2014 IL App (3d) 130222-U

Order filed June 5, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

MOSSVILLE LAND INVESTMENTS, LLC, an Illinois Limited Liability Company,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellant,	)	
v.	)	Appeal No. 3-13-0222 Circuit No. 08-MR-479
PEORIA COUNTY BOARD,	)	The Honorable Michael E. Brandt,
Defendant-Appellee.	)	Judge, presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justice Wright concurred in the judgment.
Justice Holdridge dissented.

ORDER

¶ 1 *Held*: The trial court's conclusion that the county board's denial of plaintiff's special use permits was not unreasonable and bore a substantial relation to the public health, safety and general welfare was not against the manifest weight of the evidence.

¶ 2 Plaintiff, Mossville Land Investments, LLC, petitioned the Peoria County Board for special use permits allowing it to develop two parcels of property as a sand and gravel mine. The county board denied the request, and Mossville appealed. The trial court applied the factors

set forth in *La Salle National Bank of Chicago v. County of Cook*, 12 Ill. 2d 40 (1957) and *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill. 2d 370 (1960), and affirmed the county board's decision. On appeal, Mossville claims that the trial court's judgment should be reversed because the county board had no rational basis under the *La Salle/Sinclair* factors or the county's special use ordinance for refusing to grant the petitions. We affirm.

¶ 3 In July 2008, Mossville petitioned the Peoria County zoning board of appeals for special use permits for two adjacent parcels of land in Medina Township. Mossville listed the proposed special use as a mineral extraction facility, which would include excavation, crushing, screening, washing and stockpiling of sand and gravel.

¶ 4 Following a hearing, the zoning board concluded that the petitions failed to meet the requirements for a special use permit under section 24-5-5(D) of the Peoria County Code (Peoria County Code § 24-5-5(D) (2008))[1] and recommended that the county board deny the petitions.

¶ 5 On December 11, 2008, the county board reviewed the zoning board's recommendation and attached reports and denied Mossville's requests, finding that the special use requirements of the county code had not been met.

¶ 6 Mossville filed a complaint in circuit court, seeking administrative review of the denial under section 5-12012.1(a) of the Counties Code (55 ILCS 5/5-12012.1(a) (West 2008)). The trial court, reviewing the matter as an administrative review case, affirmed the county board's denial.

¶ 7 On appeal, we held that the trial court should have applied a legislative standard of review to Mossville's complaint pursuant to an amendment to section 5-12012.1(a) that became effective on January 1, 2009. *Mossville Land Investments, LLC, v. Peoria County Board*, No. 3-

[1] Section 24-5-5(D)(1) has been recodified. Peoria County Code § 3.5.4 (eff. March 8, 2012).

09-0988 (2010) (unpublished order under Supreme Court Rule 23) (*Mossville I*). That amendment required "*de novo* judicial review" of any decision regarding special use applications. See Pub. Act 95-843 (eff. Jan. 1, 2009) (amending 55 ILCS 5/5-12012.1(a) (West 2008)). Since Mossville had not challenged the county board's decision as a legislative action or presented evidence on substantive due process grounds under *La Salle National Bank* and *Sinclair Pipe Line*, we remanded the cause to the trial court for further proceedings.

¶ 8 On remand, Mossville filed an amended complaint, challenging the board's ruling as a legislative action and claiming that the decision to deny the special use permits violated Mossville's substantive due process rights in that it was arbitrary and capricious and had no rational basis.

