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2018 IL App (3d) 160689-U

Order filed November 16, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

CITY OF EAST PEORIA, ILLINOIS, a)	Petition for Review of an
municipal corporation,)	Order of the Property Tax
)	Appeal Board
Petitioner-Appellant,)	
)	
v.)	
)	
PROPERTY TAX APPEAL BOARD,)	
PAR-A-DICE GAMING CORPORATION,)	
an Illinois corporation, and TAZEWELL)	
COUNTRY BOARD OF REVIEW,)	Docket Nos.:
)	14-01111.001-C-3
Respondents-Appellees.)	14-01111.002-C-3

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Final decision of administrative agency vacated where intervenor was denied its right to a hearing. The intervenor became a party when it timely filed its request to intervene along with the necessary resolution. Agency's default of intervenor for failure to timely file evidence did not deprive intervenor of party status. Because final administrative order vacated for failure to provide a hearing, agency's alleged violations of the Open Meetings Act remedied.

would result in a default. On May 6, 2016, East Peoria mailed its appraisal evidence to PTAB, which received it on May 12, 2016.

¶ 6 PTAB sent East Peoria a notice dated June 24, 2016, stating that East Peoria did not submit any evidence, finding East Peoria in default and determining to proceed with the appeal based on the evidence in the record. A letter from PTAB's attorney that accompanied the PTAB notice stated that the appraisal evidence received by PTAB on May 12, 2016, was not timely filed and "will not be accepted." The Board of Review was also defaulted the same day due to its failure to timely submit evidence.

¶ 7 On June 28, 2016, East Peoria moved to vacate the default. In its motion, East Peoria explained that just prior to the April 20, 2016 deadline to submit written evidence, it received a letter from its appraiser, who explained that he needed an additional 30 days to finish the appraisal report. East Peoria further explained the failure to timely request an extension was inadvertent, as counsel believed he had requested a 30-day extension prior to going on vacation between March 17 and March 28, 2016. The motion also asserted that no party would be prejudiced by allowing a late filing of the appraisal evidence as the hearing on Par-A-Dice's appeal had not been set.

¶ 8 PTAB denied East Peoria's motion to vacate at its August 2016 meeting. The record does not include PTAB's ruling on the motion or notice to East Peoria that PTAB was going to determine its motion to vacate. On October 11, 2016, East Peoria filed a motion for a hearing and objection, arguing as a party it was entitled to a hearing and alleging violations of the Open Meetings Act regarding PTAB's October 12, 2016, meeting agenda. PTAB did not provide its meeting agendas or its rulings on East Peoria's motions with the record in this matter. This court allowed East Peoria to supplement the record with the agenda and minutes for PTAB's October

12, 2016, meeting. At the meeting, PTAB voted to deny East Peoria's request for hearing and objection, and approved the lower valuation. PTAB issued a final administrative decision on October 21, 2016, accepted Par-A-Dice's market valuation of the property and reduced the assessment. East Peoria appealed.

¶ 9

ANALYSIS

¶ 10

East Peoria raises several issues on appeal. It claims it obtained party status and was improperly denied a hearing and defaulted. It further argues PTAB violated the Open Meetings Act.

¶ 11

We begin with East Peoria's claim that it properly intervened and obtained party status. East Peoria argues that it was granted intervention, obtained party status and as a party was entitled to a hearing upon its request. East Peoria submits a hearing was needed to allow it to develop a complete record with an offer of proof and to cross-examine Par-A-Dice's witnesses, challenge evidence, and submit argument.

¶ 12

Rules and regulations of an administrative agency have the force and effect of law and are construed using the principles of interpretation applicable to statutes. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 231 Ill. 2d 370, 380 (2008). In interpreting an agency regulation, the primary objective is to ascertain and give effect to the agency's intent, using the regulation's language as the best indicator of intent. *City of St. Charles v. Illinois Labor Relations Board*, 395 Ill. App. 3d 507, 509 (2009). When interpreting a regulation, a reviewing court considers the statute in its entirety, the subject it addresses and the agency's intent in enacting it. *Id.* We review matters of statutory interpretation *de novo*. *People ex rel. Madigan*, 231 Ill. 2d at 377. We also review *de novo* conclusions by an agency on questions of law. *Board of Education of City of Chicago v. Illinois. Educational Labor Relations Board*, 2015 IL 118043, ¶ 15.

