2016 IL App (2d) 151122-U
No. 2-15-1122
Order filed July 6, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

RICHARD ROBIN,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-MR-854
	)	
CITY OF ZION,	)	Honorable
	)	Diane E. Winter,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The hearing officer did not err in refusing to recuse himself based on an alleged conflict of interest. The hearing officer's findings that Robin violated section 10-179 the Zion Municipal Code (Zion Municipal Code § 10-179 (eff. Aug. 7, 2013)) by failing to register six apartment units as vacant buildings was not clearly erroneous. However, the hearing officer's finding that a seventh apartment, 2843 Galilee, was a vacant building that required registration was clearly erroneous. Section 10-179 was not unconstitutionally vague as applied to this case. The fines imposed by the hearing officer were not beyond his powers, and they did not violate Robin's substantive due process rights. Accordingly, we affirmed the trial court's order affirming the hearing officer's decision in all respects except for the finding that 2843 Galilee was a vacant building and the fines imposed for that apartment.

¶ 2 Plaintiff, Richard Robin, appeals from the trial court's order affirming the determination of a City of Zion (City) hearing officer that Robin violated section 10-179 of the Zion Municipal Code (Zion Municipal Code § 10-179 (eff. Aug. 7, 2013)) by failing to register seven apartment units as vacant buildings. On appeal, Robin argues that: (1) the hearing officer should have recused himself due to a conflict of interest; (2) the notices of ordinance violations were defective because they did not comply with the City's municipal code requirements; (3) the hearing officer erred in finding that Robin's apartment buildings were vacant under section 10-179; (4) section 10-179 is unconstitutionally vague; and (5) the fines imposed were beyond the hearing officer's powers and were excessive.

¶ 3 We conclude that the hearing officer's finding that one of the apartments, 2843 Galilee, was a vacant building was clearly erroneous, so we reverse the portion of the trial court's order affirming that finding and its corresponding fines. We affirm the remainder of the trial court's order.

¶ 4 I. BACKGROUND

¶ 5 Robin owned five adjacent buildings, each containing four residential apartment units, in Zion, Illinois. Each building had a single property tax identification number (PIN), but each apartment unit had its own street address. Specifically, the first building had units with the following addresses: 2803 Galilee; 2805 Galilee; 2807 Galilee; and 2809 Galilee. The second building had units with the following addresses: 2811 Galilee; 2813 Galilee; 2815 Galilee; and 2817 Galilee. The third building had units with the following addresses: 2819 Galilee; 2821 Galilee; 2823 Galilee; and 2825 Galilee. The fourth building had units with the following addresses: 2835 Galilee; 2837 Galilee; 2839 Galilee; and 2841 Galilee. Last, the fifth building had units with the following addresses: 2843 Galilee; 2845 Galilee; 2847 Galilee; and 2849

Galilee.

¶ 6 The City mailed a number of notices to Robin from September to December 2013 informing him that seven "buildings" were vacant under section 10-179 of its municipal code (Zion Municipal Code § 10-179 (eff. Aug. 7, 2013)), and requiring that he register the "buildings" with the city. The addresses referenced were 2809 Galilee; 2819 Galilee; 2823 Galilee; 2839 Galilee; 2843 Galilee; 2845 Galilee; and 2849 Galilee. Thus, the referenced apartments constituted one unit in the first building, no units in the second building, two units in the third building, one unit in the fourth building, and three units in the fifth building. Robin acknowledged receiving the notices.

¶ 7 On January 30, 2014, the City served Robin with seven citations, one for each unit he had failed to register. The citations all stated that the violations were first observed in December 2013. The notices listed a hearing date of March 27, 2014. A series of hearings, one for each unit, were later continued to April 24, 2014. On that date, a hearing began for the property at 2845 Galilee. Robin appeared *pro se*. After the hearing officer, an attorney named Tim Evans, made introductory remarks, Robin asked that Evans recuse himself. Robin said that Evans had represented Robin in the past and was now "represent[ing]" Zion, which was a conflict of interest. Evans replied that in 2007, he had represented Robin's corporation in reference to an eviction, and that he had not had contact with Robin since that time except for another hearing at which Evans was also the hearing officer. Evans stated that Robin did not object to Evans's role as a hearing officer at the prior hearing. Robin said that there "was some objection to that, but it was settled outside." Evans said he did not recall it that way, and that, in any event, the prior hearing had proceeded. The City stated that it did not object to Evans acting as the hearing officer because more than five years had passed since Evans had represented Robin's company,

and the matters were unrelated. Evans denied Robin's motion for recusal, stating that given the length of time that had passed since he represented Robin, he did not feel that he had any conflicts, and he could be fair to both sides.

¶ 8 Robin advised that the arguments that he would make in reference to 2845 Galilee applied to all of the citations. He asked for a directed finding because the notices were not timely filed. He argued that the notices stated that the violations were first observed in December 2013, and although a property had to be vacant for six months to violate the ordinance,[1] the citations were issued in January 2014. Robin also argued that section 10-179 required that a copy of the registration form be sent to him, but it never was, and that the notices did not list a date of the inspection. Robin further argued that the ordinance was not intended to cover multi-unit properties, and the fact that one unit in a building was vacant did not make the entire property vacant. Robin argued that although the units were individually addressed, there was only one PIN for each building. Robin agreed that he never appealed the City's vacant building determination, stating that he had disregarded the notices as being technically flawed.

¶ 9 The City argued that section 10-179 clearly applied to both entire buildings and portions of buildings. It argued that each unit had an individual address and utilities, so it could be considered vacant. The City called its lead inspector, Bob Miller, as a witness, and he testified as follows. 2845 Galilee was first brought to the City's attention as being vacant on September

[1] The relevant ordinance (section 10-179.3), which we set forth later in the disposition, does not state that a building must be vacant for six months to be considered a vacant building. Zion Municipal Code § 10-179.3 (eff. Aug. 7, 2013). Rather, section 10-179.6 states that a building may not remain boarded or vacant for more than six months without an extension of time from the City. Zion Municipal Code § 10-179.6 (eff. Aug. 7, 2013).

7, 2013, because the water was turned off. The City sent a notice to Robin to register the property as vacant, but he did not respond. The City then sent an invoice to the property owner but still received no response. On December 18, 2013, the City sent another letter to Robin to register the property, and it also sent a notice that the windows were boarded up. The City again did not hear from Robin, so on January 30, 2014, it issued a ticket and a summons to appear. Miller personally inspected the property, and the City determined that it was vacant based on boarded windows, the water being off since December 2012, and no water consumption since 2008. The City cited Robin for two code violations, those being the vacant building registration requirement and a building board-up requirement. Miller identified a picture dated December 18, 2013, as showing boarded-up windows on the property. He identified a picture dated March 17, 2014, as showing that the boarded up windows had been replaced with new windows, which he testified was done without a required permit.

