No. 128731

IN THE
SUPREME COURT OF ILLINOIS

SHAWNEE COMMUNITY UNIT SCHOOL DISTRICT No. 84,	)	On appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-19-0266,
Petitioner-Appellant,	)	
and	)	
JACKSON COUNTY BOARD OF REVIEW,	)	
Petitioner,	)	
v.	)	
ILLINOIS PROPERTY TAX APPEAL BOARD, and GRAND TOWER ENERGY CENTER, LLC,	)	There on petition for direct administrative review from the Illinois Property Tax Appeal Board, PTAB Nos. 14-03445.001-I-3 through 14-03445.009-I-3 and 15-00452.001-I-3 through 15-00452.010-I-3.
Respondents-Appellees.	)	

BRIEF OF RESPONDENT-APPELLEE ILLINOIS PROPERTY TAX APPEAL BOARD

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3312

CHRISTOPHER M.R. TURNER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2106 (office)
(773) 590-7121 (cell)
CivilAppeals@ilag.gov (primary)
Christopher.Turner@ilag.gov (secondary)

Attorneys for Respondent-Appellee
Illinois Property Tax Appeal Board

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CYNTHIA A. GRANT
SUPREME COURT CLERK

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NATURE OF THE CASE

This is a direct administrative review action involving the 2014 and 2015 tax assessments by the Jackson County Board of Review ("County") of the Grand Tower Power Plant ("Grand Tower") in Jackson County, Illinois. Grand Tower's owner, Grand Tower Energy Center, LLC ("Taxpayer"),[1] claimed that the assessments were excessive and sought review before the Illinois Property Tax Appeal Board ("Board") under section 16-160 of the Property Tax Code ("Code"), 35 ILCS 200/16-160 (2020). The Shawnee Community School District No. 84 ("District") intervened before the Board to oppose the appeals, including moving to dismiss each of the appeals for lack of jurisdiction. The Board denied both motions and, after an administrative hearing and briefing, reduced the annual assessments from approximately $31.5 million to approximately $3,333,000. The District and County filed a direct administrative review action, and the appellate court affirmed. The District then petitioned to this Court to review the Board's denials of its motions to dismiss the Taxpayer's administrative appeals.

[1] This brief refers to Grand Tower Energy Center, LLC, and its owner, Rockland Capital, LP, interchangeably as the Taxpayer.

ISSUES PRESENTED FOR REVIEW

1. Whether the Board correctly interpreted section 23-5 of the Code, 35 ILCS 200/23-5 (2020), to not require the Taxpayer to pay the challenged 2014 and 2015 taxes under protest as a condition to pursue its appeals before the Board.

2. Whether the Board correctly determined that the circuit court's tax delinquency judgments and later tax sales did not divest the Board of jurisdiction over the Taxpayer's then-pending administrative appeals of the unpaid 2014 and 2015 taxes.

STATEMENT OF FACTS

Grand Tower

The Taxpayer appealed to the Board from the County's 2014 and 2015 property tax assessments of its Grand Tower power station. (C6-22, 624-44).[2] Grand Tower is a natural gas combined-cycle turbine power generation facility located on the eastern bank of the Mississippi River in Jackson County, Illinois. (C542; E17). It was originally constructed in the 1920s as a coal-fired power plant. (R107; E17). In the 1950s and again in 2001, Grand Tower was converted to a combined-cycle configuration that burns natural gas as well as using steam turbines. (R76-77, 107-11; E17, 20). Grand Tower sold electricity and competed in Illinois' deregulated energy market. (R83, 90, 98, 193-94; E28-31).

The Taxpayer's appeals to the Board

The Taxpayer purchased Grand Tower in 2014 from the Ameren Corporation in a portfolio sale that included two other Illinois gas power plants. (R78-92). After offering several bids, the Taxpayer ultimately agreed to pay Ameren $168 million for all three plants. (R82, 87).

The Taxpayer appealed the County's 2014 and 2015 assessments to the Board on May 28, 2015, and February 16, 2016, respectively. (C6-22, 624-44).

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[2] This brief cites the administrative record on appeal as "C_," the report of proceedings as "R_," the record exhibits as "E_," the District's opening brief as "Dist. Br.," the Illinois Association of School Administrators' *amicus curiae* brief as "IASA Br.," and the Civic Federation's *amicus curiae* brief as "Civic Fed. Br."

In those appeals, the Taxpayer sought to reduce successive assessments of about $31,538,245 each, which were based on an appraisal submitted by the District to the County. (C14-22, 604, 624-44; E2). Prior to the Taxpayer's purchase of Grand Tower, Ameren and the District stipulated to a $33 million assessment. (E2). On each petition to appeal, the Taxpayer identified the basis for appeal as a recent appraisal, and then submitted an appraisal estimating Grand Tower's fair cash value by its expert, Kevin S. Reilly, ASA. (C7, 624-25; E10-118). The District intervened in each appeal. (C53-59, 697-714). Although separate merits briefs were filed in each administrative proceeding, the Board consolidated the appeals for purposes of the hearing and final decision. (C382, 836).

The District's motions to dismiss

On August 17, 2016, the District moved to dismiss the 2014 appeal because the Taxpayer had not paid the challenged 2014 tax assessment, even though: (1) the first and second installments were due in October and November 2015, and (2) on January 14, 2016, a circuit court found the tax delinquent and ordered the sale of the property for delinquent taxes to a third party. (C67-89, 108).[3] After the Taxpayer failed to pay, on January 14, 2016, the Jackson County treasurer applied for and obtained a delinquency judgment for the 2014 taxes and ordering the taxes be offered for sale. (C77-

[3] The County did not join either the District's motion or the District's petition for leave to appeal to this Court.

80). On January 19, 2016, the taxes were purchased for the full owed assessment by a third party. (C81-89, 109).

In its motion to dismiss, the District argued that the Code requires that property owners pay disputed property taxes under protest and file "a statutory objection either before the [Board] or in the circuit court." (C68-70; *see* C116 (arguing that it is public policy "that Taxpayers must first pay the taxes due before seeking assessment relief")). The District also claimed that the circuit court's tax delinquency judgment collaterally estopped the Taxpayer's administrative appeal, and that the court acquired exclusive jurisdiction over the 2014 tax assessment in that proceeding. (C70-72, 117-19). After the Board denied the motion, the District moved for reconsideration. (C147-49).

The Taxpayer opposed both motions, arguing that this Court has recognized that the Code and the Board's rules provide two alternative options to challenge property tax assessments — an objection in the circuit court or an appeal to the Board — and require payment of the tax under protest only to pursue a court action. (C97-101, 108-09, 156-58); 35 ILCS 200/16-160, 23-5 (2020). As to the tax sale, the Taxpayer responded that the circuit court's judgment did not collaterally estop or otherwise prevent its Board appeal because that tax delinquency proceeding did not address the correct assessment amount, the Taxpayer was never party to that proceeding, and the

Taxpayer retained the right to redeem the taxes through August 10, 2018, from the third party that purchased them. (C77-80, 99, 101-03, 109).

The Board denied the District's motions, holding that the Code does not require payment of property taxes to pursue an administrative appeal. (C124-26, 176-79). The Board construed the Code to require property owners to pay a challenged tax only as a condition to file a tax objection action in the circuit court, but not to seek relief from the Board. (C125, 177-78). It further explained that the authority relied on by the District clearly acknowledged this statutory scheme. (C177). The Board found that the District's other arguments also had no merit. (C125-26).

In its merits brief in the administrative proceedings relating to the 2015 assessment, the District again moved to dismiss the appeal for lack of jurisdiction due to the unpaid the 2015 taxes and subsequent tax sale, incorporating its prior motion to dismiss. (C750-51). The Board rejected the motion for the same reasons it had denied the District's motion to dismiss with respect to the 2014 assessment, and held that it had jurisdiction over the Taxpayer's appeals. (C604).

