2024 IL App (3d) 220328

Opinion filed May 9, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

JACKSON GENERATION, LLC, Plaintiff-Appellant, v. THE COUNTY OF WILL, a Body Politic; RHONDA NOVAK, in Her Official Capacity as Will County Supervisor of Assessments; TIM BROPHY, in His Official Capacity as Will County Treasurer and in His Capacity as *ex officio* Will County Collector; JACKSON TOWNSHIP, a Body Politic; DELILAH LEGRETT, in Her Official Capacity as the Jackson Township Assessor; THE ELWOOD FIRE DISTRICT; THE FOREST PRESERVE DISTRICT OF WILL COUNTY; JACKSON TOWNSHIP ROAD FUNDS; JACKSON TOWNSHIP TOWN FUNDS; JOLIET JUNIOR COLLEGE DISTRICT 525; JOLIET TOWNSHIP HIGH SCHOOL DISTRICT 204; LARAWAY SCHOOL DISTRICT 70C; THE MANHATTAN-ELWOOD PUBLIC LIBRARY DISTRICT; THE VILLAGE OF ELWOOD; THE VILLAGE OF ELWOOD ROAD AND BRIDGE; THE WILL COUNTY PUBLIC BUILDING COMMISSION; WILL COUNTY TAX FUNDS; ELWOOD SCHOOL DISTRICT 203; Defendants-Appellees.	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois. Appeal No. 3-22-0328 Circuit No. 21-MR-2099 Honorable Roger D. Rickmon, Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court, with opinion.
Justice Davenport concurred in the judgment and opinion.
Presiding Justice McDade concurred in part and dissented in part, with opinion.

OPINION

¶ 1 Plaintiff, Jackson Generation, LLC, appeals from the dismissal with prejudice of its amended complaint against various governmental units, property tax officials, and taxing districts raising claims for declaratory relief and due process violations and, alternatively, a tax objection claim. Although sanctions claims remain pending in the circuit court, we have jurisdiction pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). For the reasons set forth below, we affirm in part, reverse in part, and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 Plaintiff owns property in the Village of Elwood (located in Jackson Township and Will County) on which it is developing a utility-scale natural gas fueled combined-cycle power generation plant (the project). This case arises out of an increase in the 2020 tax assessment for the property. According to plaintiff, without receiving proper notice or an opportunity to be heard, the property at issue was split into two parcels and reassessed for the 2020 assessment year to a substantially higher total value, notwithstanding that the project was only 4.2% complete as of January 1, 2020. Specifically, its property with a permanent index number (PIN) of 10-11-08-300-013-0000 (0000 parcel) was split into PIN 10-11-08-300-013-0010 (0010 parcel—comprising 20% of the original parcel) and PIN 10-11-08-300-013-0020 (0020 parcel—comprising 80% of the original parcel). At the time of the split, the parcels were assessed at values of $12,192 and $78,324, respectively (equaling the presplit assessed value total of $90,516), but then reassessed to values of $8,414,968 and $46,400,677, respectively—resulting

in an increase of over 60,000% to the total property value assessment. In turn, the total property tax liability for 2020 was increased from approximately $7500 to over $4.1 million.

¶ 4 Plaintiff initiated this lawsuit on August 16, 2021, with a complaint against Will County, Jackson Township, and the Jackson Township Assessor. In its initial complaint, plaintiff sought a declaratory judgment that defendants violated plaintiff's procedural and substantive due process rights with respect to the issuance and enforcement of the tax assessment on both parcels, requested a preliminary and permanent injunction preventing enforcement and collection of the tax assessment, and, alternatively, raised a statutory tax objection claim. On September 29, 2021, plaintiff filed an emergency motion for a preliminary injunction preventing an attempt to collect the 2020 property taxes. Following briefing and a hearing, on October 5, 2021, the circuit court denied the motion.

¶ 5 On November 1, 2021, Will County filed a motion to dismiss plaintiff's complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2020)), arguing that it was an improper party because it exercises no control over either the assessment process or the collection of property taxes and that plaintiff failed to challenge the assessment through the proper statutory procedure.

¶ 6 On November 2, 2021, Jackson Township and its assessor filed a combined motion to dismiss pursuant to section 2-619.1 (*id.* § 2-619.1). The Jackson Township defendants sought dismissal under section 2-615 (*id.* § 2-615) on the basis that they were misjoined parties who had no ability to provide the requested relief and argued that plaintiff's claims were barred by other affirmative matter pursuant to section 2-619 in that the complaint amounted to a procedurally improper tax objection case.

¶ 7 Prior to responding to the motions to dismiss, on November 29, 2021, plaintiff paid the entire tax bill under protest and then filed a motion for leave to file an amended complaint *instanter*. On December 6, 2021, the circuit court denied the motion without prejudice to refile, if necessary, after the court ruled on the motions to dismiss the initial complaint. Plaintiff moved for reconsideration of the denial of leave to file its amended complaint but also filed a combined response to the pending motions to dismiss, arguing that each defendant played a role in the unfounded assessment increase and were all necessary parties. However, on January 14, 2022, the circuit court granted plaintiff's motion to reconsider the denial of leave to file its amended complaint *instanter* and thus did not rule on the motions to dismiss the initial complaint.

¶ 8 We recount the allegations of the amended complaint, the relevant arguments set forth in the briefing on defendants' motions to dismiss, and the circuit court's ruling thereon.

¶ 9 A. Amended Complaint

¶ 10 Plaintiff added several named defendants to its amended complaint. The first set of defendants were Will County, Rhonda Novak (in her official capacity as Will County Supervisor of Assessments) (Supervisor), and Tim Brophy (in his official capacity as Will County Treasurer and in his capacity as *ex officio* Will County Collector) (Treasurer) (collectively the County defendants). The second set of defendants were Jackson Township and Delilah Legrett (in her official capacity as the Jackson Township Assessor) (Assessor) (collectively the Jackson Township defendants).

¶ 11 The third set of defendants were the taxing districts (collectively the taxing district defendants) listed on plaintiff's property tax bill for both parcels 0010 and 0020, alleged by Jackson Township to be necessary parties to effectuate the requested relief and identified pursuant to section 23-10 of the Property Tax Code (35 ILCS 200/23-10 (West 2020) (requiring

a tax objection complaint to list the taxing districts against which the complaint is directed and include a summary of the reasons for the tax objections)). For parcel 0010, the taxing district defendants were Elwood Fire District, Forest Preserve District of Will County, Jackson Township Road Funds, Jackson Township Town Funds, Joliet Junior College District 525, Joliet Township High School District 204, Laraway School District 70C, Manhattan-Elwood Public Library District, Village of Elwood, Village of Elwood Road and Bridge, Will County Public Building Commission, and Will County Tax Funds. For parcel 0020, the taxing district defendants were identical, with the exception of a different elementary school district—Elwood School District 203 (instead of Laraway School District 70C) (collectively the taxing district defendants).

¶ 12 Plaintiff included seven counts in its amended complaint, seeking declaratory relief, claims for procedural and substantive due process violations, and, alternatively, a tax objection claim. Namely, counts I and II sought a declaratory judgment that defendants violated plaintiff's procedural due process rights with respect to the issuance and enforcement of the tax assessment on the 0010 parcel and the 0020 parcel, respectively. Count III sought a declaratory judgment that the reassessment of the parcels violated plaintiff's substantive due process rights. Counts IV through VI alleged, respectively, the underlying claims for procedural and substantive due process violations in violation of 42 U.S.C. § 1983 (2018). Plaintiff alleged that the tax assessments were void given the due process violations. Count VII alleged an alternative tax objection claim and sought placement of a constructive trust on the funds it paid under protest with an order to enjoin all taxing districts from disbursing the funds. Plaintiff alleged that it exhausted all available administrative remedies or, alternatively, that it was excused from the requirement.

¶ 13 In facts common to all counts, plaintiff alleged that, in the years preceding the initiation of project construction, plaintiff and its counsel met on multiple occasions with a Supervisor and representatives from the Will County State's Attorney's Office, including two meeting dates in 2017 and two in 2018, regarding the anticipated assessed valuation of the project but did not reach agreement. In 2019, Will County issued building permits for improvements to the project site; as of January 1, 2020, the project was 4.2% complete.

¶ 14 Pursuant to the Supervisor's 2020 publication schedule, the property assessment notice for the then-unsplit parcel 0000 was mailed on August 7, 2020, and the assessment was published in the August 13, 2020, Farmers Weekly Review, both of which reflected that the unsplit parcel was assessed at a value of $90,516. The deadline to appeal the assessment to the Will County Board of Review (Board) was September 14, 2020; plaintiff neither objected to nor appealed the assessment.

¶ 15 However, parcel 0000 was thereafter split into parcel 0010 and parcel 0020. Plaintiff set forth the content of August 26, 2020, e-mail correspondence between the assistant deputy supervisor of assessments for Will County (Deputy Supervisor) and the Jackson Township Assessor. The Deputy Supervisor wrote, "I am working on a split with Amy and I noticed on parcel 10-11-08013-0010/0020 it is classified as farm however it very much so looks industrial and farm. If I send a break down will you be able to value the commercial part? It looks very similar to 10-11-08-300-0011-0000." The Assessor responded, "Yes I can. Thanks." The Deputy Supervisor replied, "Great! Can you send a value for 72.37 commercial land and the buildings. I have attached a copy of the map." The Assessor then wrote, "This is the J power cycle plant, correct? Can you please call me on my cell phone [number provided]?" Plaintiff alleged that,

upon information and belief, the Deputy Supervisor and Assessor discussed valuation of the project.

¶ 16 In addition, plaintiff alleged that, on the same date as the e-mail correspondence—August 26, 2020—the Board approved the split and modified the assessments of parcel 0010 and parcel 0020 to $12,192 and $78,324, respectively, equaling the pre-split total of $90,516 for parcel 000. Plaintiff alleged that, as of August 26, 2020, the Township Assessor agreed with the split or, alternatively, did not object to the split or, alternatively, suggested that the Supervisor reconsider the split to no avail.

¶ 17 Plaintiff further alleged that, at some point after the parcel split, the Supervisor engaged a consultant to reassess the parcels. On November 9, 2020, the consultant e-mailed the Supervisor and a Deputy Supervisor his recommendation to reassess the parcels with "significant numbers" that were "reinforced by the Enterprise Zone expenditures [sales tax exemption certificate applications]." In response to a request for confirmation that "0010 will not be receiving a revised notice," the consultant responded, "Correct. Nothing appears to have changed on 0010."

¶ 18 According to plaintiff, the Supervisor, "knowing that the reassessments were based on non-taxable property, submitted the reassessments to the Board anyway." The Board, in turn, allegedly "conducted no independent inquiry or due diligence regarding the proposed assessments" and "rubber-stamped the Supervisor's erroneous and excessive valuations of the parcels." Plaintiff further alleged that the Supervisor, Assessor, and Board "worked together to develop the exaggerated assessments for the 0010 and 0020 Parcels after the 2020 assessments had already been published."

¶ 19 Plaintiff alleges that defendants failed to provide plaintiff notice of either the proposed change in assessed value or the final decision on the assessed value for the parcels. These

allegations involve: (1) the Board's November 9, 2020, "NOTICE OF PROPOSED CHANGE IN ASSESSED VALUE BY BOARD OF REVIEW" for parcel 0020; (2) its January 20, 2021, "NOTICE OF FINAL DECISION ON ASSESSED VALUE BY THE BOARD OF REVIEW" for parcel 0010; and (3) its January 20, 2021, "NOTICE OF FINAL DECISION ON ASSESSED VALUE BY THE BOARD OF REVIEW" for parcel 0020. Plaintiff alleges that it later obtained these notices through Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2020)) requests to Will County and Jackson Township. The notices were attached as exhibits to the amended complaint.