¶ 10 Robin disputed that the pictures depicted 2845 Galilee. He further said that he had obtained a list of multi-unit addresses to which the City had issued citations in the past year for not being registered as vacant properties. On cross-examination, Miller testified that he was familiar with some of the six properties on the list that did not belong to Robin. Miller could not recall if any of them were other than completely vacant at the time he issued the tickets. Miller agreed that a building on Lewis Street had been entirely vacant, as was a four-unit townhome on Salem Street.

¶ 11 Robin argued:

> "This [his own property] is not a deadbeat property. This is rentable property. And at any given time, there's going to be vacant properties within this complex. There always will be because I just don't rent to anybody. I would rather have the entire

complex vacant if I don't have a suitable renter."

¶ 12 On re-direct examination, Miller testified that PIN numbers were not part of the criteria to identify whether a building should be deemed vacant.

¶ 13 Evans denied Robin's motion for a directed finding and then found as follows. Section 10-179 specifically stated that it could apply to a portion of a building. There was testimony that no water had been consumed at 2845 Galilee since 2008. The City's notices complied with the ordinance, and Robin acknowledged receiving them. Robin disputed that the photographs showed the property in question, but there was a "2845" address plaque next to the windows, which was consistent with the testimony. Pursuant to the ordinance, Evans assessed a fine against Robin of $250 for each day that the property was in violation, beginning on January 30, 2014.

¶ 14 Evans then proceeded to a hearing on the next property, 2843 Galilee. Evans asked if Robin's testimony would be the same for this property, and Robin replied, "I'll include that." He further stated that he was not going to "hang around" for the rest of the hearings because they would result in the same finding. He then stated, "I think you have just entered a slippery slope for the people of Zion by stating that one unit can make a vacancy." Robin said that he did not "need to be wasting [his] time with *** a kangaroo (unintelligible.)."

¶ 15 After Robin left the hearing, Miller testified that the water at 2843 Galilee was on, but there had been no water consumption since the June 13, 2013, billing cycle. The property did not have any other violations, though he discovered on March 7, 2014, that the windows had been replaced without permits. The City introduced letters notifying Robin of the vacant building violation.

¶ 16 The hearing officer found Robin in violation of section 10-179 for failing to register a

vacant building for this address as well, and he assessed the same $250 daily fine beginning from January 30, 2014.

¶ 17 Similar hearings were conducted for each of the five remaining properties. Miller testified that the City determined that 2849 Galilee was vacant because water had been shut off on March 1, 2011, and no water had been consumed since December 2010. Miller testified that the City determined that 2839 Galilee was vacant because it had boarded-up windows and no water had been consumed since September 30, 2013. The City gave Robin until January 15, 2014, to comply. When Miller did a follow-up visit to that property, the boards had been removed, but the property still had not been registered. Miller testified that the City's vacancy determination for 2823 Galilee was based on a boarded-up window, a broken window, and the water being turned off since October 2, 2012. Miller testified that the City determined that 2819 Galilee was vacant because it had boarded-up windows and no water consumption since June 13, 2013. Miller testified that the City determined that 2809 Galilee was vacant because it had boarded-up windows, and the water had been shut off since April 14, 2010.

¶ 18 Evans found that Robin had violated section 10-179 for each these five properties, and he imposed the daily fine of $250 for each property, beginning from January 30, 2014. He also found Robin in violation of section 10-178 (Zion Municipal Code § 10-178 (eff. Aug. 7, 2013)), which relates to boarding up a building, for 2819 Galilee and 2823 Galilee.

¶ 19 On May 29, 2014, Robin filed a complaint in the trial court for administrative review.

¶ 20 The trial court issued its memorandum opinion and order on March 24, 2015. It reversed the finding that 2819 Galilee and 2823 Galilee violated section 10-178, reasoning that there was no evidence that the windows had been boarded up for at least six months. It affirmed all findings of violations under section 10-179 and the $250 fine on each unit for each day that the

property remained in violation since January 30, 2014.

¶ 21 On April 9, 2015, the City filed a motion for an entry of judgment in which it sought fines from the date of the citations, *i.e.*, January 30, 2014, through various dates for each unit, including up to the date of the filing. It alleged that it was owed a total of $625,750, and included an affidavit of its building department director.

¶ 22 On April 22, 2015, Robin filed a motion to reconsider, which the trial court denied on June 23, 2015. On October 13, 2015, the trial court granted the City's motion to enter judgment on the administrative decision, though it granted Robin's motion to strike the building department director's affidavit; the trial court stated that it was strictly reviewing the hearing officer's decision and could not consider whether the violations had continued. It entered judgment for the City and against Robin for $148,750. Robin timely appealed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, Robin argues that: (1) Evans should have recused himself as a hearing officer due to a conflict of interest; (2) the notices of ordinance violations were defective because they did not comply with the City's municipal code requirements; (3) the hearing officer erred in finding that Robin's apartment buildings were vacant as that term is defined in section 10-179; (4) section 10-179 is unconstitutionally vague; and (5) the fines imposed were beyond the hearing officer's powers and were excessive.

¶ 25 We begin by setting forth the generally applicable standards of review. In an appeal to the appellate court following the decision by a circuit court on administrative review, we review the decision of the administrative agency rather than the circuit court's judgment. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). In an administrative hearing, the plaintiff's burden of proof is by a preponderance of the evidence.

Slocum v. Board of Trustees of State Universities Retirement System, 2013 IL App (4th) 130182, ¶ 26. When the parties dispute an administrative agency's factual findings, we apply a manifest weight of the evidence standard. *Provena Covenant Medical Center*, 236 Ill. 2d at 387. Where the dispute is an agency's conclusion on a point of law, we review the agency's decision *de novo*. *Id.* An intermediate standard applies for mixed questions of law and fact, which occur where the dispute pertains to the legal effects of a set of facts. More specifically, a mixed question of law and fact is present "where the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard." *Id.* We review mixed questions of law and fact for clear error. *Id.* An agency's decision is clearly erroneous where the reviewing court, after reviewing the entirety of the record, is left with a definite and firm conviction that the agency committed a mistake. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 393 (2001). The clearly erroneous standard falls between the *de novo* and manifest-weight standards of review. *Lambert v. Downers Grove Fire Department Pension Board*, 2013 IL App (2d) 110824, ¶ 23.

