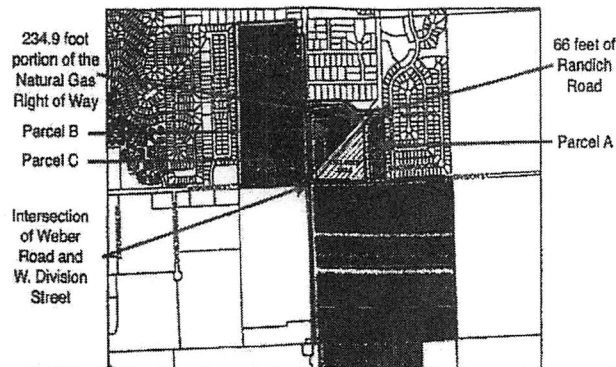
¶ 11 When the members of the JRB arrived at Crest Hill City Hall on December 4, 2017, they were informed that the scheduled meeting was cancelled. The JRB conducted a meeting in the hallway of Crest Hill City Hall to affirm the recommendation to reject the TIF District.

¶ 12 B. The School Board’s Verified Complaint

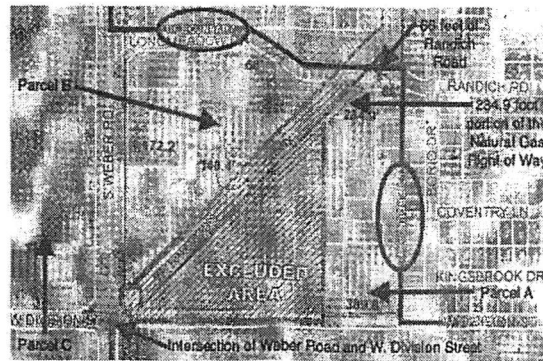
¶ 13 On January 2, 2018, the School Board filed a verified complaint against the City, alleging that the three TIF ordinances approved by the City were invalid due to noncompliance with the statutory mandates of the Act. First, the School Board stated that the northwestern portion and the remainder of the TIF District were not contiguous, as required by section 11-74.4-4(a) (see *id.*

§ 11-74.4-4(a)). For context, we have included maps of the TIF District, with court notations, immediately below.

Map 1—TIF District Map



Map 2—Enlarged TIF District Map with Measurements and Highlighted Boundary



¶ 14 The School Board's complaint also alleged that the City failed to comply with certain procedural requirements of the Act. Specifically, the School Board alleged that (1) the City failed to provide administrative support to the JRB by publishing agendas and providing meeting space and administrative staff on October 10, November 6, and December 4, 2017; (2) the City improperly adjourned a public hearing on the TIF District before the JRB held its meeting scheduled for December 4, 2017; (3) the City failed to meet and confer with or resubmit a revised Plan to the JRB after receiving the written statement recommending a rejection of the TIF District;

and (4) the City improperly approved the ordinances establishing the TIF District before meeting and conferring with, resubmitting a Plan to, or allowing the December 4, 2017, meeting to be held by the JRB. As a result of the City's noncompliance with the Act, the School Board requested that the City be enjoined from advancing its TIF District.

¶ 15

C. Cross-Motions for Summary Judgment

¶ 16

On December 21, 2018, the City and the School Board filed cross-motions for summary judgment. Thereafter, the parties filed responses and replies to the cross-motions for summary judgment. The parties' respective motions and responses are summarized separately below.

¶ 17

1. The City's Cross-Motion for Summary Judgment

¶ 18

In its motion for summary judgment, the City addressed the verified complaint's allegation that the TIF District was not contiguous, as required by section 11-74.4-4(a). The City pointed out that the School Board's allegation was based on "a map with the superimposed markings ['noncontiguous'] of an unknown person." In contrast, the City provided official Will County maps, which revealed that the northwestern portion of the TIF District, parcels B and C, share an 1175 foot common boundary along Weber Road that was sufficient during the annexation of parcel C. Likewise, the City relied on "jumping" the natural gas right of way for purposes of the prior annexation of parcel B, as it claimed was expressly allowed by section 7-1-1 of the Illinois Municipal Code (*id.* § 7-1-1). In addition, the City's motion for summary judgment addressed the allegations pertaining to the Act's procedural requirements.

¶ 19

2. The School Board's Motion for Summary Judgment

¶ 20

The School Board's motion for summary judgment addressed the issue of contiguity. Initially, the School Board rejected as irrelevant the City's contention that "there exists 1,175 linear

feet of common boundary establishing contiguity" between parcels B and C. The School Board contended parcels A and B, not parcels B and C, were noncontiguous under the Act.

¶ 21 Likewise, the School Board rejected the City's contentions with respect to past annexations. The School Board pointed out that annexations and TIF are governed by independent sections of the Illinois Municipal Code. In the School Board's view, the portion of the Illinois Municipal Code governing TIF did not allow the City to "jump" the 234.9 foot portion of the natural gas right-of-way to establish contiguity between parcels A and B. Again, the School Board argued that these parcels, not parcels B and C, were noncontiguous under the Act.²

¶ 22 In support of this argument, the School Board relied on the deposition testimony of Jeanne Lindwall, principal consultant for Camiros, Ltd., who prepared an eligibility study and the Plan for the City. Lindwall agreed that the contiguity of the northwestern portion of the TIF District (*i.e.*, parcels B and C) and the remainder of the TIF District (*i.e.*, parcel A) was "solely based" on the City's ability to "jump" the 234.9 foot portion of the natural gas right-of-way. Being even more precise, Lindwall agreed this was "the only way" to get contiguity to parcel B from parcel A. Sixty-six feet of Randich Road would also be included, but the "primary contiguity" came from the right-of-way. Lindwall admitted that she relied upon legal counsel's explanations of contiguity under "the annexation statute." She agreed that if her understanding of contiguity was incorrect, "there would be no contiguity" between parcels A and B. The School Board also argued that the City failed to comply with the Act's procedural requirements.

²City Administrator and JRB chairwoman, Heather McGuire, said in her deposition that the City's contiguity "discussion point was always focused around the northern portion of [the] pipeline."

¶ 23

D. Judgment of the Circuit Court

¶ 24

The circuit court held a hearing on the parties' motions for summary judgment on February 15, 2019, before taking the matter under advisement. On March 28, 2019, the circuit court granted the City's, and denied the School Board's, motion for summary judgment. Regarding contiguity, the circuit court found there was "over 400 feet of contiguity" connecting parcels A and B and "well over 1000 feet of contiguity" connecting parcels B and C. Thus, contrary to the School Board's allegations, the circuit court found contiguity existed between the northwestern portion and the remainder of the TIF District. Even if there were only 234.9 feet of contiguity between parcels A and B (*i.e.*, between the northwestern portion and the remainder of the TIF District), the circuit court would have found that distance was sufficient under the case law, as the existence of the natural gas right-of-way was "of no legal consequence."

¶ 25

With respect to administrative support, the circuit court found the City "provided sufficient meeting space, clerical support, and notice of meetings and agendas." The circuit court also rejected the contention that the City "improperly closed the public hearing before the JRB concluded its work and further failed to satisfy the 'meet and confer' requirements," stating that the City

"made reasonable efforts to conform to the JRB's recommendations, but the JRB's position lacked specificity. Moreover, [the City]'s counsel requested additional specificity, but did not receive it. If anything, the evidence suggests that the school board took an obstructionist position but [the City] did everything it was required to do, and everything that was reasonable to do. In short, [the City] complied with the TIF Act."

For these reasons, the circuit court granted the City's, and denied the School Board's, motion for summary judgment. The School Board filed a timely notice of appeal on April 25, 2019.

¶ 26

II. ANALYSIS

¶ 27

On appeal, the School Board presents the same issues as it did in the circuit court. However, we address only the legal question of whether the parcels contained within this TIF District were contiguous, as required by statute. See *id.* § 11-74.4-4(a). Relevantly, section 11-74.4-4(a) states: "No redevelopment project area shall be designated unless a plan and project are approved prior to the designation of such area and such area shall include only those *contiguous* parcels of real property and improvements thereon substantially benefited by the proposed redevelopment project improvements." (Emphasis added.) *Id.*

¶ 28

In the past, our court recognized that the Act does not define "contiguous." See *Henry County Board v. Village of Orion*, 278 Ill. App. 3d 1058, 1067 (1996). We acknowledged that "[c]ontiguity has long been defined in annexation cases as tracts of land that touch or adjoin one another in a reasonably substantial physical sense." *Id.* (citing *Western National Bank of Cicero v. Village of Kildeer*, 19 Ill. 2d 342, 352 (1960), *disapproved of on other grounds by People ex rel. County of Du Page v. Lowe*, 36 Ill. 2d 372, 379-80 (1967); accord *Geisler v. City of Wood River*, 383 Ill. App. 3d 828, 848 (2008). After citing statutory interpretation principles, we found this definition "well suited to determine questions arising under the Act." *Henry County Board*, 278 Ill. App. 3d at 1067; accord *Geisler*, 383 Ill. App. 3d at 849. Another definition might "allow municipalities to circumvent the Act's legislative intent by creating TIF districts where physical eligibility may not otherwise exist." *Henry County Board*, 278 Ill. App. 3d at 1067; accord *Geisler*, 383 Ill. App. 3d at 849. Further, the touching requirement "ensures a municipality has properly

constructed a TIF district and is legitimately reaping tax increment financing benefits under the Act.” *Henry County Board*, 278 Ill. App. 3d at 1067; accord *Geisler*, 383 Ill. App. 3d at 849.

