2012 IL App (2d) 110232 & 110720-U
Nos. 2-11-0232 & 2-11-0720 cons.
Order filed June 22, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

COUNTY OF LAKE, Plaintiff-Appellee, v. GEORGE STAMATOPOULOS, d/b/a VIDEO MAGIC, Defendants-Appellants (41 News Inc., and 41509 Land Company, L.L.C., Intervenors-Appellants).	)	Appeal from the Circuit Court of Lake County. No. 06-CH-1083 Honorable Margaret J. Mullen, Judge, Presiding.

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41 NEWS, INC. and 41509 LAND TRUST CO., L.L.C., Plaintiffs-Appellants, v. COUNTY OF LAKE, LAKE COUNTY ZONING BOARD OF APPEALS, GEORGE BELL, Chairman of the Lake County Zoning Board of Appeals, GREGORY KOEPPEN, Vice Chairman of the Lake County Zoning Board of Appeals, MARVIN RAYMOND, JOHN REINDL, GERALDINE STIMPSON, AL WESTERMAN, CAROL ZERBA, each	)	Appeal from the Circuit Court of Lake County. Nos. 16-CH-1083 10-MR-0479

as members of the Lake County Zoning Board of Appeals, DONALD VAN ERDEN, Alternate Member of the Lake County Zoning Board of Appeals, and SHEEL YAJNIK, Lake County Zoning Administrator,	)	Honorable Christopher C. Starck,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: The trial court did not err in denying plaintiffs' motion to intervene in a prior lawsuit between the County and Stamatopolous. The Board's decision to deny plaintiffs' zoning application for an adult use establishment was consistent with the manifest weight of the evidence and was not clearly erroneous.

¶ 1 In 2008, plaintiffs, 41 News, Inc. and 41509 Land Company L.L.C. (collectively, plaintiffs), submitted a zoning application to operate an adult use establishment. Plaintiffs submitted their zoning application after purchasing from George Stamatopoulos a business, named Video Magic, that sold adult merchandise. Defendants Lake County (the County) and Lake County Zoning Board of Appeals (the Board) affirmed the decision of defendant Sheel Yajnik, the Lake County Zoning Administrator (collectively, defendants) to deny plaintiffs' zoning application on the basis that Video Magic did not constitute a valid nonconforming use when plaintiffs purchased it and, even if it had, Stamatopolous abandoned that nonconforming use. Thereafter, plaintiffs appealed defendants' decision pursuant to the Illinois Administrative Review Law (the Review Law) (735 ILCS 5/3-102 (West 2008)), and the trial court affirmed defendants' decision to deny plaintiffs' zoning application. Plaintiffs now appeal the trial court's decision, contending that, because Video Magic constituted

a valid nonconforming use for an adult use establishment, their zoning application should have been granted.

¶ 2 In addition, in 2006, the County brought an action against Stamatopoulos seeking to enjoin him from operating Video Magic. The trial court entered an order in the County's favor, and in 2008 this court affirmed that order. In 2010, plaintiffs filed a motion to intervene, which motion the trial court denied. Plaintiffs now appeal that order. We affirm the judgments in both cases.

¶ 3 I. Background

¶ 4 The relevant facts are not dispute. Plaintiffs operated an adult store on the southwest corner of Route 41 and Route 173. The store was kitty-corner from Video Magic. On February 10, 1998, after both stores were in operation, the County adopted the Lake County Adult Use Ordinance (adult licensing ordinance) (Lake County Ordinance No. 6:1-15 (approved Feb. 10, 1998)), and amended the ordinance on October 9, 2001. The adult licensing ordinance placed restrictions on adult use establishments, including restrictions on hours of operation, a prohibition on fully enclosed adult viewing booths, and requiring adult establishments to obtain a license. In addition, section 11.H of the adult licensing ordinance imposed a signage limitation for adult use establishments by providing that "the maximum allowable sign area shall be one square foot of sign area per foot of lot frontage on a street, but in no event exceeding 32 square feet."