¶ 26 A. Request for Hearing Officer's Recusal

¶ 27 We first address Robin's argument that Evans should have recused himself as the hearing officer due to a conflict of interest. Due process requires a fair trial in a fair tribunal, including in administrative hearings. *Emergency Treatment, S.C. v. Department of Employment Security*, 394 Ill. App. 3d 893, 907 (2009). A hearing cannot be impartial if the decision maker is biased. *Id.* However, the complaining party "must overcome the presumption of honesty and integrity of those serving as adjudicator for an agency and provide sufficient proof that the risk of unfairness is 'intolerably high.' " *Id.*

¶ 28 Robin argues that he was concerned that Evans represented him in a 2007 eviction matter and that Evans had acted as the hearing officer in an unrelated administrative hearing involving Robin and the City. Robin argues that the discussion that took place shows that they were antagonistic toward each other. Robin argues that an attorney is duty-bound to avoid the appearance of impropriety (*SK Handtool Corp. v. Dresser Industries, Inc.*, 246 Ill. App. 3d 979, 988 (1993)) and that judges are to avoid partiality and the appearance of impropriety (see Ill. S. Ct. R. 63(C)(1) (eff. July 1, 2013)). Robin maintains that if Evans ruled in his favor, it would appear that he was ruling in favor of a former client, but Evans could also have been motivated to rule against Robin to show that he was impartial. Robin argues that, either way, Evans could be criticized for failing to avoid the appearance of impropriety.

¶ 29 Robin's argument is not persuasive. The record indicates that Evans had represented Robin's company over six years before in a single eviction matter, which was unrelated to the current citations and did not involve the City as a party. Robin focuses on the effect that the attorney-client relationship could have had on Evans's rulings, but even where attorney representation is involved, a party seeking to disqualify an attorney must show that the present and former representations were substantially related (*In re Marriage of Hines*, 356 Ill. App. 3d 197, 198 (2005)), which Robin has failed to do here. Moreover, Robin has not shown that the risk of unfairness was intolerably high, especially considering that the risk of impartiality and appearance of impropriety diminishes with time. *Cf. People v. Haywood*, 2016 IL App (1st) 133201, ¶ 31 (it was not against the manifest weight of the evidence for the trial court to find that the defendant's improper remarks, made one year before his plea, were too remote in time to affect the trial judge's impartiality at the Rule 402 conference). The record shows that Evans had also acted as a hearing officer in another case with which Robin was involved, but the record

indicates that any objection that Robin may have had to Evans in that case was "settled," and it is undisputed that Evans did not recuse himself in that prior hearing. Robin has not explained how Evans's appearance as a hearing officer in a previous dispute overcomes the presumption that Evans could act honestly and with integrity. For all of these reasons, Robin's argument is without merit.

¶ 30 B. Sufficiency of Notices of Ordinance Violations

¶ 31 Robin next argues that the notices of ordinance violations were defective in that they did not comply with the City's requirements. He points out that each of the January 2014 citations for ordinance violations were based on notices of violations issued to him via letters dated December 18, 2013, December 19, 2013, and December 20, 2013. Robin contends that while other letters were sent to him in September and October 2013, those letters are of no consequence because the citations were not based upon them.

¶ 32 Robin notes that section 10-179.4 states that within seven days of determining that a building is vacant, the City "shall" send a written notice. Zion Municipal Code § 10-179.4 (eff. Aug. 7, 2013). Specifically:

> "The Notice of Determination shall contain a statement of the obligations of the Owner of the Building determined to be a Vacant Building, a copy of the registration form the Owner is required to file pursuant to Section 10-179.5, and a notice of the Owner's right to appeal the Director's determination.
>
> The Notice of Determination shall identify a date and time on which the Owner may voluntarily allow for a code compliance inspection of the interior and exterior of the Vacant Building to identify what steps the Owner must take to bring the Vacant Building in compliance with the City's codes, regulations and policies." *Id.*

Robin argues that the notices sent to him on December 18, 19, and 20, 2013, were defective because they did not advise him of his right to appeal; did not give him the form needed to register the buildings; and did not provide a date for the voluntary inspection.

¶ 33 Robin notes that the rules of statutory construction apply to municipal ordinances (see *Wortham v. City of Chicago Department of Administrative Hearings*, 2015 IL App (1st) 131735, ¶ 16) and that the word "shall" generally indicates a mandatory obligation (see *Y-Not Project, Ltd. v. Fox Waterway Agency*, 2016 IL App (2d) 150502, ¶ 37). Robin cites *State Bank of Cherry v. CGB Enterprises, Inc.*, 2013 IL 113836, ¶¶ 22, 64, where our supreme court held that a notice provision of the Food Security Act of 1985 (7 U.S.C. § 1631(e) (2006)) required strict, rather than substantial, compliance. Robin also cites *Grimm v. Calica*, 2015 IL App (2d) 140820, ¶ 15, *appeal allowed*, No. 120105 (Mar. 30, 2016), where this court stated that when a protected interest is at stake, due process requires notice that is sufficient to allow the person whose interest is at risk to decide how to respond. We stated that the notice must be in a form that is reasonably calculated to provide the necessary information and must give the affected person reasonable time to act. *Id.*

¶ 34 The City argues that administrative proceedings require comparatively less due process than trials. It cites *Desai v. Metropolitan Sanitary District of Greater Chicago*, 125 Ill. App. 3d 1031 (1984), where the court stated:

> "[T]he same process which is due during a trial is not necessary at an administrative hearing. [Citations.] In administrative matters, due process is satisfied by a procedure that is suitable for the nature of the determination to be made and conforms to the fundamental principles of justice." *Id.* at 1033.

¶ 35 The City argues that, beginning in September 2013, it mailed Robin a total of 22 notices informing him that his properties were vacant and needed to be registered. The City argues that Robin has no basis to deem the notices he received from September to November 2013 inconsequential. The City maintains that they all concerned his failure to register his properties as vacant. The City argues that taken together or individually, the notices complied with the ordinance, respected Robin's due process rights, and provided Robin with actual notice of his violations.

¶ 36 The City maintains that even if its notices were deficient, Robin must show that the deficiencies resulted in substantial injustice. It cites *Shachter v. City of Chicago*, 2011 IL App (1st) 103582, ¶ 44, where the court stated that a notice's technical violation would not constitute grounds for the reversal of an administrative decision unless the error materially affects a party's rights and resulted in substantial injustice. See also *Geri's West, Inc. v. Ferrall*, 153 Ill. App. 3d 579, 585 (1987) ("[S]tatutes imposing certain technical requirements for notice may not be strictly enforced if the party seeking enforcement had actual knowledge and cannot show any prejudice as a result of the opposing party's failure to strictly comply with the technical requirements."). The City argues that Robin acknowledged receiving the notices, and he raised a vigorous defense, showing that he was aware of the bases for the notices and the ordinance's language. According to the City, Robin possessed the necessary information to protect his rights at the administrative hearing and actively attempted to do so. The City argues that, therefore, Robin failed to show he suffered any prejudice from the purported notice deficiencies.