¶ 20 Plaintiff alleged that "[t]he only mailing notice attempted to Jackson Generation regarding the proposed reassessment of the 0020 Parcel was a purported notice mailed via First Class Mail by the Board to 'Jackson Generation LLC, Attn Property Tax, 601 Travis St. STE 1400, Houston, TX 77002-3253'[1] on November 9, 2020 ***." The November 9, 2020, notice stated: "Pursuant to 35 Illinois Compiled Statutes (ILCS) 200/16-30 and 16-55, you are hereby notified of a proposed change in assessed value of the property index number listed above [0020 parcel]. This change was made by the Board of Review of Will County." The notice set forth the assessed value before Board action ($78,324 in total) and the Board's proposed assessed value ($46,400,677 in total) and the reason for the change ("NEW IMPROVEMENT FOR CURRENT ASSESSMENT YEAR [2020]—PARTIAL OR PRORATED ASSESSMENT"). The notice also advised:

> "You are notified that you may file a written complaint with the Will County Board of Review and receive a hearing on this proposed change in the assessed value. A complaint form may be obtained from the Board of Review at the address given at the top

[1]We quote plaintiff's allegation but note that the November 9, 2020, notice reflects use of the five-digit zip code without appending the four-digit code.

of this notice. If you do not file a written complaint within *10 (Ten) days after the postmark date on this notice,* you will forfeit your right to a hearing before the Board of Review on this proposed change in assessed value. You will be notified of the Board of Review's final decision on the assessed value whether or not you file a complaint." (Emphasis in original.)

¶ 21 Plaintiff alleged that no similar notice for the proposed reassessment of the 0010 parcel was ever sent, as acknowledged by counsel for Will County at the October 5, 2021, hearing on plaintiff's emergency motion for a preliminary injunction. Rather, on November 9, 2020, a notice of proposed reassessment for an adjacent parcel, owned by another entity, was mistakenly sent to plaintiff at the same address.

¶ 22 Plaintiff alleged that, "[u]pon information and belief, the 0020 November Mailing was returned to sender" and that "[t]he County, the Supervisor, the Treasurer, Jackson Township, and the Assessor knew that the Jackson Generation address in Houston was *not being monitored*." (Emphasis added.) Thus, plaintiff alleged that it "did not receive the 0020 November Mailing, and so did not receive notice of the proposed reassessment of the 0020 Parcel." Moreover, "[n]o party, including the County, the Supervisor, the Treasurer, Jackson Township, or the Assessor, made any further attempt to notify Jackson Generation of the proposed reassessment of 0020," notwithstanding that they had other contact information for plaintiff and its counsel. Namely, defendants knew the project address; the address of plaintiff's principal place of business in Schaumburg is reflected on its certificate of good standing available on the Illinois Secretary of State's website, the parties exchanged contact information during their 2017 and 2018 meetings regarding the anticipated assessed valuation of the project, and plaintiff and its counsel were involved in other property tax appeals. Plaintiff further alleged that, on November 13, 2020, the

Deputy Supervisor e-mailed the Assessor a packet of information with the proposed reassessed valuations and copied the consultant as well as counsel for Elwood School District 203 and Joliet Township High School District 204.

¶ 23 Regarding notice of the final decision on the assessed value for both parcels, plaintiff alleged that "[t]he only mailing notice attempted to Jackson Generation regarding the reassessment of the 0010 and the 0020 Parcels after the Board's final decision was a purported notice mailed via First Class Mail by the Board of Review to 'Jackson Generation LLC, Attn Property Tax, 601 Travis St. STE 1400, Houston, TX 77002-3253' on January 20, 2021." The Board's January 20, 2021, notices of final decision on assessed value for parcel 0010 and parcel 0020 each provided: "Pursuant to 35 Illinois Compiled Statutes (ILCS) 200/12-50, you are hereby notified that the Board of Review has made a final decision with regard to the assessed value of this property for the 2020 assessment year. The Board of Review has determined a change or no change in assessed value indicated and explained below."

¶ 24 The January 20, 2021, notices set forth the assessed value before Board action (0 for both parcel 0010 and parcel 0020); the Board's proposed assessed value ($12,192 in total for parcel 0010 and $78,324 in total for parcel 0020); the final assessed value after Board equalization ($8,414,968 in total for parcel 0010 and $46,400,677 in total for parcel 0020); and the reason for the change ("NEW IMPROVEMENT—PARTIAL/PRORATED ASSESSMENT"). Each notice also advised:

> "THIS IS THE FINAL DECISION BY THE BOARD OF REVIEW. You may appeal this decision to the Property Tax Appeal Board by filing a petition with THE PROPERTY TAX APPEAL BOARD within 30 days after this notice is mailed to you or your agent, or is personally served upon you or your agent."

¶ 25 Plaintiff alleged that "[t]he January Mailing was stamped, 'Return to Sender. Not Deliverable as Addressed. Unable to Forward.' " The copies of the January 20, 2021, notices attached as exhibits to the amended complaint show this stamp (dated January 21, 2021) on the notices for both parcels, whereas the November 9, 2020, notice of proposed reassessment for the 0020 parcel attached as an exhibit to the amended complaint did not reflect such a stamp. Regarding the January 20, 2021, notices, plaintiff again alleged that "[t]he County, the Supervisor, the Treasurer, Jackson Township, and the Assessor knew that the Jackson Generation address in Houston was *not being monitored*" and, as of January 21, 2021, "knew that [plaintiff] had not received any notice whatsoever of the reassessments." (Emphasis added.) However, no party made any further attempt to notify plaintiff of the Board's final decisions notwithstanding their knowledge of other contact information for plaintiff and its counsel. Plaintiff alleged that, because "it did not receive notice of the reassessment of either the 0010 or 0020 Parcel," it was denied the opportunity to appeal to the Property Tax Appeal Board (PTAB).

¶ 26 Plaintiff alleged that "[t]he valuation of the 0020 Parcel and the 0010 Parcel was not discovered until late winter 2021 when a consultant to Jackson Generation, while searching for other material, came across the assessment in a County publication." The tax bills for the two parcels became publicly available in May 2021. The total 2020 property tax liability for the parcels was $4,167,144.84.

¶ 27 In advance of the due date for the first installment of the property tax bill, plaintiff submitted certificate of error requests to the Will County Supervisor of Assessments, challenging the construction status of certain improvements and asserting material mistakes regarding the classification of certain property and assessment of nonexistent improvements. However, plaintiff alleged that only the assessed value of parcel 0010 was adjusted and that "the

adjustment still fails to reflect the correct ascertainable value of the parcel, and is not based on any rational basis." In support of the allegation, plaintiff attached its certificate of error request and the corrected tax bill for parcel 0010, which set forth a balance due of $20,222.84 for parcel 0010 (and which continued to list the Houston address as the mailing address).

¶ 28 B. Motions to Dismiss

¶ 29 The County defendants adopted the previously filed section 2-619 motion to dismiss in response to the amended complaint, arguing that the County was an improper party and that plaintiff failed to challenge the assessment through the proper statutory procedures.

¶ 30 The Jackson Township defendants filed a new combined motion to dismiss pursuant to section 2-619.1 along with a supporting affidavit from the Assessor in which she attested that she was not involved in the splitting of the parcels at issue, did not assess the taxes for the parcels, and was not responsible for sending out the tax assessment notices for the parcels. The Jackson Township defendants sought dismissal under both sections 2-615 and 2-619 on the basis that they were misjoined defendants who had no involvement in the parcel split and reassessment and no ability to provide the requested relief. They also argued that plaintiff's claims were barred by other affirmative matter pursuant to section 2-619 in that the complaint amounted to a procedurally improper tax objection case and that plaintiff failed to exhaust its administrative remedies as required by section 23-10 of the Property Tax Code. See 35 ILCS 200/23-10 (West 2020) ("An objection to an assessment for any year shall not be allowed by the court, however, if an administrative remedy was available by complaint to the board of appeals or board of review under Section 16-55 or Section 16-115, unless that remedy was exhausted prior to the filing of the tax objection complaint."). In addition, the Jackson Township defendants sought sanctions

pursuant to Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) for the filing of a frivolous and harassing lawsuit.

¶ 31 Plaintiff filed a combined response to the motions to dismiss, initially noting procedural improprieties in the motions, including that the County's position that it was an improper party was more appropriately framed as an argument for dismissal pursuant to section 2-615 rather than an affirmative matter under section 2-619, and that the Assessor's affidavit was simply a refutation of the facts pled. Regarding the merits, plaintiff reiterated that each defendant played a role in the unfounded assessment increase and were all necessary parties. Plaintiff argued that defendants failed to provide constitutionally sufficient notice or an opportunity to be heard and that such failure excused plaintiff from exhausting administrative remedies. Moreover, plaintiff argued that exhaustion of administrative remedies was not required given that the reassessment was void *ab initio* due to the constitutionally deficient notice. Plaintiff's position was that the Board's notices were sent to an address that defendants knew was "unmonitored" and that defendants should have made further attempts to notify plaintiff, through other known contact information when the mail was returned to sender. Plaintiff also sought sanctions pursuant to Rule 137 for the fees and costs incurred in responding to the Jackson Township defendants' sanctions request.

¶ 32 Following argument on the motions to dismiss, on June 1, 2022, the circuit court took the motions under advisement. Certain taxing district defendants were granted leave to join the pending motions to dismiss.

¶ 33 C. Circuit Court's Ruling

¶ 34 On July 20, 2022, the circuit court issued its ruling, granting the motions to dismiss and dismissing the case with prejudice. In its oral ruling, the circuit court reasoned:

> "Having read all the pleadings, taking the arguments of counsel into consideration, the more I look at this case, the more I believe that it's truly in the nature of a tax objection. I believe that the County Collector is the proper party defendant. Any other individual or entity named as a defendant is not a necessary party, would be dismissed.
>
> With regard to the motion to dismiss brought by the County of Will, I do not believe the plaintiff[ ] exhausted its administrative remedies. That case is dismissed on that basis."

The circuit court further clarified that all counts in the amended complaint were dismissed with prejudice.[2]

¶ 35 Plaintiff timely appealed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, plaintiff argues that the circuit court erred in dismissing the amended complaint because plaintiff exhausted its available administrative remedies or, alternatively, was excused from doing so due to constitutionally deficient notice of the reassessment. Plaintiff also argues that it stated a claim for violation of its due process rights and that it pled a viable theory of constructive trust against the taxing district defendants.

¶ 38 The County defendants respond that the Board's notices were properly mailed to the address plaintiff provided to the County for its tax bill and that plaintiff's allegation that they

[2]The circuit court never ruled on the pending sanctions requests prior to the notice of appeal; thus, this court initially dismissed the appeal for lack of jurisdiction. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017) ("A judgment or order is not final and appealable while a Rule 137 claim remains pending unless the court enters a finding pursuant to Rule 304(a)."). However, the circuit court subsequently issued a finding, pursuant to Rule 304(a), that there was no just reason to delay appeal from its July 20, 2022, order, and we granted plaintiff's motion to reinstate the appeal and withdrew our prior order. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016).

knew the address was "unmonitored" amounts to an absurd, conclusory allegation with no well-pled supporting facts or allegations. Accordingly, plaintiff's failure to exhaust its administrative remedies warranted dismissal of the complaint pursuant to section 2-619.

¶ 39 The Jackson Township defendants and certain taxing district defendants, in a separate brief on appeal, adopt the County defendants' arguments with respect to the sufficiency of the notice provided. The Jackson Township and taxing district defendants also argue that they were improperly joined defendants with no involvement in the parcel split and reassessment and no ability to provide the requested relief. The taxing district defendants further point out that plaintiff is not entitled to the equitable remedy of a constructive trust over the funds of the taxing districts because the Property Tax Code provides an adequate remedy at law.

