

NOTICE

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2017 IL App (4th) 150985-U
NOS. 4-15-0985, 4-15-0986, 4-15-0987 cons.

FILED
January 27, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

PETERSEN HEALTH CARE II, INC.,)	Petition for Direct Review
Petitioner,)	of Administrative Decision
v.)	of the Property Tax Appeal
THE PROPERTY TAX APPEAL BOARD and)	Board
MOULTRIE COUNTY BOARD OF REVIEW,)	Nos. 10-01578.001-C-3,
Respondents.)	12-04340.001-C-3,
)	13-04297.001-C-3

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the Illinois Property Tax Appeal Board properly excluded both services-related income and services-related expenses in the valuation of a supportive living facility pursuant to section 10-390 of the Property Tax Code (35 ILCS 200/10-390 (West 2010)).

¶ 2 Petitioner, Petersen Health Care II, Inc., seeks administrative review of the decision of the Illinois Property Tax Appeal Board (PTAB) to exclude both services-related income and services-related expenses in calculating the assessed real-property value of petitioner's supportive-living facility pursuant to section 10-390 of the Property Tax Code (Code) (35 ILCS 200/10-390 (West 2010)). We affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioner owns and operates Courtyard Estates, a 42,131 square foot supportive-living facility in Moultrie County, which contains 50 individual apartments designed for senior citizens. The Moultrie County Board of Review determined the value of this property as

follows: for the year 2010, the assessed value was \$1,165,000; for the year 2012, the assessed value was \$1,200,000; and for the year 2013, the assessed value was \$1,246,550. Petitioner appealed these assessments to PTAB, and the administrative law judge consolidated the three appeals. In February 2015, the matter proceeded to a hearing, during which two expert witnesses, both real-estate appraisers, testified.

¶ 5 The appraisers agreed the valuation of the supportive-living facility was governed by section 10-390 of the Code, which provides as follows:

"(a) Notwithstanding Section 1-55, to determine the fair cash value of any supportive living facility established under Section 5-5.01a of the Illinois Public Aid Code, in assessing the facility, a local assessment officer must use the income capitalization approach.

(b) When assessing supportive living facilities, the local assessment officer may not consider:

(1) payments from Medicaid for services provided to residents of supportive living facilities when such payments constitute income that is attributable to services and not attributable to the real estate; or

(2) payments by a resident of a supportive living facility for services that would be paid by Medicaid if the resident were Medicaid-eligible, when such payments constitute income that is attributable to services and not attributable to real estate." *Id.*

However, the appraisers disagreed as to the interpretation of section 10-390(b) in determining the value of the supportive living facility.

¶ 6 Donna Howard, a witness for petitioner, testified the income-capitalization approach involves considering income and expenses and then applying a capitalization rate to the net income. According to Howard, "[t]he law asks that no payments from services be included in the income[-]capitalization approach." Accordingly, Howard calculated the amount of income attributable to services and deducted that amount from the total rental income. Howard testified she then deducted all expenses except for real-estate taxes before applying the capitalization rate. Although Howard excluded services-related income, she included services-related expenses in calculating the net income. Accordingly, Howard determined the assessed value of the supportive-living facility was \$103,000 for 2010; \$92,000 for 2012; and \$97,000 for 2013.

¶ 7 Joseph Webster, a witness for respondent Moultrie County Board of Review, testified his analysis was largely the same as Howard's. Webster agreed services-related income must be excluded in calculating the net income. However, Webster also excluded services-related expenses. According to Webster, the assessment does not consider business value, so any profit from services should not be considered in determining the real-property value. Accordingly, the services-related income and services-related expenses should not be included in calculating the net income attributable to the real property.

¶ 8 In November 2015, PTAB entered final administrative decisions effectively affirming the Moultrie County Board of Review's determinations of the assessed value of petitioner's supportive-living facility. According to the final administrative decisions, "[t]he underlying principle in the valuation of real property for assessment purposes is to value only those items assessable in accordance with the Code." The Code defines taxable real property as

"[t]he land itself, with all things contained therein, and also all buildings, structures[,] and improvements, and other permanent fixtures thereon, *** and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code." 35 ILCS 200/1-130(a) (West 2010). The decisions noted a supportive-living facility generated income from the land, buildings, and services. PTAB noted neither Howard nor Webster articulated an effort to segregate the "business value" from the real-estate value of petitioner's supportive-living facility. However, PTAB found that Webster's methodology excluded "business value" by excluding both services-related income and services-related expenses. Thus, Webster's approach of excluding services-related income and expenses resulted in a valuation of the property's real estate only.

