2019 IL App (2d) 170977-U
Nos. 2-17-0977 & 2-18-0013 & 2-18-0014 cons.
Order filed October 7, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MEDPONICS ILLINOIS LLC, and Illinois Limited Liability Company, Plaintiff-Appellee, v. ILLINOIS DEPARTMENT OF AGRICULTURE; RAYMOND POE, Director of Agriculture; and JACK CAMPBELL, Chief of Medicinal Plants of the Illinois Department of Agriculture, Defendants-Appellants, CURATIVE HEALTH CULTIVATION, LLC, and Illinois Liability Company, Defendant-Appellant CITY OF AURORA, and Illinois Municipal Corporation, Proposed Intervenor-Appellant	)	Appeal from the Circuit Court of Lake County. No. 15-MR-2061 Honorable Michael J. Fusz, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court, with opinion.
Justices Jorgensen and Burke concurred in the judgment and opinion.

¶ 1 *Held:* We reverse the trial court's findings on administrative review as the Illinois Department of Agriculture's interpretation of its own regulation regarding "an area zoned exclusively for residential use" is reasonable. We affirm the trial court's order finding that the confidentiality provisions of the Compassionate Use of Medical Cannabis Pilot Program Act do not compel the seal of the record on administrative review.

¶ 2 I. BACKGROUND

¶ 3 The Compassionate Use of Medical Cannabis Pilot Program Act (the Act) became effective on January 1, 2014. 410 ILCS 130/1 *et seq* (West 2016). The Act provides that dispensaries, cultivation centers, and their agents are not subject to arrest, prosecution, civil penalties or disciplinary action for the dispensation or cultivation of medical cannabis. 410 ILCS 130/25 (West 2016). The Act defines a medical cannabis cultivation center as "a facility operated by an organization or business that is registered by the Department of Agriculture to perform necessary activities to provide only registered medical cannabis dispensing organizations with usable medical cannabis." 410 ILCS 130/10(e). Registration and oversight of medical cannabis cultivation centers is enforced by the Illinois Department of Agriculture (IDOA) through the provisions of the Act. 410 ILCS 130/15(b) (West 2016). The Act provides that the IDOA "may register up to 22 cultivation center registrations for operation," with a limit of one registration for each of the 22 Illinois State Police Districts across the state. 410 ILCS 130/85(a) (West 2016).

¶ 4 Section 150(c) of the Act provides that "[a] registered cultivation center may not be located within 2,500 feet of *** an area zoned for residential use." 410 ILCS 130/105(c) (West 2016). The Act does not define the term "an area zoned for residential use." The IDOA adopted administrative rules governing its enforcement of the Act's provisions relating to the registration and oversight of cultivation centers (IDOA rules). 8 IL ADC 1000.1 *et seq*. The IDOA's rules define the term "an area zoned for residential use" as "an area zoned exclusively for residential use." 8 IL ADC 1000.10 (West 2016).

¶ 5 To apply for and receive a permit for a cultivation center, applicants must adhere to the provisions of Subpart B of the IDOA rules. Subpart B details the rules regarding permit application, selection criteria, permit issuance, renewal, fees, modifications, and denial of application. The selection criteria are made up of categories of information the applicant must submit to the IDOA. 8 IL ADC 1000.100 (West 2016). Relevant here, applicants must submit:

> "A copy of the current local zoning ordinance to the Department and verification from the local zoning authority that the proposed cultivation center is in compliance with the local zoning rules issued in accordance with Section 140 of the Act (Section 85 of the Act)." 8 IL ADC 1000.100(d)(17) (West 2016).

Additionally, the applicants must provide:

> "A location area map of the area surrounding the proposed cultivation center. The map must clearly demonstrate that the proposed cultivation center is not located within 2,500 feet of the property line of a pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home, part day child care facility, or an area zoned for residential use (Section 105 of the Act)." 8 IL ADC 1000.100(d)(19) (West 2016).