¶ 40 For the reasons set forth below, we hold that the circuit court properly dismissed plaintiff's claims as to parcel 0020 for failure to exhaust administrative remedies but erred in dismissing the claims on this basis as to parcel 0010.

¶ 41 A. Standards

¶ 42 A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21; see 735 ILCS 5/2-615 (West 2020). "The essential question is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted." *Cochran v. Securitas Security Services USA, Inc.*, 2017 IL 121200, ¶ 11. When ruling on a motion pursuant to section 2-615, a court must accept as true all well-pled facts and any reasonable inferences therefrom. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Mere conclusions unsupported by specific facts cannot be accepted as true. *Id.*

¶ 43 A section 2-619 motion to dismiss admits the sufficiency of the complaint but permits

dismissal where the circuit court lacks subject matter jurisdiction or a claim is barred by other affirmative matter defeating the claim. 735 ILCS 5/2-619(a)(1), (9) (West 2020); *Adventure Christian Church v. Blair*, 2022 IL App (3d) 210550, ¶ 11. In reviewing the propriety of a dismissal under section 2-619, all well-pled facts, along with all reasonable inferences that may be drawn from those facts, are deemed admitted, and all pleadings and supporting documents must be interpreted in the light most favorable to the nonmoving party. *Blair*, 2022 IL App (3d) 210550, ¶ 11.

¶ 44 We review *de novo* orders granting section 2-615 and 2-619 dismissals. *Bjork*, 2013 IL 114044, ¶ 21. This appeal also involves a question of the circuit court's jurisdiction and the interpretation of a statute, which are also reviewed *de novo*. *Blair*, 2022 IL App (3d) 210550, ¶ 11 (citing *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294 (2010)). We may affirm dismissal on any ground if supported in the record. *Jorgensen v. Berrios*, 2020 IL App (1st) 191133, ¶ 21.

¶ 45 B. Exhaustion of Administrative Remedies

¶ 46 The Property Tax Code sets forth a comprehensive statutory scheme regulating the assessment and collection of taxes. *Blair*, 2022 IL App (3d) 210550, ¶ 13; see 35 ILCS 200/1-1 *et seq.* (West 2020). The general rule is that a taxpayer must exhaust the administrative remedies provided by the statute before seeking relief in the circuit court. *Blair*, 2022 IL App (3d) 210550, ¶ 13. The requirement that a taxpayer exhaust its administrative remedies before filing a tax objection is jurisdictional. *Baker v. Harper*, 2012 IL App (3d) 110343, ¶ 23; see *Blair*, 2022 IL App (3d) 210550, ¶ 15; *Friendship Manor, Inc. v. Wilson*, 2017 IL App (3d) 160391, ¶ 11. The administrative remedies begin with the Board; from there, the taxpayer has the option of either appealing to the PTAB or filing a tax objection complaint in the circuit court. *Blair*, 2022 IL App

(3d) 210550, ¶ 13. Importantly, however,

> "[a]n objection to an assessment for any year shall not be allowed by the court *** if an administrative remedy was available by complaint to the board of appeals or board of review under Section 16-55 or Section 16-115, unless that remedy was exhausted prior to the filing of the tax objection complaint." 35 ILCS 200/23-10 (West 2020).

" 'In the field of taxation the general rule applies that equity will not assume jurisdiction to grant relief where an adequate remedy at law exists.' " *Blair*, 2022 IL App (3d) 210550, ¶ 13 (quoting *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 105 (1973)). The adequate remedy at law is to pay the taxes under protest and file a statutory objection. *Id.*

¶ 47 Here, it is undisputed that plaintiff did not seek relief from the Board before filing this action in circuit court. However, plaintiff contends that lack of notice excused its failure to exhaust administrative remedies. We agree with respect to the reassessment for parcel 0010 but disagree with respect to the reassessment for parcel 0020.

¶ 48 To place our discussion in context, we first review the relevant statutory framework set forth in the Property Tax Code for counties, like Will County, that have fewer than three million inhabitants and where, as here, the year of the property tax assessment (2020) was not a general assessment (or quadrennial) year. See 35 ILCS 200/9-215 (West 2020) (general assessment years include 1995 and every fourth year thereafter). With respect to assessment authority, the chief county assessment officer or the township assessor "may in any year revise and correct an assessment as appears to be just," provided notice is given in the manner provided in sections 12-10 and 12-30 of the Property Tax Code. *Id.* § 9-75. Sections 12-10 and 12-30 set forth notice provisions with respect to the initial assessment process. See *id.* §§ 12-10, 12-30. In non-quadrennial years, "the chief county assessment officer shall publish a list of property for which

assessments have been added or changed since the preceding assessment, together with the amounts of the assessments," unless the changes result from equalization by the supervisor of assessments. *Id.* § 12-10. The publication shall be made on or before December 31 of that year and shall be printed in some public newspaper or newspapers published in the county. *Id.* In addition to publication, "a notice shall be mailed by the chief county assessment officer to each taxpayer whose assessment has been changed since the last preceding assessment, using the address as it appears on the assessor's records." *Id.* § 12-30(a). A township assessor may also send the notice. *Id.* A taxpayer may file a written complaint that its property is overassessed to the Board "on or before 30 calendar days after the date of publication of the assessment list under Section 12-10." *Id.* § 16-55(d).

¶ 49 According to plaintiff, neither the Supervisor nor Assessor sent notice of the change in assessment, as required by section 12-30(a), and the change was never published in accordance with section 12-10. Thus, plaintiff argues that it was excused from filing a complaint before the Board. Plaintiff's argument ignores the Board's independent authority to review the assessment and conflates the notice provisions governing the initial assessment process and those governing Board review. With respect to the initial assessment process, section 12-30(a)'s notice requirement and section 12-10's publication requirement were both met. Indeed, as plaintiff alleged in its amended complaint, pursuant to the Supervisor's 2020 publication schedule, the property assessment notice for the then-unsplit parcel 0000 was mailed on August 7, 2020, and the assessment was published in the August 13, 2020, Farmers Weekly Review. Plaintiff does not allege it failed to receive this notice. Rather, plaintiff acknowledged neither objecting to nor appealing that assessment.

¶ 50 However, the Board reassessed the value following the parcel split. Plaintiff suggests

impropriety with respect to the Board's decision to reassess the parcels. A review of the Property Tax Code demonstrates otherwise. Indeed, our supreme court, in reviewing the relevant statutory provisions, explained that "[a]n original assessment and an assessment increased by a supervisor of assessments stand upon a different footing than an assessment originally made or increased by a board of review." *Dietman v. Hunter*, 5 Ill. 2d 486, 491 (1955). We turn to the statute.

¶ 51 The Property Tax Code provides for an appointed board of review to review the assessments made by the supervisor of assessments. 35 ILCS 200/6-5 (West 2020). "All changes and alterations in the assessment of property shall be subject to revision by the board of review in the same manner that original assessments are reviewed." *Id.* § 9-80. The Board's authority and notice requirements are delineated in article 16 of the Property Tax Code. See 35 ILCS 200/art. 16 (West 2020). Relevant here are sections 16-30 and 16-55.

¶ 52 Section 16-30 provides that the Board "may meet at times it deems necessary for supervising and directing the clerk in the duties prescribed in this Article." *Id.* § 16-30. "At the meeting, the board of review upon application of any taxpayer or upon its own motion may revise the entire assessment of any taxpayer or any part of the assessment as appears to it to be just." *Id.* However, "[t]he assessment of the property of any person shall not be increased unless that person or his or her agent first has been notified in writing at the address that appears on the assessment books, and been given an opportunity to be heard." *Id.*

¶ 53 Section 16-55(e) further provides that the Board may,

> "at any time before its revision of the assessments is completed in every year, increase, reduce or otherwise adjust the assessment of any property, making changes in the valuation as may be just, and shall have full power over the assessment of any person and may do anything in regard thereto that it may deem necessary to make a just assessment,"

though the property shall not be assessed at a higher percentage of fair cash value than the assessed valuation of other property in the assessment district prior to equalization. *Id.* § 16-55(e). However, again, "[n]o assessment shall be increased until the person to be affected has been notified and given an opportunity to be heard." *Id.* § 16-55(f). We note that there is a general notice provision in the Property Tax Code providing, "A failure to give any notice required by this Code shall not impair or affect the validity of any assessment as finally made." *Id.* § 24-25. However, this provision does not operate to eliminate the notice requirements set forth elsewhere in the statute (see *Marty v. Brown*, 34 Ill. App. 3d 660, 665 (1975) (citing *People ex rel. Bracher v. Abraham*, 295 Ill. 582, 586-87 (1920))), and defendants do not argue otherwise.

¶ 54 The final adjournment of the Board "shall be when the work for that assessment year is completed and the assessment books certified by the county clerk but no later than March 15 of the following year." 35 ILCS 200/16-35 (West 2020). On or before the annual date for adjournment, the Board is required to make a list of all assessment changes it made reflecting, *inter alia*, the amount of the assessment prior to and after Board action. *Id.* § 12-60. The Board is required to deliver a copy of the list to the county clerk to file and to the chief county assessment officer, and the list shall be public record and open to inspection. *Id.* While there used to be a statutory requirement to publish assessment changes made at the Board level, this requirement was eliminated from section 12-60 in 2011. See Pub. Act 97-146, § 10 (eff. July 14, 2011) (amending 35 ILCS 200/12-60).

¶ 55 Here, plaintiff was given notice and an opportunity to be heard on the proposed reassessment for parcel 0020 but not for parcel 0010. The Board's November 9, 2020, notice of proposed reassessment for parcel 0020, citing sections 16-30 and 16-55, outlined all required

information, including that the proposed change in assessed value was made by the Board, the assessed value before Board action, the Board's proposed assessed value, and the reason for the change. The notice also explicitly advised plaintiff that it could file a written complaint within 10 days and receive a hearing on the proposed change in assessed value. Plaintiff did not file a complaint with the Board.

¶ 56 Conversely, a notice of proposed reassessment for parcel 0010 was never sent, as the County acknowledged. According to plaintiff, this alone voids parcel 0010's reassessment. Defendants do not address the failure to send notice of the proposed reassessment for parcel 0010. Plaintiff's certificate of error request as to parcel 0010 was allowed, but plaintiff alleges, albeit without further detail, that "the adjustment still fails to reflect the correct ascertainable value of the parcel." None of the parties suggest that the adjustment impacts our analysis on review. Regardless, having not been given notice of the proposed reassessment for parcel 0010, an administrative remedy by way of complaint to the Board, as contemplated by section 23-10 of the Property Tax Code, was not available. Thus, plaintiff was excused from exhausting its administrative remedies as to parcel 0010 (see *Marty*, 34 Ill. App. 3d at 665 (failure to give the taxpayers notice of assessment excused their failure to exhaust administrative remedies)), and the circuit court erred in holding otherwise.

¶ 57 We turn to the remaining arguments with respect to the reassessment for parcel 0020. On January 20, 2021, the Board sent notices of its final decision on the assessed value for parcel 0010 and parcel 0020 in accordance with section 12-50 of the Property Tax Code, requiring mailed notice to the taxpayer where the final Board action results in an increased or decreased assessment. See 35 ILCS 200/12-50 (West 2020). The notices set forth the requisite information, including the assessed value before Board action, the Board's proposed assessed value, the final

assessed value after Board equalization, and the reason for the change.

¶ 58 Plaintiff did not allege that the Board failed to send the notice of proposed reassessment for parcel 0020 or the final notices of reassessment. Nor did plaintiff allege that the Houston address was wrong or not associated with the property or owner. Rather, plaintiff alleged that the notices were mailed to an address the County and Jackson Township defendants knew to be "unmonitored." Parenthetically, we note that, unlike the factual allegations common to all counts in the amended complaint, in count II for declaratory relief as to defendants' alleged violation of plaintiff's procedural due process rights with respect to the issuance and enforcement of the tax assessment on the 0020 parcel, plaintiff included an isolated allegation that defendants knew the Houston address to be "outdated." However, plaintiff does not mention this allegation on appeal, maintaining only that defendants knew the address to be "unmonitored." Moreover, as noted below, the record reflects plaintiff's continued use of the Houston address.