The hearing and evidence of Grand Tower's fair cash value

An administrative law judge conducted the administrative hearing to determine Grand Tower's fair market value over three days in May 2018. (R43-775). Opposing the District's appraisals, the Taxpayer presented testimony from two fact witnesses and testimony and reports by its appraisal

expert, Reilly, and an energy expert. (R74-139, 160-344, 656-704; E10-155). The District presented testimony from a fact and an expert witnesses, along with reports supporting its appraisals. (R345-95, 469-644; E641-1551).

The Taxpayer's appraiser, Reilly, applied each of the three traditional appraisal approaches to value Grand Tower: the sales comparison, cost, and income approaches. (R178-207; E45-118). Based on his analyses, Reilly reconciled his approaches to value Grand Tower at $20 million in 2014 and 2015. (R204-05; E90). Applying the same three approaches, the District's expert, George K. Lagassa, valued Grand Tower at $220 million in 2014 and $200 million in 2015. (R579-80).

The Board's decision

The Board held that it had jurisdiction over the appeals and, based on its review of the record evidence and testimony (C544-603), concluded that the Taxpayer proved by a preponderance of the evidence that the assessments of Grand Tower should be reduced based on a market value of $20 million as of January 1, 2014, and January 1, 2015 (C604-19). The Board found that Reilly's appraisals of $20 million for each year constituted the best evidence of Grand Tower's fair market value as of the assessment dates. (C604-05, 617-18). It reviewed and weighed the competing appraisals submitted by Reilly and Lagassa, including their analyses under each of the three traditional valuation approaches. (C605-18). The Board found that Reilly's analyses under each approach were better supported by the record and more credible

than Lagassa's (C609, 611, 617), and that Reilly's final reconciliation of those approaches, which gave greater weight to the income approach, was better supported by the record (C611, 617-18).

The Board determined that the discounted cash flow under the income approach was the best method to value Grand Tower, and found that Reilly's discounted cash flow analysis was better supported and more credible than Lagassa's discounted cash flow analysis. (C611-18). The Board further found that Lagassa committed multiple errors that undermined his discounted cash flow analysis, including improperly inflating ancillary service income and overstating the property's reversionary value. (C616-17). The Board also determined that Reilly's cost approach and sales comparison approach were more credible than Lagassa's corresponding approaches. (C608-11).

The Board concluded that the Taxpayer proved by a preponderance of the evidence that the County overvalued Grand Tower in imposing the 2014 and 2015 assessments, and that Grand Tower had a market value of $20 million as of the assessment dates. (C619). It ordered the County's 2014 and 2015 assessments reduced. (*Id.*).

The appellate court opinion

After the District and County filed this direct administrative review action, the appellate court affirmed the Board's decision in its entirety. *Shawnee Cmty. Unit Sch. Dist. No. 84 v. Ill. Prop. Tax Appeal Bd.*, 2022 IL App (5th) 190266, ¶¶ 104-05. With respect to the issues raised in the District's

appeal to this Court, the appellate court rejected the District's arguments that the Board erred by denying its motions to dismiss the administrative appeals. *Id*., ¶¶ 37-69. First, the court held, the Board properly interpreted the Code to find that payment of the contested property tax is not a prerequisite to pursue an administrative appeal before the Board. *Id*., ¶¶ 44-58. Reviewing the provisions governing Board appeals and judicial tax objections, *id*., ¶¶ 44-51, the court held that "the plain statutory language" of those provisions demonstrates that the payment requirement "in section 23-5 only applies to tax objections filed in the circuit court," *id.*, ¶ 51. The court explained that the sections setting forth the procedural requirements for administrative appeals recognize that Board decisions may alter assessments that have not been paid, and do not require the dismissal of administrative appeals for failing to pay the contested tax. *Id*., ¶¶ 46-48, 51-52; *see* 35 ILCS 200/16-160, 16-185 (2020). It found that section 23-5, which imposes the protest-payment requirement, does not refer to appeals with the Board, but provides that tax is deemed paid under protest if paid under that section and tax objection complaint is filed in court. *Shawnee*, 2022 IL App (5th) 190266, ¶ 51; *see* 35 ILCS 200/23-5, 23-10 (2020). Section 16-160, in contrast, precludes a taxpayer who pursues an appeal with the Board from filing an objection under section 23-5. *Shawnee*, 2022 IL App (5th) 190266, ¶ 51; 35 ILCS 200/16-160 (2020).

In addition, the appellate court noted that the protest-payment requirement is included in article 23, governing circuit court tax objection

proceedings, and that reading section 23-5 to apply to Board appeals would not make sense given that section 16-160 requires taxpayers to file such appeals before any property tax is usually due. *Shawnee*, 2022 IL App (5th) 190266, ¶¶ 52-53. And the court rejected the District's characterization of a footnote in *Madison Two Assocs. v. Pappas*, 227 Ill. 2d 474 (2008), as suggesting that the protest-payment requirement applies to Board appeals, as well as the District's claim that the Board's reading of the Code violates Illinois public policy. *Id.*, ¶¶ 54-57.

The appellate court then rejected the District's contentions that the judicial tax-sale proceedings deprived the Board of jurisdiction over the Taxpayer's appeals. *Id.*, ¶¶ 59-68. The court explained that section 16-185 of the Code contemplates that simultaneous proceedings regarding the same property may proceed before the Board to challenge the assessment and in the circuit court to enforce the contested tax. *Id.*, ¶ 66. Likewise, section 16-160 precludes the Board and circuit court from both resolving the contested tax assessment. *Id.*, ¶ 68. Rather, the circuit court retains jurisdiction over the property to issue the necessary orders to effectuate the tax sale and issuance of deeds. *Id.*, ¶ 65. Here, because the Taxpayer pursued its challenges to the assessments of Grand Tower in its appeals before the Board, the assessments' correctness was not before the circuit court and nothing in the court's order or record approved the assessment valuations. *Id.*, ¶¶ 67-68.

Finally, the appellate court rejected the District's remaining challenges to the Board's decision. *Id*., ¶¶ 70-102. The court ruled that the Board did not err by allowing testimony regarding Grand Tower's portfolio sale, or testimony regarding appraisals used in that sale. *Id*., ¶¶ 73-79, 86-89. In reaching these rulings, the court found that, contrary to the District's characterization of the administrative decision, the Board placed "little weight" on the portfolio sale and price, and did not rely on testimony regarding the portfolio sales to value Grand Tower at all, but instead relied on Reilly's appraisal to determine Grand Tower's value. *Id*., ¶¶ 80, 84, 85, 90. The court also rejected the District's contention that Reilly's appraisal utilized an improper valuation methodology. *Id*., ¶¶ 92-98. The court then found that the Board carefully considered the record in its 83-page, "detailed review" of the competing appraisals, and concluded that the Board did not err in finding that Reilly's appraisal of Grand Tower was more credible and supported by the evidence than Lagassa's appraisal. *Id*., ¶¶ 100-102.

The District petitioned for leave to appeal solely regarding whether (1) the appellate court erred in holding that section 23-5 does not require timely payment of taxes to pursue an appeal before the Board, and (2) the Board retained jurisdiction over the appeals following the circuit court tax sales.

ARGUMENT

I. This court reviews the Board's final administrative decision *de novo*.

Review of the Board's final administrative decision is governed by the Administrative Review Law, 735 ILCS 5/3-101 *et seq*. (2020). Under that statute, questions of law are reviewed *de novo*, 735 ILCS 5/3-110 (2020), such as the question whether the Board had statutory authority, often referred to as jurisdiction, to review the Taxpayer's appeals, *see Cassens Transp. Co. v. Ill. Indus. Comm'n*, 218 Ill. 2d 519, 524–25 (2006). The interpretation of the Code is a legal question reviewed *de novo*. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 155130, ¶ 16. Though not bound by its interpretation, reviewing courts "will give substantial weight to an interpretation of an ambiguous statute by the agency charged" with the statute's administration and enforcement, as the Board is charged with administering the Code. *Citibank, N.A. v. Ill. Dep't of Revenue*, 2017 IL 121634, ¶ 39; *see Geneva Comm. Unit Sch. Dist. No. 304 v. Prop. Tax Appeal Bd.*, 296 Ill. App. 3d 630, 633-35 (2d Dist. 1998) (deferring to Board's interpretation of Code).