The IDOA rules then list the criteria and measures required to be addressed by applicants in their permit application. The required criteria and measures are broken down into six categories and assigned point values as follows: (1) Suitability of the Proposed Facility (150 points); (2) Proposed Staffing Plan and Knowledge of Illinois Law and Rules Relating to Medical Cannabis (100 points); (3) Security Plan (200 points); (4) Cultivation Plan (300 points); (5) Product Safety and Labeling Plan (150 points); and (6) Applicant's Business Plan and Services to be Offered (100 points). 8 IL ADC 1000.110(b) (West 2016). Applicants can also earn up to 20 bonus points in

each of the following eight categories: (1) Labor and Employment Practices; (2) Research Plan; (3) Community Benefits Plan; (4) Substance Abuse Prevention Plan; (5) Local Community/Neighborhood Report; (6) Environmental Plan; (7) Verification of Minority Owned, Female Owned, Veteran Owned, or Disabled Person Owned Business; and (8) Verification that the applicant's principal place of business is headquartered in Illinois. 8 IL ADC 1000.110(c) (West 2016). The applicant with the highest overall score is issued the cultivation center permit. 8 IL ADC 1000.110(f) (West 2016). In the event that an entity is awarded a permit and then forfeits that permit, the permit is awarded to the next highest scoring qualified applicant. 8 IL ADC 1000.40(d) (West 2016).

¶ 6 Plaintiff, Medponics Illinois, (Medponics), and defendant, Curative Health Cultivation (Curative), each filed an application for a cultivation center permit with the IDOA in September 2014. On October 14, 2014, Curative filed a special use petition with the City of Aurora. The petition sought the authorization of the use of Curative’s proposed location in Aurora as a medical cannabis cultivation center. The proposed location of Curative’s cultivation center is 2229 Diehl Road in Aurora. This location is within 2,500 feet of areas R-1 and R-5, areas zoned as residential under the Aurora Zoning Ordinance (AZO). The AZO defines a “residential area” as “[a] zoning lot or portion of a zoning lot designed or used exclusively for residential purposes.” The AZO details certain special, accessory, and limited but permitted uses allowed in each area zoned as a “residential area.”

¶ 7 Relevant here, area R-1 allows home occupations; community residences; transportation services; air passenger terminal; rail transportation; residential and non-residential parking facilities; electric utility facility; utilities and utility services; alternative energy services; community center; golf courses; natural and other recreational parks; educational services; public

facilities and services; health and human services; day care; hospital or sanatoria; cemeteries or mausoleums; social service agencies, charitable organizations, health related facilities, and similar uses when not operated for profit; truck gardening; stormwater management facilities, drainage area, and common landscapting areas; and planned development. Area R-5 allows for all of the above listed uses in addition to housing services for the elderly; automated business devices; nursing, supervision and other rehabilitative services; and mental health facilities.

¶ 8 On November 4, 2014, the Aurora Planning Commission held a public hearing on Curative's special use petition. Curative was found to have met the standards of the AZO and the petition was recommended for approval. On November 18, 2014, the Aurora City Council granted Curative's special use petition, finding that it "is not contrary to the purpose and intent of *** the Aurora Zoning Ordinance." On April 29, 2015, Edward Sieben, the Zoning Administrator for Aurora sent a letter to Craig Sonderoth, General Counsel for IDOA, regarding: Aurora Non-"Exclusively Residential" Zoning near Curative Health Cultivation, LLC at 2229 Diehl Road, Aurora, Illinois. Seiban's letter read as follows:

> "The Department of Agriculture is charged with registering and regulating up to 22 cultivation centers allowed in the law. The Department of Agriculture Administrative Rules were approved by the JCAR committee on July 15, 2014. *** Section 1000.10 of the Administrative Rules, defines an "Area zoned for residential use" as:
>
> "an area zoned exclusively for residential use; provided that, in municipalities with a population over 2,000,000 people, "an area zoned for residential use" means an area zoned as a residential district or a residential planned development." ***

The definition set forth in the Administrative Rules raised the obvious question as to what constituted an "area zoned exclusively for residential use." On August 25, 2014, the Illinois

Department of Agriculture released a Frequently Asked Questions document that addressed this question as follows:

> "The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a cultivation center are not zoned "exclusively" residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement? Yes, but the applicant must verify setback regulations are also met, located in the Department of Agriculture Administrative Rules section 1000.40(e). The Department will rely heavily on local zoning authority's approval.
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> ***
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> Aurora's Zoning Code does allow for such other uses such as churches, parks, schools, utility substations, and/or other planned uses in a residential district. This is clearly laid out in Table 1 of Aurora Zoning Ordinance titled Use Categories ***. Specifically, this includes the R-1 Zoning District of the nearby Harris Farms and Palomino Springs subdivisions located sourth of the Prairie Path, the Stonebridge Subdivision zoned PDD with underlying R-1 Zoning, and the R-1 and R-5 Zoning Districts of the East View Estates Subdivision to the west.
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> ***."

