2018 IL App (2d) 170388-U
No. 2-17-0388
Order filed June 21, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE VILLAGE OF MUNDELEIN, ABRAHAM BRAMBILA, DAVID FEINMAN, MARGRET FEINMAN, MELANIE MAZUR, JANET SNYDER, MELODY BONK, JAN CAMBETTO, PAUL GRANDINETTI, DENNIS BAHR, ALBERT BAHR, TAMMY CRISANTI, NANCY POSTELNIK, ERIC PEREZ, VERONICA PEREZ, ARLENE JENDRYCKI, VICENTE ALVAREZ, DELIA ALVAREZ, CHRIS COOPER, KAREN COOPER, CRISTINA ALVAREZ, DAVID PRESTON, ADELLA PRESTON, LANE KRAKOWSKI, RENEE KESSEL, ALAN BIEGEL, VIRGINIA BIEGEL, PATRICK BROWNE, VICTORIA BROWNE, CHETAN DESAI, IGNACIO MALDONADO, LETICIA MALDONADO, LARRY LAKOSKE, ROBIN LAKOSKE, JONATHAN DAWSON, CORINNE DAWSON, MAXIM SACHUK, and LJUDMILA SACHUK, Plaintiffs-Appellants, v. THE VILLAGE OF GRAYSLAKE, and SAIA MOTOR FREIGHT LINE, LLC, Defendants-Appellees.	)	Appeal from the Circuit Court of Lake County, No. 14-CH-2148 Honorable Luis A. Berrones, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court did not erroneously apply principles of nuisance law in this zoning action, and we found no basis to disturb its credibility determinations of plaintiffs' expert witnesses. Therefore, we affirmed the trial court's grant of defendants' motion for a directed finding.

¶ 2 Plaintiffs, the Village of Mundelein and numerous Mundelein residents, appeal from the trial court's grant of a directed finding in favor of defendants, the Village of Grayslake and SAIA Motor Freight Line, LLC (SAIA). Plaintiffs had challenged a Grayslake zoning ordinance that allowed SAIA to construct a large, cross-dock truck facility operating 24 hours a day, seven days a week on property bordering residential subdivisions in Mundelein. On appeal, plaintiffs argue that: (1) the trial court erroneously applied principles of nuisance law in giving no weight to the opinion testimony of all five of their expert witnesses; (2) the trial court erroneously found that the expert testimony of their traffic engineer on right turns was meaningless because it was not based upon academic texts; and (3) the trial court erroneously required that their real estate expert provide specific value amounts for the adjustments that he made in his matched pair analysis. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The property at issue is about 33 acres and consisted of farmland at the time Grayslake annexed it. The property is bordered on the north by Peterson Road; on the east by Midlothian Road; on the south by Winchester Road; and on the west by farmland. Also south of the property are various residential subdivisions located in Mundelein. Grayslake amended its ordinances to allow SAIA to build a truck terminal on the subject property.

¶ 5 On October 30, 2014, the Village of Mundelein and seven Mundelein homeowners living in the Cambridge Country North Subdivision filed a complaint for a declaratory judgment and injunctive relief, challenging the validity of Grayslake ordinances nos. 2014-0-20 and 2014-0-23. Ordinance no. 2014-0-23 zoned the subject property as limited industry (LI), and ordinance no. 2014-0-20 amended the use table in Grayslake's zoning code to allow truck terminals in LI zoning districts. Count I of plaintiffs' complaint alleged that the ordinances were void due to defective and legally insufficient notice of the rezoning hearing. Count II alleged that the ordinances were void because they were arbitrary, capricious, and unreasonable, in that the truck terminal would cause a substantial increase in noise, traffic, and light pollution, and a diminution of property values.

¶ 6 Plaintiffs filed an amendment to their complaint on July 31, 2015, that added thirty homeowners and two counts. Counts III and IV sought to enjoin the construction and use of the property as a truck terminal under section 11-13-15 of the Municipal Code (65 ILCS 5/11-13-15 (West 2014)).

¶ 7 On September 1, 2015, Grayslake adopted ordinance no. 2015-0-24, which reapproved ordinance no. 2014-0-23. On September 22, 2015, defendants moved to dismiss counts I and III as moot. The trial court granted the motion on November 6, 2015.

¶ 8 Also on November 6, 2015, plaintiffs filed a second amendment to their complaint, adding count V. They argued that Grayslake adopted the ordinances at issue without due regard for the uses and zoning of nearby property, and that its actions: were arbitrary, capricious, and unreasonable; bore no real or substantial relationship to the public health, safety, morals, and welfare; destroyed the value of plaintiffs' property without due process of law and without

benefitting the public; constituted unlawful spot zoning; and violated Illinois's municipal zoning enabling statute (65 ILCS 5/11-13-1 (West 2014)).

¶ 9 On February 16, 2016, plaintiffs filed a motion for a preliminary injunction. They alleged that SAIA had begun construction of the truck terminal in April 2015, and that it was expected to be operational in the near future. The trial court denied the motion as moot on April 1, 2016.

