

No. 1-14-1859

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WAL-MART STORES, INC., d/b/a)	Appeal from the
WAL-MART EXPRESS,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 13 CH 6923
)	
RAHM EMANUEL, as Mayor of the City of)	
Chicago and Local Liquor Control Commissioner;)	
the LOCAL LIQUOR CONTROL COMMISSION)	
OF THE CITY OF CHICAGO; the MAYOR'S)	
LICENSE COMMISSION OF THE CITY)	
OF CHICAGO; GREGORY STEADMAN, as)	
Commissioner of the Local Liquor Control)	
Commission of the City of Chicago; and)	
the CITY OF CHICAGO, a Municipal Corporation,)	
)	
Defendants-Appellants,)	
)	
(The License Appeal Commission of the)	
City of Chicago; Dennis M. Felming, as Chairman)	
Of the License Appeal Commission of the)	
City of Chicago; Stephen Schnorf and Donald)	Honorable
O'Connell, as Commissioners of the License Appeal)	Franklin Ulyses Valderrama
Commission, Defendants).)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in reversing an order of the License Appeal Commission of the City of Chicago which had affirmed a decision of the Local Liquor Commission of the City of Chicago denying the plaintiff, Wal-Mart Stores, Inc.'s, application for a package goods liquor license covering the premises at 225 West Chicago Avenue, Chicago, Illinois.

¶ 2 Rahm Emanuel, as Mayor of the City of Chicago and Local Liquor Control Commissioner; the Local Liquor Control Commission of the City of Chicago; the Mayor's License Commission of the City of Chicago; Gregory Steadman, as Commissioner of the Local Liquor Control Commission of the City of Chicago; and the City of Chicago, a municipal corporation (hereinafter collectively referred to as the City Defendants) appeal from an order of the circuit court of Cook County that reversed an order of the License Appeal Commission of the City of Chicago (LAC) affirming a decision of the Local Liquor Control Commission of the City of Chicago (LLCC) that denied the plaintiff, Wal-Mart Stores, Inc.'s (Wal-Mart), application for a package goods liquor license covering the premises at 225 West Chicago Avenue, Chicago, Illinois. For the reasons which follow, we reverse the judgment of the circuit court and reinstate the decision of the LAC which affirmed the denial of Wal-Mart's liquor license application.

¶ 3 Wal-Mart opened a retail store offering merchandise to the general public at 225 West Chicago Avenue, Chicago, Illinois (the Wal-Mart Express Store). Thereafter, Wal-Mart applied to the City of Chicago (City) for a package goods liquor license covering the Wal-Mart Express Store (the Application). On November 14, 2011, Gregory Steadman, Commissioner of the LLCC, sent a letter to Wal-Mart denying the Application. The letter stated that "The City of Chicago Municipal Code 4-60-040 states "The local liquor control commissioner shall deny an application if ... the issuance of such license would tend to create a law enforcement problem[.]' "

¶ 4 Wal-Mart filed a timely appeal with the LAC from the denial of the Application. The LAC held an evidentiary hearing which took place over three days. Brendan Reilly, the

alderman of the ward in which the Wal-Mart Express Store is located, and Ken Angarone, the commander of the police district in which the Wal-Mart Express Store is located testified in opposition to the issuance of the license. Wal-Mart employees Jack Williams, Luay Aboona, Kristopher Lamaze, and Mark McKeithan testified in support of the issuance of the license. The following facts are taken from the evidence adduced at the hearing.

¶ 5 The Wal-Mart Express Store is located in a mixed use area with a dense residential population. It is situated in close proximity to two methadone clinics, one of which is directly across the street, and a single-room-occupancy residential facility (SRO) operated by the YMCA. Alderman Reilly testified that he receives complaints on a weekly basis about incidents in the vicinity such as panhandling, drunk and disorderly conduct, robberies, loitering and shoplifting. The alderman testified that he has no objection to Wal-Mart operating a store at the location; rather, he only objects to the sale of liquor there because of the store's close proximity to the methadone clinics and the YMCA's SRO facility.