¶ 29 Consistent with *Henry County Board*’s contiguity definition, we recognize “point-to-point touching or cornering is generally not sufficient to satisfy the requirement of contiguity.” *La Salle Bank National Ass’n v. Village of Bull Valley*, 355 Ill. App. 3d 629, 637 (2005); accord *In re Annexation to the Village of Downers Grove*, 92 Ill. App. 3d 682, 685 (1981); see also *People ex rel. Freeport Fire Protection District v. City of Freeport*, 58 Ill. App. 3d 314, 317 (1978) (stating that validly annexed roads may lead to further annexations if the roads “form a new boundary with the next annexation, [and do] not merely touch it in the manner of a ‘T’ or at a corner”). As one court has noted, “point-to-point touching[] and cornering *** are merely a subterfuge to reach outlying areas.” *People ex rel. Village of Long Grove v. Village of Buffalo Grove*, 160 Ill. App. 3d 455, 462 (1987).

¶ 30 Based upon the deposition testimony of Lindwall, “the only way” to get contiguity to parcel B from parcel A was by jumping the 234.9 foot portion of the natural gas right-of-way. Thus, this appeal boils down to one question—does the Act allow the City to “jump” the 234.9 foot portion of the natural gas right-of-way, located in the unincorporated “excluded area” of the TIF district, to establish contiguity between parcels A and B? For the reasons discussed below, we conclude the answer to this question is “no.”

¶ 31 Initially, the circuit court, presumably in reliance on Will County maps contained in the record, found “over 400 feet of contiguity” connecting parcels A and B. In doing so, the circuit court failed to account for the difference between the boundaries of parcels A and B and the boundary of the TIF District. When this difference is considered, it becomes clear that this case turns on the City’s inability to “jump” the 234.9 foot portion of the natural gas right-of-way.

¶ 32 We are not persuaded by the City's argument that "contiguous" has the same meaning under both section 11-74.4-4(a) of the Act, at issue here, and section 7-1-1 of the Illinois Municipal Code, pertaining to annexations. The City makes this argument because the first paragraphs of section 11-74.4-4(a) of the Act and section 7-1-1 of the Illinois Municipal Code both use the *Henry County Board* definition of "contiguity" for "contiguous." See 65 ILCS 5/11-74.4-4(a) (West 2016); *id.* § 7-1-1; *Henry County Board*, 278 Ill. App. 3d at 1067 (citing *Western National Bank of Cicero*, 19 Ill. 2d at 352); accord *Geisler*, 383 Ill. App. 3d at 849.

¶ 33 However, the City's position requires us to ignore the second sentence of section 7-1-1, which expands "contiguous" to mean, "[f]or the purposes of [that] Article[,] any territory to be annexed to a municipality *** notwithstanding that the territory is separated from the municipality by a *** public utility right-of-way." See 65 ILCS 5/7-1-1 (West 2016) (Emphasis added.); but *cf.* *id.* § 11-74.4-4(a). The City asks us to read this sentence into section 11-74.4-4(a) so it can establish contiguity between parcels A and B by "jumping" the natural gas right-of-way. This step would require a "depart[ure] from the plain language of [the] statute by reading into it exceptions, conditions, or limitations that the legislature did not express." See *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 15. 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.

¶ 34 Since our legislature did not signal such an intention, we hold the City cannot "jump" the natural gas right-of-way to establish contiguity between parcels A and B.³ Since there is no other basis for contiguity between those parcels, we also hold the TIF District is not contiguous under

³It is telling, as the board notes, that section 11-74.4-4(q) of the Act expresses an intent to allow "one redevelopment project area" to "[u]tilize revenues *** received under [the] Act *** for eligible costs in another redevelopment project area that is: *** separated only by a public right of way," but does not express an intent to allow the establishment of one redevelopment project area with parcels separated only by a public right of way, such as a public utility right of way. See 65 ILCS 5/11-74.4-4(q) (West 2016).

section 11-74.4-4(a).⁴ Thus, we reverse the circuit court's contiguity finding and grant of summary judgment to the City.

¶ 35 By virtue of these holdings, we need not consider the School Board's issues pertaining to the Act's procedural requirements. However, we observe the City's casual approach towards its procedural obligations and the JRB. Respectfully, a more deliberate "come to the table" approach by the City under the Act could have avoided many of the issues present in this appeal.

¶ 36 III. CONCLUSION

¶ 37 The judgment of the circuit court of Will County is reversed.

¶ 38 Reversed.

¶ 39 JUSTICE HOLDRIDGE, specially concurring:

¶ 40 The majority concludes that the City cannot "jump" the natural gas right-of-way to establish contiguity between parcels A and B. I believe we do not have to reach the issue as to whether the City can "jump" the gas right-of-way to establish contiguity because parcels A and B are physically separated by a parcel of land beyond the gas right-of-way that is excluded from the TIF district, therefore preventing contiguity.

¶ 41 The focus in this case is on the 234.9 foot natural gas right-of-way that exists on the border of parcel A and the parcel identified as "Utility." The "Utility" parcel is associated with property index number (PIN) 11-04-20-300-008-0000. The Will County Treasurer's office website states that the tax bill for this PIN is mailed to Natural Gas Pipeline. See Will County Treasurer, <http://willtax.willcountydata.com/maintax/ccgis5271104203000080000> (last visited July 22, 2020) [<https://perma.cc/X2C6-AC33>]. We may take judicial notice of the Will County website because, as a government website, information contained therein is sufficiently reliable. See

⁴We expressly reject the notion that our holding invalidates any of the City's prior annexations.

***Kopnick v. JL Woode Management Co.*, 2017 IL App (1st) 152054, ¶ 26.** I note that referencing the “Utility” parcel as a right-of-way is a misnomer because it appears the utility company owns the parcel in fee simple.

¶ 42 Nonetheless, it is clear that the “Utility” parcel is excluded from the TIF District and has fee simple ownership separate from parcels A and B. Even if the City could “jump” the natural gas right-of-way that exists on the border of parcel A and the “Utility” parcel, the City cannot establish contiguity with the remaining land within the “Utility” parcel that stretches beyond the gas right-of-way up to parcel B. The discussion of “jumping” appears to be nothing more than a red herring.

No. 3-19-0225

Cite as: *Board of Education of Richland School District No. 88A v. City of Crest Hill, 2020 IL App (3d) 190225*

Decision Under Review: Appeal from the Circuit Court of Will County, No. 18-CH-19; the Hon. John C. Anderson, Judge, presiding.

**Attorneys
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Appellant:** Howard C. Jablecki, Gregory T. Smith, and Scott E. Nemanich, of Klein, Thorpe & Jenkins, Ltd., of Chicago, for appellant.

**Attorneys
for
Appellee:** Mary J. Riordan, of Mary Riordan, Ltd., of Chicago, and Scott M. Hoster, of Castle Law, of Joliet, for appellee.

No.

**IN THE
SUPREME COURT OF ILLINOIS**

BOARD OF EDUCATION OF)
RICHLAND SCHOOL DISTRICT)
NO. 88A, an Illinois public school district,)
)
Respondent,)
)
v.)
)
CITY OF CREST HILL, an Illinois)
non-home rule municipal corporation,)
)
Petitioner.)

**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.**

**PETITION FOR LEAVE TO APPEAL TO THE
ILLINOIS SUPREME COURT**

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**E-FILED
10/1/2020 4:49 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK**

PRAYER FOR LEAVE TO APPEAL

NOW COMES THE CITY OF CREST HILL, an Illinois non-home rule municipality, and pursuant to Supreme Court rule 315, hereby asks the Illinois Supreme Court to grant its petition for leave to appeal from the order of the Third District Appellate Court dated July 24, 2020, in the case of the Board of Education of Richland School District No 88A v. City of Crest Hill, Appeal No. 3-19-0225, Circuit Court 18-CH-19.

The Third District's decision in this case calls into question the legitimacy of most of the TIF Districts in municipalities throughout Illinois. And, it is in direct conflict with this Court's decision in Geisler v. City of Wood River, 322 Ill. Dec. 906 (2008). In Geisler, this Court was asked to determine if two parcels of property separated by a road were contiguous as required by the Illinois Business District Development & Redevelopment Act, (65 ILCS 11-74.3-1 *et seq.*) This Court found the parcels to be contiguous, citing the Third District's decision in Henry County Board v. Village of Orion, 278 Ill. App. 3d 1958, (1996), which held that for the purpose of TIF, the meaning of contiguity should be determined by annexation case law, a body of law which this Court found "well suited" to define the contiguity. The Court found that contiguity in a Business District should be determined by annexation law, just as it is in TIF Districts. But in this case, the Third District disregarded this Court's holding in Geisler, finding that the contiguity requirement in a TIF district is not determined by annexation law, but is limited only to the express language of the TIF Act. In contravention to Geisler, the Third District in this case invalidated a TIF District because two parcels of property in the City's TIF District were separated by a public utility right-of-way as expressly

permitted by annexation case law. The decision in this case conflicts not only with Geisler and the Third District's own opinion in Henry, but it has the potential to invalidate TIF Districts throughout Illinois along with any debt issued or contractual obligations incurred from those TIF Districts. This Court's intervention is necessary to clarify the definition of contiguous for the purpose of using TIF which is used by municipalities throughout the State for economic development.