¶ 59 Plaintiff further alleged that, upon information and belief, the November 9, 2020, notice for parcel 0020 was returned to sender and that the January 20, 2021, notices were in fact stamped return to sender, not deliverable as addressed, and unable to forward. The County counters that its notice obligation was satisfied once the notices were mailed and that it sends out hundreds of notices with no means of knowing whether a provided address is "unmonitored."

¶ 60 The Board's notices were properly mailed, as required by the Property Tax Code, to plaintiff's address as it appears on the assessor's records, *i.e.*, the address plaintiff provided to the County for its tax bill. See *id.* § 12-30(a) (notice shall be mailed "using the address as it appears on the assessor's records"); *id.* § 16-30 (notice shall be provided to "the address that appears on the assessment books"). Further, the Property Tax Code states that the default notice provision shall be "to the address of the person who last paid taxes upon the property in

question." *Id.* § 24-25. The record reflects that the Houston address was the address plaintiff provided for the tax bill and, parenthetically, continued to be the address on the tax bill in 2021 without any allegation of nonreceipt.

¶ 61 Accordingly, the notice requirement was met once the notices were placed in the mail to the Houston address. See *In re Application of Cook County Treasurer & ex officio County Collector*, 106 Ill. App. 3d 451, 453-54 (1982) (evidence that notices of increased assessment were mailed to the last provided address amounted to sufficient notice despite taxpayer's claim that it never received the notices); see also *Gyorgy v. Commissioner of Internal Revenue*, 779 F.3d 466, 473 (7th Cir. 2015) (deficiency notices mailed to taxpayer at his last known address were not rendered invalid based upon the taxpayer's complaint that he did not receive them; constructive notice was sufficient because an actual notice requirement "would impose an almost impossible burden on the IRS to keep track of every taxpayer's whereabouts"). Notwithstanding, plaintiff maintains that, given its allegation that it did not *receive* notice of the reassessment until it was too late to seek relief with the Board, it was excused from exhausting its administrative remedies. In support, plaintiff cites *Marty*, 34 Ill. App. 3d 660. In *Marty*, the taxpayers were not given *any* notice of a non-quadrennial year assessment because the property, which had not previously been taxed, was listed in the assessor's records under the city's name rather than the taxpayers' names. *Id.* at 662. In rejecting the county collector's argument that the taxpayers failed to exhaust their administrative remedies, the appellate court reasoned that "the first notice these taxpayers received was a tax bill from the county treasurer's office long after the board of review had closed its books on the tax year in question." *Id.* at 665.

¶ 62 *Marty* is inapposite as to the analysis with respect to parcel 0020. Here, the Board mailed notice of the proposed reassessment for parcel 0020 as well as the notices of final assessment for

both parcels to the address plaintiff provided for its tax bill, and plaintiff did not allege otherwise. Rather, plaintiff alleged that the address was known to be "unmonitored" and thus the notices should have been sent to a different address. Simply put, the pleadings in no way elucidate what is intended by an "unmonitored" address as pled in the amended complaint, and we are unable to draw any reasonable inference in plaintiff's favor from this otherwise unexplained allegation. The dictionary definition of "monitor" is "to watch, keep track of, or check usually for a special purpose." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/monitor (last visited Apr. 30, 2024) [https://perma.cc/3586-6KAJ]. The Property Tax Code necessarily contemplates that property owners will maintain current addresses with taxing bodies for purposes of the assessment and taxing process and relies upon those addresses being monitored for purposes of notifying taxpayers of assessments they may wish to contest in accordance with the statutory scheme.

¶ 63 Despite the plain statutory language stating to whom and where notices should be sent, plaintiff alleged that defendants knew of other potential addresses to send the notices and should have used one of those. However, we may not depart from the statutory language by reading into it exceptions, limitations, or conditions not expressed (see *Haage v. Zavala*, 2021 IL 125918, ¶ 60), and we will not interpret a statute in a manner that yields an absurd or unjust result (see *In re A.P.*, 179 Ill. 2d 184, 195 (1997)). To place the onus on the county to choose from an assortment of potential addresses for notices, rather than using the address provided for the tax bill as contemplated by the statute, would amount to an improper departure from the statutory language and, ultimately, result in a haphazard and arbitrary method of identifying the proper mailing address.

¶ 64 As a final matter, following oral argument in this case, we ordered supplemental briefing

on the issue of whether publication was statutorily required for the non-quadrennial reassessment here. Plaintiff argued that it was, relying upon the publication requirement set forth in section 12-10 applicable to the initial assessment process. See 35 ILCS 200/12-10 (West 2020) (in non-quadrennial years, "the chief county assessment officer shall publish a list of property for which assessments have been added or changed since the preceding assessment, together with the amounts of the assessments"); *Andrews v. Foxworthy*, 71 Ill. 2d 13, 22-23 (1978) (failure to comply with statutory publication requirement rendered tax resulting from increased assessment invalid). However, as the County defendants pointed out, and as set forth above, while there used to be a statutory requirement to publish assessment revisions made, as here, at the Board level, this requirement was eliminated in 2011. See Pub. Act 97-146, § 10 (eff. July 14, 2011) (amending 35 ILCS 200/12-60). Accordingly, the statutory notice requirement having been met with respect to parcel 0020, plaintiff was required to exhaust its administrative remedies before seeking relief in the circuit court.

¶ 65 We acknowledge recognized instances where a taxpayer need not look to the remedy at law but may seek equitable relief in circuit court, including where the tax or assessment is unauthorized by law or levied upon property exempt from taxation (see *Jorgensen*, 2020 IL App (1st) 191133, ¶ 24 (citing *Clarendon Associates*, 56 Ill. 2d at 105)), and where the taxpayer was subject to fraudulently excessive assessments without being sent notice of the proposed assessment and learned of the assessment after the board of review had closed its books on the relevant tax year (see *id.* ¶ 26 (citing *Hoyne Savings & Loan Ass'n v. Hare*, 60 Ill. 2d 84, 87-91 (1974))). Plaintiff contends in cursory fashion that the assessment was unauthorized. However,

> " '[a] true "unauthorized by law" challenge arises where the taxing body has no statutory power to tax in a certain area or has been given no jurisdiction to tax a certain subject, as

> opposed to a complaint that merely alleges procedural errors or irregularities in the taxing process, in which case equity relief would not be available.' " *Id.* ¶ 25 (quoting *Millennium Park*, 241 Ill. 2d at 307).

Here, the taxing body was authorized to tax plaintiff's property; what plaintiff's challenge is the *amount* of the tax imposed. See *id.*

¶ 66 Plaintiff also contends that, "even if [it] could have exhausted remedies by appealing to the Board, the Board's January 2021 Notice of Final Decision to Jackson Generation authorized Jackson Generation to appeal directly to PTAB." Plaintiff's position is the County defendants therefore waived the requirement that it exhaust its administrative remedies. Plaintiff, however, does not develop the argument or provide supporting legal authority. A point not supported by citation to relevant authority fails to satisfy the requirements of Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020) and results in forfeiture of the issue. See *Lake County Grading Co. v. Village of Antioch*, 2014 IL 115805, ¶ 36. Further, the requirement that a taxpayer exhaust its administrative remedies before filing a tax objection is jurisdictional (*Baker*, 2012 IL App (3d) 110343, ¶ 23; see *Blair*, 2022 IL App (3d) 210550, ¶ 15; *Friendship Manor*, 2017 IL App (3d) 160391, ¶ 11), and thus cannot be waived. We observe that the Board is in fact statutorily required to include in the notice of final decision the statement that its final decision is appealable to the PTAB. See 35 ILCS 200/12-50 (West 2020) ("[T]he notice shall also contain the following statement: 'You may appeal this decision to the Property Tax Appeal Board by filing a petition for review with the Property Tax Appeal Board within 30 days after this notice is mailed to you or your agent, or is personally served upon you or your agent'."). The inclusion of this statutory language does not otherwise establish an exception to the requirement of exhausting administrative remedies.

¶ 67 Ultimately, however, plaintiff's central argument on appeal is that it adequately pled *constitutionally* deficient notice. As a result, plaintiff argues that it was excused from exhausting its administrative remedies and, moreover, that the reassessment was void in its entirety. We disagree, as discussed below.

¶ 68 C. Due Process

¶ 69 Due process requires that property owners be given notice and an opportunity to be heard on the issue of the property's valuation at some point in the assessment procedure before liability to pay the property tax becomes conclusively established. *Dietman*, 5 Ill. 2d at 489. Failure to do so renders the property tax void and uncollectible. *Id.*; see *M.S. Kaplan Co. v. Cullerton*, 49 Ill. App. 3d 374, 379 (1977). "Procedural due process is founded upon the notion that prior to a deprivation of life, liberty or property, a party is entitled to 'notice and opportunity for [a] hearing appropriate to the nature of the case.' " (Internal quotation marks omitted.) *Passalino v. City of Zion*, 237 Ill. 2d 118, 124 (2009) (quoting *Jones v. Flowers*, 547 U.S. 220, 223 (2006)). To satisfy the requirements of procedural due process, the manner of giving notice must be " 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " *Id.* at 126 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

¶ 70 Here, the Board's notice of the proposed reassessment for parcel 0020 and its final notices of the reassessment were mailed to the address plaintiff provided to the County for its tax bill. Not only did the manner of notice meet the statutory requirements, as discussed *supra*, this manner of notice—a mailing to the address on the tax record—has been recognized to be sufficient to satisfy procedural due process. For instance, in *Passalino*—a case involving a city's adoption of a comprehensive zoning amendment—our supreme court held that while mere notice

by publication of the hearings on the amendment (which was all that was statutorily required) violated the procedural due process rights of the affected property owner, one of the reasonable actions the city could have taken was to review the county collector's records and mail notices to the taxpayers of record. *Id.* at 127-29; see *Musicus v. First Equity Group, LLC*, 2012 IL App (3d) 120068, ¶¶ 15-17 (although the developer's efforts to notify plaintiff of the public hearing on its rezoning application were insufficient under *Passalino*, the city provided sufficient notice of the hearing by publication and mail to the addresses on the property tax records).

¶ 71 Plaintiff likens this case to *Mercury Sightseeing Boats, Inc. v. County of Cook*, 2019 IL App (1st) 180439, ¶ 154, where the appellate court held that the county revenue department's notices to the taxpayer regarding an amusement tax assessment violated the taxpayer's procedural due process rights given misleading statements in the notices as to the deadline to file a protest. According to plaintiff, "[t]he facts in this case are even more egregious than the *Mercury Sightseeing Boards* because [it] did not receive *any* notice, let alone misleading notice." (Emphasis in original.) This argument misses the point. We necessarily accept as true plaintiff's allegation that it did not actually receive the Board's notices, in this procedural posture. However, " '[d]ue process does not require that a property owner receive *actual* notice before the government may take his property.' " (Emphasis added.) *DG Enterprises, LLC-Will Tax, LLC v. Cornelius*, 2015 IL 118975, ¶ 37 (quoting *Jones*, 547 U.S. at 226). Rather, due process required notice reasonably calculated, under " 'all the circumstances,' " to apprise plaintiff of the reassessment and afford it an opportunity to be heard. (Internal quotation marks omitted.) *Id.* (quoting *Mullane*, 339 U.S. at 314).