¶ 10 Defendants filed a motion for summary judgment on December 22, 2016. On March 7, 2017, the trial court granted the motion as to counts II and IV. It further granted the motion as to the portion of count V pertaining to ordinance nos. 2014-0-20 and 2014-0-23, but denied the motion as to the portion of count V regarding ordinance no. 2015-0-24.

¶ 11 A trial on the remaining allegations of count V began on April 18, 2017. Jarrod Cebulski, a traffic and transportation engineer, testified as follows. Plaintiffs retained him to provide his opinion as to the effect that truck traffic generated by the Grayslake terminal would have on Midlothian Road, where trucks entered and exited the terminal. Midlothian Road was a two-lane collector road that gathered traffic from residential subdivisions and provided access to larger, arterial roadways. The "heart" of the Mundelein community, namely residential subdivisions, schools, parks, the library, a fire station, and shopping areas were along Midlothian Road, south of the subject property. According to the Lake County Division of Transportation, about 7,100 vehicles traveled on Midlothian Road per day, 8% of which were trucks.

¶ 12 Cebulski was retained in late 2015, when the terminal was still under construction. Cebulski reviewed SAIA's site plan and aerial photographs of the property. He also reviewed a prior traffic study for the site. The property was about 33 acres, with the terminal itself being about one acre in size. There were 433 truck spaces, counting both the 100 truck bays and 333

truck parking spaces. SAIA also had a truck terminal in Burr Ridge. That terminal was about 29 acres and had 374 truck spaces, consisting of 154 truck bays and 220 parking spaces. Cebulski's staff conducted a 24-hour traffic count at the Burr Ridge facility from December 1 to 2, 2015, which was mid-week. They counted 593 trucks entering or exiting the terminal during that time. Cebulski estimated that the Grayslake terminal would generate about the same number of truck trips. He opined that truck drivers would have a propensity to turn right and go south on Midlothian Road, as opposed to waiting for traffic to clear and turn left.

¶ 13 Cebulski opined that the terminal would have a detrimental effect on the safety and traffic congestion on Midlothian Road because it would double the number of trucks that used that roadway. Further, there was a bike path on the west side of Midlothian Road that crossed the truck entrance, which contained only a stop sign. This crossing increased the chance for collision.

¶ 14 Cebulski was aware that SAIA had 150 facilities in the United States, and he agreed that he had examined only one of them in depth. Cebulski agreed that the Burr Ridge facility had 50% more truck bays that the Grayslake facility, and that he did not rely on any academic literature to support his opinion that truck parking spaces determine a facility's capacity. He also did not distinguish between truck tractor parking and trailer parking. He agreed that if no SAIA trucks headed south on Midlothian Road, there would be no safety impact on Mundelein. Correspondingly, if the flow of traffic was restricted, the risks he cited would decrease. He agreed that he was not opining that the Grayslake facility would cause Midlothian Road's capacity to be exceeded. Cebulski did not have a lot of experience with truck terminals, and his report for this case was the first time that he had analyzed traffic coming to and from a truck terminal.

¶ 15 David Kwasiborski, an "industrial hygienist" whose work included industrial noise evaluations, testified as follows. He worked for ECS Midwest (ECS), a multifaceted engineering and consulting firm. In April 2012, the Village of Burr Ridge contracted ECS to assess the noise level at SAIA's Burr Ridge facility because nearby condominium residents were complaining about nighttime noise. The Burr Ridge terminal operated 24 hours a day, seven days a week. Kwasiborski conducted an investigation between April 30, 2012, and May 3, 2012. He heard various noises "from trucks dropping or forklift operation," and loud bangs. ECS employees recorded noises at three locations on three consecutive evenings during that time, between 7 p.m. and 7 a.m. The "impulse noise" coming from the Burr Ridge facility ranged from "dBAs" in the 40s to 60s, with the highest level being 68.2. For someone sleeping, 68 decibels would be the equivalent of a person standing outside of his or her open window saying hello. Kwasiborski agreed that the report regarding the Burr Ridge facility was nearly five years old and was not intended to be relied upon in connection with other projects or other parties.

¶ 16 Acoustical consultant John Yerges was hired by plaintiffs to assess the noise impact from the Grayslake terminal on the surrounding property. He testified that in September 2015, he measured the overnight ambient noise level in the residential area south of Grayslake terminal, which had not yet been built. The noise level was in the range of 35 dBA or less, which was extraordinarily quiet. Also in September 2015, Yerges measured the ambient overnight noise at the Burr Ridge terminal and found it to be 50 dBA. The 15 decibel difference meant that the Burr Ridge reading was 30 times noisier than the Grayslake reading.

¶ 17 Yerges opined that if the Grayslake facility generated the same level of sudden bang noises from dock plates as the Burr Ridge facility (as recorded in the ECS report), it would be capable of waking up a lot of people near Winchester Road, and it could make it difficult for

people in the Asbury Park area to fall asleep. In the annexation agreement, SAIA agreed not to exceed a 60 dBA average, as measured at a specific point. Yerges opined that the measurement point was the most sheltered location on the property, and that the agreement's noise level would not provide any protection for residents south of the truck terminal.

