

will not attempt to set forth all the testimony and evidence in the record as that information is well known to the parties, but the Court has considered same in reaching its decision.

FACTUAL BACKGROUND

On January 2, 2007, the Plaintiff, Merryman Aggregate, LLC filed a Petition with the County seeking a Conditional Use Permit to allow the extraction and mining operations at certain property with a common address of 15613 South Street, Woodstock, McHenry County, Illinois. Sections 508.5 and 502.3 of the McHenry County Zoning Ordinance govern applications for conditional use permits for earth extraction and mining operations. Merryman Aggregate LLC is the lessee of the property owned by MB Financial Bank as Trustee under Trust Number 3179.

The subject property, which consists of approximately 78 acres, is located on the south side of South Street, approximately one half mile east of the intersection of Franklinville Road and South Street in Seneca Township, in McHenry County. At the time the Petition was filed, the property surrounding the subject property was zoned A-1 (Agriculture). The property in question is zoned A-1. The property is designated "agriculture" on the McHenry County 2010 Land Use Plan Map. (R124)

The Petition was submitted to the County's Department of Planning and Development. Contrary to Plaintiff's assertion, the Department of Planning and Development did not approve the Conditional Use Permit. As noted in its report, "there is no intention to determine the desirability of the land use proposed, that is solely the prerogative of the Zoning Board of Appeals." (R116) The Zoning Board of Appeals ("ZBA") held hearings on the Petition over five months, beginning on February 28, 2007 and ending on June 26, 2007 (R407-1161). At the conclusion of the hearings which included evidence offered by the Plaintiff and objectors, the

ZBA issued a report and voted seven to zero to recommend to the County Board to deny the Plaintiffs' Petition for Conditional Use Permit. (R131-146) Subsequent to the Zoning Board of Appeals hearing, vote and report, the Petition went to the County Board on July 17, 2007. The County Board voted to deny the Plaintiffs' Petition/Application. (R1162-1167). It is from that Decision the Plaintiff's seek this Administrative Review and request the reversal of the Board's Decision denying their Petition for Conditional Use Permit.

STANDARD OF REVIEW

In an Administrative Review, the reviewing court is limited to ascertaining whether an administrative agency's factual findings are against the manifest weight of the evidence and whether the agency's findings are contrary to the manifest weight of the evidence. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191 (1998). The findings of fact of the agency are deemed *prima facie* true and such findings will not be disturbed by the reviewing Court unless they are against the manifest weight of the evidence. *Lincoln Central Association v. Zoning Board of Appeals*, 30 Ill. App. 3d 258 (1975). A factual determination is against the manifest weight of the evidence when all reasonable people would find that the opposite conclusion is clearly apparent. *Kimberly Dawson, Inc. v. Chicago Department of Zoning*, 369 Ill. App. 3d 780 (2006). Where there is any evidence which fairly supports the decision, that decision is then not against the manifest weight of the evidence. *Farmer's State Bank v. Department of Employment Security*, 216 Ill. App. 3d 633 (1991).

ANALYSIS

Plaintiffs assert that the Decision of the County Board denying its request for the conditional use permit to allow earth excavation and mining operations on the subject property was against the manifest weight of the evidence. Plaintiffs claim that they have satisfied all the requirements for issuance of a conditional use permit pursuant to Section 502.3 of the McHenry County Zoning Ordinance, that the denial of the permit denied them due process and equal treatment under the law.

In order to obtain a special or conditional use permit in a county, an applicant must satisfy all the special use (conditional use) standards established by the zoning ordinance. Further it is Plaintiffs' burden to show that it has satisfied those conditions. *Cosmopolitan National Bank v. County of Cook*, 103 Ill. 2d 302 (1984).

The McHenry County Zoning Ordinance, Section 502.3 provides in pertinent part:

No conditional use shall be approved unless, after public hearing and recommendations of the McHenry County Zoning Board of Appeals as is provided, the McHenry County Board shall find:

1. That the petitioner has demonstrated the ability to meet the requirements listed in the section covering individual conditional uses.
2. That then site shall be so situated that the proposed use is compatible with the existing or planned future development of the area.
3. That the establishment, maintenance or operation of the conditional use shall not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the neighboring vicinity.
4. That the conditional use shall not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted.
5. That the conditional use shall not substantially diminish and impair property value within the neighborhood.
6. That adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided.

7. That adequate measures have been or will be taken to provide ingress and egress so designed to minimize traffic congestion and hazard on public streets.
8. That the conditional use shall, in all other respects, conform to the applicable regulations of the McHenry County Zoning Ordinance for the district in which it is located.
9. That the conditional use is reasonably in the interest of the public welfare.

The Zoning Board of Appeals issued its report, which summarized the testimony at the hearings, referenced testimony and exhibits it considered. (R131-146). The report provides a brief analysis of the conditional zoning ordinance and its application to Plaintiff's request. The Zoning Board voted 7-0 to deny the application for conditional use. The recommendation of the McHenry County Zoning Board of Appeals was later adopted by the full McHenry County Board.