¶ 9 The parties conducted discovery for several months and submitted testimony and evidence to the trial court by way of stipulation in written briefs. In support of its position, Mossville presented evidence showing that both parcels are currently being used for agricultural purposes and that a mineral extraction facility is a permitted special use under the current zoning designations. Parcel A is a 46.5-acres parcel that is zoned I-2 (heavy industrial). Parcel B, zoned A-2 (agricultural), covers 175.4 acres. The parcels border residential and agricultural uses to the west and north and agricultural farmland to the east. The property immediately south of the parcels is currently an industrial complex. The proposed extraction site sits atop the Sankoty Aquifer, which serves as the primary water supply for surrounding towns and private wells in the area. Within a one-mile radius, there are 439 parcels with 408 residences, and within a one-half-mile radius there are 167 residences. Testimony was also elicited that there is an 80-acre storage facility (referred to as "the Buckeye property") immediately south of Parcel A. Caterpillar's tech

center and heavy engine facilities are located across from parcels A & B on the south side of Old Galena Road.

¶ 10 Mossville's expert, Devin Birch, confirmed that the existing uses and zoning for the majority of the nearby property is not consistent with Mossville's proposed use. He testified that there is a residential driveway directly across the street from Mossville's property entrance and another one within 300 feet. Birch examined the uses and zoning within one mile of the proposed facility and testified that 408 out of the 439 parcels contained residences.

¶ 11 Birch stated that the proposed special use was entirely consistent with the industrial and agricultural uses immediately adjacent to the parcels. He prepared a spreadsheet, to which he testified, showing that only 6.19% of the adjacent property was being used for residential purposes, while 35.12% was used for industrial purposes and 58.69% was used for agricultural purposes. He noted that for a parcel zoned residential, he did not classify the entire parcel as residential; he presumed only a small area around the residence was "residential" and considered the remaining acreage "nonresidential." These "nonresidential" acres were later included in the percentage calculations as agricultural use or industrial use acres. Birch testified that he considered all the acres of any parcel zoned industrial as "industrial."

¶ 12 Mossville's owners, Stanley Maxheimer and Joseph LaHood, testified that the value of the property was substantially diminished as a result of the denial of the permits. Maxheimer testified that the property would be worth "quite a bit more money as a sand-and-gravel operation than it would as a farming operation." He stated that based on approximately 40 test holes drilled randomly at the site, the property contains 20 to 40 million tons of sand and gravel. Maxheimer also testified regarding the per-ton value of the materials. His conclusion was that the materials were worth approximately $0.75 per ton (based on a royalty fee to a third-party

miner) and $2.00 per ton (based on extraction by Mossville). Based on those values, Maxheimer set forth the equation to measure the value of the property, mining roughly 2,000 tons per acre per foot. He estimated that the value of the property with the special use would be between $16 million and $43 million.

¶ 13 Maxheimer testified that the property is all currently farmland and rotates between corn and soybean production. The average cash flow for the farming operation is between $200,000 and $300,000 per year. LaHood's testimony was consistent with Maxheimer's assessment.

¶ 14 Mossville's expert, Robert Archibald, a professional engineer in the field of mine development, concluded that a conservative value of the minerals on the parcels was $2,000,000, assuming Mossville leased the property to a third party. He noted that if Mossville mined the area, the value of the mineral extraction business "could have a potential value at least four to five times greater." In his valuation analysis, Archibald reported that parcels A & B were currently being used for agricultural purposes, that the property consisted of 222 acres, and that the reported value of similar farmland in the area was $6,000 per acre. Based on fair market estimates, he concluded that the current value of Mossville's property as farmland was approximately $1,332,000. Archibald testified that he used the estimated mineral values for the property to demonstrate that extracting minerals would generate more value for the property than farming it.

¶ 15 Robert Wilkins testified as an expert for the county board. He has a degree in economics and fifty years experience as a real estate broker and developer in the area. He opined that a gravel pit would have a negative impact on the property values of residents next to parcels A and B. He stated that there are at least 10 subdivisions with approximately 400 homes within two-square miles of parcels A and B. Wilkins recently visited two gravel pits in the area to observe

the effects of a mineral extraction operation. Based on his observations, he testified that the proposed use will be an ongoing development on the property and will generate dirt and dust. He stated that many of the subdivisions are located east and northeast of the proposed gravel pit and will experience dust from the pit due to southwest and west winds. Wilkins admitted that he owned a subdivision, Sycamore Trails, near another gravel pit and that he has not had trouble selling those properties. However, he testified that the Sycamore Trails subdivision is farther away from the existing gravel pit and is not downwind of it.