DATE OF APPELLATE COURT DECISION

On July 24, 2020, an order was entered by the Third District Appellate Court overturning the judgment of the Circuit Court of Will County. Pursuant to this Court's order of March 24, 2020, petitioner has seventy days from the date of the entry of the order to file this petition. A Petition for Rehearing was not filed with the Third District Appellate Court.

POINTS AND AUTHORITIES**Cases**

In re Village of Buffalo Grove, 128 Ill. App.2d 261, 261 N.E.2d 746	
(2d Dist. 1970).....	7, 9
<u>Freeport Fire Protection District v. City of Freeport, 58 Ill. App. 3d 314,</u>	
15 Ill. Dec. 871 (1978).....	10, 13
<u>Geisler V. City of Wood River, 383 Ill. App. 3rd. 828 (2008).....</u>	5, 6, 7, 9, 10, 11, 14
<u>Henry County Board v. Village of Orion, 278 Ill. App. 3d 1958, (1996).....</u>	5, 6, 7, 10, 14
<u>People v. Village of Hawthorne Woods, 19 Ill. 2d 316, 318, (1960).....</u>	9
<u>People Ex. Rel. Admonowski v. Village of Streamwood, 15 Ill. 2d. 595 (1959).....</u>	7, 8
<u>Wescom, Inc. v. Woodridge Park District, 49 Ill 2d 903, 364 NE 2d. 721 (1977).....</u>	10, 11

Statutes

Illinois Tax Increment Redevelopment Act, 65 ILCS 74.4-1 et seq.	4
Illinois Annexation Act, 65 ILCS 5/7-1-1, sec. 7-1-1.....	4, 7, 8, 9, 12
Illinois Business District Development & Redevelopment Act, 65 ILCS	
11-74.3-1 et seq.....	5

Websites

<https://illinoiscomptroller.gov/financial-data/local-government-division/upload-tif-reports/>
retrieved September 17, 2020

STATEMENT OF FACTS

The City of Crest Hill ("Crest Hill" or "City") is an Illinois non-home rule municipality empowered to use tax increment financing ("TIF") pursuant to the Illinois Tax Increment Redevelopment Act (65 ILCS 74.4-1 et seq.) ("TIF Act" or "Act") in the Illinois Municipal Code. The TIF Act allows municipalities to create redevelopment project areas ("TIF Districts") and divert incremental tax revenue from taxing districts to pay eligible redevelopment project costs as defined by the Act. In November 2017, the City of Crest Hill adopted the three ordinances required by the TIF Act to create the Weber Road Corridor TIF District. Shortly thereafter, in January 2018, Plaintiff Richland ("Richland"), a public school district serving a portion of the City's residents, filed a verified complaint challenging the validity of the City's enacted TIF ordinances. Richland asked Will County Circuit Court judge, Judge John C. Anderson, to declare the TIF ordinances invalid, claiming *inter alia*, that certain parcels of property in the TIF District were not contiguous and were therefore in violation of the contiguity requirement of the Act. In determining whether or not property in the Weber Road TIF District was contiguous, the City relied on a previous Third District decision and a decision of this Court, both of which held that that the definition of "contiguous" for the purpose of the TIF Act should be determined by looking to the definition in annexation cases. The City annexed the subject parcels of property twenty years ago relying on the language of the Annexation Act and included both in the Weber Road TIF District using the same analysis of contiguity. The two parcels are separated by a public utility right-of-way, which runs adjacent and parallel to both of the two parcels for an undisputed distance of 235 feet.

The parties filed cross motions for summary judgment thereby acknowledging there is no factual dispute and the Circuit Court granted the City's motion. Richland appealed the order and the Third District reversed the Circuit Court's decision, holding that a municipality cannot look to annexation law to determine contiguity in a TIF District but only to the express language of the TIF Act, a holding in direct conflict with a holding of this Court and of a previous decision of the Third District. The City of Crest Hill now requests that this Supreme Court grant this petition and review and overturn the decision of the Third District Appellate Court.

ARGUMENT

In Henry, the Third District recognized that while the TIF Act requires that all property in a TIF District be contiguous, the Act does not define the term. The Henry Court held that annexation law was a body of law "well-suited" to define contiguity since the question arises so often in annexation cases:

Contiguity has long been defined in annexation cases [and] . . . We conclude that this definition of contiguity is well-suited to determine questions arising under the Act for several reasons . . . "Henry at 1083).

This holding in Henry was expressly affirmed by this Court in Geisler. This Court was asked to rule on a dispute as to whether two properties in a business district separated by a roadway were contiguous. This Court cited the Third District's decision in Henry, holding that contiguity for the purpose of a Business District should be defined by annexation law, just as it is for TIF Districts:

Contiguity is not defined by division 74.3 of the Illinois Municipal Code. However, "[c]ontiguity has long been defined in annexation cases as tracts of land that touch or adjoin one another in a reasonably substantial

physical sense." Henry County Board, 278 Ill.App.3d at 1067, 215 Ill. Dec. 562, 663 N.E.2d 1076 (citing Western National Bank of Cicero v. Village of Kildeer, 19 Ill.2d 342, 352, 167 N.E.2d 169 (1960)). Illinois courts have found this definition of contiguity to be well-suited to determine whether a TIF district is contiguous within the meaning of the TIF Act. See Henry County Board, 278 Ill.App.3d at 1067, 215 Ill. Dec. 562, 663 N.E.2d 1076. We find no reason to depart from this well-established definition of contiguity when determining whether a business district is contiguous within the meaning of section 11-74.3-5. As explained in Henry County Board with regard to the TIF Act, . . . Geisler at 341.

This Court's holding in Geisler is unambiguous: when determining if property in a TIF District is contiguous, courts should look to the definition of contiguity in annexation cases.

ANNEXATION & CONTIGUITY

Illinois courts in annexation cases have held that for parcels of property to be contiguous, they must be parallel and adjacent (People Ex. Rel. Admonowski v. Village of Streamwood, 15 Ill. 2d. 595, 1959) and there must be "reasonably substantial physical touching" in order for properties to be contiguous (In re Village of Buffalo Grove, 128 Ill. App.2d 261, 1970). However, the Illinois Annexation Act and corresponding case law provide several express "carve-outs" to physical touching, such as when properties are separated by certain public infrastructure and rights-of-way:

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. 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 . . . 65 ILCS 5/7-1-1 Sec. 7-1-1 *et seq.*) [emphasis added]

The City relied on the language of the Annexation Act when it created the Weber Road TIF District. But now the Third District in its decision has held that a municipality cannot rely on annexation law to determine contiguity in a TIF District but can only rely on the express language of the TIF Act, holding that the "carve outs" to physical touching created by annexation law are not applicable to TIF Districts:

... depart[ure] from the plain language of [the] statute by reading into it exceptions, conditions, or limitations that the legislature did not express." [citation] 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. Since our legislature did not signal such an intention, we hold the City cannot "jump" the natural gas right-of-way to establish contiguity between parcels A and B. Crest Hill at 11.

In the City of Crest Hill's Weber Road TIF District, there are two parcels of property separated by a public utility gas right-of-way that runs parallel and adjacent to both properties, as required for contiguity by this Court in Admonowski. The pipeline runs for an undisputed length of 235 feet, a distance that this Court has held to be more than sufficient to establish contiguity:

In People v. Village of Hawthorne Woods, 19 Ill. 2d 316, 318, (1960), the Supreme Court found contiguity to exist under the provisions of Ill Rev Stats 1957, c 24, § 3-5, when the territory sought to be incorporated was composed "roughly of three areas, the two largest of which have a connecting common boundary for a distance of only 128.7 feet." Cited In re Village of Buffalo Grove, 128 Ill. App 261.

In its suit challenging the City's Weber Road TIF District, Richland contends that the two parcels of property are not contiguous because they are physically separated by the gas pipeline right-of-way running between them. The City of Crest Hill annexed these two parcels over twenty years ago (i.e., July 2000) in compliance with the Illinois Annexation

Act, and when it created the Weber Road TIF District, the City relied on the same analysis to confirm contiguity between the two parcels. But the Third District has now held that the City cannot rely on annexation law, invalidating the City's TIF District because the City applied annexation carve-outs for contiguity that are not expressly set forth in the TIF Act. If left to stand, the Illinois Municipal Code will have one definition of contiguity for annexation and an entirely different definition for the purpose of TIF, a result this Court looked to prevent in Geisler. A municipality will be able to find contiguity and annex property, but then not be able to include that property in the municipality's TIF District, as is the case in the Crest Hill Weber Road TIF.

PUBLIC UTILITY RIGHTS-OF-WAY& CONTIGUITY

Applying the Third District's decision in this case, a municipality could not include parcels of property in a TIF District that are separated by a public street, a railroad, a utility right-of-way or even a river because doing so is not specifically permitted by the express language of the TIF Act. This decision has the potential to invalidate most of the existing TIF districts throughout the State since it would be difficult to find an Illinois TIF District that does *not* include parcels of property separated by a public road, let alone rivers, railroads and expressways.