¶ 9 On October 30, 2015, the IDOA provided a "Notice of Award" to Curative granting their application for an operating permit in Illinois State Police District 2. Also on October 30, 2015, Medponics was provided with a "Notice of Denial of Medical Cannabis Cultivation Center Permit" by the IDOA. Of all entries submitted for applications for permits to operate a cannabis

cultivation center in Illinois State Police District 2, Curative finished first in scoring while Medponics was fifth.

¶ 10 On December 3, 2015, Medponics filed a verified complaint in the Lake County Circuit Court for administrative review. The complaint named IDOA, the IDOA Director, and the IDOA Chief of the Bureau of Medicinal Plants as defendants. On February 18, 2016, the trial court ordered Medponics to add Curative as a defendant. On March 24, 2016, Medponics filed a first amended complaint naming Curative as a defendant along with the originally named IDOA defendants.

¶ 11 On April 28, 2016, Curative filed a motion for transfer of venue pursuant to sections 2-104 and 3-104 of the Illinois Code of Civil Procedure (the Code). The motion requested that the matter be transferred to Sangamon County. Curative argued that the only connection between the matter and Lake County is that it is Medponics' principal place of business. On July 28, 2016, the trial court denied Curative's motion for transfer of venue citing that section 3-104(2) of the Code applies and "the subject matter of this administrative review is in Lake County making it a proper venue." Section 3-104(2) of the Code provides that venue is proper where "any part of the subject matter involved is situated." 735 ILCS 5/3-104(2) (West 2016).

¶ 12 On September 8, 2016, the IDOA defendants, Curative, and Medponics filed an unopposed motion for leave to file the administrative record under seal and joint motion for a protective order. The joint motion requested the trial court to issue an order sealing the administrative record pursuant to the confidentiality provisions in section 145 of the Act. The joint motion also requested that the trial court enter an agreed protective order controlling the dissemination of confidential information by the parties for the purposes of the litigation. On September 21, 2016, the trial court denied the motion finding that "the Joint Motion for Entry of

Protective Order fails to overcome the presumption of the public's right to access the entire proceedings ***." In denying the joint motion, the trial court granted the parties leave to file supplemental briefing to present to the court authority as to why the administrative record being filed under seal overcomes the public's right to access. The trial court ordered IDOA to file the administrative record under temporary seal pending final resolution of the joint motion.

¶ 13 Following the parties' briefing on the issue of sealing the administrative record, on December 15, 2016, the trial court ordered Curative and Medponics to deliver lists to each other's opposing counsel detailing what information in the administrative record should be redacted. The trial court concluded that it would reserve ruling on what would information would be confidential or public but articulated that the trial court "has made a preliminary determination that is not bound by the confidentiality provisions of 410 ILCS 130/145."

¶ 14 On May 19, 2017, the trial court issued a memorandum opinion and order which granted in part and denied in part the unopposed joint motion to seal the record. The trial court allowed the redaction of personal data, financial information, propriety business information, trade secret information, and security measures taken in relation to the unique nature of medical marijuana. The trial court found as follows regarding the remaining information in the administrative record:

> "[T]he Court finds that simply citing the Act, its provisions regarding confidentiality, and even its penalty provision for disclosure is simply insufficient to justify sealing the entire court file and administrative record in this case. Just because the legislature has included a strong confidentiality provision in a statute does not mean that the courts are bound to seal or impound court files which contain some materials to be filed for administrative review and upon which the court must make and justify its decision in this case. While

> there is some general justification for the confidentiality provision, as argued by the parties, the legislature failed to specifically indentify any compelling interest in non-admission, nondiscoverability or even in confidentiality sufficient to justify sealing the entire court file. If a similar confidentiality provision were to be included in every new statute, for the example, the Court would not be bound by it unless it were, in fact, based on a specifically indentified interest to be protected. Even then, the Court would be required to balance it against the public's right of access. Thus, the Court rejects the parties' arguments that it must seal the entire administrative record purely based on 410 ILCS 130/145."