¶ 16 Wilkins opined that Mossville's parcels are also desirable residential growth areas. His company currently has plans for future residential development within two miles of Mossville's parcels. He stated that he will not pursue the plan if the gravel pit is allowed due to the dirt and dust it will generate and consumer concerns that the mine will negatively impact the aquifer and contaminate their wells.

¶ 17 Steven Kroll, a licensed professional geologist with Patrick Engineering, completed a limited hydrogeological study regarding the proposed mine extraction operation and testified through deposition. In his report, he noted that parcels A and B lie over the Sankoty Aquifer, which provides most of the drinking water for Chillicothe, Peoria and other municipalities on the west side of the Illinois River, as well as hundreds of private wells. Kroll reported that since the Sankoty Aquifer is a thick, highly permeable aquifer that lies close to the surface, it is susceptible to contamination from a number of sources. He stated that "[o]bvious sources of contamination include large, visible operations such as landfills and fuel or chemical storage tanks. However, agricultural operations and septic fields are some of the largest, non-point sources of aquifer contamination in the state." Kroll's further opined that "[a]n analysis of the existing conditions at the Site and the proposed mining operations indicate that the operation of

an open-pit mine at the Site will add a potential source of aquifer contamination, an above ground diesel fuel storage tank and the fuel tanks on the mobile equipment, and create an additional pathway for contamination." Kroll testified that monitoring wells could be installed at the site to monitor the ground water, but he was unaware of any plans for monitoring wells at the proposed facility. Based on his study, Kroll concluded that the presence of an open-pit mining operation on Mossville's parcels would not increase the risk of aquifer contamination.

¶ 18 Mossville cited the deposition testimony of expert R. Lee Cannon. His deposition was taken prior to the zoning board hearing held in November of 2008. He testified regarding the traffic impact of the proposed development. Cannon measured the expected trips on local roadways if Mossville built a gravel pit on the parcels. He testified that the number of trucks traveling on Old Galena Road, the main access road, would increase by one vehicle every seven minutes. Based on his calculations, Cannon opined that the overall traffic on Old Galena Road would increase by approximately three percent over the traffic levels in 2008. In response, the county board cited Birch's statement that "one semi-truck does the damage of one million passenger vehicles, so to infer that because the number of vehicle trips our project is adding to the overall count constitutes a minor affect on the condition of the road will not be an argument that any traffic engineer will want to back up."

¶ 19 Finally, Mossville presented several witnesses who testified as to the need for the proposed use. Terry Beckman testified that he owns an excavation company and that his firm uses substantial quantities of concrete and gravel. He stated that he has to go outside the tri-county area to satisfy 50% of his sand and gravel needs. However, he admitted that the shortage of sand and gravel has never prevented him from completing a job and that he has never suffered a shortage of ready-mix concrete.

¶ 20 Wayne Litwiller is the president and owner of Wayne Litwiller Excavating. He testified that he installs 150 to 175 septic systems per year. He opined that there is a need in the community for additional gravel and sand to prevent price manipulation by the producers. Litwiller did not review any documents concerning the proposed special use permits. He testified that he assumed the project would meet his needs because "Joe [LaHood] knows what we need." He admitted that there has never been a time when he was unable to obtain gravel for a job. He travels more than two hours back to the tri-county area to obtain other materials for jobs north of Peoria.

¶ 21 Maxheimer and LaHood testified that in their opinions the tri-county area needs the proposed special use because county laborers need more washed sand and gravel. Maxheimer and LaHood did not know whether the proposed gravel pit would produce a particular type or size of gravel. Maxheimer stated that he could not estimate the quantity of gravel needed by Beckman and Litwiller and that an attempt to do so "would be purely a guess."