¶ 72 On this issue, plaintiff maintains that the Board's mailings were not reasonably calculated to provide notice under all the circumstances pled in the amended complaint. According to

plaintiff, given its allegation that the November 9, 2020, notice was returned to sender, due process required defendants to take additional steps to attempt to provide notice before the property could be reassessed. Plaintiff relies upon the principles set forth in the United States Supreme Court's decision in *Jones*, which held that due process required the state to take additional reasonable and practicable steps to provide notice to the property owner before selling his house when a certified notice of the impending tax sale to the owner was returned unclaimed. *Jones*, 547 U.S. at 234-37. The Court suggested several reasonable steps that the state could have taken when faced with the return of an unclaimed certified letter, including resending the notice by regular mail so that a signature was not required, addressing the notice to "occupant" rather than to the owner, or posting notice on the front door of the house. *Id.* at 234-35. The Court rejected the owner's argument that the state should have searched the phone book and other government records to ascertain a new address. *Id.* at 235-36. The Court concluded, "[T]he State is exerting extraordinary power against a property owner—taking and selling a house he owns. It is not too much to insist that the State do a bit more to attempt to let him know about it when the notice letter addressed to him is returned unclaimed." *Id.* at 239. Accordingly, "given the circumstances of this case," the state's effort to provide notice of the impending tax sale was insufficient to satisfy due process. *Id.*

¶ 73 Plaintiff contends that, similarly, here, the circumstances of this case required additional steps to effectuate notice when the Board's notices were returned to sender. Plaintiff points to the unique nature of its property, the special attention the property had received from Will County, and the amount of the increased tax liability from the reassessment as the circumstances that warranted further attempts at notice. Given these circumstances, plaintiff argues that, when the Board's notices were returned to sender, due process required additional attempts to effectuate

notice of the increased assessment. Plaintiff suggests that notice could have been sent to the project address or plaintiff's principal place of business—both of which were known to defendants. Moreover, the parties exchanged contact information years earlier during the 2017 and 2018 meetings regarding the anticipated assessed valuation of the project that could have been used for notice, and plaintiff and its counsel were involved in other property tax appeals from which alternative contact information could have been gleaned. The dissent agrees, stating that, "[d]espite the plaintiff's suggestion of several simple and practicable alternatives for providing effective notice, the defendants refused to avail itself of any other 'reasonably calculated' means, violating our long-held notions of fairness." *Infra* ¶ 131.

¶ 74 While this argument has intuitive appeal, it gives short shrift to pivotal circumstances here, not to mention the statutory scheme at issue in *Jones* and its progeny. As required by the Property Tax Code, the Board's notices of the increased reassessment were properly sent to the address plaintiff provided to the County for its tax bill. Plaintiff did not allege that the address was wrong. Rather, plaintiff alleged, inexplicably, that it opted not to "monitor" the address that it had provided. There was no allegation that plaintiff had informed defendants that the Houston address would not be "monitored," and the record does not otherwise support it. Rather, the basis for defendants' collective alleged knowledge that plaintiff was not "monitoring" the Houston address was that the Board's notices were returned to sender. The dissent criticizes our failure to draw all reasonable inferences in plaintiff's favor, but the precise allegations from which this inference might be drawn remain unclear. Indeed, we have accepted all well-pled allegations as true, as we must in this procedural context, but can discern no reasonable inference to be drawn in plaintiff's favor from its allegation that it did not monitor the Houston address.

¶ 75 The suggestion that due process required the Board to send notice to plaintiff at a variety

of other addresses is more akin to the sort of open-ended search for a new address expressly rejected in *Jones*. In fact, one of the suggested reasonable follow-up steps in *Jones*—sending the notice by regular mail—is precisely what the Board did here. Moreover, in considering the entirety of the circumstances here, we note that *Jones* involved notice of the forced sale of a home in a tax deed proceeding, not a notice of an increased tax assessment as here. Tellingly, even in post-*Jones* tax deed cases, our supreme court has rejected due process challenges to the lack of notice on grounds that open-ended searches of government records are not constitutionally required when certified notices to the property owners were returned unclaimed. See *DG Enterprises*, 2015 IL 118975, ¶ 48; *In re Application of the County Collector*, 225 Ill. 2d 208, 229 (2007). The dissent notes the numerous additional steps had been taken in *DG Enterprises* and *In re County Collector* to notify the property owners of the proceedings that ultimately culminated in the granting of a tax deed petition. See *infra* ¶¶ 123-24. But this only highlights the distinction between this case—involving notice from the Board of an increased tax assessment—and cases involving notice requirements set forth in multi-step tax foreclosure statutory schemes.

¶ 76 Ultimately, plaintiff's argument is that, given the special attention its unique property had received and the amount of increased tax liability at stake, when the November 9, 2020, notice of proposed reassessment was allegedly returned to sender, more was required to effectuate notice. The dissent agrees, reasoning that the process that was due was "far different from that ordinarily due when notifying an average citizen of a modest increase in their property's assessed valuation." *Infra* ¶ 102. Respectfully, this presents an unworkable framework eliciting many unanswered questions, including the parameters for identifying such a property, the monetary threshold for additional process, and even whether the "modesty" of an increase would be

relative to a property owner's financial means. The uncertainty raised by the above questions is compounded by the County defendants' observation that, in a non-quadrennial assessment year, it sends out hundreds of notices with no means of knowing whether an address is "unmonitored." In sum, under the particular facts alleged here and for all the reasons discussed, we reject plaintiff's argument that it received constitutionally deficient notice with respect to parcel 0020.

¶ 77 D. Remaining Claims

¶ 78 The dismissal with prejudice of all claims as to parcel 0020 is affirmed. This includes count II (seeking a declaratory judgment that defendants violated plaintiff's procedural due process rights with respect to the issuance and enforcement of the reassessment for parcel 0020), the declaratory judgment claim pertaining to parcel 0020 in count III (seeking a declaratory judgment that the reassessment violated plaintiff's substantive due process rights), count V (alleging a procedural due process violation with respect to parcel 0020's reassessment), the § 1983 claim pertaining to parcel 0020 in count VI (alleging that the reassessment violated plaintiff's substantive due process rights), and the alternative tax objection claim as to parcel 0020 in count VII. Plaintiff failed to exhaust its administrative remedies as to parcel 0020 and thus cannot seek relief in circuit court as to the reassessment for this parcel. See 35 ILCS 200/23-10 (West 2020); see also *Reno v. Newport Township*, 2018 IL App (2d) 170967, ¶ 27 ("Plaintiff overlooks that a taxpayer may not contest the validity of a state tax in an action for damages pursuant to section 1983 if, as in the present case, state law offers an adequate and complete remedy."); *Tampam Farms, Inc. v. Supervisor of Assessments for Ogle County*, 271 Ill. App. 3d 798, 804 (1995) ("Where a taxpayer fails to complete the procedural remedies that this State makes available to him to contest an assessment, due process has not been violated and the dissatisfied taxpayer may not bring a section 1983 claim on that basis ***.").

¶ 79 The dismissal with prejudice of all claims as to parcel 0010 on the basis of failure to exhaust administrative remedies is reversed. This includes count I (seeking a declaratory judgment that defendants violated plaintiff's procedural due process rights with respect to the issuance and enforcement of the reassessment for parcel 0010), the declaratory judgment claim pertaining to parcel 0010 in count III (seeking a declaratory judgment that the reassessment violated plaintiff's substantive due process rights), count IV (alleging a procedural due process violation with respect to parcel 0010's reassessment), the § 1983 claim pertaining to parcel 0010 in count VI (alleging that the reassessment violated plaintiff's substantive due process rights), and the alternative tax objection claim as to parcel 0010 in count VII. Plaintiff was not sent notice of the proposed reassessment for parcel 0010 and was thus excused from exhausting its administrative remedies as to the reassessment for this parcel.

¶ 80 Turning to the improper joinder challenges, we hold that the surviving claims as to parcel 0010 do not state a claim against all defendants. First, the claims are dismissed as to the taxing district defendants (with the exception of Jackson Township, as discussed below). Plaintiff is not entitled to the equitable remedy of a constructive trust over the funds of the taxing districts because the Property Tax Code provides an adequate remedy at law. See 35 ILCS 200/23-20 (West 2020) ("If the final order of the Property Tax Appeal Board or of a court results in a refund to the taxpayer, refunds shall be made by the collector from funds remaining in the Protest Fund until such funds are exhausted and thereafter from the next funds collected after entry of the final order until full payment of the refund and interest thereon has been made."). Second, the only necessary party for the tax objection claim is the Treasurer. See *id.* § 23-15(a) (the tax objection complaint "shall name the county collector as defendant and shall specify any objections that the plaintiff may have to the taxes in question"); *id.* § 19-35 ("The treasurers of

all counties shall be ex-officio county collectors of their counties.").

¶ 81 At this procedural posture, however, we reject the Jackson Township defendants' argument that they were improperly joined. Their argument for dismissal under section 2-619 was based upon the supporting affidavit of the Assessor in which she attested that she was not involved in the splitting of the parcels or the reassessment. These attestations amounted to a mere refutation of the facts pled, not an affirmative matter for purposes of section 2-619. See *Bank of America, N.A. v. Yun*, 2022 IL App (3d) 210210, ¶ 11 ("Since the declaration denied a substantial allegation of the counterclaim, it simply identified a factual matter that was not appropriate for a motion to dismiss pursuant to section 2-619(a)(9) of the Code."). No other improper joinder arguments were raised on appeal, and we otherwise express no opinion on whether the remaining defendants for the surviving claims were properly named.

¶ 82 III. CONCLUSION

¶ 83 For the reasons stated herein, the judgment of the circuit court of Will County is affirmed in part, reversed in part, and the cause is remanded for further proceedings consistent with this disposition.

¶ 84 Affirmed in part and reversed in part; cause remanded.

¶ 85 PRESIDING JUSTICE McDADE, concurring in part and dissenting in part:

¶ 86 I agree with the majority's analysis and resolution of the issues pertaining to parcel 0010, but I respectfully dissent from its conclusion that the trial court "properly dismissed plaintiff's claims as to parcel 0020 for failure to exhaust administrative remedies." *Supra* ¶ 40. By rejecting the plaintiff's contentions that "it received constitutionally deficient notice with respect to parcel 0020," the majority indirectly holds that the Board's attempts at notification provided the type of reasonably calculated notice mandated by procedural due process. Although I agree that the

Board fulfilled its statutory duty by sending notice of the reassessment of parcel 0020 to the address specified in the statute, that does not end this court's inquiry, contrary to the majority's suggestion. *Supra* ¶ 70. After applying the three-factor due process test in *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976), I conclude that the defendants' attempts at providing the plaintiff with notice of parcel 0020's reassessment violated fundamental principles of due process. Consequently, I would hold that the plaintiff's failure to exhaust its administrative remedies as to parcel 0020 must be excused for lack of constitutionally mandated notice.

¶ 87 In its due process challenge, the plaintiff claims that the notices sent to the Houston address were "not reasonably calculated to provide notice under all the circumstances pled in the amended complaint" and that "due process required defendants to take additional steps to attempt to provide notice before the property could be reassessed." *Supra* ¶ 72. Our longstanding principles of procedural due process mandate that "property owners be given notice and an opportunity to be heard on the issue of the property's valuation at some point in the assessment procedure before liability to pay the property tax becomes conclusively established." *Supra* ¶ 69 (citing *Dietman v. Hunter*, 5 Ill. 2d 486, 489 (1955)). "Failure to do so renders the property tax void and uncollectible." *Supra* ¶ 69 (citing *Dietman*, 5 Ill. 2d at 489, and *M.S. Kaplan Co. v. Cullerton*, 49 Ill. App. 3d 374, 379 (1977)).

> "To satisfy the requirements of procedural due process, the manner of giving notice must be ' "*reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.*" ' [*Passalino v. City of Zion*, 237 Ill. 2d 118, 126 (2009)] (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950))." (Emphasis added.) *Supra* ¶ 69.

Although the majority accurately outlines those fundamental tenets of due process, it falters in their application.