¶ 5 On May 12, 1998, the County incorporated into the Lake County Zoning Ordinance restrictions on adult establishments (adult zoning ordinance) (Lake County Zoning Ordinance §§ 1200, 2100(B)-(C) (amended May, 12 1998)) . The adult zoning ordinance specifically noted:

> "[I]n conjunction with the adoption of the [adult licensing ordinance], the County Board *** unanimously adopted a resolution directing the [Board] to conduct public hearings regarding

> *** amendments to the County Zoning Ordinance relating to the regulation of Sexually Oriented Business Activities[.]"

The adult zoning ordinance further noted that it was "critical to the economic viability and vitality" of the county to carefully protect residential and business areas from land uses involving sexually oriented business activities, which could undermine stability and limit growth. Toward that end, the adult zoning ordinance placed certain restrictions on the location of adult establishments, including that adult use establishments could not be located within 1,000 feet of a public park or forest preserve. In 2005, this court upheld the licensing ordinance as constitutional. See *XLP Corp. v. County of Lake*, 359 Ill. App. 3d 239 (2005), *appeal denied*, 217 Ill. 2d 595 (2005), *cert. denied*, 547 U.S. 1128 (2006).

¶ 6 Thereafter, the County brought an action against Stamatopoulos seeking injunctive relief. The County's complaint alleged that Stamatopoulos failed to obtain a license and violated various regulations required by the adult licensing ordinance. On June 28, 2007, the trial court in that action entered an order granting the County's motion for summary judgment. The order provided that Video Magic shall immediately cease operations and remain closed "unless and until it complies with all applicable provisions" of the adult licensing ordinance. On August 30, 2007, the trial court entered a final judgment, fining Stamatopoulos $204,500 for the years he operated Video Magic without obtaining a license. On September 18, 2008, this court affirmed the trial court's ruling. *County of Lake v. Stamatopoulos*, No. 2-07-0984 (2008) (unpublished order under Supreme Court Rule 23). Stamatopoulos closed Video Magic and did not pay the fine.

¶ 7 In 2008, in an effort to relocate their store, plaintiffs purchased the land where Video Magic previously operated. Plaintiffs submitted a zoning application seeking zoning approval for relocating

their store to the former Video Magic site. Yajnik denied the zoning application in a letter dated April 25, 2008, after concluding that Video Magic did not retain the status of a legal nonconforming use because Stamatopoulos failed to obtain the necessary license by November 11, 1998—the date specified in the adult licensing ordinance. In addition, Yajnik concluded that Video Magic abandoned its legal nonconforming use status because the store ceased operating as a legal nonconforming use when it operated in violation of the adult licensing ordinance for several years.

¶ 8 Plaintiffs appealed Yajnik's decision to the Board. The Board conducted public hearings on July 15, 2008, August 7, 2008, and October 2, 2008, during which the Board heard testimony from various witnesses. After the proceedings ended, the Board issued a written order dated December 4, 2008, affirming Yajnik's determination. The Board found that the adult licensing ordinance and adult zoning ordinance were part of a comprehensive regulatory scheme applicable to all adult uses; Video Magic became a nonconforming use upon the adoption of the adult zoning ordinance because it was located within 1,000 feet of a forest preserve and within 1,000 feet of another adult use establishment; Video Magic became an illegal, unauthorized use on November 11, 1998, after failing to obtain an adult license, as required by the adult licensing ordinance; Video Magic operated illegally from November 11, 1998 through June 28, 2007, because it did not have an adult license and violated various other provisions of the adult licensing ordinance; Video Magic abandoned its legal nonconforming use status because, pursuant to the adult zoning ordinance, a legal nonconforming use status is deemed abandoned if the use ceases for any reason for a period of longer than one year; and once a nonconforming status is abandoned, that status shall be lost and "the re-establishment of the use shall be prohibited." The Board concluded that the adult zoning ordinance

prohibited plaintiffs from relocating their store to Video Magic's site because that site was located within 1,000 feet of a forest preserve.

¶ 9 On March 26, 2010, plaintiffs filed a complaint pursuant to the Review Law seeking administrative review of the Board's determination. On June 13, 2011, the trial court entered an order affirming the Board's decision. The trial court found that the Board's determination to reject plaintiffs' zoning application which was "based upon the theory that the business was a prior legal non-conforming use [but lost its non-conforming status] was not against the manifest weight of the evidence and was clearly not erroneous."