¶ 22 The parties also stipulated that two comprehensive plans apply to Mossville's parcels: the Peoria County Land Use Plan and the Chillicothe-River Land Use Plan. Under both plans, parcel A is deemed suitable for industrial and office/research development that is compatible with existing uses and will not degrade the surrounding natural environment. Under the Peoria County Land Use Plan, parcel B is suitable for agriculture and other uses, with the stated goal of agricultural land preservation. Parcel B is designated as "Agriculture" under the Chillicothe-River Land Use Plan, which has a stated goal of "[r]ecognizing agriculture as an important land use, and preserv[ing] important farmlands from encroachment by residential subdivisions and other non-farm land uses, in order to protect the rural character" of the area.

¶ 23 After hearing arguments from both sides, the trial court took the matter under advisement and issued a written order. The court considered the factors enumerated in *La Salle National Bank* and *Sinclair Pipe Line* and concluded that the county board properly denied the special use permits. In reaching its decision, the court made several findings, including that Mossville's property values were not diminished, that Mossville had not suffered a hardship and that Mossville had not proven any community need for the proposed use.

¶ 24 STANDARD OF REVIEW

¶ 25 Mossville appeals the trial court's ruling in favor of the county board and urges us to apply a *de novo* standard of review. Mossville argues that *de novo* review is appropriate because, as we concluded in *Mossville I*, the board's denial of the special use permits was a legislative decision. We decline to review Mossville's appeal *de novo*. This appeal is not before us on administrative review. The trial court reviewed the case *de novo* and affirmed the county board's legislative judgment. On appeal, we are not reviewing the county board's decision to deny the special use permits; we must review the trial court's order affirming the county board's decision and determine whether the court's ruling is against the manifest weight of the evidence. *La Salle National Bank*, 12 Ill. 2d at 48; see also *1350 Lake Shore Associates v. Casalino*, 352 Ill. App. 3d 1027, 1035-49 (2004), and *Thornber v. Village of North Barrington*, 321 Ill. App. 3d 318, 327 (2001). A finding is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55.

¶ 26 In the alternative, Mossville urges us to apply the "clearly erroneous" standard of review, rather than the manifest-weight-of-the-evidence standard. The clearly erroneous standard is the proper standard for reviewing an agency's decision under administrative review law. See *Board of Trustees of University of Illinois v. Illinois Educational Labor Relations Board*, 224 Ill. 2d 88,

97-98 (2007). Again, this appeal is not an administrative review appeal; the clearly erroneous standard does not apply.

¶ 27 ANALYSIS

¶ 28 In general, a "special use" is a type of property use that is permitted within a zoning district by the controlling zoning ordinance so long as the use meets certain criteria or conditions. *City of Chicago Heights v. Living Word Outreach Full Gospel Church and Ministries, Inc.*, 196 Ill. 2d 1, 16 (2001). The purpose of a special use is to provide for a use that is either necessary or generally appropriate for a community but may require regulation because of specific impacts associated with that use. *Id*. A zoning decision to deny a special use permit is tantamount to a legislative decision that the permitted use is not in harmony with the general zoning plan and will adversely affect the neighborhood. *Id*. at 17.

¶ 29 The denial of a special use permit is a presumptively valid legislative decision, and the burden in on the party challenging the decision to show by clear and convincing evidence that the denial is arbitrary and unreasonable and bears no substantial relation to the public health, safety, morals and general welfare. *La Salle National Bank*, 12 Ill. 2d at 46; *City of Chicago Heights*, 196 Ill. 2d at 17. In *La Salle National Bank* and *Sinclair Pipe Line*, our supreme court set forth several factors a court must consider in evaluating the validity of a zoning decision as a matter of substantive due process. Those factors include (1) the existing uses and zoning of nearby property, (2) the extent to which property values are diminished by the particular zoning restriction, (3) the extent to which diminishing the plaintiff's property values promotes the health, safety, morals and general welfare of the public, (4) the relative gain to the public as compared to the hardship imposed upon the individual property owner, (5) the suitability of the subject property for the zoned purpose, (6) the length of time the property has remained vacant as zoned