¶ 15 On February 24, 2017, Medponics filed its verified second amended complaint for administrative review. The complaint alleged that Curative was improperly awarded the Illinois State Police District 2 cultivation center permit as the proposed cultivation center is within 2,500 feet of two areas zoned exclusively for residential use. Medponics argued that the Act's location requirement, that the proposed location be 2,500 feet away from area zoned exclusively for residential use, disqualified Curative's application. In its prayer for relief, Medponics requested, amongst other things, that the trial court "[o]rder the [IDOA] to appoint a fair and impartial panel with no prior involvement in the process to re-score [Medponics'] and any other remaining applications (as originally submitted) for District 2 in accordance with the 2014 Rules." On March 13, 2017, Curative filed a verified answer to Medponics' second amended complaint, asking the trial court to dismiss the complaint and affirm the decision of the IDOA to award the cultivation center permit to Curative.

¶ 16 On August 24, 2017, the trial court issued a non-final administrative review order. The trial court ordered as follows:

"The Court, having heard oral argument by all parties and conducting an Administrative Review hearing, hereby sets aside the award of the District 2 license/permit to Curative *** for the following reasons:

The Court understands that as an administrative agency, the IDOA is to be given significant or substantial deference in its rulemaking and interpretation of its rules. Insofar as the IDOA has approved Rules 8 IL ADC 1000.10 and 1000.100 purporting to interpret the phrase defining areas "zoned for residential use" as cited in 410 ILCS 130/105(c), while the Rules seem to expand the phrase, the Court does not find that the IDOA rules are improper or clearly erroneous. Although it has been suggested the rules go too far, this has not been argued by Medponics. Therefore, the court is accepting these IDOA rules as they are set forth; the Court does not find that the rules are clearly inconsistent with Sec. 130/105(c).

However, this Court finds that, as a matter of mixed law and fact, that the State and Curative's interpretation and application of the statute and IDOA's own rules, to the extent they believe that setback rule only applies to areas where *nothing* but residences are permitted is clearly erroneous.

The rule itself defines an "area zoned for residential use" as "an area exclusively zoned for residential use." All parties agree the Curative site is within 2500 feet of the R1 and R5 areas zoned for residential use. The City of Aurora has defined R1 and R5 as exclusively residential and simply because it allows special uses and special use permits, the areas are still "zoned exclusively for residential purposes" even though this designation permits certain special uses. These areas remain exclusively residential, and

by the very terms of the IDOA's rule, the Curative facility could not be within 2500 feet of areas zoned as exclusively residential.

Neither the Act nor the Rule states "areas zoned for residential use, unless there is a special use allowed." Curative and IDOA's position is illogical and does not fit the plain meaning of the statute nor *** is it consistent with the purpose of the setback provision in the statute and the rules. The mere fact that hospitals, cemeteries, etc. may be granted special use permits in the "exclusively residential use" zones does not make these area out of the purview of the Act or the rules.

As such, the R1 and R5 zoning areas in Aurora, agreed by all parties to be within 2500 feet of the proposed Curative center, are hereby found by the Court to be "area zoned exclusively for residential use" and therefore the proposed Curative site violates both the statute and Section 1000.10 of the rules.

As such, awarding Curative the license for the site was improper, and violates both the statute and IDOA's own rules as R1 and R5 are "areas zoned exclusively for residential use."

The award of the license to Curative is therefore clearly erroneous; the Court has the definite and firm conviction that a mistake has been made.

***

The Court finds that it does not necessarily follow that because Curative does not qualify for the license, that Medponics is to be awarded the license, although the Court acknowledges that the time and expense expended by Medponics was instrumental in bringing this action. Rule 8 IL ADC 1000.40(d) specifically indicates that, in case an awardee forfeits a permit, the permit shall be awarded to the next qualified applicant in

terms of points. While there is not "forfeiture" per se, to the extent Curative is disqualified, this case is to be remanded for rescoring, and reevaluation of the qualifications of all the applicants by the IDOA as well as a reassessment of the award in District 2.