¶ 37 We note that Robin's citation to *State Bank of Cherry*, 2013 IL 113836, ¶¶ 22, 64, for the proposition that strict compliance is required for notice provisions, is misguided; that case applies solely to a notice provision of the Food Security Act of 1987. Rather, as Robin also

recites, due process requires notice that is sufficient to allow the person whose interest is at risk to decide how to respond. *Grimm*, 2015 IL App (2d) 140820, ¶ 15. The notice must be in a form that is reasonably calculated to provide the necessary information and must give the affected person reasonable time to act. *Id.*

¶ 38 Assuming, *arguendo*, that we are limited to viewing the December 2013 notices because the citations explicitly listed only these notices, we agree with the City that they satisfy the aforementioned due process standards. It is true that these notices did not advise Robin of his right to appeal, did not provide the form needed to register the buildings, and did not provide a date for the voluntary inspection. However, in determining the sufficiency of notice, courts generally focus on whether it satisfied the object and intent of the law, rather than whether the notice was formally and technically correct. *People v. Lake*, 2014 IL App (1st) 131542, ¶ 15. Here, the December 2013 notices listed the property addresses; listed the violations and ordinances; provided a web address to view the full version of the ordinances; listed the date by which the violations were to be corrected; listed the potential penalties; and provided contact information. The January 2014 citations provided the property addresses; the alleged violations; contact information; and the date, time, and place of the hearings. Thus, the notices and citations were reasonably calculated to give Robin the necessary information regarding the alleged violations, and they also gave him a reasonable time to act.

¶ 39 Additionally, as the City points out, a notice's technical violation will not constitute grounds for the reversal of an administrative decision unless the error materially affected a party's rights and resulted in substantial injustice. *Shachter*, 2011 IL App (1st) 103582, ¶ 44. Robin has not explained how he has suffered prejudice from the alleged deficiencies. Rather, we agree with the City that the record reveals that, at the hearing: Robin admitted receiving all of the

notices; he was fully apprised of the alleged ordinance violations and the ordinance's language; and he was able to present a thoughtful defense. Accordingly, the hearing officer did not err in denying Robin's motion to dismiss.

¶ 40 C. Hearing Officer's Vacancy Findings

¶ 41 Robin's third argument on appeal is that the hearing officer erred in finding that his apartments were vacant and finding him in violation of section 10-179 for not registering them as vacant buildings.

¶ 42 We set forth the relevant part of section 10-179. The preamble to the vacant buildings registration ordinance states that the City was adopting the ordinance because buildings that are indefinitely vacant, in a state of disrepair, or boarded up are "public nuisances that contribute to decreased value of surrounding properties, lead to disinvestment by neighboring property owners, provide opportunities for criminal activity, undermine the aesthetic character of the City's neighborhoods, and have other undesirable effects." Zion Municipal Ordinance No. 13-O-42 (approved August 6, 2013). The preamble states that buildings that are vacant for more than two years, even in the absence of code violations or disrepair, are detrimental to the public health, safety, and welfare; could pose an extraordinary danger to police and firemen entering the premises during emergencies; and detract from the aesthetic appeal and outward appearance of the neighborhood. *Id.* The preamble further states that registering vacant buildings and implementing a maintenance plan will discourage owners from allowing their building to remain indefinitely vacant or in a state of disrepair, and will expedite the return of vacant buildings to productive use. *Id.*

¶ 43 Section 10-179 is entitled "VACANT BUILDING AND PROPERTY REGULATIONS." Zion Municipal Code § 10-179 (eff. Aug. 7, 2013). Section 10-179.1, entitled "DECLARATION OF POLICY," states:

> "This chapter protects the public health, safety, and welfare by enacting regulations that:
>
> (a) Establish a program for identification, registration, and regulation of Vacant Buildings;
>
> (b) Determine the responsibilities of Owners of Vacant Buildings; and
>
> (c) Provide for administration, enforcement, including the prevention and abatement of Public Nuisances, and imposition of penalties.
>
> This chapter shall be construed liberally to affect its purposes." Zion Municipal Code § 10-179.1 (eff. Aug. 7, 2013).

¶ 44 Section 10-179.3 defines "Boarded Building" as:

> "a building that has, in a manner intended to be temporary or permanent, any or all openings, including windows or doors present for the purpose of light, ventilation or ingress/egress, secured by means other than conventional methods used in the design of a building or permitted for new construction of a similar type by some material, whether opaque, solid or transparent, affixed to such openings, from the interior or exterior of the building, for the purpose of securing or preventing access or damage to the building or its components." Zion Municipal Code § 10-179.3 (eff. Aug. 7, 2013).

¶ 45 Section 10-179.3 defines "Unoccupied Building" as:

> "a Building or portion thereof which lacks the habitual presence of human beings who have a legal right to be on the Premises, including Buildings ordered vacated by

the Director. In determining whether a Building is 'unoccupied,' the Director may consider these factors, among others:

(a) A Building at which substantially all lawful residential or business activity has ceased.

(b) The percentage of the overall square footage of occupied to unoccupied space or the overall number of occupied and unoccupied units shall be considered.

(c) The Building is substantially devoid of contents. The condition and value of fixtures or personal property in the Building are relevant to this determination.

(d) The Building lacks utility services, *i.e.*, water, sewer, electric or natural gas.

(e) The Building is not actively for sale as part of a contractual agreement to sell the Building, the Building lacks 'for sale,' 'for rent,' or similar signage.

(f) The presence or recurrence of uncorrected code violations." *Id.*

¶ 46 Section 10-179.3 defines "Vacant Building" as:

"a *Building or portion of a Building* which is:

(a) Unoccupied (*i.e.*, an 'Unoccupied Building') and the subject of a mortgage foreclosure action; or

(b) Unoccupied and unsecured; or

(c) *Unoccupied and meeting the Boarded Building definition of this chapter*; or

(d) Unoccupied and a Dangerous Building or Structure; or

(e) Unoccupied and condemned by the Director pursuant to applicable provisions of this code; or

(f) *Unoccupied and has multiple code violations*; or

(g) Unoccupied and the Building or the Premises have been the site of unlawful

activity within the previous ninety (90) days; or

(h) Unoccupied for over ninety (90) days and during which time the Director has issued an order to correct Public Nuisance conditions and same have not been corrected in a code compliant manner; or

(i) *Unoccupied for over two (2) years*." (Emphases added.) *Id.*

Section 10-179.6 requires that an owner of a vacant building register the building with the City and pay a $175 annual registration fee. Zion Municipal Code § 10-179.6 (eff. Aug. 7, 2013).