in the context of land development in the vicinity, (7) the community's need for the proposed use; (8) whether there exists a comprehensive plan, and (9) whether the challenged ordinance is in harmony with the comprehensive zoning plan. *La Salle National Bank*, 12 Ill. 2d at 46-47; *Sinclair Pipe Line*, 19 Ill. 2d at 378. "It is not the mere loss in value alone that is significant but the fact that the public welfare does not require the restriction and resulting loss. When it is shown that no reasonable basis of public welfare requires the limitation or restriction and resulting loss, the ordinance fails and the presumption of validity is dissipated." *La Salle National Bank*, 12 Ill. 2d at 47-48. Although no one factor is controlling, the first factor is "[o]f paramount importance." *La Grange State Bank v. County of Cook*, 75 Ill. 2d 301, 309 (1979). In reviewing the trial court's decision, we will address each factor in turn.

¶ 30 The first *La Salle/Sinclair* factor requires consideration of whether the property is zoned in conformity with the surrounding existing uses and whether those uses are uniform and established. As noted previously, in resolving this issue on remand, the trial court considered the testimony presented by way of stipulation in the parties' briefs. As to the first factor, the court found that the primary uses were agricultural and residential. Evidence demonstrated that there is an 80-acre fuel storage facility immediately south of parcel A and that an industrial complex lies directly across Old Galena Road. Deposition testimony also indicated that only 35% of the adjacent property was residential. However, Birch's testimony confirmed that the existing uses and zoning for the majority of the nearby property is not consistent with Mossville's proposed use. He also testified that the surrounding property is primarily used for agricultural and residential purposes and that more than 90% of the parcels with a one-mile radius of the proposed mine contain residences. In reviewing his calculations, Birch acknowledged that the residential land use percentages in his spreadsheet were based on his own interpretation of a

parcel's use. Conflicts relating to witness credibility and the weight to be accorded their testimony are matters which the trier of fact is in a superior position to resolve. *1350 Lake Shore Associates*, 352 Ill. App. 3d at 1040. The trial court's election not to consider Birch's land use calculation is not a matter we will disturb on appeal. There is ample evidence to support the court's finding that the surrounding uses were primarily agricultural and residential.

¶ 31 The second factor is the extent to which Mossville's property values are diminished by the denial of the special use permit. As to this factor, the trial court concluded that it could not make "any definitive conclusion that the subject-matter property values are being diminished." The court found that diminished value could not be established because expert testimony on both sides lacked sufficient support.

¶ 32 Mossville argues that the trial court's decision was erroneous because it presented the testimony of Archibald, its mine development expert, and Maxheimer, one of the company's owners, who stated that the value of the minerals located below the surface of the property was in the range of $2,000,000 to $10,000,000, well above the current value as farmland.

¶ 33 Archibald's valuation analysis concluded that the current value of Mossville's property as farmland was approximately $1,332,000. By contrast, he noted that if the permits to extract sand and gravel were approved, the net present value of the minerals would be $2,000,000, a difference in property value of approximately $668,000. Although Archibald testified that the loss in value would be significant, he did not conduct a formal mineral extraction evaluation and he was unable to identify specific sales in Peoria County in which similar property was sold or leased to extraction companies. He testified that a conservative estimate of the property's mineral value would be $2,000,000 and admitted that his estimate was based on several assumptions. Moreover, his valuation analysis failed to compare similar property valuation

techniques. Archibald compared the value of the minerals on the property that he calculated based on the cash flow produced by a royalty payment to the fair market value of property as farmland. See *Department of Public Works & Buildings v. Oberlaender*, 92 Ill. App. 2d 174, 186-87 (1968) (value of minerals in property does not equate to current fair market value of the property).