¶ 10 In addition, in December 2010, plaintiffs filed a motion to substitute or for leave to intervene in the County's action for an injunction against Stamatopolous. The trial court in that case denied plaintiffs' motion.

¶ 11 Plaintiff timely appealed from both orders and we consolidated the cases on appeal.

¶ 12 II. Discussion

¶ 13 A. Plaintiffs' Motion to Intervene

¶ 14 The first issue we will address on appeal is whether the trial court erred in denying plaintiffs' motion to substitute or for leave to intervene in the County's action for an injunction against Stamatopoulos and Video Magic. In support of this contention, plaintiffs argue that Illinois courts recognize their continuing jurisdiction to enforce, modify, or vacate an injunction. Plaintiffs argue that, pursuant to section 2-407of the Code of Civil Procedure (the Code) (735 ILCS 5/2-407 (West 2010)) and section 2-408 of the Code (735 ILCS 5/2-408 (West 2010)), substitution is proper where, as here, a party has succeeded to the rights and responsibilities of an original party.

¶ 15 Section 2-407 of the Code provides in relevant part that "[n]ew parties may be added and parties misjoined may be dropped by order of the court, at any stage of the cause, before or after judgment, as the ends of justice may require and on terms which the court may fix." 735 ILCS 5/2-407 (West 2010)). Section 2-407 has been construed as applying to only necessary parties, and the section vests trial courts with broad discretion to add new parties. *Tomaso v. Plum Grove Bank*, 130 Ill. App. 3d 18, 26-27 (1985). "[W]hen an objection to the nonjoinder of a necessary party is first raised *after* judgment, it will be rejected unless the absent party was deprived of material rights without being heard or the absent party's interests in the litigation are so interconnected with the named parties' interests that the presence of the absent party is absolutely necessary." (Emphasis in original.) *State Farm Mutual Auto Insurance Co. v. Haskins*, 215 Ill. App. 3d 242, 245 (1991).

¶ 16 In the current matter, the trial court did not err in denying plaintiffs' motion to intervene pursuant to section 2-407 of the Code. Even if plaintiffs are deemed to be a necessary party to the action between the County and Stamatopoulos, plaintiffs did not bring their motion for more than three years after the trial court entered the final judgment, and more than two years after this court affirmed the trial court's judgment. As a result, plaintiffs' motion should be rejected unless plaintiffs were deprived of a material right without being heard or they are so interconnected with the named parties' interests that they are a necessary party to that action. See *Haskins*, 215 Ill. App. 3d at 245.

¶ 17 Neither of those conditions are present here. The lawsuit between the County and Stamatopoulos concerned whether Stamatopoulos improperly operated Video Magic by failing to comply with the adult licensing ordinance. Plaintiffs have not identified, nor can we discern, what material right they have been denied by not being added to the action between the County and Stamatopoulos. To the extent that plaintiffs have an interest in operating an adult use establishment

at the former Video Magic location—a right they acquired after the trial court entered its final judgment—plaintiffs are not being denied an opportunity to be heard. They submitted a zoning application to operate an adult store at the Video Magic site and are challenging the denial of that application in court. Moreover, we fail to see, nor have plaintiffs' identified, how their interests are so interconnected with the County's or Stamatopoulos' interests that plaintiffs were a necessary party to the action. As noted above, plaintiffs purchased Video Magic from Stamatopoulos after the trial court entered a final judgment.

¶ 18 Plaintiffs argument under section 2-408 of the Code is equally unavailing. Section 2-408(a)(2)(a) of the Code provides that anyone has a right to intervene in a particular action when " 'the representation of the applicant's interest by the existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action.' " *Richter v. Standard Mutual Insurance Co.*, 279 Ill. App. 3d 501, 510 (1996) (quoting 735 ILCS 5/2-408 (West 1998)). An intervenor needs only to show an injury to an enforceable right or interest which is more than a general interest in the subject of the lawsuit, and while intervention is usually permitted before judgment, intervention will be granted after judgment only where it is the only way to protect the rights of the intervenor. *Richter*, 279 Ill. App. 3d at 510. In addition, "[i]ntervention is usually allowed only before judgment issues, and parties may not normally seek intervention after the rights of the existing of the parties have been determined and a final decree entered." *Ramsey Emergency Services, Inc. v. Illinois Commerce Comm'n*, 367 Ill. App. 3d 351, 365 (2006).