When it created the Weber Road TIF District, in addition to the holdings in Geisler and Henry, the City of Crest Hill also relied on decisions from both the Second and Fifth District Appellate courts as they relate to contiguity and public utility rights-of-way.

In Freeport Fire Protection District v. the City of Freeport, 58 Ill. App. 3d 314, 15 Ill Dec. 871 (1978), the Second District found property separated by a privately owned public utility right-of-way to be contiguous so long as it is parallel and adjacent to the properties, holding a utility right-of-way to be legally indistinct from public roadways regardless of ownership:

There would seem to be good reason to also consider the 'adjacent and parallel' test, which has not been limited to street and highway annexation by the Supreme Court, where narrow corridors of land *owned by a private utility are used as connective links between other privately owned tracts and a municipality for annexation purposes. We see little difference between such strips and highways in this context.* Freeport at 319. [emphasis added]

In Wescom, Inc. v. Woodridge Park Dist., 364 NE 2d 721, Ill App. 2nd Dist. 903 (1977), the Fifth District also recognized utility rights-of-way as a legitimate means of establishing contiguity and again found no legal distinction between utility rights-of-way and public roadways:

There would seem to be good reason to also consider the "adjacent and parallel" test, which has not been limited to street and highway annexations by the Supreme Court, where narrow corridors of land owned by a public utility are used as connective links between other privately owned tracts and a municipality for annexation purposes. We see little difference between such strips and highways in this context; *both meander throughout unincorporated territory adjacent to municipalities and are convenient conduits through which annexations could not otherwise be accomplished might circumvent the annexation statutes.* Wescom at 907.

Both courts found there to be no legal distinction between a public utility right-of-way and a public roadway for the purpose of determining contiguity, regardless of ownership being public or private. So if a municipality cannot jump a utility right-of-way between

properties in a TIF District without defeating contiguity as the Third District has held, it follows that properties separated by a street in a TIF District are not contiguous. It would be difficult to find an Illinois TIF District that does not include a public street so the Third District's decision in this case will render these TIF Districts invalid for lack of contiguity.

If this Court reaffirms its holding in Geisler that annexation law controls the definition of contiguity in a TIF District, and annexation law allows a municipality to "jump" a public utility right-of-way, there is no doubt that the two parcels in the Weber Road TIF District separated by a utility right-of-way are in fact contiguous. Conversely, if the decision in this case is allowed to stand and the definition of contiguous in annexation cases is different than that for a TIF District, any TIF District with parcels of property separated by any public street, railway or utility right-of-way will now be invalid.

IMPACT OF DECISION ON MUNICIPALITIES

Based on an examination of maps of various TIF districts across Illinois, it is almost impossible to find a TIF District that will not be affected by this decision. Just about every TIF District in the State has some type of a public way or infrastructure including public streets and highways. To illustrate, the City has attached and requests this Court to take judicial notice of maps of four existing TIF districts that were created by Illinois municipalities:

A. The City of Chicago 71st/Stony Island TIF district has a Metra line, the Chicago Skyway and public roadways separating parcels, which is not expressly permitted by the TIF Act (Exhibit A);

B. The City of Chicago Addison South TIF includes parcels separated by the Chicago River, which is not expressly provided for in the TIF Act (Exhibit B);

C. The Highland Park Ravinia TIF has a Metra line separating two halves of the TIF district, which again is not expressly allowed by the TIF Act (Exhibit C); and

D. The Delavan TIF has a freight rail line cutting through the TIF district, which is not expressly permitted by the TIF Act (Exhibit D).

Applying the Appellate Court's holding in this case, the properties in the foregoing TIF Districts, although contiguous under Illinois annexation law, will be invalidated for lack of contiguity along with many others throughout Illinois.

The Appellate Court wrongfully based its ruling on its assertion that the City ignored the second sentence of the Annexation Act:

However, the City's position requires us to ignore the second sentence of section 7-1-1, which expands 'contiguous' to mean, [for the purpose of [that[Article[,] any territory to be annexed to a municipality * * * notwithstanding that the territory is separated from the municipality by a * * * public utility right of way. Crest Hill, page 11.

Not only did the City of Crest Hill *not* ask the Court to ignore the second sentence of 7-1-1 as cited by the Court, it *relied* on the second sentence in finding contiguity. The first sentence of 7-1-1 only states that requires that property to be annexed must be contiguous but offers no definition. It is the second sentence that defines contiguity; without the second sentences there is no definition of contiguity. The Court then inexplicably goes on to say that if the Court did rely on the second sentence that the City supposedly asked the Court to ignore, it would be reading into the TIF Act provisions that the legislature had not intended, i.e., provisions from annexation cases. And in his concurrence, Justice

Holdridge wrote that the Court did not even have to consider the City's ability to jump a public utility right-of-way because the right-of-way is owned in fee by a private utility company, suggesting that the ownership of the right-of-way is somehow determinative in finding contiguity. This is in direct conflict with Second District's decision in Freeport, in which it found no legal distinction as to the ownership of a utility right-of-way when determining contiguity.

SUMMARY

The Illinois TIF Act is one of the few and most frequently used economic development tools available to Illinois municipalities. According to the Illinois Comptroller's website, in FY2019, there were over 1,500 active TIF Districts located in 500 municipalities in 96 of the 102 counties in Illinois. (<https://illinoiscomptroller.gov/financial-data/local-government-division/upload-tif-reports/> retrieved September 17, 2020) Most of these 1,500 TIF Districts include parcels that are separated by public roadways, railways, utility rights-of-way and even rivers, raising the question: are these TIF Districts now invalid? And if so, what about the validity of any debt instruments or contractual obligations incurred by municipalities from those TIF Districts pursuant to the TIF Act?

Illinois Supreme Court Rule 315 states that in considering leave to appeal, this Court will consider the general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of another division of the Appellate Court and the need for the exercise of the Supreme Court's supervisory authority. The City of Crest Hill relied on the Third District's decision in Henry when it

created the Weber Road TIF District. The holding in this case is in direct conflict with this Court's holding in Geisler, and of the Third District's own decision in Henry. The Third District's decision in this case will have a significant deleterious impact on municipalities throughout Illinois and create different definitions of contiguity within the Illinois Municipal Code for different municipal purposes. Accordingly, Crest Hill respectfully asks this Court to review and reverse the Third District's decision in Richland v. Crest Hill.

Respectfully submitted,

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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) 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 14 pages.

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

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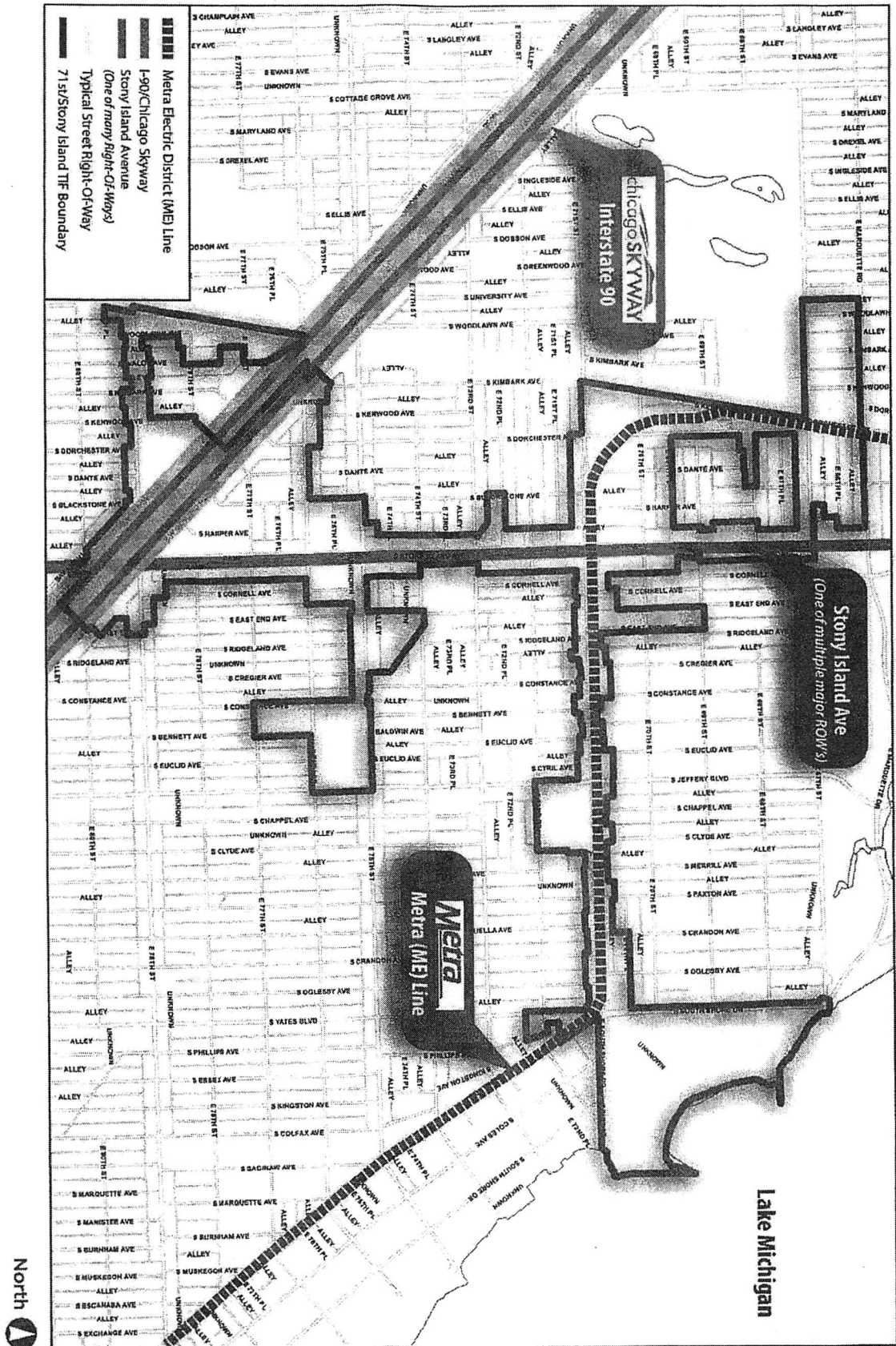
APPENDIX