¶ 34 Wilkins, the county board's real estate expert, testified that nearby property had been subdivided and developed into smaller residential parcels and opined that Mossville's parcels are desirable residential growth areas. However, his testimony was subjective, as he failed to provide documentation to support the estimated value of the property as residential real estate. Thus, the trial court's assessment of the expert testimony regarding this factor was not against the manifest weight of the evidence.

¶ 35 Even if the trial court found, based on Archibald's testimony, that the value of the property was lower due to the denial of the permits, a large decrease in market value alone is insufficient proof to overturn a zoning decision. See *1350 Lake Shore Associates*, 352 Ill. App. 3d at 1041-42 (ordinance restricting development found to be valid even though loss in property value ranged from $6.7 to $9.8 million); *Northern Trust Bank/Lake Forest, N.A. v. County of Lake*, 311 Ill. App. 3d 332, 339 (2000) (zoning decision valid even though reduction in property value equal to "millions of dollars"). In almost all rezoning cases, the subject property would be worth more if the restriction was not imposed or the special use permit was granted. See *La Salle National Bank*, 12 Ill. 2d at 47-48 (loss in value of the property must be considered in relation to the public welfare). Here, while the loss of mineral extraction value is great, the remaining value is also significant.

¶ 36 The third and fourth factors require the trial court to consider the hardship the restriction imposes on the property owners in light of the extent to which the denial promotes the health, safety and general welfare of the public. See *1350 Lake Shore Associates*, 352 Ill. App. 3d at 1042. Courts generally consider both factors together and have concluded that zoning decisions are valid where the relative gain to the public outweighs the hardship on the owner. *1350 Lake Shore Associates*, 352 Ill. App. 3d at 1044; *Michalek v. Village of Midlothian*, 116 Ill. App. 3d 1021, 1037 (1983).

¶ 37 Here, the trial court concluded that no hardship was imposed on the owners by the denial of the special use permits, citing *Bankers Trust Co. v. St. Clair County Zoning Board of Appeals*, 197 Ill. App. 3d 431 (1990). We find the court's decision erroneous for two reasons.

¶ 38 First, the trial court inappropriately relied on *Bankers Trust*, to conclude that no hardship was imposed. In *Bankers Trust*, the court held that the return a party would receive from a different zoning classification does not establish hardship or injustice in the existing zoning classification. *Id*. at 434. Our case is distinguishable in that Mossville seeks two special use permits to use their property as expressly permitted within the zoning districts by the controlling zoning ordinance. Mossville is not asking the county to rezone the property.

¶ 39 Second, plaintiff presented sufficient evidence to establish that a hardship was imposed. Plaintiff expert's testified that the value of the property will be reduced by the denial of the permits. Further, both Maxheimer and La Hood testified that they purchased the property with the intention to develop it for mineral extraction, and they are now unable to do so.

¶ 40 Nevertheless, we find the evidence demonstrates that the relative gain to the public outweighs the hardship imposed on Mossville. Although Mossville’s expert concluded that the presence of an open-pit mining operation would not increase the risk of aquifer contamination,

his report specifically noted that the operation of a mining operation at the site would create an "additional pathway" for contamination and would add a potential source of aquifer contamination. Moreover, in support of his conclusion that the proposed mining operation would not increase the risk, Kroll noted that monitoring wells could be installed at the site to monitor the ground water. However, during his testimony, he acknowledged that the facility had no plans to install monitoring wells. Testimony also established that the proposed development would increase heavy truck traffic on the access road, that the gravel pit would add dirt and dust to the atmosphere, and that the facility would have adverse visual effects on hundreds of residents in close proximity to proposed site. For these reasons, we conclude that the trial court's determination that the third and fourth factors did not weigh in Mossville's favor was not against the manifest weight of the evidence.