¶ 18 Yerges agreed that his "entire analysis [was] based upon what would happen at Grayslake if that site made as much noise as Burr Ridge did in 2012." He did not do any comparisons of the operations between the Burr Ridge and Grayslake facilities, other than comparing aerial photographs of the sites and noting that they looked similar architecturally. Yerges acknowledged that he was not an architect and that the Burr Ridge facility was built in the 1950s by a company other than SAIA. He also knew that SAIA had tried to improve noise conditions at the Burr Ridge location, after the ECS report. Yerges did not know that there was a right to make a site inspection of the Grayslake terminal as part of litigation. He agreed that he did not know what dock plate design and types of seals were being used at the Grayslake facility, and that he had no idea how quietly SAIA could operate that terminal. Yerges knew that the Grayslake facility was an "end-of-line" terminal, but he did not know how that made the facility different and how it would affect noise levels. Yerges agreed that he would expect people to complain if the Grayslake facility made as much noise as the Burr Ridge facility, yet he was not aware of any such complaints. He further agreed that he had taken measurements in the Mundelein residential area when there was traffic passing on Winchester Road; that noise level was 61.8 dBA.

¶ 19 Michael MaRous, a professional real estate appraiser and consultant, testified as follows. He was hired by plaintiffs in 2015 to determine the potential impact of the Grayslake truck terminal on the housing of adjoining residential areas. MaRous looked at residential properties

near two other truck terminals, the one in Burr Ridge and a ConGlobal terminal in Forest View. He conducted a "paired sales analysis" in which he compared the sale prices of sets of homes that were similar except for their locations closer to or farther away from the terminals. MaRous opined that the Grayslake truck terminal would decrease the value of the Mundelein residential properties to the south between 8 and 15%, with the greatest decrease applying to homes backing up to the terminal. In determining the values, MaRous also looked at expert reports produced for plaintiffs regarding traffic and noise levels.

¶ 20 MaRous agreed that, for the paired sales analysis, his report did not identify the adjustments that he made for various differences between houses in a set, such as: a family room on the main level as opposed to the basement; the number of bathrooms; location in an unincorporated verses incorporated area; location close to an interstate highway; and types of exteriors.

¶ 21 Allen Kracower, a planning, zoning, and real estate consultant, provided the following testimony. He was retained by plaintiffs in 2014 to evaluate the Grayslake truck terminal in the context of nearby land use and determine whether the zoning of the property was a reasonable use. North of the subject property, past Peterson Road, was the Lake County fairgrounds. West of the property was farmland. To the property's east was a business park that was zoned for office and manufacturing, and further east was an area zoned as light industrial. South of the property was the Cambridge Country subdivision and other residential areas. There were about 1500 residential units serving a population of about 4500 people. Almost all of the residents accessed their developments from eight points on Midlothian Road. South of the residential area were community facilities like a park, library, fire department, and school, all of which also had access points on Midlothian Road.

¶ 22 Kracower opined that the truck terminal was not compatible with the residential area because it created a significant adverse impact on public health, safety, and welfare. He considered SAIA's use of the property to be heavy industrial use based on: the significant amount of truck traffic that would be generated on local roads from a facility operating 24 hours a day, seven days a week; the potential noise impact on surrounding property; the fact that it was a cross-dock facility; and the contrast of the property to nearby industrial uses. MaRous's report indicated that there would be a decrease in property values. There was no significant economic gain to the public from tax revenue because the terminal had about 10,000 square feet of space, whereas a low industrial use could provide for 330,000 square feet of space that would generate substantially more tax revenue. The terminal should have been built in another location where it would have better access to the highways and would not adversely impact the public. Kracower believed that Grayslake did not follow its 2005 comprehensive plan in allowing the truck terminal, because the plan called for a "planned business industrial park" in the area.

¶ 23 Kracower agreed that there was a "Medline" facility just east of the truck terminal that was about 590,000 square feet, much larger than the truck terminal building, and also had truck parking spaces. The Medline facility had more truck dock doors than SAIA's truck terminal. Other businesses near Medline likewise had truck dock doors and truck parking, and they all used Midlothian Road. Kracower also agreed that south of the truck terminal, the SAIA property contained a large berm and then several acres of open space.[1] He further agreed that the housing density decreased as one went further south, going from duplex homes to single family homes. Kracower was aware that SAIA had placed a "No Right Turn" sign at the facility's exit on

[1] The berm and the approximately six acres open space were required as development conditions of the amended annexation agreement between Grayslake and SAIA.

Midlothian Road and agreed that it was a "good thing." However, there was nothing in the annexation agreement that required the sign. Kracower had not investigated whether any employees at the truck terminal lived in the area.

¶ 24 Several Mundelein residents who lived near the Grayslake facility also testified.