Table of Contents to Appendix**Exhibit**

- A. Map: Chicago 71st Street Island TIF
- B. Map: Chicago Addison South TIF
- C. Map: Highland Park Resoria TIF
- D. Map: Delavan TIF
- E. Opinion filed July 24, 2020

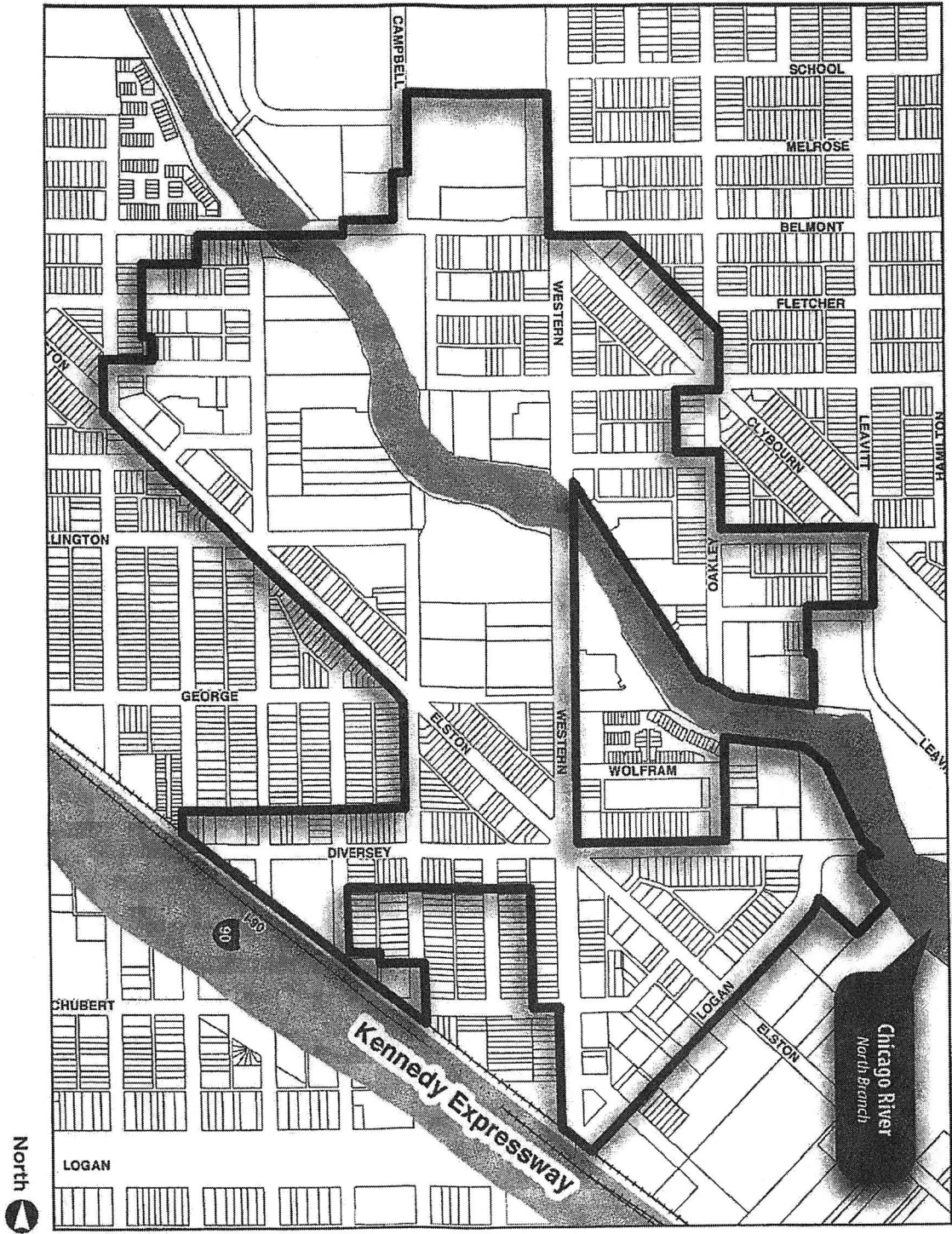
Expiration: 2033

Exhibit A - Chicago 71st/Stony Island TIF



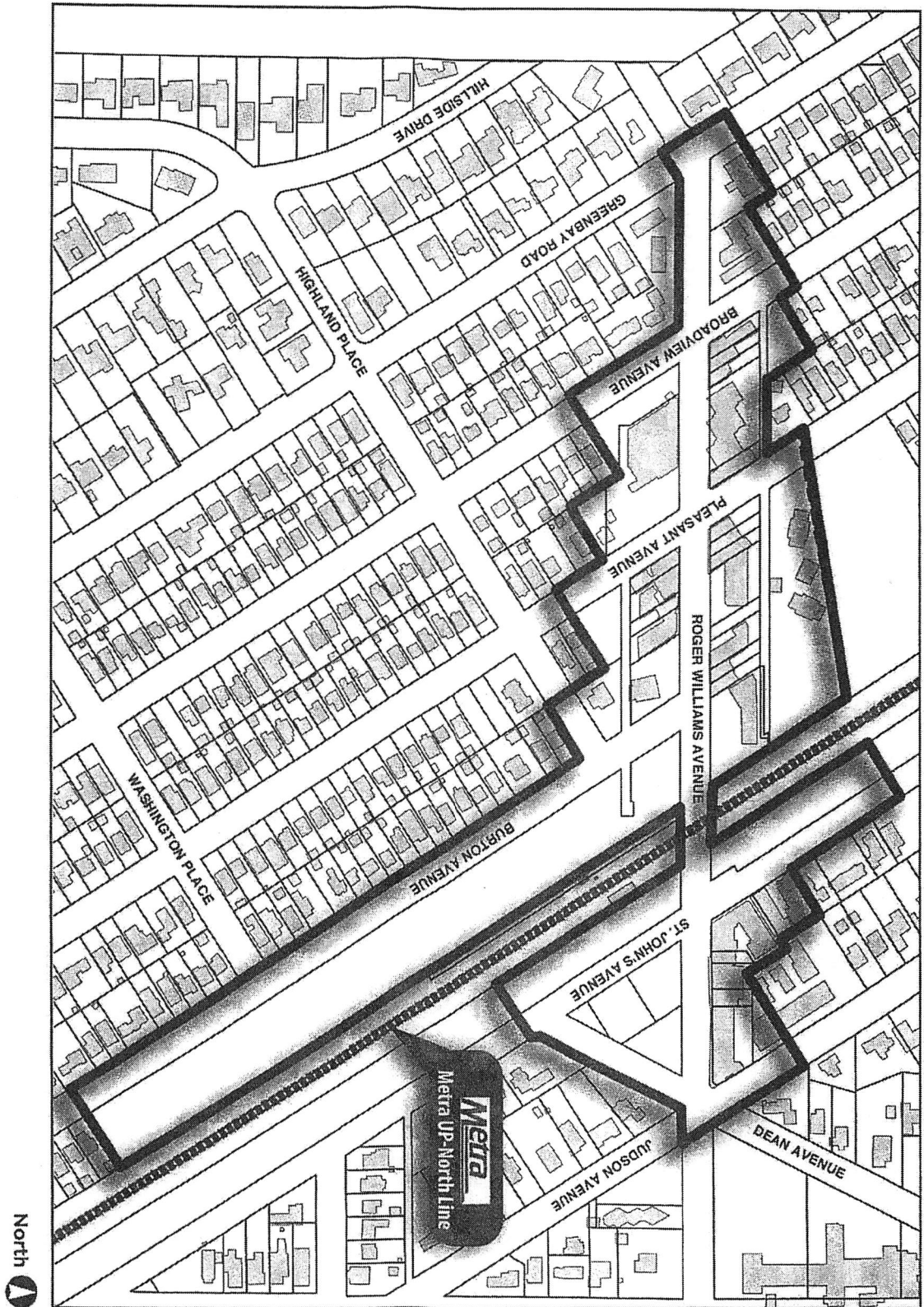
Expiration: 2037

Exhibit B - Chicago Addison South TIF



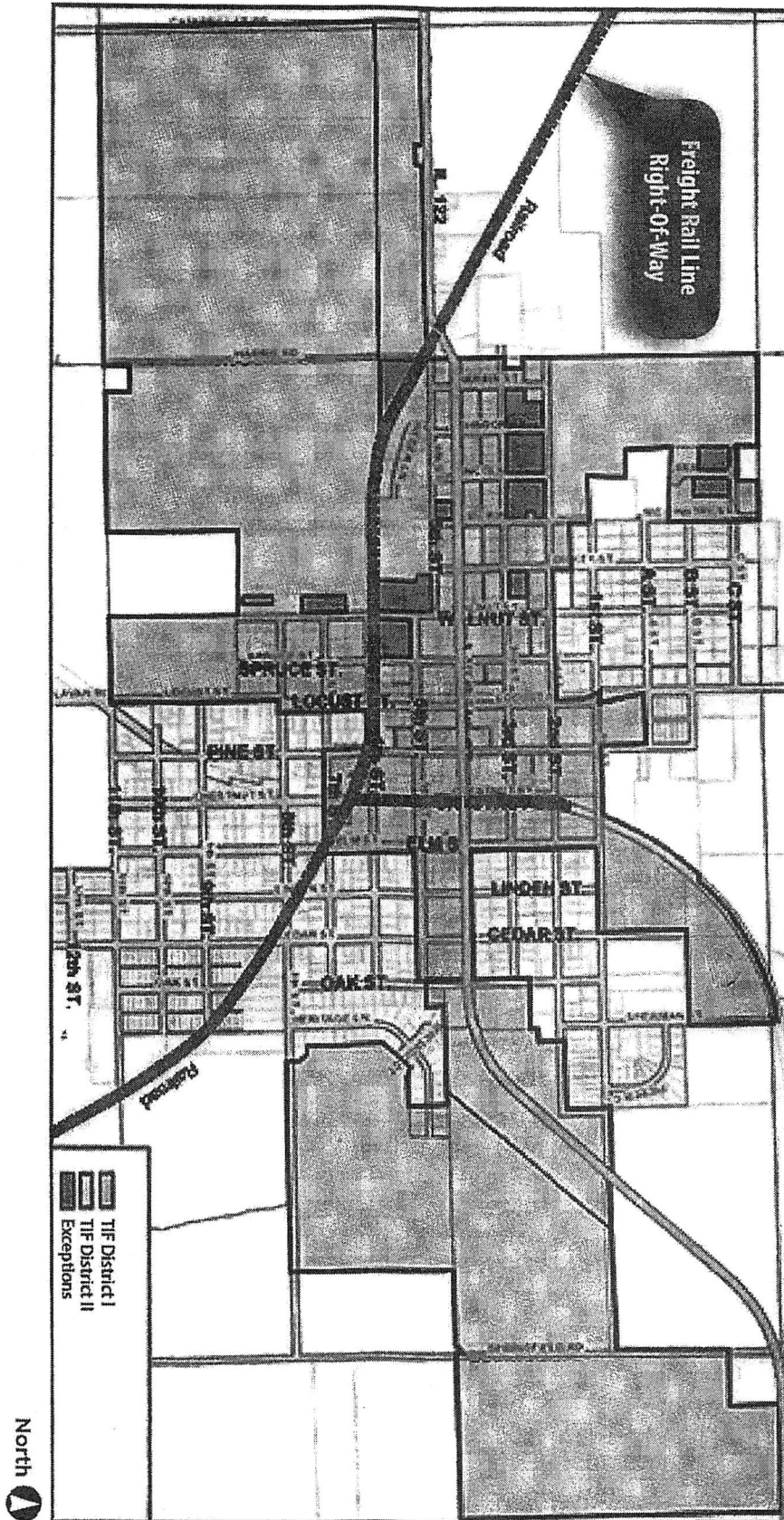
Expiration: 2029

Exhibit C - Highland Park Ravinia TIF



Expiration: 2034

Exhibit D - Delavan TIF



2020 IL App (3d) 190225

Opinion filed July 24, 2020

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2020

THE BOARD OF EDUCATION OF
RICHLAND SCHOOL DISTRICT NO. 88A,
an Illinois Public School District,

Plaintiff-Appellant,

v.

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

Defendant-Appellee.

) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
) Will County, Illinois,
)

) Appeal No. 3-19-0225
) Circuit No. 18-CH-19
)

) Honorable
) John C. Anderson,
) Judge, Presiding.
)

JUSTICE WRIGHT delivered the judgment of the court, with opinion.
Presiding Justice Lytton concurred in the judgment and opinion.
Justice Holdridge specially concurred, with opinion.

OPINION

¶1 Plaintiff filed a verified complaint challenging the tax increment financing (TIF) ordinances approved by defendant to establish the Weber Road Corridor TIF District (TIF District) under the Tax Increment Allocation Redevelopment Act (Act), 65 ILCS 5/11-74.4-1 *et seq.* (West 2016). Each party filed a cross-motion for summary judgment. The circuit court granted summary judgment for defendant. Plaintiff appeals.

Exhibit E

Opinion filed July 24, 2020

2020

**Honorable
John C. Anderson,
Judge, Presiding.**

OPINION

SUBMITTED - 11638312 - Dora Kruger - 1/6/2021 10:05 AM

¶2

I. BACKGROUND

¶3

The material facts are undisputed on appeal. Our resolution turns on an application of those facts to the Act. Before beginning this task, a brief overview of the events culminating in the establishment of the TIF District and the parties' arguments in the circuit court is appropriate.

¶4

A. Establishment of the TIF District

¶5

In July 2017, defendant, the City of Crest Hill (City), requested and received a TIF Redevelopment Plan and Project (Plan), prepared by Camiros, Ltd., under the Act. The Plan included a conclusion that the proposed project area qualified as a redevelopment project area because it was a "blighted area" under the Act. See *id.* § 11-74.4-3(a).¹

¶6

Consistent with its obligation under section 11-74.4-5(b) of the Act, the City convened a joint review board (JRB). See *id.* § 11-74.4-5(b). Section 11-74.4-5(b) states a JRB shall include:

"a representative selected by each community college district, local elementary school district and high school district or each local community unit school district, park district, library district, township, fire protection district, and county that will have the authority to directly levy taxes on the property within the proposed redevelopment project area at the time that the proposed redevelopment project area is approved, a representative selected by the municipality and a public member."

Id.

¶7

