2016 IL App (5th) 140152-U

NO. 5-14-0152

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MID-AMERICA DEVELOPMENT, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Madison County.
	)	
v.	)	No. 12-MR-185
	)	
THE DEPARTMENT OF TRANSPORTATION, ANN L. SCHNEIDER, BILL FREY, CHERYL L. CATHEY, and TIM HOESLI,	)	Honorable
	)	Donald M. Flack,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: Denial of outdoor advertising permit on the basis of there being no other plausible commercial or industrial use for the parcel was clearly erroneous.

¶ 2 Plaintiff, Mid-America Development, LLC (Mid-America), applied for an outdoor advertising permit with the Illinois Department of Transportation (Department) seeking to erect a billboard on a certain parcel of property along Illinois State Route 255 in unincorporated Madison County, Illinois. After the Department denied the application, Mid-America filed a complaint for a writ of *certiorari* in the circuit court of Madison County seeking review of the Department's decision. The circuit court, while agreeing

with Mid-America on several grounds, ultimately affirmed the decision to deny the permit. Mid-America now appeals the decision to our court. We reverse.

¶ 3 Mid-America is a limited liability company that manages and sells advertising space on billboards in southern Illinois. The Department, an administrative agency of the State, is tasked with providing safe, cost-effective transportation in ways that enhance the overall quality of life, promote economic prosperity, and demonstrate respect for the environment. Ann L. Schneider is the Secretary of the Department, and Bill Frey is the interim director of the division of highways. Cheryl Cathey is the acting business chief of land acquisition for the Department, and Tim Hoesli is the outdoor advertising program manager.

¶ 4 In early April 2012, Mid-America submitted an application and supporting documents to the Department requesting a permit to erect an outdoor advertising sign, or billboard, on an 8.6-acre parcel of land located at 6 Lakeridge Trail in Foster Township of unincorporated Madison County. This parcel was zoned commercial/industrial (M-2 manufacturing) in 1972. A commercial business and a billboard presently occupy a portion of the property. The parcel became bisected when Illinois State Route 255 was extended, leaving the commercial business and outdoor billboard located on one side of the highway, and a vacant section of the property on the other side of the highway. An access easement for agricultural equipment runs under the highway, allowing access between the two segments of the property. Mid-America's proposed location for its billboard is on the vacant portion of the property on the opposite side from the commercial business. Adjoining landowners had agreed to sell access easements to Mid-

America for the vacant section of the parcel for the erection and maintenance of the outdoor signage, should the billboard be erected. Mid-America also obtained an easement from the property's landowner, granting it the right to use a portion of the parcel for an outdoor advertising sign.

¶ 5 On April 25, 2012, the Department issued a notice of intent to deny the permit application, and subsequently issued its notice of final denial of the permit application on June 14, 2012. The application was denied on the grounds that, first, because the parcel was "newly zoned," under section 522.50(b)(1)(C) of Title 92 of the Illinois Administrative Code (Code) (92 Ill. Adm. Code 522.50(b)(1)(C) (2012)), there had to be an on-site development statement of infrastructure and/or site plan approved by the local zoning authority, and second, the only plausible commercial or industrial use for the parcel was outdoor advertising, which warranted denial under section 522.50(b)(1)(B) of Title 92 of the Code (92 Ill. Adm. Code 522.50(b)(1)(B) (2012)). Mid-America filed a complaint for administrative review in the circuit court of Madison County contending that the Department incorrectly applied section 522.50(b)(1)(C), and wrongly interpreted section 522.50(b)(1)(B). Additionally, Mid-America argued that both sections were void for vagueness as applied by the Department in this situation. Mid-America further moved the court under its writ of *certiorari* to enter an order declaring the Department's denial of Mid-America's permit for outdoor advertising as an encroachment on its right to free speech under the first and fourteenth amendments of the U.S. Constitution and sections 2 and 4 of the Illinois Constitution. The circuit court held that the parcel was neither newly zoned nor "spot zoned," but ultimately affirmed the denial of Mid-

America's application because there was no other plausible commercial or industrial use for the parcel. Mid-America now appeals to this court, raising the same issues as below. In the circuit court, the Department abandoned any argument in support of its denial of Mid-America's permit under section 522.50(b)(1)(C), and, likewise, makes no argument pertaining to that section on appeal here. We therefore need not address this matter further. Suffice it to say that the parcel at issue here clearly was not "newly zoned" within the intendments of the Code, having been zoned commercial/industrial for some 40 years.