¶ 13 To intervene, the potential intervener must file a written request to intervene and a resolution by its governing board authorizing the request. 86 Ill. Adm. Code 1910.60(d), (e) (2017). In addition, the intervenor must submit three copies of its written or documentary evidence or seek an extension. 86 Ill. Adm. Code § 1910.60(e), (f) (2017). Once intervention is granted, the intervenor obtains party status. 86 Ill. Adm. Code 1910.5(b)(8) (2014).

¶ 14 We do not consider that the statute and administrative rules and regulations support PTAB's interpretation that East Peoria lost its party status. As required, East Peoria filed its request to intervene and the required resolution. Fulfilling these two requirements warranted East Peoria status as a party. This status was recognized by PTAB when it characterized East Peoria as an "interested party" and referred to it as an intervenor in correspondence. East Peoria also filed for an extension to file its appraisal evidence when it requested intervention, as required. The late submission of its appraisal evidence did not reflect on its party status. When PTAB granted East Peoria's request to intervene, by which East Peoria obtained party status, PTAB's decision was not based on whether East Peoria had timely filed its appraisal evidence nor could it have been as the same notice from PTAB allowing intervention also granted East Peoria's request for an extension. We find East Peoria correctly identifies itself as a party and that PTAB erred in concluding that East Peoria lost its party status.

¶ 15 We are not persuaded by PTAB's argument that its characterization of East Peoria as an "interested party" and reference to it as an intervenor in correspondence did not confer East Peoria party status. PTAB's characterization is immaterial because East Peoria satisfied the requirements to intervene by requesting intervention and filing the mandatory resolution. It also requested an extension to file its appraisal evidence, also as required. The fact that East Peoria failed to timely file its appraisal evidence and was defaulted on that basis did not deprive it of

party status. There is nothing in the agency's regulations or the Administrative Review law that provides for such a result. *County of Whiteside v. Illinois Property Tax Appeal Board*, 276 Ill. App. 3d 182, 186 (1995) (reviewing court is not bound by agency's erroneous interpretation).

¶ 16 PTAB's erroneous interpretation that East Peoria was not a party also deprived East Peoria of its right to a hearing. East Peoria's supposed lack of party status also provided the basis for PTAB's denial of its motion for a hearing and objection. PTAB's regulations require that it hold a hearing on a party's request. 86 Ill. Adm. Code 1910.67(b) (2017); 35 ILCS 200/16-170 (West 2016). East Peoria requested a hearing to challenge its default and present an offer of proof and PTAB was obligated to accommodate East Peoria's hearing request. Because we consider that East Peoria retained its party status throughout the pendency of the administrative proceedings, we find that PTAB's should have allowed East Peoria's request for a hearing. We note that PTAB failed to provide notice to East Peoria of its August and October meetings where it took action on East Peoria's motions. In addition, PTAB failed to include its rulings or any information on the August and October meetings in the administrative record, as it is required to do. On this basis, we find also PTAB erred and its errors necessitate remand.

¶ 17 The next issue we review is whether PTAB erred when it defaulted East Peoria. East Peoria argues PTAB erred in defaulting it because (1) PTAB rules do not state that a party's failure to timely submit evidence results in default, (2) if the rules do state default results, the rules are inconsistent with the statute, and (3) the default is inequitable and a derogation of PTAB's authority to decide on equity and evidence.

¶ 18 PTAB hearings are "be conducted in a manner best calculated to conform to substantial justice." 86 Ill. Adm. Code 1910.92(a) (2006). The Board is to make decisions based on equity and the weight of the evidence. 35 ILCS 200/16-185 (West 2016). An administrative agency is

bound by its rules or regulations and may not violate them. *Pace Realty Group, Inc. v. Property Tax Appeal Board*, 306 Ill. App. 3d 718, 729-30 (1999). PTAB is required to conduct its proceedings in a manner that comports with its rules. *1411 North State Condominium Ass'n v. Illinois Property Tax Appeal Board*, 2016 IL App (1st) 143757, ¶ 43. A party's failure to comply with various PTAB rules "shall result in the default of that party." 86 Ill. Adm. Code 1910.69(a) (2014). Issues of interpretation of agency regulations are reviewed *de novo*. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 231 Ill. 2d 370, 380 (2008).