¶ 41 The fifth *La Salle/Sinclair* factor the trial court considered is the suitability of the property for the zoned purpose. The court concluded that the parcels are suitable for the zoned purposes, and we agree. Parcel A is zoned I-2 (heavy industrial) and Parcel B is zoned A-2 (agricultural). Currently, the property is being used as farmland, a permissible use under both classifications.

¶ 42 The sixth factor requires the trial court to determine the length of time the property has been vacant. Both parties agree that the property is not vacant.

¶ 43 Next, the trial court must consider the community's need for the proposed use. Mossville contends that the trial court erred in refusing to weigh this factor in its favor because it presented four local consumers of sand and gravel who testified that the Peoria area needs more mining facilities. The trial court, however, noted that (1) two of those witnesses, Maxheimer and La Hood, are the principle shareholders and owners of Mossville, and (2) the other two witnesses,

Beckman and Litwiller, were unable to state whether the proposed mineral excavation facility would provide the type or kind of gravel they needed. Moreover, Beckman and Litwiller testified that they have never been unable to complete a job or locate concrete due to a lack of sand and gravel. Again, the trial court is charged with making credibility determinations and deciding the weight to be given the evidence. See *Firstbank Co. v. City of Springfield*, 253 Ill. App. 3d 844, 849 (1993). Based on the testimony presented, the trial court's finding that Mossville failed to prove a community need was not against the manifest weight of the evidence.

¶ 44 The last two *La Salle/Sinclair* factors a court must evaluate are whether a comprehensive zoning plan exists and whether the proposed special uses are in harmony with that plan. In this case, two plans apply: the Peoria County Comprehensive Land Use Plan and the Chillicothe-River Land Use Plan. After considering both plans, the trial court concluded that the county board's decision that Mossville's mining extraction facility was incompatible with the surrounding residential area and the natural environment, as mentioned in the comprehensive land use plans, was not unreasonable and that the denial of the specific special use permits was not a substantive due process violation.

¶ 45 We find sufficient evidence in the record to support the trial court's determination. Under both plans, appropriately located industrial development is only allowed if it (1) contributes to the economic stability of the region, (2) is compatible with the existing uses and (3) does not degrade the character of the surrounding natural, visual and residential environment. Mossville failed to present competent testimony of a specific shortage of sand and gravel in the Peoria area such that an additional gravel pit would improve economic stability. In addition, evidence suggested that an open-pit mining facility is not compatible with the residential areas immediately north and west of the proposed site. Testimony also indicated that the mining

facility would deplete natural resources, harm the economic stability of the surrounding properties and negatively impact the environmental quality of the area. Accordingly, the trial court's conclusion that a mine extraction facility is not in harmony with the comprehensive zoning plans was not contrary to the manifest weight of the evidence.

¶ 46 Admittedly, the evidence in this case is malleable. However, the party attacking the zoning decision bears the burden of proof by clear and convincing evidence that the decision is invalid. *La Salle National Bank*, 12 Ill. 2d at 46. "[I]f the validity of the legislative classification for zoning purposes [is] fairly debatable, the legislative judgment must be allowed to control." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296 (2008). In this case, the record supports the trial court's conclusion that Mossville failed to prove by clear and convincing evidence that the denial of the special use permits was arbitrary and unreasonable and bore no substantial relation to the public health, safety, or general welfare. We therefore conclude that the trial court's finding that the county board's decision was constitutionally valid was not against the manifest weight of the evidence.

¶ 47 CONCLUSION

¶ 48 The judgment of the circuit court of Peoria County is affirmed.

¶ 49 Affirmed.

¶ 50 JUSTICE HOLDRIDGE, dissenting.

¶ 51 I dissent. The trial court's decision affirming the Board's denial of a special use permit was against the manifest weight of the evidence. I would therefore reverse the trial court's judgment and remand this matter to the circuit court to enter an order granting the plaintiff's special use permit request.