Further, section 11-74.4-5(b) states that a JRB reviews "(i) the public record, planning documents and proposed ordinances approving the redevelopment plan and project and (ii) proposed amendments to the redevelopment plan or additions of parcels of property to the

¹Five statutory conditions for "blighted area" existed for the proposed project area's 339 acres of improved property. See 65 ILCS 5/11-74.4-3(a)(1) (West 2016). Three statutory conditions for "blighted area" existed for the proposed project area's 74 acres of vacant property. See *id.* § 11-74.4-3(a)(2), (3).

redevelopment project area to be adopted by the municipality." *Id.* The JRB then renders "an advisory, non-binding recommendation" on the redevelopment plan and project. See *id.*

¶ 8 Plaintiff, Board of Education of Richland School District No. 82A (School Board), selected Joe Shimpkins as its representative on the JRB convened by the City in this case. The JRB met for the first time on October 10, 2017, in the City's council chambers, where a vote to approve the TIF District failed. Thus, the City's attorney suggested that the JRB "prepare a statement setting forth the reasons that [the] Plan either failed to comply with the Act or how the property did not meet the [TIF] eligibility requirements." The JRB continued the meeting until November 6, 2017, at which time the JRB reconvened and adopted a written statement that the TIF 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 [JRB] finds that [TIF] is not needed to encourage redevelopment within the Redevelopment Project Area, and the Redevelopment Project Area would experience redevelopment in the absence of [TIF]. The [JRB] finds that the creation of the *** [TIF] 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."

¶ 9 According to the transcript of the November 6, 2017, meeting of the JRB, the City's attorney asked for more "specificity on how [the TIF District] fails to meet the criteria." Regarding an obligation of the City to respond to the JRB's written statement, the City's attorney stated, "I'm not quite sure, frankly, what we're responding to because it sounds like *** 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." In response, the School Board's attorney stated that if the City

"takes the position that it has met all its obligations with regard to [JRB] proceedings and it is going to go ahead any way [sic], it can do that *** [but] [t]he more conservative approach for the City would be to interact with the JRB as called for under the TIF [A]ct."

Thereafter, the JRB voted to reconvene on the tentative date of December 4, 2017. Also on November 6, 2017, after receiving the JRB's written statement, the City held and adjourned a public hearing on the TIF District.

¶ 10 On November 20, 2017, the City's mayor, Raymond Soliman, wrote a letter to the School Board's JRB representative, Simpkins, asserting that the JRB did not cite "any specific challenges to the [P]lan" and any determination regarding the need for redevelopment was "a finding to be made by the municipality." In the letter, the mayor stated, "there is no reason for the City to meet with the JRB members on December 4th." According to the mayor, the JRB's written statement recommending a rejection of the TIF District was "legally deficient to the point that there [we]re no amendments the City c[ould] make to address the JRB objections." On this same day, the City unanimously approved three TIF ordinances establishing the TIF District.