¶ 19 Here, plaintiffs' petition to intervene was far from timely. See *id.* The trial court entered its final judgment in August 2007, and we affirmed that judgment in September 2008. Plaintiffs did not bring their motion to intervene until December 2010. Given this significant delay, the trial court

did not abuse its discretion in denying plaintiffs' motion. See *id.* (noting that the decision of whether to allow or deny intervention is within the discretion of the trial court and will not be overturned absent an abuse of discretion).

¶ 20 Accordingly, the trial court did not err in denying plaintiffs' motion to intervene.

¶ 21 B. Plaintiffs' Zoning Application

¶ 22 The next issue on appeal is whether defendants' erred in denying plaintiffs' zoning application to operate an adult use establishment at the former Video Magic site. In support of this contention, plaintiffs argue that defendants were bound by the court's decision in the prior lawsuit between the County and Stamatopoulos that permitted Stamatopoulos to reopen Video Magic upon coming into compliance with the adult licensing ordinance. Plaintiffs further argue that Video Magic's violations of the adult licensing ordinance did not affect its status as a legal nonconforming use. Defendants counter that the Board was not bound by the trial court's order in the lawsuit between the County and Stamatopoulos, and further, Video Magic's continued violations of the adult licensing ordinance forfeited its nonconforming use status.

¶ 23 This court reviews a determination from a zoning board pursuant to the Review Law. See *Taylor v. Zoning Board of Appeals*, 375 Ill. App. 3d 585, 591 (2007) (citing 735 ILCS 5/3-101 *et. seq.* (West 2004)). Pursuant to the Review Law, we review the determination of the administrative agency, not the trial court. *Taylor*, 375 Ill. App. 3d at 591. "The standard of review applied to an administrative agency's decision depends on whether the issue presented is one of fact or law." *Wabash County v. Illinois Municipal Retirement Fund*, 408 Ill. App. 3d 924, 932 (2011). Purely factual findings are afforded great deference and reviewed under a manifest-weight-of-the-evidence standard of review. *Id.* at 932-33. On the other hand, when our review involves a purely legal

question, we apply *de novo* review. *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 369 (2002). Finally, when our review of an agency's determination involves a mixed question of law and fact, we review the determination for clear error. *Wabash*, 408 Ill. App. 3d at 933. The clear-error standard of review is a less deferential standard of review than that applied to questions of fact, and we will reverse when, based on the entire record, we are left with a definite and firm conviction that a mistake has been made. *Id.* (citing *Carpetland U.S.A.*, 201 Ill. 2d at 369).

¶ 24 Guided by these principles, we first address plaintiffs' argument that the Board was bound by the trial court's order enjoining Video Magic from conducting business until it came into compliance with the adult licensing ordinance. Plaintiffs argue that "the matter of Video Magic's continuing nonconforming use rights had already been—or should already have been—the subject of litigation followed by authoritative and conclusive determination between [the County] and Video Magic." Plaintiffs further specify in a footnote that its use of the term "*res judicata*" embraces the terms claim preclusion, issue preclusion, and judicial preclusion. Before turning to the merits of this argument, we caution plaintiffs that Illinois Supreme Court rule 341(a) (eff. July 1, 2008) expressly provides that the use of footnotes is discouraged.

¶ 25 The doctrines of collateral estoppel and *res judicata*, while distinct, serve the same purposes of promoting judicial economy and preventing repetitive litigation. *Hayes v. State Teacher Certification Board*, 359 Ill. App. 3d 1153, 161 (2005). "Collateral estoppel applies when a party participates in two separate and consecutive cases arising out of different causes of action and some controlling factor or question material to the determination of both cases has been adjudicated by a court of competent jurisdiction against the party in the former suit." *Id.* at 162. In other words,

under collateral estoppel, the adjudication of a fact or question in the first cause will be conclusive to the same question in the later suit. *LaSalle Bank National Ass'n. v. Village of Bull Valley*, 355 Ill. App. 3d 629, 635 (2005) (citing *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001)). Pursuant to collateral estoppel, the judgment in the first suit acts as a bar only as to the point or question that was actually litigated and determined, rather than matters that might have been litigated and determined but were not. *LaSalle Bank National Ass'n*, 355 Ill. Ill. App. 3d at 635. Three elements are necessary to apply collateral estoppel: (1) the issue decided in the prior adjudication must be identical to the issue in the current action; (2) the party against whom estoppel is asserted must have been a party in privity with a party in the prior action; and (3) the prior adjudication must have resulted in a final judgment on the merits. *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, ¶17.

