

¶ 3

I. Background

¶ 4 On March 1, 2018, the Wayne County Collector conducted an annual tax sale on two lots (lots 43 and 44) located at 204 West Robinson Avenue, Wayne City, Wayne County, Illinois (Wayne City properties). Petitioner successfully purchased the Wayne City properties for the sum of \$4690.29, paid the interest and taxes for 2017 and 2018, and subsequently obtained tax sale certificates of purchase for the properties. The period of redemption was to expire on March 1, 2021.

¶ 5 At the time of the sale, the lots were subject to liens filed by the Village of Wayne City (Village) on July 20, 2011, and August 11, 2015, for monies spent for nonpayment penalties of utility charges against the prior owner, Jay Verai, incorporated as Shell Food Mart. The specific unpaid utility charges, totaling \$4004.71, were for water, sewer, trash, and gas services.

¶ 6 On November 19, 2020, petitioner filed a *pro se* petition for a tax deed with the circuit court, claiming he was the holder and owner of the Wayne City properties. Petitioner claimed he paid all general taxes and special assessments. Petitioner requested that the court order the issuance of the tax deed if the Wayne City properties were not redeemed from the tax sale within the redemption period.

¶ 7 On February 23, 2021, petitioner filed a *pro se* motion to vacate tax sale, attaching as an exhibit the tax sale certificates of purchase for the Wayne City properties. Petitioner requested that the circuit court declare a sale in error because of the multiple liens on the Wayne City properties, pursuant to sections 22-35 and 21-315 of the Code (35 ILCS 200/22-35, 21-315 (West 2020)). Petitioner requested the court to direct the Wayne County Treasurer to refund petitioner the amount paid, apply a 1% interest fee per month from March 1, 2018, to the date of payment, and order

payment to petitioner in the amounts of \$4431.76 for the payment of 2017 taxes and \$4312.01 for the payment of 2018 taxes.

¶ 8 On March 1, 2021, the circuit court held a hearing on petitioner's *pro se* motion to vacate tax sale.¹ Following the hearing, the court allowed the parties to file memorandums of law and additional authorities before the court took the matter under advisement on March 12, 2021.

¶ 9 On March 12, 2021, petitioner filed a *pro se* memorandum in support of the motion to vacate tax sale. Petitioner alleged that he was unaware of the liens on the Wayne City properties at the time of purchase on March 1, 2018. Petitioner also alleged that he became aware of the Village's liens when he filed for a tax deed on November 19, 2020. Petitioner relied on section 22-35 of the Code, which states as follows:

“Reimbursement of a county or municipality before issuance of tax deed. Except in any proceeding in which the tax purchaser is a county acting as a trustee for taxing districts as provided in Section 21-90, an order for the issuance of a tax deed under this Code shall not be entered affecting the title to or interest in any property in which a county, city, village or incorporated town has an interest under the police and welfare power by advancements made from public funds, until the purchaser or assignee makes reimbursement to the county, city, village or incorporated town of the money so advanced or the county, city, village, or town waives its lien on the property for the money so advanced. However, in lieu of reimbursement or waiver, the purchaser or his or her assignee may make application for and the court shall order that the tax purchase be set aside as a sale in error. A sale in error may not be granted under this Section if the lien has been released, satisfied, discharged, or waived. A filing or appearance fee shall not be required of a county, city, village or incorporated town seeking to enforce its claim under this Section in a tax deed proceeding.” 35 ILCS 200/22-35 (West 2020).

Petitioner argued that section 22-35 of the Code “protects a buyer from suffering an inadvertent loss,” which supports the purpose of section 21-310 of the Code (*id.* § 21-310) to “afford[] relief to a tax buyer from the effect of caveat emptor purchases at void tax sales.”

¹The report of proceedings is not contained in the record on appeal.