¶ 6 On a writ of *certiorari*, when presented with a mixed question of law and fact, we, as an appellate court, review the order of the administrative agency, not that of the circuit court, for clear error. See *Porter v. Illinois State Board of Education*, 2014 IL App (1st) 122891, ¶ 25, 6 N.E.3d 424; *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 337, 909 N.E.2d 806, 814 (2009).

¶ 7 The Highway Advertising Control Act of 1971 (Act) (225 ILCS 440/1 *et seq.* (West 2012)) regulates outdoor advertising signs in areas adjacent to highways for the purposes of protecting the public investment in such highways, promoting the recreational value of public travel, preserving natural beauty, and promoting the reasonable, orderly, and effective display of outdoor advertising signs. Overall, the Act is aimed at limiting highway advertising. See *Outcom, Inc.*, 233 Ill. 2d at 343, 909 N.E.2d at 817. Accordingly, the Act prohibits signs that are not in compliance with Department regulations, as well as those without a permit issued by the Department. 225 ILCS 440/10 (West 2012).

¶ 8 Mid-America argues on appeal that the Department erred in denying its application for a permit pursuant to section 522.50(b)(1)(B) of the Department's regulations given that the parcel is not "spot zoned" and the property cannot plausibly be used for a commercial or industrial use other than outdoor advertising. Section 522.50(b)(1)(B) specifically prohibits outdoor advertising "on spot zoned land or land on which the only plausible commercial or industrial use is outdoor advertising." 92 Ill. Adm. Code 522.50(b)(1)(B) (2012). Clearly, there is no evidence that the parcel was "spot zoned." To be spot zoned requires a showing that the parcel was zoned commercial or industrial for the sole purpose of allowing outdoor advertising. *O'Brien v. City of Chicago*, 347 Ill. App. 45, 54, 105 N.E.2d 917, 921 (1952). The property at issue here was already zoned for commercial use some 30 years before a highway ran across the property. The only real viable contention is whether the only plausible commercial or industrial use of the land is outdoor advertising.

¶ 9 The Department concluded the site had no plausible commercial or industrial use other than outdoor advertising because it was adjacent to a highway, landlocked, and inaccessible. We initially note that the parcel on which Mid-America proposes to build a billboard is in fact some 1.6 acres larger than the other section of the property on the opposite side of Highway 255. This smaller parcel already sustains commercial activity. Clearly, the "orphaned" section is therefore large enough to also sustain commercial activity. That leaves only the question of the vacant property being landlocked and inaccessible. As part of its application process, Mid-America submitted documentation that it had acquired or contracted to acquire an access easement suited to its purposes.

The fact that Mid-America only obtained an easement for an outdoor advertising sign does not mean that such easement is the only easement possible or plausible for the parcel. As Mid-America contends, it obtained the easement it needed. Mid-America did not want anything more and should not be penalized for not acquiring more than it needed. Simply because Mid-America did not acquire more than it needed does not mean that other types of easements with greater access potential were not possible or unavailable. Moreover, contrary to the Department's assertion, the parcel is only landlocked if the current owners subdivide the land without an access easement. As Mid-America points out, a landlocked parcel would still have access either via an easement by necessity or preexisting use. See *Canali v. Satre*, 293 Ill. App. 3d 407, 409-10, 688 N.E.2d 351, 353 (1997). The fact that there is not currently a commercial business on the side of the parcel where the billboard would be located, or that Mid-America did not obtain an easement for more than just erecting and maintaining a billboard, does not mean that it is not "plausible" that the remaining portion of the parcel could not support other commercial or industrial businesses.

¶ 10 Given that the property was, and is, zoned for commercial and industrial use with commercial development already occupying a portion of the land, and given that there is access to the vacant side of the property as well, it is equally plausible that the property has a commercial use or industrial use other than outdoor advertising. The denial of Mid-America's permit application on this ground is, therefore, clearly erroneous. Given our disposition in favor of granting Mid-America's outdoor advertising permit, we need not address any of its other remaining arguments on appeal.

¶ 11 For the aforementioned reasons, we reverse the judgment of the circuit court of Madison County upholding the final decision of the Department denying Mid-America's outdoor advertising permit, and reverse the Department's denial of Mid-America's application for an outdoor advertising permit.

¶ 12 Reversed.