¶ 25 Following plaintiffs' case-in-chief, defendants renewed their previously-filed motion to strike and bar any evidence regarding the Burr Ridge facility, and they further moved for a directed finding. The trial court ruled on these motions on May 2, 2017; we summarize its findings. Plaintiffs sought to establish the noise and truck traffic levels that may occur at the Grayslake facility through evidence obtained from the Burr Ridge facility, which plaintiffs claimed was comparable because of the size of the facilities, the number of truck docks and truck parking spaces, the fact that both facilities were cross-dock facilities, the presence of maintenance and refueling stations on site, and operations 24 hours a day, seven days a week. The broad and general similarities between the two facilities made the evidence regarding the Burr Ridge facility relevant, and the trial court denied defendants' motion to strike such evidence.

¶ 26 In ruling on defendants' motion for a directed finding, the trial court had to determine first whether plaintiffs had made a *prima facie* case, and then weigh the evidence to determine whether sufficient evidence remained to establish a *prima facie* case. It had to begin with the presumption that the zoning ordinance was valid, and the presumption could be overcome only by clear and convincing evidence that the zoning was arbitrary and capricious and unrelated to the public health, safety, and morals. The trial court was required to consider the factors set out in *LaSalle National Bank v. County of Cook*, 12 Ill. 2d 40, 46-47 (1957), and *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill. 2d 370, 378 (1960). Viewing plaintiffs' evidence in the

light most favorable to them, plaintiffs had established a *prima facie* case to overcome the presumption of the ordinance's validity. However, when the trial court weighed the evidence, plaintiffs' ability to prove their case depended on the trial court accepting plaintiffs' experts' opinions regarding the anticipated noise, light, and truck traffic levels that would occur if the Grayslake facility continued to operate. The trial court would then have to accept Kracower's opinion, which relied on the other experts' conclusions, that the Grayslake facility was not compatible with the surrounding land development.

¶ 27 Plaintiffs' experts were not credible with respect to the opinions and conclusions that they offered at trial. The most notable deficiency was the lack of any specific factual evidence relied upon by the experts relating to the operations, internal rules, construction, equipment, or materials to be used at the Grayslake facility. Their excuse was that the Grayslake facility was not fully operational, so any specific information about it would be misleading. The experts relied on information relating to the Burr Ridge terminal because they reviewed aerial photographs of the properties and determined that they would be similar based on the aforementioned factors. However, the Grayslake facility had been operating since early 2016. Even when the facility was not operational, plaintiffs could have provided their experts with facts specific to the facility by asking for them in discovery, particularly regarding the types of dock doors and plates. They could have investigated whether the facility was constructed to or had operational procedures to address noise issues that were present in the much older Burr Ridge facility. Instead, the experts merely assumed that the noise levels would be the same.

¶ 28 However, because the Grayslake facility had been operational since early 2016, there was testimony from residents living south of the facility, and none of that evidence supported the assumptions made by plaintiffs' experts about noise and truck traffic levels. None of the

residents testified that they had issues with excess noise from the facility or had made complaints about the truck traffic and noise levels. Plaintiffs' experts also assumed that the facility's truck traffic would travel south on Midlothian Road, but the real-time evidence did not support that assumption. A home security camera videotape that plaintiffs introduced into evidence showed traffic going both directions on Midlothian Road. It covered a 6-hour and 18-minute period from 3:47 p.m. to 10:05 p.m. on February 9, 2016. The homeowner said that it showed 50 trucks, two of which were SAIA trucks. The videotape contradicted Cebulski's opinion that trucks exiting the facility would have a propensity to turn right and go south instead of turning left and going north, regardless of the sign directing drivers to exit north. Cebulski further did not articulate any academic texts supporting his conclusion about right turns. Cebulski's opinion regarding right turns was critical to his opinion regarding the facility's impact on the Midlothian Road residential corridor, and if the truck traffic did not go south, the experts' opinions were meaningless.

¶ 29 MaRous' valuation opinions were based on other experts' opinions regarding noise levels and truck traffic, and based on the deficiencies in those opinions identified by the trial court, MaRous' opinions were questionable. Additionally, MaRous testified that he had made adjustments to property valuations in his matched pair analysis to account for variations in the properties, and he relied on the analysis to conclude that residences south of the Grayslake facility would decrease in value from 8 to 15%. However, he could not articulate any specific value amounts for the adjustments in his analysis, which deprived the trial court of properly analyzing the accuracy of his ultimate opinion. Instead, the trial court was asked to blindly accept MaRous' statement that he appropriately accounted for the adjustments. The trial court

was "not inclined to overlook these deficiencies in Mr. MaRous' testimony and determine[d] that MaRous' testimony should be given no weight."

¶ 30 Finally, Kracower opined that the Grayslake facility was not compatible with the surrounding area. He opined that the terminal was a heavy industrial use and not a light industrial use based largely on acceptance of plaintiffs' noise and traffic experts' opinions, but the trial court had determined that these opinions were not credible.

¶ 31 The trial court found that "the opinion testimony provided by plaintiffs' experts [was] unpersuasive, unreliable, [had] no credibility and should be given no weight in determining whether plaintiffs have met their burden with respect to the LaSalle/Sinclair Factors." The only remaining evidence was that of plaintiffs' lay witnesses, and the trial court would consider their testimony as it related to the factors.

