

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

HOMER TOWNSHIP, an Illinois)
township, Sean Reilley, Maria Reilley,)
Rich Polaski, Quinn Polaski, Ed Kalas,)
Margaret Sabo, Ellen Moriarty,)
Kathleen Kruczek, individually and in her)
capacity as Clerk of the Homer)
Township Road District, Kolbe Kruczek,)
Jacob Kruczek, Pamela Meyers,)
Individually and in her official capacity as)
Treasurer of the Homer Township Road)
District and Supervisor of Homer Township,)
Ethel Rodriquez, George Offord, Cheryl)
Bromberek, Bill Bromberek, Denise)
Clements, Roy Adcock, Laura Adcock,)
James Kuzma, Karen Szykowski,)
and Tom Fijan,)

Plaintiffs,)

v.)

Case No. 2020 CH 808

VILLAGE OF HOMER GLEN,)
an Illinois municipal corporation, the)
HOMER TOWNSHIP ROAD)
DISTRICT, an Illinois special district,)
MIKE DE VIVO, in his official capacity)
as Homer Township Road District)
Highway Commissioner,)

Defendants.)

**VILLAGE OF HOMER GLEN’S MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

Defendant, Village of Homer Glen, by its attorneys, Mahoney, Silverman & Cross, LLC,
for its memorandum in support of its motion for summary judgment, states:

The Village of Homer Glen adopts and hereby incorporates by reference the arguments
made by Homer Township Road District and Mike De Vivo in support of their motion for
summary judgment. The Village submits this memorandum to further articulate the

incorrectness of Plaintiffs' assertion that under 60 ILCS 1/30-50, "[t]he sale of surplus property of the Road District can only be approved by the township electors." (Cmplt. ¶31). The assertion is demonstrably wrong as shown by the very text of section 30-50 which Plaintiffs claim is the basis for the assertion.

Section 30-50 states in full:

§ 30-50. Purchase and use of property.

(a) The electors may make all orders for the purchase, sale, conveyance, regulation, or use of the township's corporate property (including the direct sale or lease of single township road district property) that may be deemed conducive to the interests of its inhabitants, including the lease, for up to 10 years, or for up to 25 years if the lease is for a wireless telecommunications tower, at fair market value, of corporate property for which no use or need during the lease period is anticipated at the time of leasing. The electors may delegate the power to purchase, sell, or lease property to the township board for a period of up to 12 months and the township board may specify properties being considered. The property may be leased to another governmental body, however, or to a not-for-profit corporation that has contracted to construct or fund the construction of a structure or improvement upon the real estate owned by the township and that has contracted with the township to allow the township to use at least a portion of the structure or improvement to be constructed upon the real estate leased and not otherwise used by the township, for any term not exceeding 50 years and for any consideration. In the case of a not-for-profit corporation, the township shall hold a public hearing on the proposed lease. The township clerk shall give notice of the hearing by publication in a newspaper published in the township, or in a newspaper published in the county and having general circulation in the township if no newspaper is published in the township, and by posting notices in at least 5 public places at least 15 days before the public hearing.

(b) If a new tax is to be levied or an existing tax rate is to be increased above the statutory limits for the purchase of the property, however, no action otherwise authorized in subsection (a) shall be taken unless a petition signed by at least 10% of the registered voters residing in the township is presented to the township clerk. If a petition is presented to the township clerk, the clerk shall order a referendum on the proposition. The referendum shall be held at the next annual or special township meeting or at an election in accordance with the general election law. If the referendum is ordered to be held at the township meeting, the township clerk shall give notice that at the next annual or special township meeting the proposition shall be voted upon. The notice shall set forth the proposition and shall be given by publication in a newspaper published in the township. If there is no newspaper published in the township, the notice shall be published in a

newspaper published in the county and having general circulation in the township. Notice also shall be given by posting notices in at least 5 public places at least 15 days before the township meeting. If the referendum is ordered to be held at an election, the township clerk shall certify that proposition to the proper election officials, who shall submit the proposition at an election. The proposition shall be submitted in accordance with the general election law.

(c) If the leased property is utilized in part for private use and in part for public use, those portions of the improvements devoted to private use are fully taxable. The land is exempt from taxation to the extent that the uses on the land are public and taxable to the extent that the uses are private.

(d) Before the township makes a lease or sale of township or road district real property, the electors shall either delegate the power to the township board to purchase, sell, or lease properties for a period of up to 12 months as provided in subsection (a) or adopt a resolution stating the intent to lease or sell the real property, describing the property in full, and stating the terms and conditions the electors deem necessary and desirable for the lease or sale. A resolution stating the intent to sell real property shall also contain pertinent information concerning the size, use, and zoning of the property. The value of real property shall be determined by a State licensed real estate appraiser. The appraisal shall be available for public inspection. The resolution may direct the sale to be conducted by the staff of the township or by listing with local licensed real estate agencies (in which case the terms of the agent's compensation shall be included in the resolution).