¶ 9 Turning to the language of section 10-390, PTAB found the legislature "did not include language limiting the appropriate and/or applicable expenses of a supportive[-]living facility as part of the calculation under an income approach to value." PTAB further found that, had it so desired, the General Assembly could have included language excluding certain expenses. Nonetheless, PTAB determined that accepting Howard's approach would lead to an absurd result. Specifically, the decisions state, "As a logical matter of appraisal theory for an income approach to value, [PTAB] finds that given the exclusion of income related to services it is similarly logical for the appraiser to likewise exclude expenses related to those services; to do otherwise results in an excessively low value conclusion which was set forth in Howard's appraisal report which is likewise an absurd result."

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Petitioner appeals, arguing PTAB erroneously excluded certain expenses in calculating the net income for purposes of the income-capitalization approach to valuation in

violation of section 10-390 of the Code (35 ILCS 200/10-390 (West 2010)). Respondents contend PTAB properly interpreted section 10-390 of the Code.

¶ 13 A. Standard of Review

¶ 14 The parties agree the valuation of petitioner's real property is governed by section 10-390 of the Code. However, the parties disagree as to the propriety of PTAB's interpretation of the statute. This is a legal question that we review *de novo*. *Board of Education of Meridian Community Unit School District No. 223 v. Illinois Property Tax Appeal Board*, 2011 IL App (2d) 100068, ¶ 35, 961 N.E.2d 794.

¶ 15 Respondents contend PTAB's interpretation of the statute is entitled to substantial weight and deference. Conversely, petitioner asserts no deference is required. When an agency is charged with administering and enforcing a statute, the agency's interpretation of the statute is given some deference. *Sycamore Community Unit School District No. 427 v. Illinois Property Tax Appeal Board*, 2014 IL App (2d) 130055, ¶ 27, 13 N.E.3d 321. Although not binding on the courts, "[t]he agency's interpretations *** are an informed source, helpful to ascertaining the legislative intent, because of the agency's expertise and experience in enforcing the statute." *Id.* With these standards in mind, we address the merits of petitioner's argument.

¶ 16 B. Income Capitalization Approach to Valuation

¶ 17 This dispute turns on the interpretation of section 10-390 of the Code—particularly, whether PTAB should consider services-related expenses in calculating the net income of petitioner's supportive-living facility. In interpreting statutes, we seek to ascertain and give effect to the legislative intent. *Alvarez v. Pappas*, 229 Ill. 2d 217, 228, 890 N.E.2d 434, 441 (2008). The statute's plain language, given its plain and ordinary meaning, is generally the best indication of legislative intent. *Id.* When that language is clear and unambiguous, we give the

language effect without aids of construction. *Id.* "In determining the General Assembly's intent, we may consider not only the language of the statute, but also the purpose and necessity for the law, the evils sought to be remedied, and the goals to be achieved." *Id.* at 231, 890 N.E.2d at 443.

¶ 18 There are three approaches used in the valuation of real property: "(1) the comparison or market approach, which focuses on sales of comparable property; (2) the income[-capitalization] approach, which is used when the property is most valuable as rental property; and (3) the reproduction or replacement cost method, which focuses on what it would cost to recreate real property with the same value." *Willow Hill Grain, Inc. v. Property Tax Appeal Board*, 187 Ill. App. 3d 9, 14, 549 N.E.2d 591, 596 (1989). Section 10-390(a) of the Code (35 ILCS 200/10-390(a) (West 2010)) requires an assessment officer to use the income-capitalization approach to valuation when determining the fair cash value of a supportive-living facility. "Under this approach, the fair cash value of property is determined by applying a capitalization rate to the property's estimated net annual income." *Kankakee County Board of Review v. Property Tax Appeal Board*, 131 Ill. 2d 1, 6, 544 N.E.2d 762, 764 (1989).

¶ 19 As stated above, the parties agree the income-capitalization approach is the appropriate valuation method for determining the fair cash value of petitioner's supportive-living facility. Petitioner contends section 10-390(b) of the Code only allows for the exclusion of income related to Medicaid or Medicaid-eligible services. By extension, petitioner asserts the statute does not allow exclusion of expenses related to these services in determining net income. In other words, petitioner asserts section 10-390(b) requires services-related expenses to be included in calculating net income. PTAB's decision, on the other hand, found the legislature clearly could have provided for the exclusion of these services-related expenses, but it did not. However, PTAB concluded excluding the services-related income but not the services-related

expenses would lead to an absurd result and, accordingly, PTAB determined the legislature intended services-related income and expenses should both be excluded in calculating the net income of a supportive-living facility.