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The Court hereby continues this matter for 21 days, or until 9/14/17, for entry of a final order."

¶ 17 On September 12, 2017, the City of Aurora filed a petition to intervene. The petition argued that intervention should be allowed as a matter of right pursuant to section 2-408(a)(2) of the Code. Additionally, the petition sought intervention pursuant to section 2-408(d) of the Code, arguing the trial court's interpretation of the City's zoning categories as "exclusively residential" relates to the validity and integrity of Aurora's zoning ordinance. Further, the City argued that the trial court's interpretation contradicts those of the Aurora Zoning Administrator contained in the April 29th letter to the general counsel of the IDOA. Aurora argued that their petition to intervene was timely as the trial court's August 24, 2017, order was non-final.

¶ 18 On September 13, 2017, Curative and the IDOA filed a joint motion to supplement the record. The motion sought to supplement the record with three additional documents as part of the administrative review record: (1) the permit award letter issued by the IDOA to Curative on October 30, 2015; (2) the City of Aurora's ordinance granting Curative a special use permit to operate its cultivation center; and (3) the April 29, 2015 letter from Aurora's Zoning Administrator to the IDOA concerning the issue of "exclusively residential."

¶ 19 On November 3, 2017, the trial court held a hearing on both Aurora's petition to intervene and the joint motion to supplement the record filed by Curative and IDOA. Regarding the petition to intervene, the trial court said:

> "I don't find, frankly, that Aurora's petition to intervene is timely. Whether it's brought as a matter of right or as a permissive intervention, I have heard no satisfactory explanation whatsoever and I've got no credible information *** upon which I can make a decision when the City learned of this litigation or when they didn't other than they learned about the adverse decision sometime after August 24, 2017. I find it, frankly, hard to believe that the City of Aurora had absolutely no knowledge that this case was pending or that Medponics was challenging the award by the [IDOA]."

The court went on to state that, although its August 24, 2017, decision did require the interpretation of the AZO's zoning definitions, the "only issue was to determine whether or not the [IDOA] was acting properly based on the language of the statute based on its own rules and regulations as far as the setback." Finally, regarding the petition to intervene, the court stated that the City of Aurora's interest in the litigation to be "remote in terms of economic interest, slightly better than the general public, but not much better, and the most directly affected parties here are Medponics and Curative."

¶ 20 The trial court then moved on to Curative and IDOA's joint motion to supplement the record. The trial court allowed the motion, in part, by supplementing the record with the October 30, 2015, permit award letter and the City of Aurora's ordinance granting Curative a special use permit to operate the cultivation center. The trial court denied supplementing the record with the April 29, 2015, letter from Aurora's Zoning Administrator to the IDOA. As to this denial, the

trial court stated that there was no evidence presented indicating that the IDOA ever reviewed the letter or considered it in awarding the permit.

¶ 21 On November 30, 2017, the trial court entered its final order. The final order incorporated the order entered on August 24, 2017, and granted Curative's request for a stay of judgment pursuant to Supreme Court Rule 305(b). The trial court entered a finding pursuant to Supreme Court Rule 304(a), finding no just reason for delaying enforcement or appeal of the order. All parties timely appealed.

¶ 22 II. ANALYSIS.

¶ 23 Before beginning our analysis of the issues presented in this consolidated appeal, we must address a contention raised by Medponics in its appellee's brief presented to this court. Medponics contends its application for the District 2 cultivation center permit is the only application that should be rescored by the IDOA. Medponics argues that because it were the only applicant for the permit that exhausted its administrative remedies under the Act and the IDOA rules, it is the only applicant entitled to the benefit of rescoring. This contention is improperly before this court.

¶ 24 Medponics' contention above seeks modification of the trial court's November 30, 2017, final order. This court is not at liberty to reverse or modify the trial court's order at the urging of the appellee since the appellee, Medponics, has failed to file a cross-appeal. *Mid-West Nat. Bank of Lake Forest v. Metcoff*, 23 Ill. App. 3d 607, 610 (1974). In the absence of a cross-appeal, the matters contended by Medponics are not properly before this reviewing court and are not subject to review on this appeal. *Id*. Therefore, this court lacks jurisdiction to entertain Medponics' above contention as it has failed to file a mandatory cross-appeal to attack the trial court's November 30, 2017, order.