¶ 19 The default here was based on the failure of East Peoria to timely submit written evidence. East Peoria maintains that PTAB had the discretion to waive the deadline for submission of evidence and that allowing late submission here would not prejudice the proceedings or parties. East Peoria asserts that PTAB had the appraisal evidence before it was defaulted and should have considered it to conform to substantial justice.

¶ 20 PTAB has authority to waive the requirement that written evidence be filed before the hearing. 86 Ill. Adm. Code 1910.67(k)(2) (2017). Hearings before an administrative agency are to be investigatory and to ascertain and make fact findings. *Six-Brothers King Drive Supermarket, Inc. v. Dept. of Revenue*, 192 Ill. App. 3d 976, 983 (1989). Evidence directed to those ends should be considered by the agency. *Id.* An agency has inherent authority to manage its docket and to conduct proceedings and this court reviews its decisions for an abuse of discretion. *John J. Moroney & Co. v. Illinois Property Tax Appeal Board*, 2013 IL App (1st) 120493, ¶ 50.

¶ 21 PTAB is charged with making decisions based on evidence and equity. We do not consider either purpose served by its conduct in this case. Acknowledging PTAB's authority to manage its docket, we note the following facts. Par-A-Dice filed its appeal on February 2, 2015,

and received two extensions to file its appraisal evidence. Par-A-Dice timely submitted its evidence on October 9, 2015. East Peoria moved to intervene on December 30, 2015. PTAB added East Peoria as an interested party on January 21, 2016, and granted its request for an extension to April 20, 2016. East Peoria untimely filed its appraisal evidence on May 6, 2016, and was notified it was defaulted on June 24, 2016. It moved to vacate on June 28, 2016, which was denied on August 8, 2016. East Peoria filed a request for a hearing and objection on October 11, 2016. PTAB denied the motion at its October 12 meeting, where it also approved the lowered valuation per Par-A-Dice's appraisal.

¶ 22 Par-A-Dice took seven months to file its evidence. East Peoria filed its evidence in six months. PTAB had East Peoria's appraisal evidence for approximately six weeks before it rejected the evidence and defaulted East Peoria. It took another nearly four months for PTAB to decide Par-A-Dice's appeal. Under the instant circumstances, we find that PTAB denied East Peoria substantial justice and abused its discretion when it refused to accept late submission of East Peoria's appraisal evidence.

¶ 23 East Peoria also challenges PTAB's failure to issue rulings on its motions to vacate and for a hearing, or if rulings were made, to include them in the record on appeal.

¶ 24 PTAB is required to rule on all motions. 86 Ill. Adm. Code 1910.64(e) (2014). The rulings must be included in the agency record. 5 ILCS 100/10-35(1), (4) (West 2016). The entire record before the agency shall be included in the record on appeal unless the parties stipulate to omissions. Ill. S. Ct. R. 335(d) (eff. July 1, 2017). The agency has the burden to provide, as part of its answer, a complete record of the administrative proceedings, including findings and decisions. *Shallow v. Police Board of City of Chicago*, 60 Ill. App. 3d 113, 116-17 (1978).

¶ 25 Courts may take judicial notice of facts that are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Ill. R. Evid. 201(b) (eff. Jan. 1, 2011). When requested by a party and provided the necessary information, the court must take judicial notice. Ill. R. Evid. 201(d) (eff. Jan. 1, 2011). Public documents are subject to judicial notice. *Curtis v. Lofy*, 394 Ill. App. 3d 170, 172 (2009). Published agency reports and public records are subject to judicial notice. *Thurman v. Illinois Dept. of Public Aid*, 25 Ill. App. 3d 367, 370 (1974).