¶ 47 Robin argues that when section 10-179 is read in its entirety, it is clear that it is intended to cover entirely vacant buildings and not individual apartments within multi-unit buildings. Robin refers to the ordinance's declaration of policy (see *supra* ¶ 43) and argues that none of his five apartment buildings were totally vacant, nor were any a public nuisance. Robin further argues that section 10-179.3 requires that a vacant building be "unoccupied" (see *supra* ¶ 46), which in turn means that it "lacks the habitual presence of human beings who have a legal right to be on the Premises" (Zion Municipal Code § 10-179.3 (eff. Aug. 7, 2013)). Robin acknowledges that section 10-179.3 also states that an unoccupied building means a "Building or portion of a Building" (*id.*), but he argues that each of the criteria listed refers to an entire building and not individual apartments within a building. Robin maintains that the ordinance does not contemplate individual apartments, as evidenced by criterion which states that the "overall number of occupied and unoccupied units shall be considered." *Id.* Robin argues that, as he stated at the administrative hearings, there will always be vacant apartments, and he was selective in finding new tenants.

¶ 48 Robin argues that even if section 10-179 is construed to apply to individual apartments within a multi-unit building, the hearing officer never stated which of the nine subsections

applied, and none of the apartments met the criteria for a vacant building. He argues that although two apartments, namely 2823 and 2808 Galilee, were found to be boarded up buildings under section 10-178, the trial court ruled that they did not violate that ordinance because the evidence at the hearing did not show that the boarded-up condition had existed for at least six months.

¶ 49 As stated, the rules of statutory construction apply to municipal ordinances. *Wortham*, 2015 IL App (1st) 131735, ¶ 16. We must ascertain and give effect to the drafter's intent, which is best indicated by the ordinance's language, when given its plain and ordinary meaning. *Shadid v. Sims*, 2015 IL App (1st) 141973, ¶ 7. If a term is ambiguous, we can give some deference to the municipality's interpretation of its own ordinance. *Id.* We review the interpretation of an ordinance *de novo* (*id.*), but whether facts satisfy the statutory standard is a mixed question of law and fact that we review under the clearly erroneous standard (see *Provena Covenant Medical Center*, 236 Ill. 2d at 387).

¶ 50 We agree with the City that section 10-179.3's plain language indicates that it can apply to both entire buildings and individual apartment units within a building. Specifically, section 10-179.3 defines "Unoccupied Building" as "a Building *or portion thereof* which lacks the habitual presence of human beings" (emphasis added), and it defines "Vacant Building" as "a Building or *portion of a Building*" which satisfies certain criteria. Zion Municipal Code § 10-179.3 (eff. Aug. 7, 2013). By referring to a "portion" of a building, the ordinance clearly can apply to less than an entire building, and therefore could apply to individual apartment units within a building. This interpretation is in harmony with the ordinance's preamble and the declaration of policy, as the stated concerns regarding vacant buildings also apply to vacant units within a single building. Each of the possible criteria to be deemed a "Vacant Building" can also

apply to a single unit or an entire building. The definition of "Unoccupied Building" lists criteria that the City can consider in determining whether a building is unoccupied, and the fact that one consideration is the "overall number of occupied and unoccupied units" (*id.*) does not conflict with the interpretation that a vacant building can consist of an individual apartment unit. Indeed, if an entire building of apartment units had to be vacant for a vacant building determination, the ratio of occupied and unoccupied units could not be a criterion. We recognize that landlords may go through periods of time in which they lack a tenant in any given apartment unit, but our interpretation does not lead to an absurd result, as a building must be unoccupied for over two years, or be unoccupied and meet another criterion, for it to be considered a vacant building.

¶ 51 We now examine the hearing officer's findings that the apartments were vacant. Robin faults the hearing officer for not stating which criteria he was relying on in making his rulings. However, an administrative agency has the obligation only to provide a record and findings to allowing for judicial review of its decision, and specific factual findings are not required. *In re Fatima A.*, 2015 IL App (1st) 133258, ¶ 63. Here, the hearing officer directly addressed Robin's arguments regarding the first apartment unit and found: that the ordinance could cover an individual apartment unit; that the notices were sufficient; that there was no water consumption since 2008; and that the referenced building was depicted in the City's photograph. In making subsequent findings, he generally referred to the City's testimony and other evidence. Thus, the record here is sufficient to allow for our review.

¶ 52 Looking at the merits of the hearing officer's findings, we observe that for a building to be vacant under section 10.179, it must meet the definition of an unoccupied building and also meet one of the criteria for a vacant building. The lack of utility services is one basis for determining that a building is "unoccupied" under section 10-179.3 (Zion Municipal Code § 10-

179.3 (eff. Aug. 7, 2013)), and there was evidence that three of the apartment units (2845 Galilee; 2849 Galilee; and 2823 Galilee) had the water shut off. Another basis for determining that a building is "unoccupied" is that "substantially all lawful residential *** activity had ceased" (*id.*), and the remaining apartment units fell within this category because they had not had water consumption for a significant period of time. Thus, all of the buildings clearly met the definition of being "unoccupied."

¶ 53 To be a "Vacant Building," the apartments had to be unoccupied, which we have determined they all were, and meet an additional criterion. See *id.* We consider each address individually.

¶ 54 The first unit, 2845 Galilee, had no water consumption since 2008, so the determination that it was a vacant building was not clearly erroneous, as it met the criterion of being unoccupied for over two years.

¶ 55 The second unit, 2843 Galilee, had no water consumption only since the June 13, 2013, billing cycle, so it could not fall within the category of having been unoccupied for over two years. The City argues that it had boarded windows, and we recognize that the December 18, 2013, notice stated that the unit had broken and boarded windows. However, Miller specifically testified at the hearing that there were no boarded, broken, or damaged windows at that apartment. Thus, any finding that the apartment had broken or boarded windows would be against the manifest weight of the evidence, and the apartment could not qualify as being "[u]noccupied and meeting the Boarded Building definition of this chapter." *Id.* Miller additionally testified that even though the windows were not broken or damaged, he discovered on March 7, 2014, that they had been replaced without permits. However, there was no evidence that this would qualify the unit as being "[u]noccupied and [having] *multiple* code violations"

(emphasis added) (Zion Municipal Code § 10-179.3 (eff. Aug. 7, 2013)), as opposed to a single code violation. Accordingly, the hearing officer's finding that 2843 Galilee was a vacant building under the ordinance was clearly erroneous. We reverse the trial court's affirmance of this finding and its affirmance of the $21,250 total fine imposed for this building ($148,750 judgment entered ÷ 7 apartment units = $21,250 per apartment unit).

¶ 56 The third unit, 2849 Galilee, had water shut off since March 1, 2011, and no water consumption since December 2010. Therefore, it met the criterion of being unoccupied for over two years, and the determination that it was a vacant building was not clearly erroneous.