The Zoning Board of Appeals Report details three separate areas that support recommending denial of the request. The ZBA found that: (1) the standards for conditional use, listed in Article 5, under Section 502.3 have not been met to the satisfaction of the Zoning Board of Appeals; (2) there were many neighboring property owners in opposition to the request; and (3) there is a possibility of traffic hazards and environmental issues. Neighboring property owners testified as to their concerns about traffic congestion, traffic safety issues, noise, dust, decreased land values and incompatibility with the existing agricultural land uses and environmental deterioration.

The Plaintiff maintains that the record supports its application for conditional use. Plaintiff further maintains that the Defendants failed to articulate reliance upon any fact other than the opinions of the board members when all expert testimony was provided by Plaintiff's experts and the objectors presented no evidence or expert testimony with respect to the proposed

use.” The record contains evidence presented by the objectors and there was evidence other than Plaintiff’s experts upon which the Board could rely in support of its position. The burden rested clearly on the Petitioner to satisfy each and every standard as articulated in the conditional use ordinance.

There was evidence on record that the proposed use is not compatible with existing or planned development. In addition to the public hearings, the McHenry County Soil and Water Conservation District issued its report. The report found that the soil survey of the subject property indicated that approximately 97.91% of the parcel in question is composed of prime farmland soils. The report noted “the agricultural nature of the area, the presence of prime soils on the entire parcel excluding developed areas, the non sloping nature of the parcel, and the identification of the parcel as “agriculture” on the McHenry County 2010 Land Use Plan Map indicates the parcels importance to the agricultural composition of the county. Mining will prevent future agricultural activities from occurring.” (R69) The surrounding property is zoned A-1 Agriculture and the surrounding properties are used for agricultural and residential. There is one excavation operation near the subject property operated by Gavers.

The Zoning Board of Appeals members indicated in their discussions prior to their vote that they believed the excavation and mining operation was not compatible with the surrounding properties while they acknowledged the presence of a gravel pit in the area. They pointed out that the overall area is agricultural and residential with the trend in the area being further residential development. (R1136)

With respect to the Gaver’s Pit in the area, the Plaintiff attempts to argue that “fundamental fairness” supports the granting of the conditional use as the Gaver’s mining operation was previously allowed by the Board. However, Plaintiff provides no authority which

supports the contention that because one particular operation was allowed in that area, that an additional related operation must also be allowed in the same locale. The Zoning Board of Appeals found that the predominant use of land in the area was agricultural with a significant residential component. It does not follow that where one gravel mining operation may be beneficial to the community that two must be better. Furthermore, one gravel operation in the area does not in and of itself change the uses or planned uses of the entire surrounding areas.

The Board considered whether the mining operation proposed would be detrimental to the public health and general welfare and injurious to the use and enjoyment of other property in the vicinity. The McHenry County Soil and Water Conservation District report indicated that the potential for contaminating shallow aquifers is high. (R70) It further indicated that contaminants will therefore move rapidly through sand and gravel to wells and streams. The Conservation District's Report recommended various conservative land uses in the area. (R78) Also, at the hearings testimony was presented regarding noise pollution, traffic congestion and safety issues in connection therewith.

The Zoning Board of Appeals addressed traffic concerns in the event the conditional use was allowed. Mr. Merryman testified that in order to operate a minimum of 100 loads would need to leave the facility during the day, with a maximum of 200 loads per day leaving the site. The Board expressed its concerns with this increased traffic congestion in the area as well as safety issues related to these trucks traveling on the neighboring roads. This could equate to as many as 400 trips in a day on the road. The creation of a particular traffic problem connected to a particular use at a location can, in and of itself, be sufficient reason for denial of a Special (conditional) Use Permit. *Blazier v. St. Clair County*, 209 Ill. App. 3d 928 (1991).

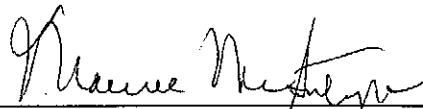
As previously stated, in order to prevail under Administrative Review the Defendant's Decision denying the Conditional Use Permit must be against the manifest weight of the evidence. It was Plaintiff's burden to establish that it had or could satisfy all nine standards of the Conditional Use Permit Ordinance. Failing to satisfy any one of the standards would result in the appropriate denial of Plaintiff's application. That, despite Plaintiff's attempts at confusing the issue with arguments of "fundamental fairness" and burden shifting, the record on Administrative Review reveals sufficient evidence to support the McHenry County Board's Decision.

CONCLUSION

Having considered the record and arguments presented, this Court finds the Decision of the McHenry County Board is not against the manifest weight of the evidence.

IT IS THEREFORE ORDERED that the Decision of the McHenry County Board denying the application for Conditional Use Permit is affirmed and the case is dismissed.

Dated: August 19, 2009



MAUREEN P. McINTYRE
CIRCUIT COURT JUDGE