¶ 88 What constitutes a reasonable attempt at providing notice is not a one-size-fits-all determination; rather, it is a highly individualized and fact-specific inquiry. As the United States Supreme Court explained in *Mathews,* 424 U.S. at 335, the

> "identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

The majority's rejection of the instant constitutional challenge is perhaps attributable, at least in part, to its decision not to adhere to the *Mathews* framework.

¶ 89 In examining those factors, the first is easily applied here. The private interest affected by the State's action is undoubtedly the plaintiff's pocketbook, since the enormous increase in the proposed reassessment of parcel 0020 directly led to a corresponding increase in its tax liability. Indeed, the assessed value of parcel 0020 rose nearly 600-fold in the course of three months, from $78,324 in August 2020 to $46,400,677 in November 2020. *Supra* ¶ 3. It cannot be seriously disputed that the proposed change did not substantially impact the plaintiff's tangible, private interests.

¶ 90 To address the second *Mathews* factor, this court must examine the risk to the plaintiff's private interest created by the defendants' choice of notification procedures, as well as the

probable value of employing additional or differing procedures. Here, the risk to the plaintiff's financial interests from inadequate notice of the reassessments is glaringly evident. The plaintiff's total tax liability swelled precipitously from about $7500 to over $4.1 million in mere months, and its amended complaint alleged that the defendants' chosen notification procedure failed to provide an adequate opportunity to timely object. *Supra* ¶ 3.

¶ 91 Because the plaintiff's amended complaint was dismissed by the trial court, we must consider the well-pled facts, as well as all reasonable inferences premised on them, to be admitted and view all pleadings and supporting documents in the light most favorable to the plaintiff as the nonmovant. *Supra* ¶ 43. That means, at a minimum, that we cannot reject out of hand any specific allegations in the plaintiff's amended complaint. While the majority expressly acknowledges those fundamental principles, its analysis fails to honor them.

¶ 92 For example, rather than addressing the multitude of factual allegations in the plaintiff's amended complaint, the majority hinges its conclusion that the defendant's notice was constitutionally sufficient on only two facts: the "unmonitored" status of the Houston mailing address and the return of the November 2020 notice as undeliverable. *Supra* ¶¶ 74, 75, 76. As even a brief review of the amended complaint readily confirms, however, those two assertions are far from "all the circumstances" or well-pled facts alleged by the plaintiff. Accordingly, the majority's analysis falls far short of effectuating either the proper standard of review for the dismissal of a complaint or the due process requirements mandated in *Passalino*.

¶ 93 In its analysis, the majority declares that "the record does not otherwise support" "that plaintiff had informed defendants that the Houston address would not be 'monitored.' " *Supra* ¶ 74. Relying on its claim that "the precise allegations from which this inference might be drawn remain unclear," the majority maintains that it has "accepted all well-pled allegations as true, as

we must in this procedural context, but can discern no reasonable inference to be drawn in plaintiff's favor from its allegation that it did not monitor the Houston address." *Supra* ¶ 74. Although the majority makes much of the plaintiff's handling of the "unmonitored" address (see *supra* ¶¶ 58, 62, 74, 76), its concerns have no bearing on the proper analysis of the plaintiff's due process challenge.

¶ 94 By focusing on the "unmonitored" Houston address. and any potential inferences based on it, the majority misses the analytical point in two ways. First, neither the bare fact that the address was unmonitored nor the plaintiff's rationale for not monitoring it are relevant to the resolution of the constitutional question. As *Passalino* explains, to meet constitutional muster, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (Internal quotation marks omitted.) *Passalino*, 237 Ill. 2d at 126; *supra* ¶ 69. Applying that test, the relevant inquiry examines what the defendants allegedly knew, under "all the circumstances," about both the likely effectiveness of those notification attempts. Indeed, all that the defendants could consider in deciding what constituted constitutionally sufficient notice were the facts allegedly known to them prior to sending that notice. The concerns expressed by the majority regarding the Houston address's "unmonitored" status add nothing to that analysis; simply stated, they do not relate to what the defendants knew about the likely success of sending notice to the plaintiff there, despite the plaintiff's numerous allegations about the defendant's knowledge.

¶ 95 Second, the majority's conclusion that it "can discern no reasonable inference to be drawn in plaintiff's favor from its allegation that it did not monitor the Houston address" (*supra* ¶ 74) goes astray for an even more fundamental reason: this court need not rely on *any* inferences

from that allegation in light of the facts provided in the amended complaint. Apparently, the majority's quest for potential inferences from the decision not to monitor the Houston address blinded it to not one, but two, specific allegations in the amended complaint that directly addressed the defendants' *actual knowledge*. Both paragraphs 73 and 86 of that complaint alleged that "[t]he County, the Supervisor, the Treasurer, Jackson Township, and the Assessor *knew* that the Jackson Generation address in Houston was not being monitored." (Emphasis added.) As the majority admits, we must accept those specific factual allegations as true under the procedural posture of this case. *Supra* ¶¶ 42, 71, 74. Because the plaintiff alleged the defendants had knowledge that the Houston address was unmonitored, and thus would prove ineffective in providing the mandated notice, the majority errs by searching for other potential inferences about the extent of the defendants' knowledge. Given the plaintiff's express allegations, no other inferences are necessary.

¶ 96 The majority also critiques the absence of allegations or evidence in the record expressly stating that the plaintiffs told the defendants the Houston address was unmonitored. *Supra* ¶ 74. Any speculation on that matter, however, again lies outside the scope of the relevant constitutional inquiry. In considering a motion to dismiss, the essential components in determining whether the notice provided was "reasonably calculated, under all the circumstances," to be effective do not include a detailed explanation of how the plaintiffs conveyed the relevant information to the defendants. They do, however, necessarily include the express allegation that the defendants knew that the address was unmonitored and, thus, by reasonable inference, that any notice sent there would not be received by the plaintiff. See *Passalino*, 237 Ill. 2d at 126; *supra* ¶ 69.

¶ 97 Moreover, contrary to the majority's claim, the plaintiff's complaint also cited additional evidence establishing that the defendants knew that the second notice sent to the Houston address would be ineffective: the undisputed return of the initial November 2020 notice. The return of that mailing as undeliverable provided yet another means of informing the defendants that mailings sent to that address would not be "reasonably calculated" to reach the plaintiff. That conclusion is sound regardless of whether or not "the record reflects plaintiff's continued use of the Houston address." *Supra* ¶ 58. Despite knowing both that the Houston address was unmonitored and that mailing the November notice to that address was ineffective, the defendants nonetheless persisted in using that same failed method just two months later, in January 2021, when sending notice that the Board had adopted the new proposed valuations. When looked at under the proper standard for reviewing a dismissal order, the plaintiff's amended complaint contained more than enough well-pleaded facts to establish that the notice sent was not " 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " *Passalino*, 237 Ill. 2d at 126 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

¶ 98 The majority also attempts to excuse the defendants' failure to act on their alleged knowledge by employing a different notification method. It finds that "in a non-quadrennial assessment year, [the County] sends out hundreds of notices with no means of knowing whether an address is 'unmonitored.' " *Supra* ¶ 76. That conclusion, however, directly contradicts the allegations in the plaintiff's amended complaint. Despite its recitation of the black letter law that this court must deem all well-pled facts and reasonable inferences admitted and read all pleadings and supporting documents in the light most favorable to the plaintiff (*supra* ¶ 43), the

majority appears to abandon any serious attempt to apply those standards. Accepting the allegations in the complaint as true, as we must, they, along with the inferences reasonably flowing from them, establish that the reassessment of parcel 0020 was far from routine, having long garnered considerable special attention from the defendants due to its singular nature.

¶ 99 The amended complaint specifically alleged that the property had been the focus of substantial discussion and concern among the defendants long before any reassessment notices were sent. Prior to the start of construction, the plaintiff and its counsel had numerous meetings with both the Will County Supervisor of Assessments and members of Will County State's Attorney's Office about potential assessment changes. The complaint alleged that at least four meetings were held, dating back to January 2017. During those meetings, the defendants obtained effective contact information from the plaintiff and its counsel, attempted to agree on new assessment values, and confirmed that certain equipment in the proposed development had not previously been subject to property taxes because it was not properly classified as real property. Although those extended discussions failed to reach an agreement on the proper reassessed valuations, the fact that they were held at all clearly supports the inference that the defendants were uniquely aware of parcel 0020 and its reassessment process. Indeed, the plaintiff's development project ultimately generated millions of additional tax dollars each year for the defendants. Subsequently, the plaintiff was issued building permits for massive improvements to the site in 2019 by Will County, again placing the project squarely on the defendants' radar.

¶ 100 Moreover, the amended complaint alleged that a series of e-mails and phones calls discussing the project took place between various defendants just a few months prior to the mailing of the first reassessment notice. The assistant deputy supervisor of assessments for Will

County sent an e-mail to the county assessor stating that she was "working on a split *** and I noticed on parcel 10-l l-08013-0010/0020 it is classified as farm however it very much so looks industrial and farm. If l send a break down will you be able to value the commercial part? It looks very similar to 10-ll-08-300-0011-0000." The assistant deputy supervisor subsequently requested "a value for 72.37 commercial land and the buildings" from the assessor and attached the relevant map." The assessor responded on August 26, 2020, "This is the J power cycle plant, correct? Can you please call me on my cell phone?" and provided her cell phone number. "Upon information and belief, Assessor and the Assistant Deputy Supervisor discussed the valuation of the Project." That same day, "the Board approved the split of PIN 10-ll-08-300-012-0000 into the 0010 Parcel and 0020 Parcel" and changed the assessments of those parcels to $12,192 and $78,324, respectively, retaining the pre-split total valuation of $90,516.

¶ 101 The plaintiff further alleged that "[a]t some point after the August 2020 publication of assessments and the split, the Supervisor engaged a consultant named John Trowbridge ('Consultant') to re-assess" the property, an act that was undoubtedly not routine. The consultant was provided with various materials to review on October 26 and 28, with the Will County supervisor being copied on those emails. On November 9, the consultant sent an e-mail to the deputy supervisor of assessments and supervisor recommending that the two parcels "should be reassessed based on property values supported by Enterprise Zone sales tax exemption certificate applications." The consultant noted that "these reassessed numbers were 'significant numbers, but are reinforced by the Enterprise Zone expenditures.' " In response, the deputy supervisor "confirm[ed] that 0010 will not be receiving a revised notice. And also confirming that 0020 farm building is being removed. Please advise." In turn, the consultant replied, "Correct. Nothing appears to have changed on 0010. The farm buildings were on the east side of the parcel. They

appear to have been scraped off for the new construction." A few days later, the deputy supervisor e-mailed materials to the assessor that included new proposed reassessed values of $8,414,968 for parcel 0010 and $46,400,677 for parcel 0020. A copy was also sent to the consultant. The new valuations represented "a total increase of $54,815,645, or over 60,000%," according to the amended complaint. The complaint added that, "[u]pon information and believe [*sic*], Deputy Supervisor acted at the direction and with the knowledge of Supervisor, and Supervisor caused Deputy Supervisor to send the inflated reassessments to the Assessor." Those new valuations allegedly also treated certain plant equipment as real property, "contrary to past practice and law." Attached to the amended complaint as exhibits, the communications cited in the complaint irrefutably demonstrate that the parcels received special attention from the defendants, beginning years before the ineffective reassessment notices were sent to the unmonitored Houston address.

¶ 102 When viewed under the correct standard, the inference that the return of the unopened November notice to the Houston address garnered at least some degree of individualized attention from the defendants flows naturally from the allegations in the amended complaint. Indeed, it is difficult to fathom reaching a contrary inference based on those allegations. The indisputably unique characteristics of the plaintiff's industrial development, combined with the defendants' extensive history of giving the property special attention and the parties' repeated and extensive interactions about the proper assessment, establish that the process due here was far different from that ordinarily due when notifying an average citizen of a modest increase in their property's assessed valuation.