¶ 57 Regarding the fourth unit, 2839 Galilee, Miller testified that no water had been consumed since September 30, 2013, and that he observed boarded-up windows on December 18, 2013. The City gave Robin until January 15, 2014, to register the property and remove the boards. On a follow-up visit on March 17, 2014, the boards had been removed, but new windows had been installed without permits. Robin never registered the property as vacant. As Robin had boarded windows during the relevant period but never registered the property, the apartment could fall within the category of "[u]noccupied and meeting the Boarded Building definition of this chapter." *Id.* Thus, the hearing officer's finding that 2839 Galilee was a vacant building under the ordinance was not clearly erroneous.

¶ 58 The fifth unit, 2823 Galilee, had a boarded up window that was not replaced. As such, it met the criterion of being "[u]noccupied and meeting the Boarded Building definition of this chapter" (*id.*), and it was not clearly erroneous for the hearing officer to find that it was a vacant building.

¶ 59 The sixth unit, 2819 Galilee, had windows that were boarded up in December 2013. Miller testified that on January 29, 2013, he observed that the window had been replaced without

a permit. The new window was broken, which was also a code violation. In March 17, 2014, Miller observed that the window had been boarded up again. Accordingly, we conclude that the hearing officer's finding that 2819 Galilee was a vacant building was not clearly erroneous, as it could fall into the category of either "[u]noccupied and [having] multiple code violations" (those being replacing a window without a permit and having a broken window) or "[u]noccupied and meeting the Boarded Building definition of this chapter." *Id*.

¶ 60 The seventh and last unit, 2809 Galilee, had the water shut off since April 14, 2010. Therefore, the determination that it was a vacant building was not clearly erroneous, as it met the criterion of being unoccupied for over two years.

¶ 61 D. Constitutionality of Section 10-179

¶ 62 Robin's fourth argument on appeal is that section 10-179's definition of an unoccupied or vacant building as including a "portion thereof" is unconstitutionally vague and therefore unenforceable as to his buildings. The City argues that it is unclear whether Robin is raising an as-applied or facial challenge, and that he has waived any as-applied challenge for failing to sufficiently define such a claim. In his reply brief, Robin clarifies that he is alleging an as-applied challenge and notes that vagueness challenges to laws which do not involve first amendment rights are subject to only as-applied challenges. See *O'Donnell v. City of Chicago*, 363 Ill. App. 3d 98, 105 (2005). We conclude that Robin has adequately argued an as-applied challenge in his initial brief and has thereby preserved the issue for review.

¶ 63 A statute or ordinance can be impermissibly vague if it either (1) fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits, or (2) authorizes or encourages arbitrary and discriminatory enforcement. *City of Chicago v. Pooh Bah Enterprises, Inc.*, 224 Ill. 2d 390, 441-42 (2006). Regarding the former, the ordinance's

language must provide sufficiently definite warning and fair notice of what conduct it prohibits. *O'Donnell*, 363 Ill. App. 3d at 106. For an as-applied challenge, if the litigant's conduct is squarely within the statute's or ordinance's prohibitions, it does not matter that it may be vague as applied to others. *Pooh Bah Enterprises, Inc.*, 224 Ill. 2d at 442. Municipal ordinances are presumed constitutional, and the party challenging the ordinances has the burden of establishing a clear constitutional violation. *Jackson v. City of Chicago*, 2012 IL App (1st) 111044, ¶ 20. We will resolve any doubt regarding an ordinance's construction in favor of its validity. *Id.* Whether an ordinance is unconstitutional is a question of law that we review *de novo*. *Id.*

¶ 64 Robin argues that none of his buildings was a vacant building because there were always tenants occupying one or more apartment units in the buildings, and there was always utility service to the buildings. Robin maintains that it is illogical to find that a structure is a "vacant building" due to an apartment being vacant when other apartments within the building are occupied. Robin argues that if the City had intended the ordinance to apply to vacant apartments or condominium units in a multi-unit building, it could have simply stated as much. Robin argues that section 10-179's language "or a portion thereof" could have many interpretations, which renders it unconstitutionally vague. Robin asserts that it could apply to a closet, an empty bedroom, an unused basement, or a vacant attic. He argues that for a multi-unit building, it is unclear whether it could be any single unit or a certain percentage of the building. Robin argues that a person of ordinary intelligence would never consider an apartment building to be vacant when three out of four units are occupied, and section 10-179 " 'traps the innocent' " owner by not giving fair warning. Robin contends that we should hold that section 10-179 is void for vagueness because its language is unclear, it fails to give fair warning of what is required, and it does not provide explicit standards that would avoid arbitrary enforcement.

¶ 65 In this case, section 10-179's use of the phrase "portion" of a building clearly applies to less than an entire building and would therefore encompass an individual apartment unit. While Robin argues that it could seemingly refer to just a closet, an as-applied challenge focuses on just the facts at hand. See *Pooh Bah Enterprises, Inc.*, 224 Ill. 2d at 442. Moreover, as the City points out, a building or portion of a building must meet the definition of "unoccupied" before it can be subject to a vacant building citation, and considerations of whether a building is "unoccupied" include, among others, whether substantially all activity has ceased; the proportion of occupied space to unoccupied space; whether the building is devoid of contents; whether the building lacks utilities; and whether there are code violations. Even an "unoccupied" building must satisfy an additional criterion to be considered a "vacant building." Therefore, a reasonable reading of the ordinance shows that it would not cover a closet or bedroom of a home.

¶ 66 In addition to the ordinance's plain language stating that it could cover a "portion" of a building, which would include an apartment unit, the list of considerations of whether a building is "unoccupied" also indicates that an apartment unit could be found to be a vacant building, as an occupied apartment would be expected to have lawful activity, contents, and utilities. Moreover, as discussed, labeling individual apartments as vacant buildings is in harmony with the goals of the ordinance's preamble and declaration of policy. It also does not lead to an absurd result, as an apartment must be unoccupied for over two years, or be unoccupied and meet another criterion, for it to be considered a vacant building. Thus, section 10-179 apprises the average person that it also applies to apartments, and it does not authorize or encourage discriminatory enforcement. Accordingly, the ordinance is not unconstitutionally vague as applied to the facts in this case.

¶ 67 E. Fines

¶ 68 Last, Robin argues that the hearing officer imposed fines that were beyond his powers and were excessive.