¶ 10 On March 1, 2021, the circuit court held a hearing on petitioner’s *pro se* motion to vacate tax sale,² which the court denied on March 23, 2021. In denying petitioner’s motion, the court took judicial notice of the utility liens for water, sewer, trash, and gas services that the Village filed on July 20, 2011, and August 11, 2015. Following a review of section 22-35 of the Code, the court, citing *In re Application of County Treasurer & ex officio County Collector of Lake County*, 2019 IL App (2d) 180727, ¶ 21 (*In re County Treasurer*), determined petitioner was not entitled to a declaration of sale in error because the liens were not advancements made from public funds as authorized by the Village’s police and welfare power. Rather, the court determined that the liens represented fees assessed for utility services and late payments to the prior owner of the Wayne City properties that were not advancements made from public funds that qualified under section 22-35 of the Code. The court also charged petitioner with record knowledge of the liens that were recorded on July 20, 2011, and August 11, 2015, prior to the tax purchase on March 1, 2018.

¶ 11 On April 19, 2021, petitioner, represented by counsel, filed a timely motion to reconsider. Petitioner argued that the liens qualified under section 22-35 of the Code, because the liens represented the Village’s interest under its police and welfare power through advancements made from public funds.

¶ 12 On April 28, 2021, petitioner filed a supplemental memorandum in support of his motion to reconsider. In support of his position, petitioner attached the Village’s audited financial statements from 2008, 2009, and 2020, arguing that the fees assessed for gas, water, and sewer services were intended “to reimburse the Village for the costs incurred and ongoing related to the acquisition, construction, maintenance and ongoing operation of the Village’s water, sewer, trash and gas services.”

²The report of proceedings is not contained in the record on appeal.

¶ 13 Following a hearing on May 24, 2021, on June 18, 2021, the circuit court denied petitioner’s motion to reconsider.³ Petitioner filed a timely notice of appeal.

¶ 14 II Analysis

¶ 15 On appeal, petitioner argues that the circuit court erred by denying his motion to vacate tax sale, where the liens for unpaid charges and fees permitted petitioner, pursuant to section 22-35 of the Code, to seek a declaration of sale in error. The question before this court is whether section 22-35 of the Code applies to municipality liens assessed to a prior owner for unpaid utility fees.

¶ 16 Because this dispute requires us to construe the language of a statute, it presents a question of law, and our standard of review is *de novo*. *Cassidy v. China Vitamins, LLC*, 2018 IL 122873,

¶ 15. The primary objective of this court in construing a statute is to ascertain and give effect to the legislature’s intent. *McVey v. M.L.K. Enterprises, LLC*, 2015 IL 118143, ¶ 11. The plain language of the statute is the most reliable indication of the legislature’s intent. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). In determining legislative intent, a court should consider the statutory language first, giving the terms of the statute their ordinary language. *MQ Construction Co. v. Intercargo Insurance Co.*, 318 Ill. App. 3d 673, 681 (2000) (citing *In re Application for Judgment & Sale of Delinquent Properties for Tax Year 1989*, 167 Ill. 2d 161, 168 (1995)). When a statute’s language is clear, it must be applied as written without resort to aids or tools of interpretation. *DeLuna*, 223 Ill. 2d at 59.

¶ 17 Section 22-35 of the Code provides, in relevant part, as follows:

“[A]n order for the issuance of a tax deed under this Code shall not be entered affecting the title to or interest in any property in which a county, city, village or incorporated town *has an interest under the police and welfare power by advancements made from public funds*, until the purchaser or assignee makes reimbursement to the county, city, village or incorporated town of the money so advanced or the county, city, village, or town waives

³The report of proceedings is not contained in the record on appeal.

its lien on the property for the money so advanced. However, in lieu of reimbursement or waiver, the purchaser or his or her assignee may make application for and the court shall order that the tax purchase be set aside as a sale in error.” (Emphasis added.) 35 ILCS 200/22-35 (West 2020).

¶ 18 Petitioner argues that the court’s decision *In re County Treasurer*, 2019 IL App (2d) 180727, ¶¶ 21-23, was erroneously decided, where the court determined that the lien at issue for unpaid wastewater treatment usage fees owed by the former owner of the property did not stem from the advancement of public funds, as required under section 22-35 of the Code. Contrary to the decision in *In re County Treasurer*, petitioner, here, asserts that the fees assessed for gas, water, sewer, and trash services are used to pay the debt service for the costs of infrastructure and the expense of paying employees to render water, gas, and sanitation services. Accordingly, petitioner argues that these fees represent the Village’s interest under its police and welfare power as advancements made from public funds, thus, a sale in error is warranted. For the reasons that follow, we are unpersuaded by petitioner’s argument.