¶ 32 The first *LaSalle* factor was the existing use and zoning of nearby property. With the exception of the Kensington subdivision on the southeast corner of Midlothian and Winchester Road, much of the surrounding property was zoned as light industrial, office park, or commercial development. The property west of the Kensington subdivision was designated for the Route 53 extension, and the property at the southwest tip of the subdivision west of that was zoned by Mundelein to allow truck terminals. Therefore, this factor favored defendants.

¶ 33 The second factor was the extent to which property values were diminished by the particular zoning restrictions. Other than homeowners' subjective concerns, there was no credible evidence that the property values of the residential areas south of Winchester Road were diminished by the terminal's zoning. Plaintiffs had failed to meet their burden on this factor.

¶ 34 The third factor was the extent to which the destruction of property values of the plaintiff promoted the health, safety, and general welfare of the public. Without credible evidence of decreased property values, plaintiffs failed to meet their burden on this factor.

¶ 35 The fourth factor was the relative gain to the public as compared to the hardship imposed on the individual property owners. Aside from the claimed decreased property values, plaintiffs claimed that they would suffer a hardship to their health, safety, and welfare because of the increased noise, truck traffic, and light pollution. The evidence did not support any claim of hardship by plaintiffs. The fact witnesses did not identify any increase in noise, truck traffic, or light pollution that had caused or will cause them hardship. They did not complain of any noise during the operation of the Grayslake facility, and they did not testify about their sleep being disturbed by noise from the terminal. No witnesses identified any traffic congestion from SAIA's operation of its trucks. A couple of witnesses testified about the brightness of the facility's lights at night, stating that it looked like the lighting on an airport runway. However, no one testified that they were bothered by the lights beyond an esthetic level. The pictures introduced into evidence showed that the lights were visible, but they did not show that they were so bright that they would bother adjacent residents. In fact, two of the pictures showed the lights surrounded by the black of night, which contradicted any testimony that the lights were illuminating the surrounding area. Plaintiffs thus failed to meet their burden on the fourth factor.

¶ 36 The fifth factor was the suitability of the subject property for zoned purposes. This factor also favored defendants for the reasons stated in analyzing the previous factors. Additionally, even Mundelein had planned on the property being developed as light industrial, as a business park, or as commercial for a big box retailer.

¶ 37 The sixth factor was the amount of time the property had been vacant as zoned, considered in the context of land development in the vicinity. Before the annexation and rezoning, the property was farmland, despite the development of the surrounding property. This factor could favor either side and was of limited consequence to the trial court's decision.

¶ 38 The first *Sinclair* factor was whether the restriction had a basis in public health, safety, and welfare in light of the uses to which the surrounding property is or may be put based on the community's land use development plan. One of the objectives of Grayslake's comprehensive plan was to expand the local economy to increase the non-homeowner tax base, create jobs, and provide products and services locally. Therefore, the development of the truck terminal was consistent with the plan and promoted the welfare when viewed with the uses of surrounding property. This factor thus favored defendants.

¶ 39 The second *Sinclair* factor was the community's need for the use. There was little evidence regarding this factor, though one of plaintiffs' experts stated that there was a growing need for truck terminals based on the increasing number of consumers shopping on the Internet. Still, there was no testimony that the communities near the facility needed the truck terminal, so the factor did not favor either side.

¶ 40 The trial court concluded that, after weighing the evidence and assessing the witnesses' credibility, plaintiffs had failed to prove by clear and convincing evidence that the Grayslake ordinance that zoned the SAIA property for light industrial use and allowed the truck terminal was unreasonable, arbitrary, and capricious or unrelated to the public health, safety, and morals. There was therefore no evidence that continued to support a *prima facie* case for plaintiffs, and the trial court granted defendants' motion for a directed finding.

¶ 41 Plaintiffs timely appealed.

¶ 42 II. ANALYSIS

¶ 43 Section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2016)) governs motions for directed findings in bench trials. In ruling on a section 2-1110 motion, the trial court must first determine whether the plaintiff has established a *prima facie* case by providing evidence on every element essential to the plaintiff's underlying cause of action. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003). If the plaintiff fails to meet this burden, the trial court should grant the motion and enter judgment in the defendant's favor. *Id.* If the plaintiff has presented a *prima facie* case, the court must then weigh all of the evidence presented, including evidence favorable to the defense, considering the witnesses' credibility. *Id.* at 275-76. If the court then concludes that sufficient evidence still exists to establish a *prima facie* case, the defendant's motion should be denied. *Id.* at 276. On the other hand, if the weighing process negates some of the evidence necessary for a *prima facie* case, the court should grant the motion and enter judgment for the defendant. *Midfirst Bank v. Abney*, 365 Ill. App. 3d 636, 651 (2006). The trial court made such a determination here.

¶ 44 A reviewing court will not reverse a trial court's grant of a section 2-1110 motion unless it is contrary to the manifest weight of the evidence. *Id.* To the extent that the trial court's ruling involves a question of law, we review its ruling *de novo*. *Hedrich v. Mack*, 2015 IL App (2d) 141126, ¶ 10.