¶ 69 Robin notes that non-home rule municipalities, such as Zion, have only those powers specifically granted to them by the Illinois Constitution or by statute. See *Hayenga v. City of Rockford*, 2014 IL App (2d) 131261, ¶ 15. Robin further notes that section 11-31.1-2 of the Illinois Municipal Code (65 ILCS 5/11-31.1-2 (West 2014)) allows municipalities to adopt a code hearing department for buildings and construction. Robin cites section 1-2-1 of the Illinois Municipal Code, which states, in relevant part:

> "The corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper. *No fine or penalty*, however, except civil penalties provided for failure to make returns or to pay any taxes levied by the municipality *shall exceed $750* and no imprisonment authorized in Section 1-2-9 for failure to pay any fine, penalty or cost shall exceed 6 months for one offense." (Emphases added.) 65 ILCS 5/1-2-1 (West 2014).

¶ 70 Robin further cites chapter 3 of the Zion Municipal Code (Zion Municipal Code § 3-1 *et seq.* (eff. Sept. 21, 2004)), which provides rules for the enforcement of city ordinances, including a procedure for the administrative adjudication and rules for fines and penalties. It contains a provision stating that hearing officers have the authority to:

> "*[i]mpose penalties consistent with the applicable code* and assess costs upon finding a party liable for the charged violation, except, *however, that in no event shall the hearing officer have authority* (i) to impose a penalty of incarceration, or (ii) *impose a fine in excess of $750.00*. The maximum monetary fine under this item (5) shall be

> exclusive of costs of enforcement or costs incurred by the city to secure compliance with the Code and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the city." (Emphases added.) Zion Municipal Code § 3-5(1)(b)(5) (eff. Sept. 21, 2004).

Robin argues that both section 1-2-1 of the Illinois Municipal Code and section 3-5(1)(b)(5) of the Zion Municipal Code prohibit fines in excess of $750, so he could not be subject to a $250 daily fine.

¶ 71 The City cites *City of McHenry v. Suvada*, 396 Ill. App. 3d 971 (2009). There, McHenry's ordinance stated that a person who violates McHenry's building code " 'shall be punished by a fine of not less than $25.00 nor more than $750.00 and each day upon which such violation continues shall constitute a separate offense.' " *Suvada*, 396 Ill. App. 3d at 980 (quoting McHenry Municipal Code § 7–30(a) (eff. December 4, 1987)). The appellate court held that the ordinance mandated a fine between $25 and $750 for each day that the property was in violation. *Id.* at 984. The City argues that the version of the ordinance at issue in *Suvada* was enacted prior to McHenry obtaining home rule authority, so the case shows that non-home rule communities are authorized to impose daily fines.

¶ 72 The City also notes that in *Village of Franklin Grove v. Chicago & Northwestern Ry Co.*, 196 Ill. App. 167 (1915), the appellate court stated:

> "if the city could only impose a single penalty for a perpetual failure to obey a valid ordinance, *** this would result in making such a fine or penalty entirely insufficient to procure the enforcement of the ordinance. This court is committed to the principle that each day may be made a separate offense." *Id.* at 170.

The City further cites *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838 (2007), in which daily fines were imposed through a home-rule municipality's ordinance.

¶ 73 Regarding section 3-5(1)(b)(5) of the Zion Municipal Code, the City argues that more specific penalty provisions trump general provisions and that more recent legislative enactments generally control over older legislative enactments. The City argues that, therefore, the hearing officer properly applied the penalty provision within section 10-179.

¶ 74 Robin counters that the issue of whether a home rule municipality could impose daily fines was not raised or addressed in *Suvada*. As for *Chicago & Northwestern Ry Co.*, Robin points out that appellate decisions issued before 1935 are not binding authority. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 95 (1996). He also argues that the case was published long before the adoption of the Illinois Constitution, which distinguishes between the authority of home-rule and non-home rule municipalities.

¶ 75 Robin additionally cites *Shachter v. City of Chicago*, 2016 IL App (1st) 150442. There, the plaintiff argued that the fine schedule of Chicago's weed ordinance, which allowed a maximum fine of $1,200, exceeded and was therefore preempted by the $750 maximum fine allowed under section 1-2-1 of the Illinois Municipal Code. *Id.* ¶ 39. The appellate court stated that home rule municipalities were allowed to impose fines greater than the amount provided for in section 1-2-1. *Id.* ¶ 43.

¶ 76 We begin with the City's municipal ordinances, keeping in mind the principles for construing ordinances, including *de novo* review. See *supra* ¶ 49. Section 10-179.10 states, in relevant part:

> "In addition to any other statutory remedy, any person, firm, corporation or entity found guilty of violating the terms of this article *shall be fined not more than $750.00 nor*

> *less than $100.00 per each day the violation(s) continues. Each day the violation(s) continues shall be a separate offense.* In addition to the fine, the owner, or his or her agent shall be ordered to bring the structure or building into compliance with the requirements of this article within 15 days." (Emphasis added.) Zion Municipal Code § 10-179.10 (eff. Aug. 7, 2013).

Thus, section 10-179.10 specifically provides for a daily fine of between $100 to $750, and the hearing officer's fine fell within this range.

¶ 77 As Robin points out, section 3-5(1)(b)(5) of the Zion Municipal Code provides "that in no event shall the hearing officer have authority *** to *** impose a fine in excess of $750.00." Zion Municipal Code § 3-5(1)(b)(5) (eff. Sept. 21, 2004). The City argues that section 10-179.10 controls because it is more specific and newer, but such a rule of construction applies only where there appears to be a conflict in provisions. *Coalition to Request Equitable Allocation of Costs Together (REACT) v. Commonwealth Edison Co.*, 2015 IL App (2d) 140202, ¶ 44. That is not the case here, as section 3-5(1)(b)(5) discusses the authority of all hearing officers, and its limit of $750 is within the maximum fine listed in section 10-179.10. See *Szewczyk v. Board of Fire & Police Commissioners*, 381 Ill. App. 3d 159 (2008) ("[S]tatutes should be construed in harmony with each other if at all possible so that no provisions are rendered inoperative."). That being said, section 3-5(1)(b)(5) allows hearing officers to "impose penalties consistent with the applicable code" (Zion Municipal Code § 3-5(1)(b)(5) (eff. Sept. 21, 2004)), and the applicable code here, section 10-179.10, states that "each day the violation(s) continues shall be a separate offense" (Zion Municipal Code § 10-179.10 (eff. Aug. 7, 2013)). Thus, the $250 daily fine is actually a fine for individual violations/offenses, such that it falls within the limit of the $750 maximum fine listed in section 10-179.10.