¶ 103 Nonetheless, after accepting without question the plaintiff's numerous factual allegations about the defendants' knowledge that the original notice had failed and that they had ready

access to other means of effectively contacting the plaintiff, the majority rejects the "plaintiff's argument *** that, given the special attention its unique property had received and the amount of increased tax liability at stake, when the November 9, 2020, notice of proposed reassessment was allegedly returned to sender, more was required to effectuate notice." *Supra* ¶ 76. The error of that conclusion is palpable in light of the detailed allegations in the plaintiff's amended complaint.

¶ 104 Taking all those allegations, as well as all inferences that reasonably flow from them, into consideration, the second *Mathews* factor must be resolved in favor of the plaintiff. The risk created by the defendants' decision to send a second notice to the same address that they knew had already proven to be inadequate just two months earlier was substantial. Moreover, the probable value of using the alternative contact information the defendants obtained during their timely and extensive discussions with the plaintiff and its counsel was high. For those reasons, the facts pled by the plaintiff were more than sufficient to establish the defendants' knowledge that mailings sent to the Houston address were not "reasonably calculated" to provide notice.

¶ 105 Turning to the final *Mathews* factor, this court is obliged to examine the nature of "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Despite the majority's misplaced emphasis on the differing notice provisions represented in various statutory schemes (*supra* ¶¶ 70, 74-75), compliance with statutory notice requirements is not sufficient to ensure that the intended recipient received notice that comported with due process. The Supreme Court's reasoning in *Mullane* is instructive.

¶ 106 In *Mullane*, the Supreme Court considered whether notice by publication, the minimum required under New York's banking laws, comported with due process. *Mullane*, 339 U.S. at

309-10. After reviewing the specific facts before it, the Court concluded that "under the circumstances [notice by publication was] not reasonably calculated to reach those who could easily be informed by other means at hand." *Mullane*, 339 U.S. at 319. Thus, the Court held that the statutory floor for providing notice violated due process in cases where, as here, the actual name and address of the intended recipients were known to the sender. *Mullane*, 339 U.S. at 320.

¶ 107 We must also consider the alternative notification methods available to the defendants here, as well as the burdens entailed in using them. Once again, an examination of the allegations in the plaintiff's amended complaint is critical. That complaint expressly alleges that the defendants had actual knowledge of several simple alternative means of providing effective notice. A review of those allegations establishes that they are more than sufficient to withstand dismissal when viewed under the proper standards.

¶ 108 The plaintiff asserted that it provided the defendants with valid contact information during four meetings in 2017 and 2018 in which the parties discussed potential changes to the property's assessed valuation. In addition, the complaint maintained that the parties' participation in related property tax appeals provided the defendants with yet another source of ready access to valid contact information for the plaintiff and its counsel. Based on those allegations and the special attention the property had received from the defendants for years, the claim that the defendants possessed multiple alternative means of contacting the plaintiff before sending out any notice of the reassessment is well supported.

¶ 109 As the plaintiff alleged, in November 2020, "the County, the Supervisor, the Treasurer, Jackson Township, and the Assessor *each knew* the physical and electronic mailing address for both Jackson Generation and its legal counsel." (Emphasis added.) That knowledge, in turn, was premised on the parties' "multiple" discussions about the reassessed valuation of parcel 0020

that had recently taken place. The plaintiff specifically asserted that the defendants had acquired reliable contact information during those extensive discussions, as well as during other interactions related to the reassessment process.

¶ 110 Some of those other interactions involved the plaintiff's participation in related property tax appeals during both 2019 and 2020, during which the defendants were provided with alternative contact information for the plaintiff and its counsel. Significantly, 2020 was the same year that defendants sent the first reassessment notice to the unmonitored Houston address. The feasibility of using the contact information gleaned from those property tax appeals is also well supported in the plaintiff's amended complaint. Attached to that complaint was an exhibit establishing that "the Supervisor's Office did electronically notify counsel for the Joliet Township High School District No. 204 and the Elwood Consolidated School District No. 203 of the valuation of new 0010 and 0020 Parcels, whose info they obtained from the 2019 Elwood Energy PTAB Appeal." Based on those allegations, it is imminently reasonable to infer that the defendants had the same ready access to the type of contact information provided by the plaintiff during the same PTAB appeal. Thus, the final *Mathews* factor must also be resolved in the plaintiff's favor.

¶ 111 Although the majority does not dispute the validity of any of the plaintiff's allegations, it still upholds the dismissal of the plaintiff's amended complaint. It even recounts, without comment or criticism, the plaintiff's assertions that

> "the circumstances of this case required additional steps to effectuate notice when the Board's notices were returned to sender. Plaintiff points to the unique nature of its property, the special attention the property had received from the County, and the amount

> of the increased tax liability from the reassessment as the circumstances that warranted further attempts at notice." *Supra* ¶ 73.

The majority also implicitly acknowledges the defendants' access to alternative contact information, silently noting the plaintiff's assertion

> "that notice could have been sent to the project address or plaintiff's principal place of business—both of which were known to defendants. Moreover, the parties exchanged contact information years earlier during the 2017 and 2018 meetings regarding the anticipated assessed valuation of the project that could have been used for notice, and plaintiff and its counsel were involved in other property tax appeals from which alternative contact information could have been gleaned." *Supra* ¶ 73.

Although the majority repeatedly recounts its obligation to consider all of those allegations to be true and to draw all reasonable inferences from them in the plaintiff's favor (*supra* ¶¶ 42, 71, 74), it still somehow finds that the plaintiff failed to allege sufficient facts to avoid dismissal, rejecting the "plaintiff's argument *** that, given the special attention its unique property had received and the amount of increased tax liability at stake, when the November 9, 2020, notice of proposed reassessment was allegedly returned to sender, more was required to effectuate notice" (*supra* ¶ 76).

¶ 112 The sole explanation for the majority's mysterious conclusion is its claim that the argument

> "presents an unworkable framework eliciting many unanswered questions, including the parameters for identifying such a property, the monetary threshold for additional process, and even whether the 'modesty' of an increase would be relative to a property owner's financial means. The uncertainty raised by the above questions is compounded by the

County's observation that, in a non-quadrennial assessment year, it sends out hundreds of notices with no means of knowing whether an address is 'unmonitored.' " *Supra* ¶ 76. That conclusion necessarily throws out as "unworkable" the due process framework that has long been ensconced in our jurisprudence, presumably favoring some type of *per se* black letter law standard that is more amenable to simple application. I could not disagree more.

¶ 113 The applicable analytical framework is no more "unworkable" than any of the other individualized evaluations constitutionally mandated in a wide array of other constitutional challenges. See, *e.g.*, *People v. Jones*, 2021 IL 126432, ¶ 17 (requiring individualized sentencing consideration for juvenile offenders); *People v. Watson*, 214 Ill. 2d 271, 283 (2005) (requiring "individualized suspicion" before issuance of a subpoena seeking noninvasive bodily evidence as necessary to comport with the Illinois Constitution's protection of individual privacy interests (internal quotation marks omitted)); *People v. Lampitok*, 207 Ill. 2d 231, 252 (2003) (requiring individualized suspicion to avoid fourth amendment search and seizure violations when intruding into residences); *People v. Munson*, 206 Ill. 2d 104, 133 (2002) (stating that the eighth amendment requires individualized sentencing in capital cases); *Raintree Health Care Center v. Illinois Human Rights Comm'n*, 173 Ill. 2d 469, 482 (1996) (requiring "an individualized determination of whether a particular person could perform a particular job" to comply with the nondiscrimination requirements of article I, section 19, of the Illinois Constitution (Ill. Const. 1970, art. I, § 19)); *In re R.C.*, 195 Ill. 2d 291, 299 (2001) (requiring review of the specific facts underlying a civil vagueness challenge that does not involve the first amendment). Indeed, our case law is replete with analyses requiring courts to answer difficult questions based on complex and highly individualized factual scenarios.

¶ 114 Here, as in every other due process case, the process due to the plaintiff is that " 'reasonably calculated, *under all the circumstances*, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,' " nothing more and nothing less. (Emphasis added.) *Passalino*, 237 Ill. 2d at 126 (quoting *Mullane*, 339 U.S. at 314). Any consideration of "all the circumstances" necessarily defies a simplistic *per se* analysis. " 'Due process is a flexible concept,' and thus, not all circumstances call for the same type of procedure. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201 (2009)." *People v. Stoecker*, 2020 IL 124807, ¶ 17.

¶ 115 When faced with a due process challenge, the sworn duty of this court is to undertake the potentially difficult, and sometimes painstaking, determination of what process is due under the unique circumstances of each and every case. See *Passalino*, 237 Ill. 2d at 126 (premising the calculation of the process due in a specific case on "all the circumstances" presented (internal quotation marks omitted)). The difficulty of fulfilling that critical task in a particular case can never justify the diminution of our duty. In evaluating constitutional challenges such as the instant due process claim, the issues " 'cannot be resolved by resort to easy slogans or pigeonhole analysis, but rather requires a careful inquiry into [other] factors.' " *Cordrey v. Prisoner Review Board*, 2014 IL 117155, ¶ 31 (quoting *Bearden v. Georgia*, 461 U.S. 660, 666 (1983)).

¶ 116 I also take exception to the majority's contention that "many unanswered questions, including the parameters for identifying such a property, the monetary threshold for additional process, and even whether the 'modesty' of an increase would be relative to a property owner's financial means' " (*supra* ¶ 76) are too overwhelming for this court to address. Judges address and resolve similarly complex questions, as well as far more difficult ones involving individuals'

rights to liberty and life itself, routinely in the course of each workday. We cannot justifiably shirk our duty to do the same in the instant case.

¶ 117 Indeed, we are not asked to craft for the first time an overarching framework for evaluating all due process claims or to even establish absolute standards for determining when "additional process," whatever that means, is due. The highest courts of the United States and our own state of Illinois have already provided us with the requisite framework. See *Mathews*, 424 U.S. at 334-35; *Passalino*, 237 Ill. 2d at 126. We are merely tasked with the ordinary job of deciding whether, " 'under all the circumstances,' " the notice provided by the defendants in this case was " 'reasonably calculated *** to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " *Passalino*, 237 Ill. 2d at 126 (quoting *Mullane*, 339 U.S. at 314). That is the same expectation faced by any court asked to resolve a due process challenge, and we should address it head-on as a critical component of our work. And, contrary to the majority's apprehensions, here that task is quite easily done. That is particularly true under the deferential standard of review that is applicable when determining whether the plaintiff's amended complaint asserted sufficient allegations to avoid dismissal.

¶ 118 Here, the broad panoply of key facts alleged provided a solid evidentiary basis supporting the allegations that the defendants both knew that the November 2020 notice failed to reach the plaintiff, creating an extraordinary increase in tax liability that substantially impacted the plaintiff without granting an opportunity for objection, and that the defendants had ready access to simple and accessible alternative means of providing effective notice. Taking those alleged facts as true, as we must, the notice provided failed to comport with due process, and the trial court erred in dismissing the plaintiff's complaint with prejudice.

¶ 119 Nonetheless, the majority contends that the plaintiff's analysis, with which I agree, "gives short shrift to pivotal circumstances here, not to mention the statutory scheme at issue in *Jones* and its progeny," presumably referring to our supreme court's decisions in *DG Enterprises*, 2015 IL 118975, and *In re Application of the County Collector*, 225 Ill. 2d 208, which the majority briefly discusses. *Supra* ¶¶ 74-75. The majority's focus on variations in various statutory notice requirements, and its unexplained reference to some "pivotal circumstances," are puzzling.