II. The Board properly denied the District's motions to dismiss the administrative appeals.

The District contends that the Board lost jurisdiction over or was otherwise required to dismiss the Taxpayer's administrative appeals because the Taxpayer failed to pay the challenged property taxes under protest in conformity with section 23-5 and because it made no payment prior to the

related tax delinquency judgments and tax sales. Dist. Br. at 9-10. Consistent with this Court's precedent, however, the appellate court and the Board correctly interpreted the Code's plain terms to provide two alternative avenues to challenge a property tax assessment — an administrative appeal to the Board or a tax objection action filed in circuit court — and to require a protest payment of the challenged tax only as a condition to file an objection in court. *Shawnee*, 2022 IL App (5th) 190266, ¶¶ 44-58; (C121-22, 176-78); *see Madison Two Assocs. v. Pappas*, 227 Ill. 2d 474, 477 (2008). Consequently, the District's policy arguments cannot be used to read such a requirement into the Code to pursue Board appeals. And even if the Code were ambiguous, this Court should defer to the Board's reasonable reading of the statute that it is charged to administer, a reading that is consistent with the legislative purpose of the Board and legislative history of section 23-5. Furthermore, both the appellate court and the Board correctly held that the circuit court's tax delinquency judgments and tax sales did not preempt or otherwise divest the Board of authority to hear the Taxpayer's pending appeals. *Shawnee*, 2022 IL App (5th) 190266, ¶¶ 59-68.

The District's challenges turn on its proposed reading of the Code. The primary rule of statutory construction is to ascertain and give effect to the legislature's intent, based on the plain and ordinary meaning of the statute's terms. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 307 (2010). To determine the legislature's intent, the court must view the

statute's provisions as a whole, construing words and phrases not in isolation, but in light of other relevant provisions. *Stern v. Wheaton-Warrenville Cmty. Unit Sch. Dist. 200*, 233 Ill. 2d 396, 410 (2009). Where the legislature uses certain language in one instance but different language in another, the court must presume it intended different meanings and results. *Chi. Tchrs. Union, Loc. No. 1 v. Bd. of Educ. of the City of Chi.*, 2012 IL 112566, ¶ 24. And the court may not rewrite a statute by reading into it exceptions, limitations, or conditions not expressed by the legislature. *In re Mary Ann P.*, 202 Ill. 2d 393, 409 (2002).

A. The Code's plain terms do not require payment of a challenged property tax as a condition to pursue an appeal before the Board.

The Code "is a comprehensive statute regulating the assessment and collection of taxes." *Millennium Park*, 241 Ill. 2d at 295. It creates an administrative process by which persons may challenge property tax assessments through local boards of review. *See* 35 ILCS 200/16-5 through 16-155 (2020). The Code also provides a property owner with two alternative "options for challenging the board of review's decision: (1) it could [] file[] an appeal with the [Board]," 35 ILCS 200/16-160 (2020), "or (2) it could [] pa[y] the real estate tax due on the property [35 ILCS 200/23-5], and then file[] a 'tax objection complaint' with the circuit court . . . [35 ILCS 200/23-10]." *Madison Two Assocs.*, 227 Ill. 2d at 477. Thus, by its plain terms, the Code

requires a protest payment only as a condition to file a tax objection complaint in the circuit court.

In particular, article 23 of the Code governs the "Procedures and Adjudication for Tax Objections" in circuit court. *See* 35 ILCS 200/23 *et seq*. (2020). It provides the procedures, requirements, and standards applied to such court actions. *See* 35 ILCS 200/23-5 through 23-45 (2020). Its first section requires any person who "desires to object" through a court action to "pay all of the tax due within 60 days from the first penalty date of the final installment of taxes for that year." 35 ILCS 200/23-5 (2020). If that person timely pays the tax and files "a tax objection complaint . . . in compliance with Section 23-10," then the tax is deemed paid under protest. *Id*. Section 23-10, in turn, states that a "person paying the taxes due as provided in Section 23-5 may file a tax objection complaint under Section 23-15." 35 ILCS 200/23-10 (2020). It requires the litigant to "wait until 'after the first penalty date of the final installment of taxes for the year in question' before filing the complaint" in circuit court. *Millennium Park*, 241 Ill. 2d at 308. Thus, article 23 requires property owners to first pay the challenged tax in protest when they seek to bring a tax objection action in *court*.

In contrast, article 16 of the Code describes the administrative process for property owners to challenge assessments on their property before local boards of review and the Board. 35 ILCS 200/16 *et seq*. (2020). Division 4 of that article, governing the "Property Tax Appeal Board," provides the option

to appeal a local board decision to the Board *instead of* filing a tax objection complaint in court, and section 16-160 sets forth the process for that administrative appeal. *See* 35 ILCS 200/16-160 through 16-195 (2020). As section 16-160 makes clear, these taxpayer remedies are mutually exclusive. 35 ILCS 200/16-160 (2020). Unlike section 23-10, section 16-160 does not mention paying the challenged tax to initiate or pursue an appeal with the Board. *See id*. To the contrary, it requires owners to appeal a local board's decision within 30 days, regardless of whether any property tax payment is due. *Id*.[4] And where legislature intended to impose other conditions on the Board's jurisdiction, it explicitly said so. *See id*. (providing that the Board "shall have no jurisdiction to hear any subsequent appeal" if the taxpayer's local board appeal was dismissed for failing to appear at the hearing). Moreover, in clarifying that an owner's remedies before the Board and the circuit court are mutually exclusive, section 16-160 specifies that the appellant is "precluded from filing objections based upon valuation, as may otherwise be permitted by Sections 21-175 *and 23-5*." *Id*. (emphasis added). Thus, section 16-160 explicitly prohibits owners appealing before the Board from contesting their property tax through the procedures under section 23-5, and refers to section 23-5 only to identify the alternative, mutually exclusive procedure to

[4] Here, for example, the final installment of Grand Tower's 2014 tax was not due until November 16, 2015, more than five months after the Taxpayer's appeal to the Board was due in early June 2015. (C108); 35 ILCS 200/16-160 (2020).

challenge property taxes in circuit court. Indeed, no provision in Division 4 refers to protest payments, let alone requires such payments to pursue an administrative appeal before the Board. *See* 35 ILCS 200/16-160 through 16-195 (2020).

Thus, in contrast to court actions for tax objections, the legislature did not require appellants to pay the challenged tax as a condition to pursue an administrative remedy with the Board. *See Chi. Tchrs. Union*, 2012 IL 112566, ¶ 24 (by using certain words in one instance and different words in another, legislature intended different meanings and results).

B. None of the District's arguments show that section 23-5's protest-payment requirement applies to Board appeals.

The District first contends that the appellate court erred by focusing on whether section 23-5 requires protest payments *before* taxpayers initiate their tax challenge. Dist. Br. at 10-12. Contrary to the District's characterization of the opinion, however, the appellate court primarily found that "[a] plain reading of" section 23-5, in conjunction with the terms of sections 23-10, 23-15, 23-20, 16-160 and 16-185, "demonstrates that section 23-5 does not apply to appeals filed with the [Board]." *Shawnee*, 2022 IL App (5th) 190266, ¶ 51; *see id*., ¶¶ 46-52. Only after reaching that conclusion did the appellate court note (as an "additional reason[]" for rejecting the District's reading) that section 23-5 requires the protest payment *after* the challenged tax becomes due, which is generally long after the deadline to file a Board appeal. *Id*., ¶ 53. Thus, the appellate court recognized that it "would not make sense" to apply section 23-

5's protest-payment requirement to already pending Board appeals. *Id.*; *see Chatham Foot Specialists, P.C. v. Health Care Serv. Corp.*, 216 Ill. 2d 366, 382 (2005) (courts construing statutes should presume legislature did not intend absurd, inconvenient, or unjust results). But the appellate court's reading of section 23-5 and the related Code provisions hardly depends on the contradiction between the District's reading of the protest-payment requirement and the timing of Board appeals.