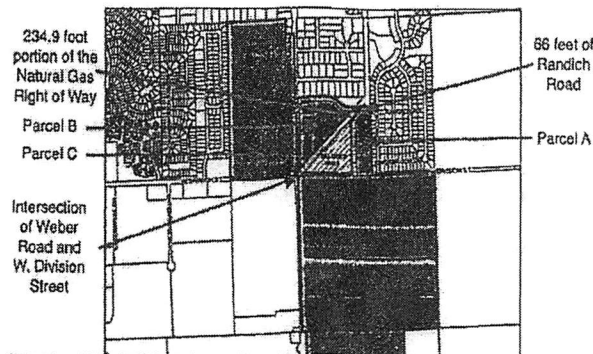
¶ 11 When the members of the JRB arrived at Crest Hill City Hall on December 4, 2017, they were informed that the scheduled meeting was cancelled. The JRB conducted a meeting in the hallway of Crest Hill City Hall to affirm the recommendation to reject the TIF District.

¶ 12 B. The School Board's Verified Complaint

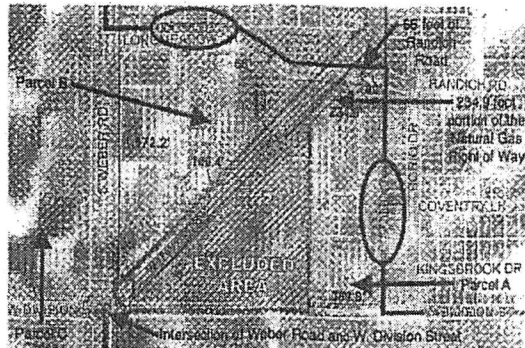
¶ 13 On January 2, 2018, the School Board filed a verified complaint against the City, alleging that the three TIF ordinances approved by the City were invalid due to noncompliance with the statutory mandates of the Act. First, the School Board stated that the northwestern portion and the remainder of the TIF District were not contiguous, as required by section 11-74.4-4(a) (see *Id.*

§ 11-74.4-4(a)). For context, we have included maps of the TIF District, with court notations, immediately below.

Map 1—TIF District Map



Map 2—Enlarged TIF District Map with Measurements and Highlighted Boundary



¶ 14 The School Board's complaint also alleged that the City failed to comply with certain procedural requirements of the Act. Specifically, the School Board alleged that (1) the City failed to provide administrative support to the JRB by publishing agendas and providing meeting space and administrative staff on October 10, November 6, and December 4, 2017; (2) the City improperly adjourned a public hearing on the TIF District before the JRB held its meeting scheduled for December 4, 2017; (3) the City failed to meet and confer with or resubmit a revised Plan to the JRB after receiving the written statement recommending a rejection of the TIF District;

and (4) the City improperly approved the ordinances establishing the TTF District before meeting and conferring with, resubmitting a Plan to, or allowing the December 4, 2017, meeting to be held by the JRB. As a result of the City's noncompliance with the Act, the School Board requested that the City be enjoined from advancing its TTF District.

¶ 15 C. Cross-Motions for Summary Judgment

¶ 16 On December 21, 2018, the City and the School Board filed cross-motions for summary judgment. Thereafter, the parties filed responses and replies to the cross-motions for summary judgment. The parties' respective motions and responses are summarized separately below.

¶ 17 1. The City's Cross-Motion for Summary Judgment

¶ 18 In its motion for summary judgment, the City addressed the verified complaint's allegation that the TTF District was not contiguous, as required by section 11-74.4-4(a). The City pointed out that the School Board's allegation was based on "a map with the superimposed markings ['noncontiguous'] of an unknown person." In contrast, the City provided official Will County maps, which revealed that the northwestern portion of the TTF District, parcels B and C, share an 1175 foot common boundary along Weber Road that was sufficient during the annexation of parcel C. Likewise, the City relied on "jumping" the natural gas right of way for purposes of the prior annexation of parcel B, as it claimed was expressly allowed by section 7-1-1 of the Illinois Municipal Code (*id.* § 7-1-1). In addition, the City's motion for summary judgment addressed the allegations pertaining to the Act's procedural requirements.

¶ 19 2. The School Board's Motion for Summary Judgment

¶ 20 The School Board's motion for summary judgment addressed the issue of contiguity. Initially, the School Board rejected as irrelevant the City's contention that "there exists 1,175 linear

feet of common boundary establishing contiguity" between parcels B and C. The School Board contended parcels A and B, not parcels B and C, were noncontiguous under the Act.

¶ 21 Likewise, the School Board rejected the City's contentions with respect to past annexations. The School Board pointed out that annexations and TIF are governed by independent sections of the Illinois Municipal Code. In the School Board's view, the portion of the Illinois Municipal Code governing TIF did not allow the City to "jump" the 234.9 foot portion of the natural gas right-of-way to establish contiguity between parcels A and B. Again, the School Board argued that these parcels, not parcels B and C, were noncontiguous under the Act.²

¶ 22 In support of this argument, the School Board relied on the deposition testimony of Jeanne Lindwall, principal consultant for Caminos, Ltd., who prepared an eligibility study and the Plan for the City. Lindwall agreed that the contiguity of the northwestern portion of the TIF District (*i.e.*, parcels B and C) and the remainder of the TIF District (*i.e.*, parcel A) was "solely based" on the City's ability to "jump" the 234.9 foot portion of the natural gas right-of-way. Being even more precise, Lindwall agreed this was "the only way" to get contiguity to parcel B from parcel A. Sixty-six feet of Randolph Road would also be included, but the "primary contiguity" came from the right-of-way. Lindwall admitted that she relied upon legal counsel's explanations of contiguity under "the annexation statute." She agreed that if her understanding of contiguity was incorrect, "there would be no contiguity" between parcels A and B. The School Board also argued that the City failed to comply with the Act's procedural requirements.

²City Administrator and JRB chairwoman, Heather McGuire, said in her deposition that the City's contiguity "discussion point was always focused around the northern portion of [the] pipeline."

¶23

D. Judgment of the Circuit Court

¶24

The circuit court held a hearing on the parties' motions for summary judgment on February 15, 2019, before taking the matter under advisement. On March 28, 2019, the circuit court granted the City's, and denied the School Board's, motion for summary judgment. Regarding contiguity, the circuit court found there was "over 400 feet of contiguity" connecting parcels A and B and "well over 1000 feet of contiguity" connecting parcels B and C. Thus, contrary to the School Board's allegations, the circuit court found contiguity existed between the northwestern portion and the remainder of the TIF District. Even if there were only 234.9 feet of contiguity between parcels A and B (*i.e.*, between the northwestern portion and the remainder of the TIF District), the circuit court would have found that distance was sufficient under the case law, as the existence of the natural gas right-of-way was "of no legal consequence."

¶25

With respect to administrative support, the circuit court found the City "provided sufficient meeting space, clerical support, and notice of meetings and agendas." The circuit court also rejected the contention that the City "improperly closed the public hearing before the JRB concluded its work and further failed to satisfy the 'meet and confer' requirements," stating that the City

"made reasonable efforts to conform to the JRB's recommendations, but the JRB's position lacked specificity. Moreover, [the City]'s counsel requested additional specificity, but did not receive it. If anything, the evidence suggests that the school board took an obstructionist position but [the City] did everything it was required to do, and everything that was reasonable to do. In short, [the City] complied with the TIF Act."

For these reasons, the circuit court granted the City's, and denied the School Board's, motion for summary judgment. The School Board filed a timely notice of appeal on April 25, 2019.

¶ 26

II. ANALYSIS

¶ 27

On appeal, the School Board presents the same issues as it did in the circuit court. However, we address only the legal question of whether the parcels contained within this TIF District were contiguous, as required by statute. See *Id.* § 11-74.4-4(a). Relevantly, section 11-74.4-4(a) states: "No redevelopment project area shall be designated unless a plan and project are approved prior to the designation of such area and such area shall include only those *contiguous* parcels of real property and improvements thereon substantially benefited by the proposed redevelopment project improvements." (Emphasis added.) *Id.*

¶ 28

In the past, our court recognized that the Act does not define "contiguous." See *Henry County Board v. Village of Orion*, 278 Ill. App. 3d 1058, 1067 (1996). We acknowledged that "[c]ontiguity has long been defined in annexation cases as tracts of land that touch or adjoin one another in a reasonably substantial physical sense." *Id.* (citing *Western National Bank of Cicero v. Village of Kildeer*, 19 Ill. 2d 342, 352 (1960), *disapproved of on other grounds by People ex rel. County of Du Page v. Lowe*, 36 Ill. 2d 372, 379-80 (1967); accord *Geisler v. City of Wood River*, 383 Ill. App. 3d 828, 848 (2008). After citing statutory interpretation principles, we found this definition "well suited to determine questions arising under the Act." *Henry County Board*, 278 Ill. App. 3d at 1067; accord *Geisler*, 383 Ill. App. 3d at 849. Another definition might "allow municipalities to circumvent the Act's legislative intent by creating TIF districts where physical eligibility may not otherwise exist." *Henry County Board*, 278 Ill. App. 3d at 1067; accord *Geisler*, 383 Ill. App. 3d at 849. Further, the touching requirement "ensures a municipality has properly

constructed a TIF district and is legitimately reaping tax increment financing benefits under the Act.” *Henry County Board, 278 Ill. App. 3d at 1067*; accord *Geddes*, 383 Ill. App. 3d at 849.