¶ 6 Commander Angarone testified that he has been a police officer for 31 years, the last 2 years and 5 months of which he has been the commander of the police district in which the Wal-Mart Express Store is located. He testified that the Chicago Police Department regularly deals with incidents involving robbery, public urination, panhandling, and loitering in the area near the Wal-Mart Express Store. According to Commander Angarone, conditions in the area would be exacerbated if a packaged goods liquor license were issued to Wal-Mart. Commander Angarone testified that the three city block stretch in which the Wal-Mart Express Store is located drains an inordinate amount of police resources when compared to the entire 18th Police District and that it is "entirely possible" that the situation would only get worse if a liquor license were issued for the Wal-Mart Express Store. Commander Angarone stated his belief that the proximity of the

location to the two methadone clinics and the YMCA's SRO facility made the issuance of a liquor license inappropriate. He summarized statistics relating to calls for police service in the three police beats near 225 West Chicago Avenue for the period from January 1, 2011, through September 2, 2011. The figures showed that there were 374 calls for service, resulting in 270 documented incidents in the area. Those incidents resulted in 16 arrests, none of which involved an alcohol related crime. He admitted that the crime rate in the 18th Police District had decreased in each of the three prior years. Commander Angarone did not believe that Wal-Mart's business practices posed a law enforcement problem, nor did he have any reason to believe that Wal-Mart would evade or ignore the City's liquor laws. He did opine, however, that the issuance of a packaged goods liquor license to the Wal-Mart Express Store would have a negative impact on police resources.

¶ 7 Wal-Mart called four of its employees to testify in support of the issuance of a package goods liquor license covering the Wal-Mart Express Store. These employees testified to the type of business conducted by Wal-Mart at its stores, the volume of its sales derived from liquor sales, and the lack of any citations for liquor law violations at another of its stores in Chicago. They recounted Wal-Mart's efforts and proposals to alleviate the concerns of the community associations and Alderman Reilly relating to the issuance of a liquor license for the location at issue. In particular, they testified to the lack of any adverse impact on traffic, the level of risk from a safety perspective that the issuance of the license posed, the safety precautions that are in place at the Wal-Mart Express Store, and the lack of reports of criminal activity at or in the area surrounding that store since it opened for business.

¶ 8 On October 19, 2012, the LAC issued a decision affirming the LLCC, which denied the Application. That decision contained both the opinion of the LAC's chairman, Dennis M.

Fleming, and the separate concurring opinion of commissioners Donald O'Connell and Stephen Schnorf. In his portion of the decision, Chairman Fleming summarized the testimony of the various witnesses. He noted the City's acknowledgement that it was not contending that the issuance of a license in this case would tend to create a law enforcement problem as a result of any past law violations on the part of Wal-Mart. Additionally, Fleming found that the traffic problems testified to by Alderman Reilly are not the type of problems that would support a denial of the license. He concluded, however, that the City met its burden of establishing that the issuance of a packaged goods liquor license for the Wal-Mart Express Store would tend to create a law enforcement problem. According to Fleming's portion of the decision:

"The testimony from the Alderman and the Police Commander established there are quality of life issues with panhandling and loitering in the area. These matters are sufficient to show a law enforcement problem exists in the area of 225 W. Chicago. It is not necessary that the City prove the area is a high crime area. The criminal activity and the response to it add to the proof that there is a law enforcement problem.

While the impact of a Walmart selling liquor might be less than if a pure liquor store selling half-pints, 40 ounce beers, single cans of beer, and fortified wine was seeking this license, the evidence from Commander Angarone based upon his 30 years experience is that adding alcohol to these types of conditions will not make it better and the conditions will get worse."

The separate concurring opinion of commissioners O'Connell and Schnorf states that they agreed with Fleming's review of the evidence and the fact that there is no evidence in the record of any history of liquor law violations on the part of Wal-Mart. They too found that the City established, through the testimony of Alderman Reilly and Commander Angarone, that "quality of life" issues exist in the area of 225 West Chicago, and that their testimony was sufficient to establish that the issuance of a liquor license for the location would tend to create a law enforcement problem and tend to exacerbate the existing "quality of life" problems.