Next, the District proposes a strained interpretation of the first sentence of section 23-5 that ignores the section's remaining provisions, the other sections in article 23, and the article 16 sections governing Board appeals. Focusing narrowly on the word "any," the District contends that section 23-5 applies to Board appeals because it requires "any person" who "desires to object to" to a property tax "for any reason" to pay that tax within 60 days of the due date. Dist. Br. at 19-20, 26. On the contrary, section 25-3 uses the word "any" to establish that its protest-payment requirement applies to all entities filing tax objections in circuit court, regardless of the reason for the challenge (unless based on a contention that "the property is exempt"). 35 ILCS 200/23-5 (2020). Because section 23-5 neither refers to the Board nor otherwise suggests that the protest-payment requirement applies to tax challenges raised outside of judicial proceedings, the section's use of the word "any" cannot bear the weight the District places on it.

Characterizing Board proceedings as "objections" and court tax proceedings as "appeals," the District similarly argues that section 23-5 does not distinguish between court and Board "objections." Doc. 20. Like section 23-5, however, the other provisions of article 23 consistently refer to a tax challenge pursued in circuit court as an "objection." *See* 35 ILCS 200/23-5, 23-10, 23-15, 23-30, 23-35, 23-45 (2020). In contrast, Division 4 of article 16 repeatedly refers to a tax challenge before the Board as an "appeal." 35 ILCS 200/16-160 (2020) (party raising appeal is "called the appellant"); *see* 35 ILCS 200/16-160, 16-165, 16-170, 16-180, 16-185, 16-190, 16-191 (2020). Division 4 uses the term "objection" only twice: once when requiring the "appellant" to "file a petition" setting forth the bases for their "objection," and then when referring to section 16-160's prohibition against "filing objections" in circuit court under sections 21-175 and 23-5. 35 ILCS 200/16-160 (2020). Thus, section 23-5's application of the protest-payment requirement to "any person who desires to object" to their property taxes refers to owners who intend to file tax judicial objection complaints under article 23, not to appellants who already filed theirs appeal with the Board. *See Chi. Tchrs. Union*, 2012 IL 112566, ¶ 24 (where the legislature uses certain words in one instance and different words in another, different meanings were intended).

When properly construed in conjunction with the Code's other relevant provisions, the protest-payment requirement clearly does not apply to Board appeals. Instead, section 23-5 clarifies that taxes paid under this provision

combined with a tax objection complaint filed under section 23-10 are "deemed paid under protest." 35 ILCS 200/23-5 (2020). As the District acknowledges, "[s]ection 23-10 explicitly applies to objection filing procedures at the circuit court." Dist. Br. at 20. Section 23-10, in turn, allows the filing of a tax objection complaint in circuit court only by "the person paying the taxes due as provided in [s]ection 23-5." 35 ILCS 200/23-10 (2020). Section 16-160, though, refers to section 23-5 only to identify the alternative, mutually exclusive procedure to object to property taxes in circuit court. 35 ILCS 200/16-160 (2020). Thus, the plain terms of sections 23-5, 23-10, and 16-160 make clear that a "[p]ayment under protest," the subject of section 23-5, is required only for tax objection complaints filed in circuit court, not Board appeals. 35 ILCS 200/23-5, 23-10 (2020).

The District also disputes that article 23 governs judicial proceedings only, arguing that "[s]ome portions" apply to Board appeals. Dist. Br. at 20-21. But every section in article 23 explicitly addresses the procedures for filing and litigating tax objections in circuit court. *See* 35 ILCS 200/23-5 (protest payments for filing tax objection complaints), 23-10 (tax objection complaints), 23-15 (court procedures and hearings for tax objections), 23-25 (limiting court tax objections based on exemptions), 23-30 (court settlement conferences), 23-35 (limiting court tax objections based on budget and appropriation ordinances), 23-40 (errors "[i]n all judicial proceedings concerning the levying

and collection of taxes"), 23-45 (court dismissal of tax objections after 10 years) (2020).

Indeed, the *only* provision in article 23 that refers to the Board is section 23-20, which addresses local tax collectors' management of tax revenues and the calculation of any interest due on tax refund awards. 35 ILCS 200/23-20 (2020). But nothing in section 23-20 applies prior to a decision (by either the circuit court or the Board) to award a tax refund, let alone suggests that Board appellants are subject to section 23-5's protest-payment requirement. Moreover, while the District points to the first sentence of section 23-20, Dist. Br. at 21, that sentence does no more than direct tax collectors (not the Board or courts) not to delay the distribution of revenues to taxing districts due to protest payments, 35 ILCS 200/23-20 (2020); it does not refer to either the Board or the procedures for Board appeals, *see id*.

The District also contends that the subsequent sentences in section 23-20 authorize the Board to award refunds to successful appellants. Dist. Br. at 21. But section 16-185 (governing Board decisions), not section 23-20, authorizes the Board to alter tax assessments based on its decisions, and to order that any extended, unpaid taxes "be abated," or "if already paid . . . be refunded with interest as provided in Section 23-20." 35 ILCS 200/16-185 (2020). For its part, section 23-20 provides: (1) that tax collectors must pay any tax refunds awarded by courts or the Board, "and interest thereon," first from any remaining monies in the taxing entity's Protest Fund and then from

the next collected taxes; and (2) the method to calculate interest on such refunds. 35 ILCS 200/23-20 (2020).[5] Thus, section 16-185 authorizes the Board to award refunds, and refers to section 23-20 only to incorporate its methods for financing and calculating interest. Indeed, rather than supporting the District's argument, section 23-20 demonstrates that when the legislature intended for a provision in article 23 to apply to the Board appeals, it said so. *See Chi. Tchrs. Union*, 2012 IL 112566, ¶ 24 (where the legislature uses certain words in one instance and different words in another, different meanings were intended).

Finally, the District argues that section 16-185 demonstrates the legislature's intent that section 23-5's protest-payment requirement would apply to Board appeals, because section 16-185 states that "[t]he extension" of the contested tax "shall not be delayed" by a Board appeal. Dist. Br. at 22-23 (quoting section 35 ILCS 200/16-185 (2020)). The District is incorrect. Section 16-185 establishes that the pendency of a Board appeal does not operate to stay enforcement of the Code's provisions regarding tax collection and enforcement. *See, e.g.*, 35 ILCS 200/21-15, 21-75, 21-175, 21-345, 21-350, 21-355 (2020). The assertion by the District's *amicus* that the Board and the Department of Revenue have "unmistakably stated payment of taxes is a

[5] The reference to Protest Funds in section 23-20 was rendered obsolete after 1997, when the legislature amended the Code to prohibit subsequent deposits of any taxes into Protest Funds. *See* 35 ILCS 200/20-35 (2020); P.A. 90-566, § 5 (eff. Dec. 12, 1997); *see generally* Civic Fed. Br. at 13-17 (discussing legislative history).

prerequisite" to Board appeals on their websites, *see* IASA Br. at 9-10, is incorrect for the same reason: The quoted statements merely reiterate that, under section 16-185, the pendency of a Board appeal will not stay a property owner's obligation to pay the contested taxes. *See id*. (quoting Board website that "[i]f you choose to appeal your board of review's decision, the taxes still come due. . . . Therefore, pay them on time").