Anytime during the year, the township *or township road district may* lease or *sell personal property* by a vote of the township board *or request of the township highway commissioner*.

The clerk shall thereafter publish the resolution or personal property sale notice once in a newspaper published in the township or, if no newspaper is published in the township, in a newspaper generally circulated in the township. If no newspaper is generally circulated in the township, the clerk shall post the resolution or personal property sale notice in 5 of the most public places in the township. In addition to the foregoing publication requirements, the clerk shall post the resolution or personal property sale notice at the office of the township (if township property is involved) or at the office of the road district (if road district property is involved). The following information shall be published or posted with the resolution or personal property sale notice: (i) the date by which all bids must be received by the township or road district, which shall not be less than 30 days after the date of publication or posting, and (ii) the place, time, and date at which bids shall be opened, which shall be at a regular meeting of the township board.

All bids shall be opened by the clerk (or someone duly appointed to act for the clerk) at the regular meeting of the township board described in the notice. With respect to township personal property, the township board may accept the high

bid or any other bid determined to be in the best interests of the township by a majority vote of the board. With respect to township real property, the township board may accept the high bid or any other bid determined to be in the best interests of the township by a vote of three-fourths of the township board then holding office, but in no event at a price less than 80% of the appraised value. With respect to road district property, the highway commissioner may accept the high bid or any other bid determined to be in the best interests of the road district. In each case, the township board or commissioner may reject any and all bids. This notice and competitive bidding procedure shall not be followed when property is leased to another governmental body. *The notice and competitive bidding procedure shall not be followed when real or personal property is declared surplus by the township board or the highway commissioner and sold to another governmental body.*

The township board or the highway commissioner may authorize the sale of personal property by public auction conducted by an auctioneer licensed under the Auction License Act or through an approved Internet auction service.

(e) A trade-in of machinery or equipment on new or different machinery or equipment does not constitute the sale of township or road district property. 60 ILCS 1/30-50 (2018) (emphasis added).

As shown above, section 30-50 states that “[a]nytime during the year, ...[the] township road district may ... sell personal property... [at the] request of the township highway commissioner.” This portion of the text was added by P.A. 97-337, effective August 12, 2011. 2011 Ill. Legis. Serv. P.A. 97-337 (H.B. 3152) (WEST). Thus, while Plaintiffs’ assertion may have had some merit at some point in history, it ceased to do so over almost a decade ago.

The final nail in the coffin to Plaintiffs’ assertion is a later amendment to section 30-50, adopted in 2013, which changed the section so that it now reads: “The notice and competitive bidding procedure shall not be followed when real or personal property is declared surplus by the township board or the highway commissioner and sold to another governmental body.” 60 ILCS 1/30-50 (2018); 2013 Ill. Legis. Serv. P.A. 98-549 (S.B. 2268) (WEST). Prior to the amendment the declaration of surplus was to be made by the electors. *Id.*; 60 ILCS 1/30-50 (2008). The

authority to declare property of a highway district to be surplus was thus taken out of the hands of the electors and put in the hands of the highway commissioner.

It is no answer to the argument that the township board is also given the ability to declare property surplus. Section 30-50 governs not only property that is owned by a highway district but also covers property that is owned by a Township. Thus, properly read, section 30-50 gives the right to either the highway commissioner or the township board, whichever is the owner of the property, the right to declare property surplus dependent on the owner of the property, i.e. either a township or a highway district. To determine otherwise would lead to the absurd result that one governmental body was able to sell off the property of another governmental body. Such a determination would allow the highway commissioner to sell off the property of the Township.

In sum, under section 30-50, the Road District may sell personal property at any time in the year at the request of the highway commissioner, and when personal property is declared surplus by the highway commissioner and sold to another governmental body, the bidding procedures otherwise required by 30-50 need not be followed. Thus, Plaintiffs' premise that the sale of personal property of the District requires approval of the township electors is wrong. Accordingly, for the above reasons and those stated by the Road District in its motion for summary judgment, summary judgment should be granted in favor of Defendants and against Plaintiffs. Alternatively, partial summary judgment should be granted with the Court entering an order declaring that the Road Commissioner has the authority to sell personal property of the Road District which he deems to be surplus to another governmental entity on terms that he believes to be appropriate.

MAHONEY, SILVERMAN & CROSS, LLC

By: /s/ James A. Murphy

One of the Attorneys for

Defendant

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