¶ 9 Wal-Mart sought a rehearing of the LAC's decision, arguing that the decision in *Vino Fino Liquors, Inc. v. License Appeal Comm'n of the City of Chicago*, 394 Ill. App. 3d 516, 525-26 (2009), established that the only circumstance which can form the basis for the denial of a liquor license on the grounds that its issuance would tend to create a law enforcement problem are those in which the applicant has a history of violating liquor laws or the law in general. The LAC rejected Wal-Mart's argument and, on February 11, 2013, issued an order stating that the "Commission affirms its decision of October 19, 2012."

¶ 10 Wal-Mart filed a timely Complaint for Administrative Review (see 735 ILCS 5/3-101 *et seq.* (West 2010)) in the circuit court, seeking a reversal of the LAC decision affirming the LLCC's denial of the Application. On May 22, 2014, the circuit court entered an order, finding that the "facts present in the administrative record do not satisfy the standard for a denial based on 'law enforcement problems,' and therefore, this court is left with the definite and firm conviction that a mistake has been committed." The circuit court found that, in the absence of evidence that Wal-Mart had a history of disobeying liquor laws or the law in general, the Application could not be denied on the basis that its issuance would tend to create law enforcement problems. Concluding that the LAC applied an inappropriate standard for denial of

the Application based on "law enforcement problems," the circuit court reversed the LAC's order of October 19, 2012, and "dismissed" the matter "in its entirety." Thereafter, the City Defendants filed the instant appeal.

¶ 11 In urging reversal of the circuit court's order and reinstatement of the LAC's decision, the City Defendants argue that the LAC's determination is not against the manifest weight of the evidence. They assert that the testimony of Alderman Reilly and Commander Angarone support the conclusion that the issuance of a package goods liquor license for the location would tend to exacerbate crime in the area and further strain police department resources.

¶ 12 In support of an affirmance of the circuit court's order, Wal-Mart argues, *inter alia*, that the LAC's decision is clearly erroneous. It asserts that the LAC's decision is limited to a finding that certain "quality of life" issues would get worse if a liquor license were issued covering the Wal-Mart Express Store. According to Wal-Mart, the quality of life issues identified by the LAC consist of lawful activity which cannot be regarded as a law enforcement problem.

¶ 13 From the outset, we find that the reasoning employed by the circuit court in reversing the LAC's decision in this matter is the precise reasoning which we rejected in *Move N Pick Convenience, Inc. v. Emanuel*, 2015 IL App (1st) 133449. Simply put, denial of a liquor license on the basis that its issuance would tend to create a law enforcement problem is not restricted to circumstances in which the applicant has a prior history of disobeying liquor laws or the law in general. *Id.* ¶¶ 19-25. However, in deference to the circuit court, we are quite aware that it issued its decision in this case months before we issued our opinion in *Move N Pick Convenience*. However, the fact that we disagree with the reasoning employed by the circuit court is of little relevance to our resolution of this appeal. When, as in this case, an appeal has been taken from a decision of the circuit court in an administrative review action, it is the

decision of the administrative agency which we review, not the decision of the circuit court. *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 337 (2009); *Move N Pick Convenience*, 2015 IL App (1st) 133449, ¶ 22.

¶ 14 Our standard of review applicable to decisions of an administrative agency depends upon whether the question presented is one of fact or law. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998). An agency's findings of fact are deemed *prima facie* true and correct. 735 ILCS 5/3-110 (West 2010). We are limited to determining whether the agency's findings of fact are against the manifest weight of the evidence. *City of Belvidere*, 181 Ill. 2d at 205. A factual finding is against the manifest weight of the evidence if, from the evidence of record, an opposite conclusion is clearly evident. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). If any evidence supports the agency's decision, it should be affirmed. *Id.*

¶ 15 Where an administrative agency's decision involves a question of law, our review is *de novo*. *City of Belvidere*, 181 Ill. 2d at 205. When, however, an administrative agency's finding involves an examination of the legal effect of a given set of facts, it presents a mixed question of fact and law. *Id.* On review of such a finding, we apply a clearly erroneous standard. *Id.* An agency's determination is clearly erroneous where, after reviewing the entire record, we are left with a definite and firm conviction that a mistake has been committed. *Outcom*, 233 Ill. 2d at 337.