Other Code provisions quoted by the District similarly establish nothing more than that pursuing a tax challenge under the cited section will not stay the property owners' obligation to pay the contested taxes. *See* Dist. Br. at 23-24; 35 ILCS 200/8-35, 8-40, 15-25 (2020) (administrative challenges to Department of Revenue decisions regarding tax exemptions and other issues); *id*., 200/16-70, 16-130 (2020) (administrative challenges to local boards of review tax-exemption decisions). None purports to incorporate section 23-5's protest-payment requirement as a condition to pursue those challenges.

Thus, none of the District's arguments concerning the Code's language show that section 23-5 applies to Board appeals. Instead, the plain language of section 23-5, properly construed in light of the Code's other relevant provisions, does not require a protest payment to pursue Board appeals.

C. Consistent with the plain terms of the Code, Illinois courts have long recognized that section 23-5's protest-payment requirement does not apply to Board appeals.

When addressing the legislative scheme for challenging property tax assessments by local boards of review, this Court has consistently recognized

that taxpayers may either: (1) file an appeal with the Board; or (2) pay the property tax due and file a tax objection complaint in circuit court. *Madison Two Assocs.*, 227 Ill. 2d at 477, 481; *see Schlenz v. Castle*, 115 Ill. 2d 135, 142 (1986) (distinguishing "two mutually exclusive [] routes" and explaining that, pursuant to the judicial route, "the taxpayer can pay his taxes under protest and file objections to the collector's application for judgment in the circuit court"). Likewise, appellate court decisions state that the "taxpayer may either appeal to [the Board] or pay the taxes under protest and file objections to the collector's application for judgment in the circuit court." *Villa Ret. Apartments, Inc. v. Prop. Tax Appeal Bd.*, 302 Ill. App. 3d 745, 752, 755 (4th Dist. 1999*); accord Cotter & Co. v. Prop. Tax Appeal Bd.*, 277 Ill. App. 3d 538, 544 (2d Dist. 1995); *Bunge Corp. v. Lewis*, 146 Ill. App. 3d 1094, 1098 (5th Dist. 1986); *Beverly Bank v. Bd. of Rev. of Will Cnty*., 117 Ill. App. 3d 656 (3d Dist. 1983).

Contrary to the District's characterization of a footnote in *Madison Two*, Dist. Br. at 11-12, 18, this Court has not suggested that property owners must pay the challenged tax to pursue an appeal with the Board. On the contrary, the footnote states: "Unlike the tax objection alternative, paying the property tax is not a prerequisite for seeking relief from [the Board]." *Madison Two Assocs.*, 227 Ill. 2d at 477 n.2. And although the footnote adds, citing section 16-185, that filing an appeal with the Board "does not [] stay the obligation to pay the contested tax," *id.*, this merely confirms, as explained,

that the pendency of a Board appeal does not stay enforcement of the Code's provisions regarding usual tax collection and enforcement, *see supra* pp. 22-23. In other words, if Board appellants fail to timely pay their taxes, they will be subject to interest, penalties, and costs; a tax lien on the property for those charges; and tax delinquency judgment and sale of the property tax. 35 ILCS 200/21-15, 21-75, 21-175 (2020). In addition, if they fail to satisfy the lien and redeem their property within the statutory period, they will lose title to their property. 35 ILCS 200/21-345, 21-350, 21-355 (2020).

The District's cited authority does not suggest otherwise. *See* Dist. Br at 12-18. Contrary to the District's characterization, *Millennium Park* did not "uphold" the applicability of section 23-5's protest-payment requirement to Board appeals. *See id*. at 17. Rather, that decision held that property owners may pursue a declaratory judgment action challenging their property taxes under an exception (for taxes "unauthorized by law") to the usual jurisdictional limitation, which requires that there be no adequate remedy at law, on tax actions seeking equitable relief. *Millennium Park*, 241 Ill. 2d at 295-309. When explaining that jurisdictional limitation, this Court noted that "the adequate remedy at law is to pay the taxes under protest and file a statutory objection." *Id*. at 296. The "statutory objection" refers to "filing a tax objection complaint in circuit court specifying 'any objections . . . to the taxes in question,'" *id.* (quoting 35 ILCS 200/23-15 (2008)), and not to "the option of . . . appealing to the [Board]," *id*. Again, while article 23 requires

owners to wait until after the tax becomes due before they can file a tax objection complaint under section 23-15, *id*. at 308, article 16 requires owners to file their appeals with the Board before section 23-5's payment deadline, *id.* at 296. Board appellants thus cannot pay a protested tax and then "file" a Board appeal. *Id*. at 296; *see* Dist. Br. at 10-11 (Board appeals usually must be filed months before taxes are due). Thus, *Millennium Park* never suggested, let alone held, that section 23-5 applies to Board appeals.

Nor do any of the District's other cited decisions state that section 23-5's protest-payment requirement applies to Board appeals. Most address whether the protest-payment requirement constitutes an adequate legal remedy precluding property owners' judicial actions for equitable relief. *See, e.g.*, *N. Pier Terminal Co. v. Tully*, 62 Ill. 2d 540, 543-44, 548-49 (1976); *Clarendon Assocs. v. Korzen*, 56 Ill. 2d 101, 103-04, 107-08 (1973); *Mathers v. Cnty. of Mason*, 232 Ill. App. 3d 1095, 1100 (4th Dist. 1992). Only *Mathers* mentions the Board, and it does so in the context of recognizing that property owners have two options for challenging a local board's tax assessment: (1) appeal to the Board and, if they lose, pursue an administrative review action; or (2) have the "taxes paid under protest, and [file] an objection . . . in the circuit court in the proceedings involving the next application for judgment." 232 Ill. App. 3d at 1099.

To the extent that the other decisions cited by the District reference the protest-payment requirement, they do so in the context of judicial tax

objection proceedings, not Board appeals. *See, e.g.*, *First Nat. Bank & Tr. Co. of Evanston v. Rosewell*, 93 Ill. 2d 388, 396 (1982) (affirming dismissal of taxpayer action for equitable relief "[i]n view of the judicial review afforded the taxpayer in the tax-objection remedy"); *Jojan Corp. v. Kusper*, 173 Ill. App. 3d 622, 625-26 (1st Dist. 1987) ("[a]fter the party has paid under protest, if the party is entitled to a refund, the court shall" direct the return of money). For example, two describe the "usual vehicle through which judicial relief" is sought as the statutory remedy "for paying taxes under protest and filing objections to the *application for judgment*." *Clarendon*, 56 Ill. 2d at 104 (emphasis added). The "application for judgment" refers to the circuit court tax delinquency proceedings that, prior to 1995, constituted the Code's sole procedure for property owners to challenge their property taxes. *See* Ill. Rev. Stat. 1973, ch. 120, ¶¶ 675, 716; *see also N. Pier*, 62 Ill. 2d at 546 (describing ability to challenge a tax assessment by "paying the tax under protest and filing an objection to the application of judgment" as an adequate remedy at law). And the remaining decisions cited by the District long precede the Board's creation in 1967 so cannot plausibly be understood to address the question whether section 23-5's protest-payment requirement applies to Board appellants. *See, e.g.*, *Cent. Ill. Pub. Serv. Co. v. Thompson*, 1 Ill. 2d 468 (1953).

Rather than identify any case applying the protest-payment requirement to a Board appeal, the District cites these decisions to argue that the appellate court's holding violates the so-called "payment under protest

doctrine" by improperly reading "an exception" to that doctrine into the Code. Dist. Br. at 10, 12-18, 39. But neither the District's cited decisions nor any other Illinois authority recognize a "payment under protest doctrine." Instead, these decisions describe the legislative history of the protest-payment requirement for judicial tax objection actions during the economic upheaval of the Great Depression. *See People ex rel. Sweitzer v. Orrington Co.*, 360 Ill. 289, 291-93 (1935). As explained *infra* pp. 30-35, the legislative history of the Code's provisions governing the Board and the protest-payment requirement since the Board's creation confirms the legislature's intent that section 23-5 not apply to Board appeals. Thus, the District seeks to improperly read a condition on Board appellants into the Code that was neither expressed nor intended by the legislature. *See Mary Ann P.*, 202 Ill. 2d at 409 (courts should not read conditions into statutes under the guise of statutory construction).