¶ 45 Home rule municipalities, such as Grayslake, have broad power to perform any function pertaining to their governments and affairs, including enacting municipal development regulations such as zoning ordinances. *Gurba v. Community High School District No. 155*, 2015 IL 118332, ¶ 13. A zoning ordinance is presumptively valid, and the challenging party must show by clear and convincing evidence that the ordinance, as applied to a particular piece of

property, is arbitrary and unreasonable and bears no substantial relationship to the public health safety, and welfare. *Tomasek v. City of Des Plaines*, 64 Ill. 2d 172, 179-80 (1976). In *La Salle National Bank*, our supreme court set out a list of factors that may be considered in making this determination. *Id.* at 180. These factors are: (1) the existing uses and zoning of nearby property; (2) the extent to which property values are diminished by the particular zoning restrictions; (3) the extent to which the destruction of the plaintiff's property values promotes the health, safety, morals, or general welfare of the public; (4) the relative gain to the public as compared to the hardship imposed on the individual property owner; (5) the suitability of the subject property for the zoned purposes; and (6) the length of time the property has been vacant as zoned considered in the context of land development in the vicinity. *La Salle National Bank*, 12 Ill. 2d at 46-47. Our supreme court identified additional factors to consider in *Sinclair Pipe Line Co.*, 19 Ill. 2d at 378, namely: (1) the care with which the community has planned its land use and development, and (2) whether the community needs the use. No single factor is controlling. *La Salle National Bank*, 12 Ill. 2d at 47.

¶ 46 Plaintiffs argue that the trial court erroneously applied the principles of nuisance law in giving no weight to the opinion of all five of their experts. They note that nuisance and zoning actions differ. See *Herman v. Village of Hillside*, 15 Ill. 2d 396, 402 (1959) ("In any event, this is not a nuisance case, and we must view it from the principles applicable to zoning."); *Mid-west Emery Freight System, Inc. v. City of Chicago*, 120 Ill. App. 2d 425, 447 (1970) ("It is unquestionably correct that nuisance and zoning cases are not determined on precisely the same principles. In fact, the restricted use need not constitute a nuisance to authorize enactment of a zoning ordinance.") Plaintiffs maintain that the issue in an "as applied" zoning action is whether the use of the subject property, as proposed by the property owner and permitted by right under

the challenged zoning ordinance, is unreasonable under a *LaSalle*/*Sinclair* factor analysis. They argue that, in contrast, the issue in a nuisance case is whether the actual use of the subject property unreasonably interferes with the enjoyment of nearby properties. See *Schweihs v. Chase Home Finance, LLC*, 2015 IL App (1st) 140683, ¶ 40 (a private nuisance occurs when an act invades another's interest in the use and enjoyment of his land, with the invasion being substantial, either intentional or negligent, and unreasonable).

¶ 47 According to plaintiffs, the Grayslake zoning code and the annexation agreement include only a few limitations on the truck terminal. One condition is that a "preponderance" of trucks be routed north on Midlothian Road, which plaintiffs argue would implicitly allow up to 49% of outgoing trucks to be routed south. Plaintiffs also point out that trucks are expressly allowed to proceed south on Midlothian Road to make deliveries in Mundelein and Vernon Hills, north of Route 22. Plaintiffs contend that, significantly, no development conditions in the annexation agreement restrict incoming trucks from approaching and entering the terminal from the south. Plaintiffs cite another development condition that the noise generated by the terminal will be limited to 60 dBAs averaged over a one-hour period as measured at noon on a regular business day. They argue that this standard does not apply to sudden impact noise and does not provide any protection during nighttime hours when the noise would be most disturbing. Plaintiffs further maintain that the development conditions can be enforced only by Grayslake, and only for the 20-year life of the annexation agreement. Plaintiffs argue that any voluntary measures that SAIA has undertaken at the facility, such as posting a "No Right Turn" sign at the exit onto Midlothian Road and noise mitigation measures such as installing dock door seals, are not enforceable by Grayslake or property owners and can be discontinued at will by SAIA or any subsequent owner of the property.

¶ 48 Plaintiffs argue that SAIA is permitted by right under the challenged zoning ordinances to do anything and everything at the Grayslake terminal that it has done at the Burr Ridge terminal. Plaintiffs contend that the terminals are comparable in size, hours and days of operation, and type of facilities. They argue that Cebulski and Yerges properly applied principals of zoning law in arriving at their opinions as to the number of truck trips and type and level of noise that the Grayslake truck terminal has the capacity and is permitted by right to generate under the challenged zoning ordinances.

¶ 49 It is clear from the record that the trial court recited the elements of a zoning action, as opposed to a nuisance action, in ruling on defendants' motion for a directed finding. Indeed, it went through the *LaSalle*/*Sinclair* factors in great detail. The issues that plaintiffs raise on appeal require determining whether, in an as-applied zoning challenge, the actual use of a property is relevant, and if so, to what extent, or if the focus should be limited to what use is permissible under a zoning ordinance.