¶ 29 Consistent with *Henry County Board*’s contiguity definition, we recognize “point-to-point touching or cornering is generally not sufficient to satisfy the requirement of contiguity.” *La Salle Bank National Ass’n v. Village of Bull Valley*, 355 Ill. App. 3d 629, 637 (2005); accord *In re Annexation to the Village of Downers Grove*, 92 Ill. App. 3d 682, 685 (1981); see also *People ex rel. Forest Park Fire Protection District v. City of Forest Park*, 58 Ill. App. 3d 314, 317 (1978) (stating that “validly annexed roads may lead to further annexations if the roads “form a new boundary with the next annexation, [and do] not merely touch it in the manner of a ‘T’ or at a corner”). As one court has noted, “point-to-point touching[] and cornering *** are merely a subterfuge to reach outlying areas.” *People ex rel. Village of Lang Grove v. Village of Buffalo Grove*, 160 Ill. App. 3d 455, 462 (1987).

¶ 30 Based upon the deposition testimony of Lindwall, “the only way” to get contiguity to parcel B from parcel A was by jumping the 234.9 foot portion of the natural gas right-of-way. Thus, this appeal boils down to one question—does the Act allow the City to “jump” the 234.9 foot portion of the natural gas right-of-way, located in the unincorporated “excluded area” of the TIF district, to establish contiguity between parcels A and B? For the reasons discussed below, we conclude the answer to this question is “no.”

¶ 31 Initially, the circuit court, presumably in reliance on Will County maps contained in the record, found “over 400 feet of contiguity” connecting parcels A and B. In doing so, the circuit court failed to account for the difference between the boundaries of parcels A and B and the boundary of the TIF District. When this difference is considered, it becomes clear that this case turns on the City’s inability to “jump” the 234.9 foot portion of the natural gas right-of-way.

¶ 32 We are not persuaded by the City's argument that "contiguous" has the same meaning under both section 11-74.4-4(a) of the Act, at issue here, and section 7-1-1 of the Illinois Municipal Code, pertaining to annexations. The City makes this argument because the first paragraphs of section 11-74.4-4(a) of the Act and section 7-1-1 of the Illinois Municipal Code both use the *Henry County Board* definition of "contiguity" for "contiguous." See 65 ILCS 5/11-74.4-4(a) (West 2016); *Id.* § 7-1-1; *Henry County Board*, 278 Ill. App. 3d at 1067 (citing *Western National Bank of Cicero*, 19 Ill. 2d at 352); accord *Gelsler*, 383 Ill. App. 3d at 849.

¶ 33 However, the City's position requires us to ignore the second sentence of section 7-1-1, which expands "contiguous" to mean, "[f]or the purposes of [that] Article[,] any territory to be annexed to a municipality *** notwithstanding that the territory is separated from the municipality by a *** public utility right-of-way." See 65 ILCS 5/7-1-1 (West 2016) (Emphasis added.); but *cf.* *Id.* § 11-74.4-4(a). The City asks us to read this sentence into section 11-74.4-4(a) so it can establish contiguity between parcels A and B by "jumping" the natural gas right-of-way. This step would require a "depart[ure] from the plain language of [the] statute by reading into it exceptions, conditions, or limitations that the legislature did not express." See *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 15. 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.

¶ 34 Since our legislature did not signal such an intention, we hold the City cannot "jump" the natural gas right-of-way to establish contiguity between parcels A and B.³ Since there is no other basis for contiguity between those parcels, we also hold the TIF District is not contiguous under

³It is telling, as the board notes, that section 11-74.4-4(g) of the Act expresses an intent to allow "one redevelopment project area" to "[u]tilize revenues *** received under [the] Act *** for eligible costs in another redevelopment project area that is: *** separated only by a public right of way," but does not express an intent to allow the establishment of one redevelopment project area with parcels separated only by a public right of way, such as a public utility right of way. See 65 ILCS 5/11-74.4-4(g) (West 2016).

section 11-74.4-4(a).⁴ Thus, we reverse the circuit court's contiguity finding and grant of summary judgment to the City.

¶ 35 By virtue of these holdings, we need not consider the School Board's issues pertaining to the Act's procedural requirements. However, we observe the City's casual approach towards its procedural obligations and the JRB. Respectfully, a more deliberate "come to the table" approach by the City under the Act could have avoided many of the issues present in this appeal.

¶ 36 **III. CONCLUSION**

¶ 37 The judgment of the circuit court of Will County is reversed.

¶ 38 Reversed.

¶ 39 JUSTICE HOLDRIDGE, specially concurring:

¶ 40 The majority concludes that the City cannot "jump" the natural gas right-of-way to establish contiguity between parcels A and B. I believe we do not have to reach the issue as to whether the City can "jump" the gas right-of-way to establish contiguity because parcels A and B are physically separated by a parcel of land beyond the gas right-of-way that is excluded from the TIF district, therefore preventing contiguity.

¶ 41 The focus in this case is on the 234.9 foot natural gas right-of-way that exists on the border of parcel A and the parcel identified as "Utility." The "Utility" parcel is associated with property index number (PIN) 11-04-20-300-008-0000. The Will County Treasurer's office website states that the tax bill for this PIN is mailed to Natural Gas Pipeline. See Will County Treasurer, <http://willtax.willcountydata.com/maintax/cogis5271104203000080000> (last visited July 22, 2020) [<https://perma.cc/X2C6-AC33>]. We may take judicial notice of the Will County website because, as a government website, information contained therein is sufficiently reliable. See

⁴We expressly reject the notion that our holding invalidates any of the City's prior annexations.

***Kopnick v. JL Woode Management Co.*, 2017 IL App (1st) 152054, ¶ 26.** I note that referencing the "Utility" parcel as a right-of-way is a misnomer because it appears the utility company owns the parcel in fee simple.

¶ 42 Nonetheless, it is clear that the "Utility" parcel is excluded from the TIF District and has fee simple ownership separate from parcels A and B. Even if the City could "jump" the natural gas right-of-way that exists on the border of parcel A and the "Utility" parcel, the City cannot establish contiguity with the remaining land within the "Utility" parcel that stretches beyond the gas right-of-way up to parcel B. The discussion of "jumping" appears to be nothing more than a red herring.

No. 3-19-0225

Cite as: *Board of Education of Richland School District No. 88A v. City of Crest Hill, 2020 IL App (3d) 190225*

Decision Under Review: Appeal from the Circuit Court of Will County, No. 18-CH-19; the Hon. John C. Anderson, Judge, presiding.

**Attorneys
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**Attorneys
for
Appellee:** Mary J. Riordan, of Mary Riordan, Ltd., of Chicago, and Scott M. Hoster, of Castle Law, of Joliet, for appellee.

No.

**IN THE
SUPREME COURT OF ILLINOIS**

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

Respondent,

v.

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

Petitioner.

**Third Appellate District
Court, Appeal from Twelfth
Judicial Circuit, Will County**

**Case No. 3-19-0225
Case No. 2018 CH 19**

**Hon. John C. Anderson
Judge Presiding**

NOTICE OF FILING

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NOTICE IS HEREBY GIVEN, that on the 1st day of October, 2020, the undersigned filed with the Clerk of the Supreme Court of Illinois via electronic filing and by mailing, the attached Petition for Leave to Appeal to the Illinois Supreme Court, a copy of which is attached hereto.

CITY OF CREST HILL,

Scott Hoster

One of the Attorneys for Petitioner

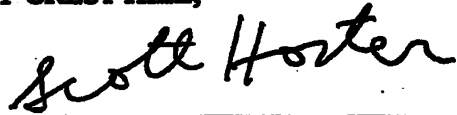
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PROOF OF SERVICE

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 Petition for Leave to Appeal to the Illinois Supreme Court by electronic filing and by enclosing a copy thereof in an envelope with proper postage prepaid, 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 1st day of October, 2020.

CITY OF CREST HILL,



One of the Attorneys for Petitioner

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Crest Hill



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November 18, 2020

~~In re: The Board of Education of Richland School District No. 88A, etc.,~~
Appellee, v. The City of Crest Hill, etc., Appellant. Appeal,
Appellate Court, Third District.
126444

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Carolyn Taft Gusbell

Clerk of the Supreme Court

A059

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

BOARD OF EDUCATION OF RICHLAND

SCHOOL DISTRICT NO. 88A

Plaintiff/Petitioner

Reviewing Court No: 3-19-0225

Circuit Court No: 2018CH000019

Trial Judge: JOHN ANDERSON

v.

CITY OF CREST HILL

Defendant/Respondent

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No. 126444

**IN THE
SUPREME COURT OF ILLINOIS**

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

Appellee,

V.

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

Appellant.

Third Appellate District
Court, Appeal from Twelfth
Judicial Circuit, Will County

Case No. 3-19-0225
Case No. 2018 CH 19

Hon. John C. Anderson
Judge Presiding

NOTICE OF FILING

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NOTICE IS HEREBY GIVEN, that on the 28th day of **December, 2020**, the undersigned filed with the Clerk of the Supreme Court of Illinois via electronic filing and by mailing, the attached **City of Crest Hill's Brief**, a copy of which is attached hereto.

CITY OF CREST HILL,

Scott Foster

One of the Attorneys for Appellant

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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 Brief 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 28th day of December, 2020.

CITY OF CREST HILL,



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