¶ 26 Conversely, *res judicata*, or claim preclusion, "precludes a party from taking more than one bite out of the same apple" by providing that a final judgment on the merits rendered by a court of competent jurisdiction bars a later action between the same parties or their privies involving the same claim, demand, or cause of action. *Hayes*, 359 Ill. App. 3d at 1161. Three elements must be satisfied for *res judicata* to be applicable: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of the parties or their privies; and (3) an identity of cause of action. *Matejczyk v. City of Chicago*, 397 Ill. App. 3d 1, 3 (2009).

¶ 27 Finally, the doctrine of judicial estoppel is designed to protect the integrity of the courts by providing that a party who asserts a particular position in a legal proceeding is estopped from asserting a contrary position in a subsequent legal proceeding. *Wolfe v. Wolfe*, 375 Ill. App. 3d 702, 705 (2007). Five elements are necessary for the doctrine of judicial estoppel to be invoked: (1) the

party estopped must have taken two positions; (2) that are factually inconsistent; (3) in a separate judicial or administrative proceeding; (4) intending for the trier of fact to accept the truth of the facts alleged; and (5) succeeded in the first proceeding by obtaining a benefit. *Id.* (citing *Larson v. O'Donnell*, 361 Ill. App. 3d 388, 398 (2005)).

¶ 28 In the current matter, the doctrines of collateral estoppel, *res judicata*, and judicial estoppel do not prevent defendants from objecting to plaintiffs' zoning application to operate an adult use establishment at the former Video Magic location. The prior action between the County and Stamatopoulos involved the issue of whether Video Magic failed to obtain a license and committed other violations specified in the adult licensing ordinance. The current matter involves the question of whether the Board erred in denying plaintiffs' zoning application on the basis that Video Magic lost its nonconforming use status. As a result, plaintiffs are unable to satisfy a necessary element for each of the three doctrines.

¶ 29 With respect to collateral estoppel, the issue here—whether the Board properly denied plaintiffs' zoning application—is not identical to the issue of whether Video Magic operated in violation of the adult licensing ordinance. See *Board of Education, Granite City Community Unit School District No. 9 v. Sered*, 366 Ill. App. 3d 330, 339-40 (2006) (holding that collateral estoppel did not apply because the prior lawsuit arose from the parties' agreement to arbitrate the issue of dock days, while the issue in the current matter was whether one of the parties refused to bargain in good faith). Similarly, the second element necessary to invoke the doctrine of judicial estoppel is not met here because the County is not taking two factually inconsistent positions. In the prior lawsuit, the County's position was that Stamatopoulos should be enjoined from operating Video Magic until it complied with the adult licensing ordinance. Conversely, here, the County's position

is that plaintiffs should not be granted a zoning application to operate an adult use establishment because Video Magic lost its nonconforming use status. See *Boelkes v. Harlem Consolidated School District No. 122*, 363 Ill. App. 3d 551, 557 (2006) (holding that judicial estoppel did not apply because the defendant did not take independent positions).