Accordingly, legal authority has consistently recognized that the protest-payment requirement applies to judicial tax objections, not Board appeals.

D. To the extent that section 23-5 is ambiguous, the Board's interpretation is reasonable.

Because the Code's plain language demonstrates that section 23-5's protest-payment requirement does not apply to Board appeals, this Court need not consider extrinsic aids of construction, such as the reasonableness of the Board's interpretation, the drafting history of the Code or the District's policy arguments. *See Mary Ann P.*, 202 Ill. 2d at 405 (statute's unambiguous

language must be "given effect with resort to other aids of construction"). However, if this Court were to conclude that the Code is ambiguous as to whether section 23-5's protest-payment requirement applies to Board appeals, then it should defer to the Board's reasonable interpretation of the statute that it is charged to administer, which interpretation is consistent with the Code's drafting history.

1. This Court should defer to the Board's interpretation of the Code.

Where a statute is ambiguous, "courts afford considerable deference to the interpretation . . . by the agency charged with its administration." *Cnty. of DuPage v. Ill. Labor Relators Bd.*, 231 Ill. 2d 593, 608-09 (2008). This deference includes the agency's construction of provisions governing its jurisdiction. *Ill. Bell Tel. Co. v. Ill. Commerce Comm'n.*, 362 Ill. App. 3d 652, 655-56 (4th Dist. 2005). Here, the Board has never required property owners to pay a challenged tax to file or pursue a Board appeal. *See* 86 Ill. Admin. Code Part 1910; *see also Bunge*, 146 Ill. App. 3d at 1096-97 (addressing Board appeal pending months after final tax due date and tax delinquency judgment). Instead, it has reasonably construed the Code's plain terms to impose the protest-payment requirement only as a condition to file judicial tax objections. (C124-26, 176-79) (rejecting the District's application of section 23-5 to Board appeals). Thus, if the Court concludes that the Code is ambiguous with respect to whether section 23-5's protest-payment requirement applies to

Board appeals, the Court should defer to the Board's reasonable determination that it does not.

2. The Board's interpretation is consistent with the legislature's intent that Board appeals provide a less burdensome means of challenging property taxes.

The Board's construction of the Code is consistent with the legislative purpose of the Code provisions governing Board appeals. *See Gruszeczka v. Ill. Workers' Comp. Comm'n*, 2013 IL 114212, ¶ 12 (where statute is ambiguous, courts may "consider the purpose behind the law" and the legislative history). In 1967, the General Assembly created the Board to provide property owners with an alternative, informal administrative procedure for challenging their tax assessments. *See Cook Cnty. Bd. of Rev. v. Prop. Tax Appeal Bd.,* 339 Ill. App. 3d 529, 535 (1st Dist. 2002). When the legislature created the Board, it directed the Board to adopt rules to establish "an informal procedure for the determination of the correct assessment of property," which would "eliminate formal rules of pleading, practice and evidence." Ill. Rev. Stat. 1967, ch. 120, ¶ 592.2 (§ 111.2); *see* 35 ILCS 200/16-180 (2020).

At that time, property owners pursuing judicial tax objections faced a heavy burden of proving by clear and convincing evidence that the challenged tax was the result of "constructive fraud." *In re Application of Cnty. Treasurer*, 131 Ill. 2d 541, 550-51 (1989). The legislature eliminated that burden for Board appellants, directing the Board to determine the correct assessments "based upon equity and the weight of evidence." Ill. Rev. Stat.

1967, ch. 120, ¶ 592.4 (§ 111.4); *see* 35 ILCS 200/16-185 (2020). As a result, Board appellants are required to prove the correct valuation by a preponderance of the evidence. *E.g.*, *Winnebago Cnty. Bd. of Review v. Prop. Tax Appeal Bd.*, 313 Ill. App. 3d 179, 183 (2d Dist. 2000) (citing 86 Ill. Adm. Code § 1910.63(e) (eff. Jan. 1, 1990)). In contrast, even today the Code requires owners pursuing tax objections in court to rebut a presumption that the challenged tax is proper by clear and convincing evidence. 35 ILCS 200/23-15(b)(2) (2020); 35 ILCS 200/23-15(b)(2) (1996).

Thus, even if the Code were ambiguous as to whether section 23-5's protest-payment requirement applies to Board appeals, the Court should also defer to the Board's reasonable interpretation that it does not because it is consistent with the legislature's intent that Board appeals provide a less formal and burdensome administrative process for property owners to challenge tax assessments.

3. The Board's interpretation is consistent with the legislative history of section 23-5.

Since the Board's inception, none of the sections governing Board appeals has imposed a requirement that property owners pay the contested tax as a condition to pursuing a Board appeal. *See* Ill. Rev. Stat. 1967, ch. 120, ¶¶ 592.1-592.5 (§§ 111.1-111.5). Section 194 (the precursor to section 23-5) imposed the protest-payment requirement on any person who "desires to object pursuant to the provisions of Section 235 of this Act." Ill. Rev. Stat. 1967, ch. 120, ¶ 675 (§ 194). Section 235, in turn, governed the procedures for

raising tax objections as a defense in circuit court proceedings for tax delinquency judgments and did not reference the Board. *See* Ill. Rev. Stat. 1967, ch. 120, ¶ 716 (stating that section 235 governs "Proceedings by court—Form of order—Cure of error or informality"). Section 235 stated that persons seeking to object to their taxes in judicial delinquency proceedings must show that they paid the taxes under protest pursuant to section 194. *Id*. And section 194 required property owners to file duplicative copies of formal protest letters with their local tax collector. Ill. Rev. Stat. 1967, ch. 120, ¶ 675.

The Code continued to impose the protest-payment requirement to judicial tax objections under section 235 until 1994, when the legislature recodified the Code, created article 23, and replaced section 194's protest-payment provision with section 23-5. P.A. 88-455 (eff. Jan. 1, 1994). At that time, section 23-5 required a tax challenger "to object under Section 21-175." 35 ILCS 200/23-5 (1994). And section 21-175, like prior section 235, governed judicial tax delinquency proceedings and the procedures for raising tax objections as a defense in such proceedings. 35 ILCS 200/21-175 (1994).

In 1995, the legislature again amended the Code, including section 23-5, to reform the judicial tax objection process. P.A. 89-126, § 5 (eff. July 11, 1995). The amendments were drafted by a task force that included the Civic Federation, which provided commentary to the amendments in a 1995 report. *See* Rep. of the Task Force on Reform of the Cook Cnty. Prop. Tax App.

Process (Chicago: The Civic Federation, Mar. 1995) ("1995 Report").[6] The 1995 Report was incorporated into the legislative history of the Code amendments. *See People ex rel. Devine v. Murphy*, 181 Ill. 2d 522, 534-35 & n.1 (1998) (relying on 1995 Report to construe section 23-15); *see* 89th Gen. Assem., S. Tr., May 23, 1995 at 111 (Sen. O'Malley).[7] The 1995 Report stated that Board appeals were "not changed in any way by the draft legislation," which was intended to reform the judicial tax objection process only. 1995 Rep. at 5. Rather, the amendments to article 23 sought to reform judicial tax objection procedures, including creating a new taxpayer-initiated judicial objection action under sections 23-10 and 23-15 that was independent of judicial tax delinquency proceedings. *Id*. at 3-6, 8-19; *see* 35 ILCS 200/23-10, 23-15 (1996).