¶ 26 The record of the administrative proceedings provided by PTAB does not include any rulings on East Peoria’s motion to vacate or request for a hearing and objection. PTAB does not dispute the rulings are not in the record. Rather, it directs this court to PTAB’s website to examine the agendas and minutes for its August and October 2016 meetings and urges this court to take judicial notice of the documents and the rulings indicated in them. We do not disagree with our authority to take judicial notice of the documents published on PTAB’s website and we take judicial notice of PTAB’s denials of East Peoria’s motion to vacate. However, we do not consider that notifying this court that the documents reflecting its rulings in this case are available at its website satisfies PTAB’s obligation to present a complete record on appeal. See *National Aircraft Leasing, Ltd. v. American Airlines, Inc.*, 74 Ill. App. 3d 1014, 1017-18 (1979) (judicial notice should not be used by a party “as a means of evading its responsibility to prove the matters alleged in its pleadings”). We allowed East Peoria’s motion to supplement the record with PTAB’s October 12, 2016, agenda and minutes but the record lacks any ruling by PTAB regarding East Peoria’s motion to vacate. We find PTAB’s failure to provide a complete administrative record was error and constitutes another basis to vacate PTAB’s final administrative decision.

¶ 27 Lastly, we consider whether PTAB violated the Open Meetings Act (Act) (5 ILCS 120/1 *et seq.* (West 2016)). East Peoria argues that PTAB violated the Act when it approved final action in Par-A-Dice’s tax appeal and failed to conduct any “public recital” before voting. According to East Peoria, because there was a violation of the Act, the administrative order reducing Par-A-Dice’s assessment is void and the case is not ripe for review.

¶ 28 The Act provides that an agenda must set forth the “general subject matter” of any resolution or ordinance to be voted on as final action. 5 ILCS 120/2.02(c) (West 2016). The Act also provides that public bodies maintain minutes of their meetings, which should include a summary of discussion on any matters decided and a record of votes taken. 5 ILCS 120/2.06(a)(3) (West 2016). The Act does not require that an agenda be specifically detailed or tailored to meet private interests. *In re Foxfield Subdivision*, 396 Ill. App. 3d 989, 997 (2009). It requires only that the actions taken “be germane” to the agenda listings. *Id.*

¶ 29 Violations of the Act are addressable in a civil action, where enumerated remedies are available, including granting mandamus relief requiring the meeting to be open, enjoining future violations, ordering minutes to be made public, or declaring as null and void any final action that was taken at a closed meeting in violation of the Act. 5 ILCS 120/3(a), (c) (West 2016). Actions by an administrative agency that are taken in violation of the Act are voidable, not automatically void, and the Act’s violations will not ordinarily prevent an agency’s decision from being considered a final administrative decision. *American Federation of State, County, & Municipal Employees, Council 31 v. Illinois Labor Relations Board*, 2017 IL App (5th) 160229, ¶¶ 30-31 (*AFSCME II*); *American Federation of State, County, & Municipal Employees, Council 31 v. Illinois Labor Relations Board*, 2017 IL App (5th) 160046, ¶¶ 28-29 (*AFSCME II*);

¶ 30 East Peoria asks this court to follow the first district decision, *Howe v. Retirement Board of Firemen's Annuity & Benefit Fund*, 2013 IL App (1st) 122446, ¶ 32, in which the reviewing court found that an agency's failure to take a final vote in public invalidated the agency's final decision. As discussed in the *AFSCME* cases, there were other procedural irregularities in *Howe* that rendered the agency's decision void, including that the orders were signed in closed meetings and no public vote was taken. *AFSCME I*, 2017 IL App (5th) 160229, ¶ 31; *AFSCME II*, 2017 IL App (5th) 160046, ¶ 29.

¶ 31 Here, the minutes do not indicate a public recital took place during an open portion of the PTAB meeting, violating the Act. However, the violation does not command that PTAB's action be deemed non-final or void. See *Board of Education of Community Unit School District No. 337 v. Board of Education of Community Unit School District No. 338*, 269 Ill. App. 3d 1020, 1031 (1995) (finding board's violation of Act did not "render the proceedings null and void"). Because we remand as discussed above, PTAB's violations of the Act are remedied. We note East Peoria has also challenged PTAB's compliance with the Act through a complaint to the Illinois Attorney General's Office's public access counselor, which remains stayed pending the resolution of this appeal.

¶ 32 Based on PTAB's erroneous interpretation of the applicable statutory and administrative agency requirements, we reverse PTAB's determination that East Peoria lost party status, vacate PTAB's denials of East Peoria's motions to vacate and for a hearing, and its final decision granting Par-A-Dice's reduced assessment, and remand this cause for further administrative proceedings consistent with this order.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, the decision of the Property Tax Appeal Board is vacated and this cause is remanded.

¶ 35 Vacated and remanded.