¶ 25 We now move on to the remaining issues raised by the appellants in this appeal. Curative contends that the trial court erred in (1) finding that their proposed cultivation center is within 2,500 feet of an area zoned "exclusively" for residential use; (2) finding that Lake County is the appropriate venue for the proceedings; (3) finding that their application was not protected by the confidentiality provisions of the Act; and (4) excluding the April 29th letter from the Aurora Zoning Administrator to the IDOA from the record. The IDOA contends that the trial court erred by failing to accord substantial deference to the IDOA's interpretation of its own regulation and that the trial court's interpretation violates rules of statutory construction. Finally, the City of Aurora contends that the trial court abused its discretion in denying its petition to intervene. We begin our analysis with a discussion of the crux of this appeal: whether Curative's proposed cultivation center is located within 2,500 feet of areas zoned exclusively for residential use.

¶ 26 In administrative review cases, the appellate court reviews the decision of the agency, not the trial court. *Village of Oak Brook v. Sheahan*, 2015 IL App (2d) 140810, ¶ 29. "The applicable standard of review, which determines the degree of deference given to the agency's decision, depends upon whether the question presented is one of fact, one of law, or a mixed question of law and fact." *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill.2d 380, 390 (2001). The factual findings of the administrative agency are considered to be *prima facie* correct and will be reversed only if against the manifest weight of the evidence. 735 ILCS 5/3-110 (West 2016). Questions of law are reviewed *de novo*. *Doe Three v. Department of Public Health*, 2017 IL App (1st) 162548, ¶ 25. Mixed questions of law and fact are reviewed under the clearly erroneous standard. *Id.*

¶ 27 The trial court found that the issue of whether the phrase "area zoned exclusively for residential use" in the IDOA rules includes areas zoned for residential use and specially permitted uses, presents a question of "mixed law and fact." Mixed questions of fact and law are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211 (2008).

¶ 28 The facts in this case are undisputed. All parties agree that Curative's proposed cultivation center is located within 2,500 feet of two areas zoned for residential use. However, the parties are in dispute as to whether the IDOA's phrase "area zoned exclusively for residential use" includes areas that allow for special uses other than residential. Therefore, this issue presents a question of law which we review *de novo*. *Village of Oak Brook v. Sheahan*, 2015 IL App (2d) 140810, ¶ 30.

¶ 29 Courts apply the same rules in interpreting administrative regulations as in construing statutes. *Weyland v. Manning*, 309 Ill. App. 3d 542, 547 (2000). Thus, we first consider the language of the regulation. If it is clear, we need not look to other aids for construction. *Id*. Generally, a reviewing court affords substantial deference to an agency's interpretation of its own regulations. *Id*. Although we apply the *de novo* standard of review, an administrative agency's interpretation of its own regulations is accorded deference by the reviewing court unless it is clearly erroneous, arbitrary, unreasonable or inconsistent with past interpretations. *Portman v. Department of Human Services*, 393 Ill. App. 3d 1084, 1088 (2009).

¶ 30 In interpreting an agency regulation, our primary objective is to ascertain and give effect to the intent of the agency, in this case, the IDOA. *People ex rel. Madigan v. Illinois Commerce*

Commission, 231 Ill. 2d 370, 380 (2008). The surest and most reliable indicator of intent is the language of the regulation itself. *Id*.

¶ 31 Section 105(c) of the Act provides that "[a] registered cultivation center may not be located within 2,500 feet of *** an area zoned for residential use." The Act does not define the term "area zoned for residential use." Section 15(b) of the Act provides that "[i]t is the duty of the [IDOA] to enforce the provisions of this Act relating to the registration and oversight of cultivation centers ***." Section 165(c)(8) of the Act provides that the IDOA "may adopt rules related to the enforcement of this Law." The IDOA adopted rules related to the Act which define the phrase "area zoned for residential use" as an "area zoned exclusively for residential use." 8 IL ADC 1000.10 (West 2016).