¶ 78 We construe section 1-2-1 of the Illinois Municipal Code in a similar manner. That is, while the statute states that "[n]o fine or penalty *** shall exceed $750" (65 ILCS 5/1-2-1 (West 2014)), in this case the fines satisfy the language because each day was considered a separate violation, and the fine for each of the daily violations was $250, which was within the $750 maximum. Although Robin argues that the statute prohibits daily fines, we may not ignore the statute's plain language and read into it exceptions, limitations, or conditions that conflict with the express legislative intent. *WKS Crystal Lake, LLC v. LeFew*, 2015 IL App (2d) 150544, ¶ 23. Section 1-2-1 does not prohibit a municipality from considering each day of noncompliance with an ordinance as a separate violation, so we may not read such a limitation into its language. Indeed, as the City points out in its citation to *Village of Franklin Grove*, 196 Ill. App. at 170,[2] eliminating daily fines could make enforcing an ordinance very difficult, as the violator would have little incentive to comply once the $750 maximum fine had been reached. Robin's reliance on *Shachter*, 2016 IL App (1st) 150442, ¶ 43, does not change our result, as the issue of whether a non-home rule municipality could impose daily fines was not before that court.

¶ 79 Robin additionally argues that the $148,750 judgment entered violated his substantive due process rights because it was unreasonable and disproportionate to the offenses. We note that based on our determination that the hearing officer's finding that 2843 Galilee was a vacant building was clearly erroneous, Robin's fine has been reduced to $127,500 ($148,750 - $21,250). Therefore, we consider his argument in the context of the $127,500 fine.

[2] Although appellate decisions before 1935 do not constitute binding authority, such decisions can still serve as persuasive authority. *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 32 n.4.

¶ 80 The legislature's authority to set fines and penalties is limited by due process requirements. *Metropolitan Life Insurance Co. v. Hamer*, 2013 IL 114234, ¶ 30. Where a statute does not implicate a fundamental constitutional right, we employ a rational basis test to determine whether the statute satisfies due process; the test requires only that the statute bear a reasonable relationship to a legitimate state interest. *Id.* A statutory penalty will not violate due process unless it is so severe and oppressive as to be wholly disproportionate to the offense and obviously unreasonable. *Id.* These standards have also been applied to ordinances. See *Express Valet, Inc.*, 373 Ill. App. 3d at 857-58.

¶ 81 Robin argues that in the case at bar, there were no life safety issued involved and his properties were not public nuisances that were in disrepair. He argues that he mounted a good-faith challenge to the City's determination that his properties were vacant buildings that were required to be registered, and although he did not succeed before the hearing officer or the trial court, a judgment of $148,750 is disproportionate to the offenses at issue and is unreasonable. He argues that the disproportionality is also evident by considering the "$75.00" vacant property registration fee.[3] He argues that he would have been better off registering the apartments each time he had a 14-day vacancy, and that he should not be penalized for disagreeing with the City's interpretation of the ordinance.

¶ 82 Robin acknowledges that in *Express Valet, Inc.*, and *In re Marriage of Miller*, 227 Ill. 2d 185 (2007), substantial fines were upheld on appeal. However, he argues that *Express Valet, Inc.*, is distinguishable because it involved a home rule municipality and fraud, and he argues

[3] The registration fee is actually $175. Zion Municipal Code § 10-179.6 (eff. Aug. 7, 2013).

that *In re Marriage of Miller* is distinguishable because the fines were under a state statute and were based on the failure to pay child support.

¶ 83 In *Express Valet, Inc.*, the petitioners were cited with, among other things, violations related to operating a valet parking service without liability insurance coverage. *Express Valet, Inc.*, 373 Ill. App. 3d at 840-41. They were fined a total of $135,825. *Id.* at 854. The appellate court upheld the fines, stating: that 95% of the total fines imposed were for running an unlicensed valet parking service; that each day without a license constituted a separate offense; that they were fined only $100 per offense, which was near the minimum of the range of fines that could have been imposed; and that the petitioners controlled the extent of the fines. *Id.* at 857.

¶ 84 In *In re Marriage of Miller*, an employer knowingly failed to timely forward almost 128 weekly child support payments, and the $100-per-day penalties totaled over $1 million. *In re Marriage of Miller*, 227 Ill. 2d at 192. Our supreme court held that the total penalty did not violate the employer's substantive due process rights because he was aware of his statutory obligations and of the daily penalty, yet violated the statute 11,721 separate times. *Id.* at 201. The supreme court stated, "Because [the employer] controlled the extent of the penalty, he cannot now complain that the penalty is harsh when compared to the amount of child support at issue." *Id.* at 202.

¶ 85 We conclude that Robin has failed to show that the fines violate his due process rights. Robin does not dispute that the ordinance bears a reasonable relationship to a legitimate municipal interest, that being the regulation of vacant buildings, and the ordinance's preamble discusses the City's legitimate goals in imposing such regulations.

¶ 86 Although Robin attempts to distinguish *Express Valet, Inc.* and *In re Marriage of Miller*, those cases strongly support the judgment here. The vast majority of the penalty in *Express Valet, Inc.*, resulted from a daily fine for failing to have liability insurance coverage, and the over $1 million fine in *In re Marriage of Miller* also resulted from daily violations. Here, the total judgment against Robin is similarly based on hundreds of daily fines for failing to register his vacant properties. Robin admitted receiving notices beginning in September 2013 that described the violations and the range of penalties, yet he chose not to register his apartments. Robin argues that he legitimately challenged the ordinance, but we note that nothing would have prevented Robin from paying the registration fees while preserving his right to object to the fees. Also, Robin was not required to pay the vacant building registration fee every time a tenant left one of his apartments, because, as discussed, the ordinance requires that the apartment be unoccupied for over two years, or be unoccupied and meet another criterion, for it to be considered a vacant building. Moreover, while Robin contends that his vacant properties did not present any safety issues or create public nuisances, section 10-179's preamble states that vacant buildings can present an extraordinary danger to emergency personnel, and it further explains the manner in which they constitute public nuisances. Finally, as in *Express Valet, Inc.*, 373 Ill. App. 3d at 857, the $250 daily penalties imposed were at the lower range of the penalties allowed. See Zion Municipal Code § 10-179.3 (eff. Aug. 7, 2013). In sum, considering that Robin knowingly allowed hundreds of daily violations to accumulate for months on a number of properties, we cannot say that the (modified) $127,500 judgment against him is wholly disproportionate to the offenses and obviously unreasonable.

¶ 87 III. CONCLUSION

¶ 88 For the reasons stated, we affirm the judgment of the Lake County circuit court insofar as it affirms the hearing officer's findings that 2809 Galilee, 2819 Galilee, 2823 Galilee, 2839 Galilee, 2845 Galilee, and 2849 Galilee were vacant buildings under the City's ordinance. We further affirm the circuit court's judgment affirming the hearing officer's penalties for failing to register these properties as vacant building; the penalties for these buildings total $127,500. However, as we have determined that the hearing officer's finding that 2843 Galilee was a vacant building was clearly erroneous, we reverse the portion of the circuit court's judgment that affirmed this finding and its corresponding penalties.

¶ 89 Affirmed in part and reversed in part.