¶ 120 By emphasizing differences in statutory requirements, the majority blurs the line between the statutory notice required by a legislature and the mandates imposed by the overarching demands of the fourteenth amendment of the United States Constitution (U.S. Const., amend. XIV, § 1). While the defendants here undoubtedly complied with the requisite statutory notice requirements, that compliance does not affect the required due process analysis. When reviewing an order dismissing a due process challenge, the court's focus must be on whether the allegations in the plaintiff's amended complaint state sufficient facts to create a legally valid and triable question about whether the type of notice given was " 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " *Passalino*, 237 Ill. 2d at 126 (quoting *Mullane*, 339 U.S. at 314). The fact that the notice given was sufficient to satisfy the statutory requirements does not affect our determination of whether it was also sufficient to comply with due process.

¶ 121 Continuing its focus on differences in the various statutory schemes, the majority asserts that "the numerous additional steps [that] had been taken in *DG Enterprises* and *In re County Collector* to notify the property owners of the proceedings that ultimately culminated in the granting of a tax deed petition" "*only highlight[ ] the distinction between this case—involving notice from the Board of an increased tax assessment—and cases involving notice requirements*

set forth in multi-step tax foreclosure statutory schemes." (Emphasis added.) *Supra* ¶ 75. Although the precise procedures required to reassess the plaintiff's property in this case certainly do not mirror those that must be undertaken in a tax foreclosure and sale case, both processes are admittedly complex and require the defendants to successfully complete multiple steps. The completion of each of those steps is not, however, *per se* sufficient to satisfy due process. See *Mullane*, 339 U.S. at 319 (concluding that "under the circumstances [statutory notice by publication was] not reasonably calculated to reach those who could easily be informed by other means at hand").

¶ 122 Key to resolution of this case, our supreme court addressed the issue of the process due when prior notice attempts provide to be unsuccessful in *DG Enterprises*, another tax deed case. *DG Enterprises*, 2015 IL 118975, ¶ 34. There, the court ultimately rejected a due process claim challenging a decision not to attempt additional notice after multiple earlier attempts failed. *DG Enterprises*, 2015 IL 118975, ¶ 48. In its discussion, the court noted that the *Jones* Court was examining

> "the 'new wrinkle' of whether due process requires further measures when it is known prior to the taking that the attempt at notice has failed. [*Jones*, 547 U.S. at 227]. The Court found that it did not 'think that a *person who actually desired to inform* a real property owner of an impending tax sale *** *would do nothing when a certified letter sent to the owner is returned unclaimed*.' *Id.* at 229. The Court decided that *a person actually desirous of informing Jones 'would take further reasonable steps* if any were available.' *Id.* at 230." (Emphases added.) *DG Enterprises*, 2015 IL 118975, ¶ 38.

The *Jones* Court's reasoning is equally applicable here.

¶ 123 The decision in *DG Enterprises* also recognized that *Jones* had recounted "several reasonable steps that could have been taken when the certified letter to Jones was returned unclaimed." *DG Enterprises,* 2015 IL 118975, ¶ 39 (citing *Jones*, 547 U.S. at 234-35). Similarly, the plaintiff here also offered several reasonable alternatives that used information recently provided by the plaintiff and required minimal effort by the defendants. Although the court in *DG Enterprises* ultimately rejected the argument that more should have been done there to provide notice, that conclusion hinged on the wide variety of attempts at notice previously made by that defendant-petitioner. As the court explained, the petitioner "took numerous additional steps to notify respondent of all the proceedings." *DG Enterprises,* 2015 IL 118975, ¶ 46. Those steps included: (1) "order[ing] a title examination and a commitment for title insurance showing the necessary parties for the tax deed"; (2) *11 attempts made over 3 weeks to provide personal service* by a licensed process server that proved to be unsuccessful despite the suggestion by the presence of a car in the driveway that someone was present; (3) the Will County sheriff's attempt to send the requisite "take notice" by certified mail addressed to the intended recipients as well as to "occupant"; and (4) the Will County circuit court clerk's similar attempt to send notice by certified mail, return receipt requested. *DG Enterprises,* 2015 IL 118975, ¶ 46.

¶ 124 Similarly, the court *In re County Collector*, 225 Ill. 2d 208, relied on the defendant's use of multiple "additional steps" in rejecting a claim of insufficient notice. The court "found that the steps taken *** exceeded those suggested in *Jones* as reasonable and in fact included an 'open-ended search for a new address' in phone books and government records that was specifically noted in *Jones* as unnecessary." *DG Enterprises,* 2015 IL 118975, ¶ 45 (quoting *In re County Collector*, 225 Ill. 2d at 229). Applying the reasoning in *Jones*, the court held that the multiple attempts at notification were sufficient to satisfy the requirements of due process. *In re County*

Collector, 225 Ill. 2d at 229; *DG Enterprises*, 2015 IL 118975, ¶ 45. The *DG Enterprises* court subsequently relied on that same reasoning. See *DG Enterprises*, 2015 IL 118975, ¶¶ 46-48.

¶ 125 I do not take exception to the analyses in *Jones*, *DG Enterprises*, or *In re County Collector*. Instead, I find the outcomes in those cases to be factually distinguishable for at least two reasons. The first is those defendants' use of multiple modalities in their attempts to provide notice. The second is the absence of *any* request by the instant plaintiff for any additional attempts at notice even approaching an "open-ended search" of public records.

¶ 126 Here, the defendants only attempts at providing notice consisted of two mailings, both of which were sent to an address that they allegedly knew would be ineffective. Despite knowing that the first attempt at notifying the plaintiff of the reassessments had failed, the defendants simply duplicated the failed November mailing when attempting to provide notice of the Board's adoption of the proposed reassessment valuations in January 2021, just two months later. Here, as in *Jones*, "[a]lthough the State may have made a reasonable calculation of how to reach [the intended recipient], it had good reason to suspect when the notice was returned that [that party] was 'no better off than if the notice had never been sent.' " *Jones*, 547 U.S. at 230. In turn, the defendants' duplicative failed attempts at notification created an exceedingly high risk to the plaintiff's private interests. The defendants' knowledge of the notices' return as undeliverable further supports the conclusion that those futile attempts were constitutionally inadequate. As in *Jones*, "a person who actually desired to" provide notice would take additional steps "when a certified letter sent to the owner is returned unclaimed." *Jones*, 547 U.S. at 229. Because the facts alleged by the plaintiff demonstrate that the defendants' efforts to provide notice were a far cry from the multi-faceted approaches that met with approval in both *Jones* and *DG Enterprises*, the outcomes in those cases are readily distinguishable.

¶ 127 The majority draws a different conclusion, however, baldly asserting that "[t]he suggestion that due process required the Board to send notice to plaintiff at a variety of other addresses is more akin to the sort of open-ended search for a new address expressly rejected in *Jones*." *Supra* ¶ 75. I strongly disagree with that assertion. Numerous allegations in the amended complaint firmly establish that, prior to any notices being sent, the defendants were well aware of the critical and unique nature of this particular reassessment. The allegations about the defendants' knowledge were further bolstered by the return of the first mailing as undeliverable. The plaintiff also specifically alleged that it had shared alternative addresses and other contact information for itself and its counsel during the parties' extensive prior discussions. The end result was that the defendants were allegedly fully aware of the Houston address's inadequacy and had ready access to several other convenient means of providing notice—if that were their desired goal. Indeed, the plaintiff alleged that the defendants had used similar sources of contact information to "electronically notify counsel for the Joliet Township High School District No. 204 and the Elwood Consolidated School District No. 203 of the valuation of new 0010 and 0020 Parcels." For reasons that are hard to imagine, however, they did not provide the actual owner of those parcels with similar notice.

¶ 128 It is not disputed that the probable value of undertaking additional steps better calculated to provide effective notice, such as using an available alternative mailing address, sending an e-mail, or placing a simple phone call to the plaintiff or its counsel, was high. Although the majority emphasizes the *Jones* Court's rejection of the "argument that the state should have searched the phone book and other government records to ascertain a new address" after the original notice was returned unclaimed (*supra* ¶ 72), the amended complaint was replete with specific allegations showing the alternative contact information available to the defendants, if

they had only opted to use it, demonstrating the fallacy of the majority's claim. This was not a case in which the defendants were relegated to "open-ended searches" of phone books and endless public records to find an effective means of notifying the plaintiff. The plaintiff and its counsel were, truly, "hiding" in plain sight.

¶ 129 The defendants allegedly knew of readily accessible sources of alternative contact information that were virtually guaranteed to provide effective notice to the plaintiff. Yet, the defendants made no effort to use any of them. As the Supreme Court has declared, "[W]hen notice is a person's due, process which is a mere gesture is not due process." *Mullane*, 339 U.S. at 315; *Passalino,* 237 Ill. 2d at 126. By alleging that the defendants only sent notices of parcel 0020's reassessment to addresses that they knew would not be effective and made no further effort to use other available means of contact, the complaint satisfied the *Mathews* test.

¶ 130 Because the instant appeal comes before us after the grant of a motion to dismiss, we must treat *all* well-pled facts and reasonable inferences as admitted and view *all* pleadings and supporting documents in the light most favorable to the nonmovant. *Blair*, 2022 IL App (3d) 210550, ¶ 11; see *supra* ¶ 43. By alleging facts showing that the defendants were uniquely aware of parcel 0020 as a "one-of-a-kind" development, the plaintiff established its claim that the project had long garnered special governmental attention. That special attention included numerous meetings between multiple county representatives and the plaintiff, as well as a series of interdepartmental e-mails, all focused on the assessed valuation of the development. The amended complaint also alleged that the defendants had accurate contact information based on those interactions, information that would have resulted in notice that met with the requirements of due process. *Supra* ¶¶ 13, 15, 16, 17, 22, 25. Based on those allegations, the administrative

burden of using the proposed alternative notification methods would have been minimal. The *Mathews* factors all favor the viability of the plaintiff's due process claim.

¶ 131 In sum, the goal of both statutory and constitutional notice requirements is to provide adequate opportunity for property owners to become aware of impending changes that affect their properties. Pursuant to those requirements, the State bears the duty of providing notice of a property's valuation before the owner's tax liability is conclusively established. *Dietman*, 5 Ill. 2d at 489. Due to the defendants' unique awareness of the parcels at issue here, they were allegedly put on notice of a potential due process problem when the November 2020 notice was returned unopened. Thereafter, they had a duty to attempt notification by reasonable alternative means. They did not. Instead, they used the same failed method to send the January 2021 notice. Unsurprisingly, that notice was also returned as undeliverable. Despite the plaintiff's suggestion of several simple and practicable alternatives for providing effective notice, the defendants refused to avail itself of any other "reasonably calculated" means, violating our long-held notions of fairness. See *People v. Stapinski*, 2015 IL 118278, ¶ 51 (stating that "the essence of due process is 'fundamental fairness' "). The means a State employs to provide notice " 'must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.' " *Jones*, 547 U.S. at 229 (quoting *Mullane*, 339 U.S. at 315). In short, the amended complaint here sufficiently alleged that the defendants failed to fulfill that constitutional duty.

¶ 132 Under the facts of this case, providing only the minimum statutory notice "is incompatible with the requirements of the Fourteenth Amendment." *Mullane*, 339 U.S. at 320. The notices sent were not " 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " *Passalino*, 237 Ill. 2d at 126 (quoting *Mullane*, 339 U.S. at 314). For those reasons,

I would excuse the plaintiff's failure to exhaust its administrative remedies and reverse the dismissal of the portion of the plaintiff's amended complaint relating to parcel 0020, remanding the matter for additional proceedings. Accordingly, I respectfully dissent, in part, from the majority's decision.

Jackson Generation, LLC v. County of Will, **2024 IL App (3d) 220328**

Decision Under Review:	Appeal from the Circuit Court of Will County, No. 21-MR-2099; the Hon. Roger D. Rickmon, Judge, presiding.
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