¶ 50 As defendants point out in their brief, Illinois courts have considered evidence of nuisance in zoning cases. For example, in *Herman*, the court considered witness testimony about tremors and vibrations from dynamiting at a quarry operation, in the context of applying the *LaSalle* factors. *Herman*, 15 Ill. 2d at 404; see also *Mid-west Emery Freight System*, 120 Ill. App. 2d at 447 (stating that the *Herman* court considered nuisance complaints as a factor in its decision). Nuisance evidence can also involve evidence of actual/present use of a property. For example, in *Mid-west Emery Freight System*, the court stated that "[t]he nuisance testimony of the residents is relevant to show the present use to which plaintiffs are putting their property, and to tend to show the effect which intensification of this use will have on their residential property." *Id.* The court further stated that "there is a close relationship between zoning and

laws prohibiting nuisances." *Id.* at 448. Finally, in *Robrock v. County of Piatt*, 2012 IL App (4th) 110590, ¶ 47, the appellate court considered evidence of noise nuisance in discussing the *LaSalle* factors. Accordingly, we agree with defendants that, as a matter of law, the trial court was not precluded from considering the effects of the actual use of the land, which is pertinent to the *LaSalle*/*Sinclair* factors in an as-applied due process claim. Indeed, plaintiffs elicited evidence of nuisance from testifying homeowners, and plaintiffs' counsel stated that the same evidence can be used for both nuisance and zoning cases, with only the standard being applied differing.[2]

¶ 51 Our conclusion that actual use of a property can be relevant in zoning cases is supported by the standards applicable to cases challenging zoning ordinances. A zoning classification's "validity as applied to a specific property depends on the sum total of the particular facts found in each case." *Cech Builders, Inc. v. Village of Westmont* 118 Ill. App. 3d 828, 830 (1983). It is true that in most challenges to a new zoning classification, the challenged use of the property has not yet been implemented, so the proposed use and what is permissible under the zoning ordinance is paramount. Relatedly, witnesses may testify as to conditions at similar facilities. However, where land has been developed in spite of ongoing litigation, as here, that development is part of the specific property and becomes part of the facts of the case. This is not to say that courts will ignore what is permissible under the ordinance and related agreements, but courts can view this in the context of actual use of the property, as that use is part of the facts of

[2] Defendants argue that counsel's statement constitutes a judicial admission, and therefore plaintiffs have forfeited their argument on appeal. However, plaintiffs' argument is broader than simply whether nuisance evidence is admissible in zoning actions, so we decline to find forfeiture.

the case. Particularly, where a proposed building has been constructed, the layout and building materials have become largely set, excepting any potential future additions and/or alterations.

¶ 52 We further note that the trial court in this case did not find plaintiffs' experts' testimony irrelevant. To the contrary, it denied defendants' motion to strike and bar evidence about the Burr Ridge facilities, finding that the broad similarities between the two terminals made the evidence regarding the Burr Ridge facility relevant. It further found that, viewing plaintiffs' evidence in the light most favorable to them, they had established a *prima facie* case overcoming the presumption of the ordinance's validity. Only when the trial court weighed the evidence did it determine that plaintiffs' experts' testimony was not credible. It is the province of the trial court as the trier of fact to determine expert witnesses' qualifications and credibility, and the weight to be afforded to their testimony. *Temesvary v. Houdek*, 301 Ill. App. 3d 560, 568 (1998). As stated, when the trial court considers the weight and quality of the evidence in a motion for a directed finding, our review is whether the trial court's ruling was against the manifest weight of the evidence. *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶ 98. A decision is against the manifest weight of the evidence only where the opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *L.D.S., LLC v. Southern Cross Foods, Ltd.*, 2017 IL App (1st) 163058, ¶ 34.

¶ 53 The trial court found that plaintiffs' experts did not rely on any specific factual evidence regarding the operations, internal rules, construction, equipment, or materials to be used in the Grayslake facility. Therefore, it essentially found that the factual basis for the experts' opinions was not credible. See *Eid v. Loyola University Medical Center*, 2017 IL App (1st) 143967, ¶ 28 ("[T]he weight to be assigned to an expert opinion is for the [trier of fact] to determine in light of the expert's credentials and the factual basis of his opinion.") The trial court noted that the

Grayslake facility had been operating since early 2016, and that even otherwise, plaintiffs could have provided their experts with facts specific to the facility, such as the types of dock door and plates, by asking for them in discovery.

¶ 54 Cebulski testified that in determining that the Burr Ridge facility was an appropriate comparison for the Grayslake facility, he reviewed aerial images to determine if the site plans were similar and counted the number of truck docks and parking spaces. Cebulski acknowledged that he was not an expert in trucking and that the Burr Ridge facility has 50% more truck bays than the Grayslake facility. He also agreed that he did not look at any of SAIA's other 149 facilities. At his deposition, he testified that a truck terminal is limited in its capacity by the number of truck bays that it has, but at trial he testified that truck parking spaces are included in the calculation. Moreover, he did not distinguish between tractor parking and truck trailer parking, and he did not rely on any academic literature to support this opinion.