¶ 32 The plain language of the IDOA rules intends to prohibit cultivation centers within 2,500 feet of area zoned "exclusively" for residential use. 8 IL ADC 1000.10. The term "exclusively" does not present ambiguity. The term "exclusively" is defined as "apart from all others," "solely," and "to the exclusion of all others." See Oxford Online Dictionary, https://en.oxforddictionaries.com/definition/us/exclusively (last visited Mar. 4, 2019).

¶ 33 Although Curative's proposed cultivation center is located within 2,500 feet of the R-1 and R-5 zoning districts in Aurora, the record reflects that these areas are not exclusively residential. The AZO reflects areas R-1 and R-5 as having a litany of special and accessory uses other than residential. See *supra* ¶ 5. In its ordinance granting Curative a special use permit for a medical cannabis cultivation facility, the City of Aurora stated that Curative's "petition met the standards prescribed by *** the Aurora Zoning Ordinance." Aurora further stated that "the proposed Special Use will not be detrimental to or endanger the public health, safety, morals,

comfort or general welfare and will not be injurious to the use of other property in the immediate vicinity, nor diminish or impair property values in the neighborhood."

¶ 34 The IDOA provides further guidance on this issue in their answers to frequently asked questions at their website in the following manner:

> "The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a cultivation center are not zoned 'exclusively' residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement?
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> Yes, but the applicant must verify setback regulations are also met, located in the Department of Agriculture Administrative Rules section 1000.40(e). The Department will rely heavily on local zoning authority's approval." See Illinois Department of Agriculture-Medical Cannabis Pilot Program Frequently Asked Questions, https://www2.illinois.gov/sites/agr/Plants/MCPP/Documents/mcppfaq.pdf (last visited Mar. 4, 2019).

¶ 35 The AZO clearly zoned districts R-1 and R-5 as residential. However, the many other allowed uses in these areas make clear that they are zoned for non-residential special uses as well. In short, they are not "exclusively" residential. Medponics argues that the R-1 and R-5 districts remain zoned exclusively for residential use in the AZO even when non-residential uses are allowed. While this may be a reasonable interpretation, it does not make the IDOA's interpretation of its own regulations clearly erroneous, arbitrary, or unreasonable. "If reasonable readers of a statute could differ over the extent of the regulatory authority it confers, we defer to

the agency's interpretation if the interpretation is defensible." *Quality Saw and Seal, Inc. v. Illinois Commerce Com'n*, 374 Ill. App. 3d 776, 782 (2007). That rule holds true even if the agency only recently arrived at the interpretation. *Id*.

¶ 36 Based on the foregoing, we reverse the trial court's November 30, 2017, order finding the award of the cultivation center permit to Curative to be clearly erroneous. The IDOA's interpretation that zoning districts R-1 and R-5 are not "exclusively residential" as defined by its own rules and, therefore, the Act, is a reasonable interpretation based on the administrative record in this case. We will now move on to Curative's contention that the trial court erred in finding that their application was not protected by the confidentiality provisions of the Act.

¶ 37 Curative argues that the confidentiality provisions of the Act are clear and unambiguous, thus requiring the seal of the administrative record containing their application. When construing a statute, this court's primary objective is to ascertain and give effect to the legislature's intent. *People v. O'Brien*, 197 Ill. 2d 88, 90 (2001). We begin with the language of the statute, which must be given its plain and ordinary meaning. *Id*. Where the language is clear and unambiguous, we will apply the statute without resort to further aids of statutory construction. *Id*. at 90-91. One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. *Id*. at 91. Words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute. *Id*.

¶ 38 Section 145 of the Act states in relevant part:

> "(a) The following information received and records kept by the Department of Public Health, Department of Financial and Professional Regulation, Department of Agriculture, or Department of State Police for purposes of administering this Act are subject to all applicable federal privacy laws, confidential, and exempt from the Freedom of Information

Act, and not subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of those authorized agencies to perform official duties under this Act and the following information received and records kept by Department of Public Health, Department of Agriculture, Department of Financial and Professional Regulation, and Department of State Police, excluding any existing or non-existing Illinois or national criminal history record information as defined in subsection (d), may be disclosed to each other upon request: ***

(2) Applications and renewals, their contents, and supporting information submitted by or on behalf of cultivation centers and dispensing organizations in compliance with this Act, including their physical addresses. ***

(c) It is a Class B misdemeanor with a $1,000 fine for any person, including an employee or official of the Department of Public Health, Department of Financial and Professional Regulation, or Department of Agriculture or another State agency or local government, to breach the confidentiality of information obtained under this Act.