¶ 52 Turning to the factors articulated by our supreme court in *La Salle National Bank of Chicago v. County of Cook*, 12 Ill. 2d 40 (1957), I would find that none of those factors support denying the special use permit. The manifest weight of the evidence clearly supports the opposite conclusion to that reached by the trail court.

¶ 53 The first *La Salle* factor requires the proposed special use to conform to the existing uses and zoning of the nearby property. *Id*. Here, the overwhelming evidence established that the subject property is zoned for agricultural and industrial use and that the proposed special use would be in conformity with existing zoning. The fact that some adjoining land is zoned residential is not significant since the subject parcels are in close proximity to a large technical and manufacturing facility operated by the Caterpillar Tractor Company. Clearly any speculative concerns that residential landowners may have regarding the proposed special use are negated by the existing industrial enterprises already operating in the same area. Given the overwhelming industrial character of the current use of the land in this area, in total compliance with existing zoning ordinances, the trial court's determination that the proposed use would not conform to existing uses and zoning requirements is clearly against the manifest weight of the evidence.

¶ 54 Likewise, regarding the second *La Salle* factor, I would also find that the trial court's finding that the plaintiff failed to establish that the property value of the parcels in question was against the manifest weight of the evidence. The plaintiff provided expert testimony that the value of the land in question would be diminished by at least $668,000. The County provided no documented expert opinion as to the land values. Moreover, the plaintiff presented un-rebutted testimony that the mineral extraction value if the special use permit were granted would be in excess of $2 million. Again, the overwhelming evidence supported a finding that the plaintiff's

property value was significantly diminished by the denial of the special use permit and the trial court's finding to the contrary was against the manifest weight of the evidence.

¶ 55 As the majority noted, in addressing the third *La Salle* factor, the trial court erred in finding that no hardship was imposed on the plaintiffs by the denial of the special use permit. I agree with the majority's conclusion that the plaintiff presented sufficient evidence to establish that a hardship was imposed. I disagree with the majority's finding that the hardship imposed on the plaintiff was outweighed by the public gain from denying the permit. The evidence was overwhelming that the proposed special use would not increase the risk of aquifer contamination. The only evidence in support of a finding that the denial of the permit would promote the health, safety, and general welfare of the public was the entirely speculative opinion that the proposed use might increase truck traffic (on an already heavily industrialized traffic pattern), might add dirt and dust to the atmosphere (with no quantifiable estimates or projections) and might have adverse visual effects on residents in close proximity to the proposed gravel pit (even though a large manufacturing operation already existed nearby). These speculations can hardly be deemed sufficient to outweigh the quantifiable and unquestioned hardship imposed upon the plaintiff and the trial court's finding to the contrary was clearly against the manifest weight of the evidence.

¶ 56 The majority also acknowledges that the trial court correctly considered that the parcels at issue are zoned for use consistent with the proposed special use, *i.e.*, heavy industrial and agricultural. This *La Salle* factor clearly favors the granting of the special use permit and the trial court's decision to the contrary is clearly at odds with this fact.

¶ 57 The trial court also erred in address the next *La Salle* factor when it found that the community need for the proposed special use did not weigh in favor of granting the permit.

Given the fact that the plaintiff presented un-rebutted testimony regarding the need for locally produced sand and gravel in the immediate area was unmet, the trial court's refusal to consider this un-rebutted testimony was against the manifest weight of the evidence.

¶ 58 Regarding the last *La Salle* factor, the trial court's finding that the proposed use conflicted with existing comprehensive zoning plans was clearly against the manifest weight of the evidence. It is uncontroverted that the proposed planned use was in complete conformity with existing zoning plans.

¶ 59 Considering the record as whole, the evidence is overwhelming that the special use permit should have been granted under all of the relevant *La Salle* factors. The trial court's conclusion to the contrary is clearly against the manifest weight of the evidence. I would find that the trial court erred in affirming the Board's decision. I would, therefore, reverse the judgment of the circuit court and remand the matter with instruction that the court order the Board to grant the special use permit.