Thus, the drafting history of section 23-5 demonstrates that the legislature added the current language not to extend section 23-5's protest-payment requirement to Board appeals but to replace the prior requirement that property owners pay the tax under protest "to object under [s]ection 21-175" with the requirement that property owners pay the tax under protest

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[6] *See* Civ. Fed. Br., App. B; also available at https://www.civicfed.org/sites/default/files/report_of_the_task_force_on_reform_of_cook_county_property_tax_appeals_process_march_1995.pdf (last visited March 7, 2023).

[7] This Court may take judicial notice of the 1995 Report. *See Scofield v. Bd. of Ed. of Cmty. Consol. Sch. Dist. No. 181*, 411 Ill. 11, 16 (1952) (courts may take judicial notice of public records in the legislative history to determine legislative intent).

when filing a tax objection complaint under section 23-10. *Compare* 35 ILCS 200/23-5 (1996) *with* 35 ILCS 200/23-5 (1994). At the same time, the legislature amended section 23-5 to eliminate the requirement that form protest letters be filed. 35 ILCS 200/23-5 (1996). Thus, contrary to the District's argument, Dist. Br. at 26-27, the final sentence of section 23-5 does not suggest that non-judicial methods of protest are subject to section 23-5's protest-payment requirement. Instead, this sentence clarifies that a tax is paid under protest by paying the tax and filing a section 23-10 complaint, "without the filing of a separate letter of protest with the county collector." 35 ILCS 200/23-5 (1996); *see also* 1995 Rep. at 9.

Also in 1995, the legislature amended sections 21-175, 23-10, and 23-15 to specify that section 23-5's protest-payment requirement applies to judicial tax proceedings governed by those sections. *See* P.A. 89-126, § 5; 35 ILCS 200/21-175, 23-10, 23-15 (1996). The legislature could have, but did not, amend article 16, governing the Board, in the same way. *See Chi. Tchrs. Union*, 2012 IL 112566, ¶ 24 (where the legislature uses certain language in one section but omits it in another section, courts presume it was intentional). Indeed, the only amendment to Division 4 of article 16 extended the Board's jurisdiction to Cook County tax assessments starting in 1996. *See* P.A. 89-126, § 5.

Had the General Assembly intended for the protest-payment requirement to apply Board appeals, it could have amended the Code to

explicitly say so. *See Mary Ann P.*, 202 Ill. 2d at 409. Instead, the legislative history reflects that, since the Board's creation, the General Assembly has repeatedly amended the Code but always drafted the protest-payment requirement to apply to judicial tax objections, not Board appeals.

E. No policy argument justifies applying section 23-5's protest-payment requirement to Board appeals.

The District otherwise argues that the appellate court's reading of the Code violates "Illinois public policy" by allowing property owners to withhold challenged taxes to "coerce settlements." Dist. Br. at 10, 12, 13-16, 27-28, 36-41. As the appellate court recognized, however, such policy arguments provide no basis to rewrite the plain language of the Code under the guise of statutory construction by reading in terms or conditions not expressed by the legislature. *Shawnee*, 2022 IL App (5th) 190266, ¶ 56; *see Roselle Police Pension Bd. v. Vill. of Roselle*, 232 Ill. 2d 546, 558 (2009) (this Court may not rewrite statutes' plain language to make them consistent with its idea of public policy). Rather, the legislature, not this Court, is best suited for evaluating competing policy interests and setting public policy. *Manago v. Cnty. of Cook*, 2017 IL 121078, ¶ 13; *see also Charles v. Seigfried*, 165 Ill. 2d 482, 493 (1995) (explaining that the legislature is best able to properly balance competing societal, economic, and policy considerations to set public policy).

Regardless, the District's arguments that the appellate court's decision creates a "loophole" that allows property owners to "forum shop" and use Board appeals to withhold tax revenues from local taxing districts, Dist. Br. at

10, 28, 38, and provides a "roadmap" for "large taxpayers" to pressure local taxing districts to accept lower assessments by withholding challenged taxes, *id*. at 36-41, are incorrect. As noted, the legislature created the Board to provide owners with an alternative to judicial tax objection actions for challenging their taxes. *See Schlenz*, 115 Ill. 2d at 142. And the legislature directed the Board to adopt informal procedures that are not subject to the "formal rules of pleading, practice and evidence" imposed in judicial proceedings. 35 ILCS 200/16-180, 16-185 (2020). In addition, contrary to the District's suggestion, most Board appellants are not "large taxpayers." *See* Dist. Br. at 36-40. For example, in 2021, the Board closed over 24,000 residential appeals.[8] Thus, the District's proposed protest-payment requirement would apply primarily to residential, not industrial or commercial, property owners.

Furthermore, as the appellate court recognized, provisions elsewhere in the Code prevent Board appellants "from withholding the payment of taxes to impede government function." *Shawnee*, 2022 IL App (5th) 190266, ¶ 57. Under the Code, Board appeals do not stay appellants' obligation to pay the

[8] Prop. Tax App. Bd. 2021 Annual Rep. at 1 (available at http://www.ptab.illinois.gov/pdf/AnnualReport/2021AnnualReport.pdf) (last visited March 7, 2023); *see also* 89th Gen. Assem., May 23, 1995, S. Tr. at 113 (Sen. O'Malley) (arguing in favor of P.A. 89-126's extending Board to Cook County because "eighty percent plus of all appeals that are made to the [Board] are for homeowners"). The Court may take judicial notice of the Board's annual report. *See People v. Mata*, 217 Ill. 2d 535, 540 (2005) (courts may take judicial notice of public records).

contested tax. 35 ILCS 200/16-185 (2020). Thus, if a Board appellant fails to pay its tax, the tax collector will obtain a tax delinquency judgment, and a third party may pay the delinquent tax and purchase a tax lien on the property, entitling the third party to the unpaid taxes plus additional premiums from the property owner. *See A.P. Prop., Inc. v. Goshinsky*, 186 Ill. 2d 524, 529-30 (1999) (describing tax delinquency process); 35 ILCS 200/21-175, 21-190, 21-240, 21-250 (2020). If the property owner then fails to timely make those payments, the third party may seek title to the property. *See A.P. Prop., Inc.*, 186 Ill. 2d at 530; 35 ILCS 200/21-350, 22-40 (2020). In counties of fewer than 3,000,000 inhabitants, applications for delinquency judgments are made "within 90 days" of the final installment due date. 35 ILCS 200/21-150 (2020). Thus, the Code imposes substantial financial incentives for delinquent taxes to be promptly paid by either property owners or third parties.

The proceedings in this case illustrate these principles. Here, just after section 23-5's deadlines for any protest payment, a third party purchased the disputed taxes for the contested years, thereby obtaining the right to either repayment of the taxes plus a premium or title to Grand Tower. (C71, 171, 750). The due date for the final installment of the 2014 assessment was November 16, 2015. (C108). Consequently, had the Taxpayer decided to proceed in circuit court rather than before the Board, section 23-5 would have required it to pay its taxes under protest and file a judicial tax objection by 60 days later, January 15, 2016. *See* 35 ILCS 200/23-5 (2020). The tax judgment

was entered against Grand Tower the previous day, January 14, 2016, and the third party paid the contested tax on January 19, two business days after section 23-5's January 15 deadline. (C77-79, 81-89, 109). The following year, the same third party purchased the 2015 tax in a similar process. (C750).

Accordingly, even if the District's policy arguments were appropriately directed to this Court rather than the General Assembly (and they are not, *see Manago*, 2017 IL 121078, ¶ 13), those arguments fail to persuade.