¶ 55 Yerges testified that he determined that the Burr Ridge and Grayslake facilities were comparable based only on looking at aerial photographs and noting that they looked similar architecturally. He acknowledged that he was not an architect; that the Burr Ridge terminal was built in the 1950s by a company other than SAIA; and that he did not know what type of dock plates and seals were being used at the Grayslake facility. He also knew that the Grayslake facility was an "end-of-line" terminal, but he did not know how that classification made the facility different or how it would affect noise levels.

¶ 56 Therefore, both Cebulski and Yerges determined that the two truck terminals were similar based on very limited factors, without looking at any other truck terminals as potential comparisons. Neither witness was a trucking industry or trucking facility expert, nor did they know how the materials and construction of the terminals differed. They also did not account for

the fact that the Grayslake facility was built over 50 years after the Burr Ridge facility, by SAIA itself. Cebulski counted both truck bays and parking spaces in determining that the facilities' capacities were similar, but he did not have any academic support for his opinion that truck parking spaces were the equivalent of truck bays for such an analysis, and he did not distinguish between different types of parking spaces. Based on these considerations, we have no basis to disturb the trial court's determination that these witnesses' opinions regarding the traffic and noise levels that would be produced at Grayslake facility were not credible.

¶ 57 Relatedly, we find no reversible error in the trial court's determination that Cebulski's testimony about drivers' propensity to make right turns was not credible. Cebulski did not point to any academic literature to support his opinion, and, as stated, the trial court could assess the weight to be given to his opinion on the factual basis of his opinion, in addition to Cebulski's credentials. See *Eid*, 2017 IL App (1st) 143967, ¶ 28. The evidence established that there was a sign directing truck traffic to exit north, and, according to the trial court, the videotape that plaintiffs introduced into evidence, which recorded Midlothian Road near a residence during an approximately six-hour period, showed only two SAIA trucks. As the trial court pointed out, the videotape contradicted Cebulski's testimony about trucks turning right. Even if SAIA removed the sign, the amended annexation agreement requires a preponderance of truck traffic to go north. Cebulski acknowledged that if fewer trucks went south on Midlothian Road, the risks he referenced would decrease.

¶ 58 Turning to MaRous, plaintiffs point out that in addition to rejecting his testimony because he relied on the opinions of Cebulski and Yerges, the trial court faulted him for not providing specific values for the adjustments that he made to his matched pair analysis. Plaintiffs argue that the trial court ignored MaRous's testimony that, in the real estate appraisal field, specific

dollar adjustments are not required by industry standards. Plaintiffs maintain that because MaRous's testimony was uncontradicted, the trial court erred in disregarding it. See *Kelly v. Jones*, 290 Ill. 375, 378 (1919) (where witnesses' testimony is uncontradicted and not inherently improbable, it cannot be rejected). Plaintiffs also argue that in arriving at his valuations for homes near the Grayslake facility, MaRous made a significant downward adjustment from his matched pair data, which showed a decrease in value by an average of 19.65%.

¶ 59 MaRous's valuation determination was based in part on considerations of Cebulski's and Yerges' reports on traffic and noise. As we have upheld the trial court's determination that the weighing process undermined these expert's opinions, it follows that MaRous's opinions also become suspect. The trial court additionally found that MaRous's testimony should not be given any weight because he did not articulate any specific amounts for the adjustments in his analysis, preventing the trial court from assessing the accuracy of his ultimate opinion. It is true that under Illinois Rule of Evidence 705 (eff. Jan. 1, 2011), an expert may testify to an opinion without first testifying as to the underlying facts or data. However, the same rule provides that the expert may be required to disclose the underlying facts or data on cross examination. Ill. R. Evid. 705 (eff. Jan. 1, 2011). Here, defendants directly questioned MaRous about his value adjustments, and he acknowledged that none were listed in his report, nor did he specify any of these values at trial. His report also did not contain totals for the adjustments that he made. Again, the trial court could determine the weight to give to MaRous's opinion considering the factual basis of his opinion, in addition to credentials. See *Eid*, 2017 IL App (1st) 143967, ¶ 28. Plaintiffs' citation to *Kelly* is not persuasive, as that case did not involve an expert witness. In sum, we find no reason to overturn the trial court's assessment of MaRous's credibility.

¶ 60 Plaintiffs do not separately discuss Kracower's testimony, so we likewise do not analyze it independently. Suffice it to say that because Kracower's testimony was largely based on the other expert's opinions, and because we have upheld the trial court's credibility determinations of those experts, we would likewise have no basis to disturb its assessment of Kracower's credibility.

¶ 61 Last, plaintiffs argue that reversal of the trial court's decision to give no weight to the opinion testimony leaves in place the trial court's initial determination that plaintiffs had presented a *prima facie* case, before the weighing process. As we have not reversed the trial court's credibility determinations, we need not address this argument further. Additionally, plaintiffs have not challenged the trial court's application of the *LaSalle*/*Sinclair* factors to the lay witness testimony, so we need not go through the factors.

¶ 62 Based on the aforementioned considerations, we conclude that the trial court's grant of defendants' motion for a directed finding under section 2-1110 was not against the manifest weight of the evidence.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 65 Affirmed.