¶ 16 The LLCC has discretion to deny an application for a liquor license if its issuance "would tend to create a law enforcement problem, result in or add to an undue concentration of licenses, or have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located." Chicago Municipal Code, § 4-60-040(h) (amended May 12,

2010). In this case, the denial of the Application was based on a finding that its issuance would tend to create a law enforcement problem. The ordinance does not define what is meant by the phrase "tend to create a law enforcement problem." In *Move N Pick Convenience*, this court rejected the notion that the phrase is restricted to circumstances where the applicant for a liquor license has a prior history of disobeying liquor laws or the law in general. *Move N Pick Convenience*, 2015 IL App (1st) 133449, ¶ 19. In that case, we concluded that the phrase includes circumstances where there exists a "likelihood of increased demand for police services to the establishment in a crime-infested area that already had limited law enforcement resources." *Id.* ¶ 26.

¶ 17 In construing a municipal ordinance, our function is to ascertain and give effect to the intent of the legislative body that enacted it. See *Amigo's Inn, Inc. v. License Appeal Comm'n of the City of Chicago*, 354 Ill. App. 3d 959, 965 (2004). We consider the ordinance in its entirety, keeping in mind the subject it addresses and the apparent objective in enacting it. *Id.* The most reliable indicator of legislative intent is the language of the ordinance itself which, if plain and unambiguous, must be read without exception, limitation, or condition. *Id.*

¶ 18 We believe that the plain and unambiguous language of section 4-60-040(h) of the Chicago Municipal Code evinces an intention on the part of the Chicago City Council to grant the LLCC discretion to deny an application for a liquor license in circumstances where there exists a likelihood of an increased demand for police services if the license were issued. Our conclusion in this regard is supported by the fact that the ordinance does not require a finding that the issuance of the license would contribute to an increase of crime before it could be denied. Nor does it require a finding that the issuance *will* lead to law enforcement problems.

The ordinance only requires a finding that the issuance of the license would "tend" to create a law enforcement problem.

¶ 19 In this case, both Chairman Fleming's portion of the LAC decision and the separate concurring opinion of commissioners O'Connell and Schnorf found, based upon the testimony of Alderman Reilly and Commander Angarone, that issuance of a package goods liquor license covering the Wal-Mart Express Store would tend to create a law enforcement problem. The evidence of record supports the conclusion that the location for which the license was sought is in an area frequented by panhandlers and individuals loitering in the vicinity of methadone clinics and an SOR facility and that the Chicago Police Department is called upon to respond regularly to incidents in the area. Commander Angarone testified that, in his opinion, the issuance of a liquor license to the Wal-Mart Express Store would make conditions in the area worse. According to Commander Angarone, an inordinate amount of police resources are devoted to the area surrounding the Wal-Mart Express Store and that it is entirely possible that the situation would be exacerbated in the event that a packaged goods liquor license were issued for the location. The LAC relied upon Commander Angarone's opinion in reaching its conclusion that the issuance of a liquor license to the Wal-Mart Express Store would tend to create a police problem. The weight to be given to the commander's testimony was a matter for the LAC to decide. See *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 528 (1998). We are limited to ascertaining whether an opposite conclusion is clearly apparent.

¶ 20 If, as Commander Argarone opined, the issuance of a liquor license for the Wal-Mart Express Store would make conditions in the area worse and increase the draw on police resources, the LAC could reasonably conclude that the issuance of the license would "tend" to create a police problem. We find, therefore, that the decision of the LAC to affirm the decision

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of the LLCC to deny the Application is neither against the manifest weight of the evidence nor clearly erroneous.

¶ 21 Based upon the foregoing analysis, we reverse the judgment of the circuit court and reinstate the decision of the LAC.

¶ 22 Circuit court reversed; agency decision reinstated.