F. The circuit court's delinquency judgments and tax sales did not preclude the Taxpayer's appeals to the Board.

Finally, the appellate court correctly held that the circuit court's tax delinquency judgments and order to sell the taxes did not divest the Board of jurisdiction to hear the Taxpayer's appeals. *See Shawnee*, 2022 IL App (5th) 190266, ¶¶ 59-68. The Code provides separate procedural tracks for administrative appeals challenging property tax assessments, on the one hand, and collecting challenged taxes, on the other. *See id.*, ¶¶ 61-66. As explained, Division 4 of article 16 governs administrative challenges to the assessment amount with the Board. 35 ILCS 200/16-160 (2020). To collect the tax, article 21 provides for a judicial delinquency judgment followed by the sale of the tax on the property. 35 ILCS 200/21-175, 21-190, 21-240, 21-250 (2020).

In particular, under section 21-175, the circuit court may consider any defenses to applications for a delinquency judgment, subject to specified exceptions, "only when" the owner paid the tax as required under section 23-5 and filed an objection in the court under section 23-10. 35 ILCS 200/21-175

(2020). Also required are whether the relevant deadline has passed, notice was given, and the tax was paid. *See* 35 ILCS 200/21-175, 21-180 (2020). Indeed, section 16-160 explicitly prohibits Board appellants from pursuing challenges to the valuation of their taxes in tax objection actions under sections 23-5 and 23-10 and in delinquency proceedings under section 21-175. 35 ILCS 200/16-160 (2020). Section 16-185, in turn, authorizes the Board to abate "any taxes extended" that it has altered, as well as to refund any such tax "if already paid," thereby recognizing that Board appeals may proceed concurrently with judicial delinquency proceedings. 35 ILCS 200/16-185 (2020). Therefore, circuit courts presiding over tax delinquency proceedings neither adjudicate property owners' pending Board challenges to tax assessments nor exercise jurisdiction over those disputes. 35 ILCS 200/16-160, 21-175 (2020); *see also Millennium Park*, 241 Ill. 2d at 295 (Because the obligation "to pay taxes is purely a statutory creation, [] taxes can be levied, assessed and collected only in the manner expressly spelled out by statute.").

Consistent with these provisions, the circuit court's judicial tax delinquency judgments for Grand Tower did not address or involve the propriety of the assessment amount. (C77-80). Those proceedings and the later judgments addressed only whether the property tax was due and had been paid. (*Id.*); *see* 35 ILCS 200/21-175, 21-240 (2020). Although the District asserts that the court ruled that the unpaid tax assessment was correct when it described the tax collector's application for judgment as seeking a

"'judgment fixing the correct amount of any taxes paid under protest,'" Dist. Br. at 30 (quoting C77), the District is incorrect: the circuit court's decision and judgment stated only that notice had been given, no defenses were made, and the tax was unpaid, resulting in an order for the tax sale. (C77-79). Indeed, because the Taxpayer did not (and could not) raise any objections based on valuation while it pursued its Board appeal, the circuit court could not entertain or resolve such issues. 35 ILCS 200/21-175 (2020).

The District's cited decisions are not to the contrary. Some of them hold merely that property owners must utilize the Code's statutory remedies to object to their property tax assessments. Dist. Br. at 32-35; *see People v. Hagerty*, 104 Ill. App. 3d 240, 244-45 (1st Dist. 1982) (rejecting owner's defense to tax collection action based on first-time challenge to assessment valuation); *People v. Chi. Title & Tr. Co.*, 50 Ill. App. 3d 387, 389 (1st Dist. 1977) (same). These First District decisions provide a non-controversial application of prior Code sections 194 and 235, which required property owners to pay their tax under protest and file any tax objections as a defense in the prior tax delinquency proceedings. *See* Ill. Rev. Stat. 1967, ch. 120, ¶¶ 675, 716. The decisions do not refer to Board appeals because they addressed Cook County tax assessments from before 1996, when the Board first obtained jurisdiction over challenges to such assessments. *See Cook Cnty. Bd. of Rev.*, 339 Ill. App. 3d at 535. In contrast to the defendants to those collection actions, the Taxpayer timely utilized its available statutory remedy by pursuing its appeal

with the Board before the delinquency judgments and tax sales. (C6-22, 624-44).

The other cases cited by the District do not address challenges to the amount or propriety of property taxes at all, let alone in the context of Board appeals. *See* Dist. Br. at 33-35. Rather, they address challenges to circuit court orders transferring title in the subject property long after the tax sale, based on arguments that have nothing to do with the propriety of the unpaid taxes. *See Vulcan Materials Co. v. Bee Constr.*, 96 Ill. 2d 159, 161-65 (1983) (addressing claim that tax purchaser committed fraud on court to obtain tax deed); *In re Cnty. Treasurer*, 2013 IL App (3d) 120999, ¶¶ 27-31 (rejecting claim that tax deed was void due to tax purchaser's violations of Code's procedures for acquiring deed).

Ignoring these distinctions, the District argues that these cases demonstrate that circuit courts presiding over tax-sale proceedings acquire jurisdiction over the subject property "'to make all necessary findings,'" and therefore that these courts acquire exclusive jurisdiction to resolve owners' challenges to the underlying unpaid tax. Dist. Br. at 33-35 (quoting *Vulcan*, 96 Ill. 2d at 165). But *Vulcan* (and *County Treasurer*, on which the District also relies) considered only the circuit courts' jurisdiction over their later, supplemental orders issuing tax deeds to the buyers after the redemption periods had lapsed. *See Vulcan*, 96 Ill. 2d at 163-65; *Cnty. Treasurer*, 2013 IL App (3d) 120999, ¶¶ 29-31; *see also* 35 ILCS 200/22-40 (2020) (providing for

court orders issuing tax deeds to tax sale purchasers when taxes are not timely redeemed). Neither decision considers whether a circuit court may consider the correctness of the unpaid tax if no one raised that defense in compliance with section 21-175. Nor did either decision consider whether a prior tax sale divests the Board (or even another circuit court) of jurisdiction over pending challenges to the unpaid taxes. Therefore, the District's authority provides no support for its claim that the delinquency judgments and tax sales divested the Board of jurisdiction.

For these reasons, the appellate court properly concluded that the Taxpayer was not required to pay the contested taxes under section 23-5 as a condition to pursue its appeals before the Board, and that the tax delinquency judgments and tax sales did not divest the Board of jurisdiction over those appeals.

CONCLUSION

For the foregoing reasons, Respondent-Appellee Illinois Property Tax Appeal Board requests that this Court affirm the appellate court judgment and the Board's final administrative decision.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

Attorneys for Respondent-Appellee
Illinois Property Tax Appeal Board

/s/ Christopher M. R. Turner
CHRISTOPHER M.R. TURNER
Assistant Attorneys General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2106 (office)
(773) 590-7121 (cell)
CivilAppeals@ilag.gov (primary)
Christopher.Turner@ilag.gov (secondary)

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 10,310 words.

/s/ Christopher M.R. Turner
CHRISTOPHER M. R. TURNER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2106 (office)
(773) 590-7121 (cell)

CivilAppeals@ilag.gov (primary)
Christopher.Turner@ilag.gov (secondary)

CERTIFICATE OF FILING AND SERVICE

I certify that on March 8, 2023, I electronically filed the foregoing **Brief of Respondent-Appellee Illinois Property Tax Appeal Board** with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Scott L. Ginsburg
Katie N. DiPiero
sginsburg@robbins-schwartz.com
kdipiero@robbins-schwartz.com

David J. Braun
Christine G. Christensen
dbraun@millertracy.com
christensen@millertracy.com

Thomas J. McNulty
Steven F. Pflaum
David S. Martin
tmcnulty@nge.com
spflaum@nge.com
dmartin@nge.com

Mark R. Davis
Timothy E. Moran
markdavis@okeefe-law.com
temoran@ssmtax.com

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Christopher M. R. Turner
CHRISTOPHER M. R. TURNER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2106 (office)
(773) 590-7121 (cell)
CivilAppeals@ilag.gov (primary)
Christopher.Turner@ilag.gov (secondary)