¶ 30 Finally, *res judicata* does not apply because plaintiffs cannot establish that an identity of causes of action exists between this case and the County's enforcement action against Video Magic. To determine whether there is an identity of causes of action for the purposes of *res judicata*, Illinois courts apply a transactional analysis, *i.e.*, whether claims in multiple lawsuits arise from a single group of operative facts, regardless of whether different theories of relief are asserted. *Lane v. Kalcheim*, 394 Ill. App. 3d 324, (2009) (citing *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311 (1998)). Moreover, " '[*r*]*es judicata* should be applied only *** to facts and conditions as they existed at the time judgment was entered.' " *Dowrick v. Village of Downers Grove*, 362 Ill. App. 3d 512, 517 (2005) (quoting *In re J'America B.*, 346 Ill. App. 3d 1034, 1042 (2004)). In this case, plaintiffs did not submit their zoning application until after Stamatopoulos stopped operating Video Magic and sold the store to them, which occurred after the trial court in the lawsuit between the County and Stamatopoulos entered a final judgment. Plaintiffs do not explain how the County could have challenged their zoning application in its action against Stamatopoulos when they had yet to submit their adult use zoning application until after a final judgment was entered. See *Dowrick*, 362 Ill. App. 3d at 516-17 (holding that *res judicata* does not apply where the relief sought in the second proceeding was not available in the prior proceeding). Finally, preventing the County from challenging plaintiffs' zoning application on the basis that the County previously sought an injunction against Stamatopoulos, even though plaintiffs had yet to submit their zoning application

when a final judgment was entered, would be contrary to the equitable nature of both collateral estoppel and *res judicata*. See *Yorulmazoglu v. Lake Forest Hospital*, 359 Ill. App. 3d 554, 563 (2005) ("Both collateral estoppel and res judicata are equitable doctrines; thus, even if the threshold requirements are met, the doctrines should only be applied as fairness and justice require).

¶ 31 Having determined that the doctrines of collateral estoppel, judicial estoppel, and *res judicata* do not bar defendants' challenge to plaintiffs' zoning application, we now turn to whether the Board erred when it denied the application. Plaintiffs argue that Video Magic's prior nonconforming use status runs with the land, and further, Video Magic's failure to comply with the adult licensing ordinance did not alter its status as a nonconforming use. Defendants counter that, because Video Magic failed to comply with the adult licensing ordinance, Video Magic never operated as a legal nonconforming use. As a result, defendants' maintain that Video Magic's status as a proper nonconforming use pursuant to the adult zoning ordinance was lost and no longer runs with the land.

¶ 32 Plaintiffs cite *Carroll v. Hurst*, 103 Ill. App. 3d 984 (1982), in support of their argument that Video Magic did not lose its status as a valid nonconforming use by failing to obtain a license as required by the adult licensing ordinance. In *Carroll*, the plaintiffs filed a complaint alleging that the defendants operated a junkyard and salvage operation that was not a valid nonconforming use, the nonconforming use had been lost, and the junkyard constituted a nuisance. *Id.* at 986. The plaintiffs argued that the junkyard, which existed before the applicable zoning regulation became effective, did not operate as a valid nonconforming use because neither the defendant nor his predecessors obtained a licence as required by the Illinois Vehicle Code. *Id.* The reviewing court in *Carroll* rejected the plaintiffs' argument. Specifically, the court concluded:

> "We think the better rule is to make a distinction between violations of statutes designed to regulate land use as opposed to violations of statutes whose purpose is totally unrelated to land use planning. The purpose of section 5-301 is, in large part, to prevent easy disposal of stolen vehicles. [Citation.] *The statute was not designed as an aid in land use planning or environmental protection.* Therefore, we hold that [the] defendants failure to obtain a license under section 5-301 does not operate to deny nonconforming-use status to the property in question." (Emphasis added.) *Id.* at 989.

Therefore, the reviewing court concluded, the defendants' failure to obtain a license pursuant to the Vehicle Code did not operate to deny the defendants the nonconforming use-status of the property. *Id.*

¶ 33 We do not read *Carroll* as broadly as plaintiffs suggest, and therefore, decline to extends its holding to this case. As we read *Carroll*, failure to obtain a license pursuant to a legislative enactment not designed to aid in the regulation land use will not render an otherwise legal nonconforming use lost. However, the reviewing court in *Carroll* emphasized a distinction between statutes that regulate land use, or were designed to aid in the regulation of land use, from statutes that were not designed to regulate land use. The logical extension of that holding is that, by failing to obtain a license pursuant to a statute that was designed to regulate or aid in the regulation of land use, an entity can forfeit an otherwise lawful nonconforming use. See *id.* (emphasizing that the Vehicle Code was not designed as an aid to land use, but instead was designed to prevent auto theft). Accordingly, whether Video Magic lost its legal nonconforming use status due to its failure to obtain a license in violation of the adult licensing ordinance depends on whether that ordinance aids in the regulation of land use.