(d) The Department of Public Health, the Department of Agriculture, the Department of State Police, and the Department of Financial and Professional Regulation shall not share or disclose any existing or non-existing Illinois or national criminal history record information. For the purposes of this Section, "any existing or non-existing Illinois or national criminal history record information" means any Illinois or national criminal history record information, including but not limited to the lack of or non-existence of these records." 410 ILCS 130/145 (West 2016).

¶ 39 Missing from the above language in the Act is any discussion of how a court record is to be handled during an administrative review proceeding. The Act's only mention of the court appears in section 155 which states as follows regarding review of administrative decisions:

> "All final administrative decisions of the Departments of Public Health, Department of Agriculture, and Department of Financial and Professional Regulation are subject to direct judicial review under the provisions of the Administrative Review Law and the rules adopted under that Law. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure." 410 ILCS 130/155 (West 2016).

The Act is silent on whether administrative review in the trial court needs to be conducted with a sealed record. Although the language of section 145 includes confidentiality provisions regarding the IDOA's handling of information contained within the applications filed, including criminal penalty for the breach of confidentiality, it does not follow that the courts are bound to seal or impound materials filed for administrative review.

¶ 40 Curative's contention on this issue is limited to the scope of the Act. It is worth noting here that in its finding that the language of the Act does not compel the court to seal the entire administrative record, the trial court went to great lengths in a 25-page memorandum opinion and order to detail what information was ordered to be redacted from the public record in relation to the applications filed with the IDOA by both Curative and Medponics. As noted earlier in this disposition, but more detailed here, the trial court allowed redaction of (1) private and personal identifying information; (2) criminal history checks and results thereof; (3) bank account numbers; (4) trade secrets and proprietary information regarding production, quality control and marketing plans; (5) trade secrets and proprietary information regarding the specific design and

physical layout of production facilities; (6) security plans; (7) transportation and delivery plans and procedures; and (8) money handling policies and procedures.

¶ 41 The United States Supreme Court acknowledged a common law presumption that the public has a right to "inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978). In Illinois, our legislature codified that right in section 16(6) of the Clerks of the Courts Act:

> "All records, dockets and books required by law to be kept by such clerks shall be deemed public records, and shall at all times be open to inspection without fee or reward, and all persons shall have free access for inspection and examination to such records, docket and books, and also to all papers on file in the different clerks' offices and shall have the right to take memoranda and abstracts thereto." 705 ILCS 105/16(6) (West 2016).

However, the public's right of access is not absolute. *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 231 (2000). "Every court has supervisory power over its own records and files, and access [may be] denied where court files might become a vehicle for improper purposes." *Skolnick*, 191 Ill. 2d at 231; quoting *Nixon*, 435 U.S. at 598. Thus, whether court records in a particular case are opened to public scrutiny rests with the trial court's discretion, which must take into consideration all facts and circumstances unique to that case. *Skolnick*, 191 Ill. 2d at 231.

¶ 42 In this case the trial court recognized the importance of shielding large swaths of the administrative record from public view in order to protect the parties' interests. The trial court also allowed the parties to enter into an agreed protective order to ensure access to all material provided. We take no issue with the trial court's discretion on this issue and find nothing in the Act that supports Curative's contention that the trial court erred in finding that their application was not protected by the confidentiality provisions of the Act. Therefore, we affirm the trial

court's order granting, in part, and denying, in part, the motion for leave to file the administrative record under seal.

¶ 43 Based on our reversal of the trial court's administrative review findings, we need not reach Curative's remaining contentions. Additionally, as a result of our reversal, we dismiss the City of Aurora's appeal concerning the denial of their petition to intervene as moot.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we reverse the judgment of the circuit court of Lake County and affirm the decision of the Illinois Department of Agriculture.

¶ 46 Reversed in part, affirmed in part, dismissed as moot in part.