¶ 19 In *In re County Treasurer*, the court determined that the fees for wastewater treatment were not an advancement of public funds, but rather unpaid usage fees owed by the former property owner for services rendered. *Id.* ¶ 21. The Second District found it important that the lien at issue was not from public funds advanced to take care of abandoned or hazardous property or to promote safety and welfare of the community at large, thus, the petitioner was not entitled to a sale in error. *Id.* ¶¶ 21-23. Additionally, with reliance on legislative history,⁴ the court determined that the

⁴There are multiple occasions when the legislature supported this endeavor, stating, “A lot of times municipalities may cut weeds down of *** vacant properties. If [the properties] are sold, then the purchaser of that property is required to either get a lien or to reimburse that municipality for the funds expended.” 93d Ill. Gen. Assem., Senate Proceedings, Apr. 8, 2003, at 133 (statements of Senator Clayborne). In March 2014, with reference to Senate Bill 2677 and add counties to the statute as an entity, Senator Bush stated, “All that it does is it allows counties to have the same rights that municipalities have. When there is a building torn down for safety reasons, it allows them to have a lien on the property at tax sale.” 98th Ill. Gen. Assem., Senate Proceedings, Mar. 4, 2014, at 15 (statements of Senator Bush).

language used by the legislature demonstrated they were “concerned with counties and municipalities being reimbursed for caring for abandoned or hazardous properties within their control, not with ensuring that they receive compensation for services rendered.” *Id.* ¶ 22.

¶ 20 Similar to our colleagues in the Second District, here, we cannot conclude that the utility fees paid by the Village constitute municipal liens under section 22-35 of the Code. Our supreme court determined that “the police power may be validly exercised in order to protect the public health,” and that this power embraces all matters reasonably related to the protection of public health, safety, morals, and general welfare. *Schuringa v. City of Chicago*, 30 Ill. 2d 504, 508 (1964) (citing *City of West Frankfort v. Fullop*, 6 Ill. 2d 609, 613 (1955); *People ex rel. Kerner v. Huls*, 355 Ill. 412, 416 (1934)); *City of Carbondale v. Brewster*, 78 Ill. 2d 111, 114-15 (1979). In fact, courts have found several types of liens qualify under section 22-35 of the Code or its predecessor provision⁵ as the advancement of public funds when the lien at issue provided for the safety and welfare of the community at large, including (1) issues related to demolition and repair expenses on a subject lot (*In re Application of County Treasurer of Cook County*, 14 Ill. App. 3d 1062, 1063 (1973); *In re Application of County Treasurer of Cook County*, 343 Ill. App. 3d 122, 126 (2003)); (2) payment to heat a building to comply with minimum health and safety standards (*In re Application of County Collector*, 206 Ill. App. 3d 22, 29 (1990)); and (3) a lien for cutting weeds on a property (*In re Application of County Collector for Judgment & Order of Sale Against Lands & Lots Returned Delinquent for Nonpayment of General Taxes for the Year 2009*, 2015 IL App (4th) 140810, ¶ 9).

⁵Section 271.1 of the Revenue Act of 1939 (35 ILCS 205/271.1 (West 1992)), repealed by Pub. Act 88-455, art. 32, § 32-20 (eff. Jan. 1, 1994).

¶ 21 Unlike the cases cited above, here, the lien at issue does not provide for the safety and welfare of the community at large. Instead, the lien provides for reimbursement for services rendered for unpaid utility fees to the former property owner. Because the Village's lien on the Wayne City properties did not stem from the advancement of public funds under the Village's police and welfare powers, petitioner is not entitled to a sale in error. Accordingly, we cannot conclude that the circuit court erred by denying petitioner's motion to vacate tax sale.

¶ 22 III. Conclusion

¶ 23 The circuit court's order denying petitioner's motion to vacate tax sale is affirmed, where defendant failed to demonstrate that the Village's lien on the Wayne City properties did not constitute an advancement of public funds under the Village's police and welfare power under section 22-35 of the Code.

¶ 24 Affirmed.