¶ 34 Here, the adult licensing ordinance was clearly designed to aid in the regulation of land use. The adult licensing ordinance expressly provides that adult uses contribute to the deterioration of residential neighborhoods; reduce property value; undermine the stability of other commercial uses; and diminish the enjoyment and ability to use parks, playgrounds, and forest preserves. To help limit the effects of adult use establishments, section 11.H of the adult licensing ordinance regulates signage limitations for adult use establishments by providing that any sign area shall be equal to one square foot per foot of lot frontage, and shall not exceed 32 feet. Signage regulations are commonly associated with zoning ordinances for the purpose of regulating land use. See generally *Scadron v. Zoning Board of Appeals of the City of Chicago*, 264 Ill. App. 3d 946, 946-51 (1994) (discussing a dispute over property signage in the context of a zoning ordinance). In contrast, the licensing ordinance at issue in *Carroll* did not contain regulations typically associated with land use, but instead, regulated junkyards' operations by requiring a license to engage in the activities of selling used auto parts, wrecking or dismantling vehicles, rebuilding wrecked vehicles, possessing multiple inoperable vehicles, or engaging in storing and recycling vehicles. *Carroll*, 103 Ill. App. 3d at 987-89. In addition, the adult zoning ordinance expressly provided that it was being adopted "in conjunction with the [adult use licensing ordinance] ***."

¶ 35 In reaching our determination, we emphasize that Video Magic's violations of the adult licensing ordinance were not limited to failing to obtain the required license. In addition, as the trial court in the County's action against Stamatopoulos found, Video Magic also failed to comply with the adult licensing ordinance's requirements relating to hours of operations and prohibition against fully enclosed adult viewing booths.

¶ 36 Finally, we note that case law from other jurisdictions supports our holding. While we recognize that a majority of jurisdictions follow *Carroll* and hold that the failure to obtain a license pursuant to a licensing statute does not terminate a valid nonconforming use (*e.g.*, *Guy v. Town of Temple*, 157 N.H. 642, 651 (2008) (and cases cited therein)), those cases do not provide that failure to obtain a license pursuant to a licensing ordinance can never lead to the forfeiture of a nonconforming use status. In *Guy*, the New Hampshire Supreme Court noted that the rationale behind such a policy is that "unlike zoning law which 'is primarily concerned with uniformity of land use and stability of community growth,' licensing regulations are generally 'concerned with proper operation or with limitation or distribution or outright suppression of operation.' " *Id.* at 652 (citing *Primm v. City of Reno*, 252 P.2d 835,839 (Nev. 1953)). The New Hampshire Supreme Court further elaborated that, because such a rule is founded upon the distinction between zoning and licensing regulations, "the rationale supporting its application weakens where the licensing scheme offended 'so meaningfully curtail[s] the use to which land may be employed *** as to be deemed the equivalent of an ordinance which regulates the utilization of land.' " *Guy*, 157 N.H. at 652 (quoting *Town of Scituate v. O'Rourke*, 239 A.2d 176, 180 (R.I. 1968)). As discussed above, consistent with the court's finding in *Carroll*, the rationale in *Carroll* that failure to obtain a license does not forfeit a nonconforming use is not as prevalent here because the adult licensing ordinance was designed to aid in land use regulation.

¶ 37 Accordingly, because the record clearly reflects that Video Magic failed to comply with the adult licensing ordinance by failing to obtain a license, and because the adult licensing ordinance was designed to aid in the regulation of land use, the Board's determination that Video Magic lost its nonconforming use status was not against the manifest weight of the evidence. Therefore, because

Video Magic did not constitute a valid nonconforming use when plaintiffs purchased the store, defendants properly denied plaintiffs' zoning application. See *Taylor*, 375 Ill. App. 3d at 593 (holding that a city properly denied the plaintiffs' petition for zoning recertification because the property in question did not constitute a legal nonconforming use).

¶ 38 III. Conclusion

¶ 39 For the foregoing reasons, we affirm both of the judgments from the circuit court of Du Page County.

¶ 40 No. 2-11-0232, Affirmed.

¶ 41 No. 2-11-0720, Affirmed.