¶ 20 The pertinent statutory language provides:

"(b) When assessing supportive living facilities, the local assessment officer may not consider:

(1) payments from Medicaid for services provided to residents of supportive living facilities when such payments constitute income that is attributable to services and not attributable to the real estate; or

(2) payments by a resident of a supportive living facility for services that would be paid by Medicaid if the resident were Medicaid-eligible, when such payments constitute income that is attributable to services and not attributable to real estate." 35 ILCS 200/10-390(b) (West 2010).

The language of the statute only mentions payments and is silent as to expenses.

¶ 21 However, even though the statutory language does not address services-related expenses, it is appropriate for this court to consider the consequences that result from one construction of a statute over another. *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 12, 919 N.E.2d 300, 306 (2009). "In doing so, we presume that the legislature did not intend absurd, inconvenient, or unjust consequences." *Solon v. Midwest Medical Records Ass'n*, 236 Ill. 2d 433, 441, 925 N.E.2d 1113, 1118 (2010). "[W]here a plain or literal reading of a statute produces absurd results, the literal reading should yield: 'It is a familiar rule, that a thing may be

within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.' " *People v. Hanna*, 207 Ill. 2d 486, 498, 800 N.E.2d 1201, 1207-08 (2003) (quoting *Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892)).

¶ 22 We conclude that, were we to adopt petitioner's reading of the statute, the result would be absurd. Petitioner's reading of the statute would lead to an artificial reduction of the valuation of a supportive-living facility by allowing a facility to exclude services-related income in calculating the gross income (which reduces the overall value) and to further reduce the value of the property by including services-related expenses in calculating the net income. This amounts to an artificial double-reduction in value, leading to excessively low valuations. Indeed, the discrepancies between the assessed values as determined by the Moultrie County Board of Review and the values as determined by Howard range from \$1,062,000 to \$1,149,550. For example, under petitioner's reading, the 42,131 square foot supportive-living facility, which contains 50 individual apartments, was "worth" only \$310,000 in 2010 (with an assessed value of \$103,000). Petitioner's reading leads to an excessively low valuation, which is an absurd result not intended by the legislature.

¶ 23 Petitioner finally contends PTAB's claim of an absurd result is not supported by the evidence. Specifically, petitioner argues Webster's testimony establishes the low valuation is a result of the statutory requirement to use the income-capitalization approach instead of another valuation method. Petitioner claims Webster testified, "there would be nothing unique in finding that a supportive[-]living facility might have a near negative value under the income[-] capitalization approach to value." Petitioner ignores the following exchange:

"Q. So there's nothing unique about this property that could cause it to be a negative value, correct?"

[WEBSTER]. Well, it depends on how you handle—I mean, I guess there is a discrepancy if you handle expenses in a certain way, you handle rents in a certain way, you have to be at a level playing field, in that, say that, you know, you're appraising an office. Maybe you only include part of the rents but all of the expenses, maybe that would result in a negative net income, but is that the correct way to do it? No."

Webster's testimony establishes that it was not the income-capitalization approach itself that led to a low valuation. Excluding services-related income but including services-related expenses artificially depresses value in much the same way excluding part of the rental income artificially—and incorrectly—depresses value in Webster's office-building example. Thus, the testimony supports a finding that the income-capitalization approach is not the cause of the low valuation. Rather, it is petitioner's method of including services-related expenses that leads to the absurd result of an excessively low valuation. Accordingly, we conclude PTAB properly excluded both services-related income and services-related expenses in calculating the net income of petitioner's supportive-living facility pursuant to section 10-390 of the Code (35 ILCS 200/10-390 (West 2010)).

¶ 24 In its reply brief, petitioner argues the legislature has shown a special concern for valuing a facility that receives state Medicaid dollars. Besides being forfeited, we find this argument unpersuasive. Petitioner's own appraiser stated during the administrative hearing that whether the payments came from Medicaid was irrelevant, and petitioner did not make this argument before PTAB or the Moultrie County Board of Review. The statute indicates the services-related payments should not be considered in applying the income-capitalization

approach to valuation regardless of whether the payments came from Medicaid or would be covered if the recipient were Medicaid-eligible. This does not indicate a special preference for a facility that receives state Medicaid dollars. Section 10-390 applies to all supportive-living facilities, regardless of whether they receive Medicaid payments. Moreover, identifying the services-related income (and expenses) from Medicaid or Medicaid-eligible services is appropriate when seeking to exclude from consideration value unrelated to the real estate.

¶ 25

III. CONCLUSION

¶ 26

For the reasons stated, we affirm the decision of PTAB.

¶ 27

Affirmed.