SIXTH DIVISION
March 30, 2018

No. 1-17-1115
2018 IL App (1st) 171115-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JEANINE F. TOBIN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 16 M4 6581
	)	
VILLAGE OF MELROSE PARK,	)	
	)	Honorable
Defendant-Appellee.	)	Cheyrl D. Ingram,
	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justice Cunningham concurred in the judgment.
Justice Delort dissented.

ORDER

¶ 1 *Held:* The circuit court did not err when it proceeded with the hearing in an administrative review case even though no recording of the administrative hearing was available, where the plaintiff failed to show she was prejudiced by the lack of recording; administrative hearing officer's decision was not clearly erroneous; affirmed.

¶ 2 Plaintiff, Jeanine F. Tobin, appeals from the circuit court's decision that sustained the administrative hearing officer's finding of Tobin's liability for a red light violation. Tobin contends, *inter alia*, that the circuit court erred by allowing "trial[1]" to proceed without an audio

[1] We note that although Tobin uses the term "trial" to refer to the proceedings that occurred in circuit court, we believe the term "hearing" is more accurate when referring to a circuit court's administrative review

recording from the administrative hearing, and that the court erred when it failed to conduct a fair and impartial trial. We find that the administrative hearing officer's finding of liability was proper, and thus we affirm the decision of the circuit court.

¶ 3 BACKGROUND

¶ 4 On October 4, 2016, the Village of Melrose Park, Illinois Photo Enforcement Program (Village), issued a Red Light Violation Notice (Notice) to Jeanine F. Tobin. The Notice alleged that on September 6, 2016, a vehicle registered to Tobin ran a red light at the corner of 5th Street and North Avenue. The Notice included three photographs depicting the violation and stated:

> "This Red Light Violation is a photographic record obtained by a traffic control signal monitoring device and constitutes *prima facie* evidence of a violation. *** Please visit www.RedLightViolations.com to view video footage of violations, where available."

The Notice also required Tobin to pay a fine of $100. Tobin timely requested an in-person hearing to contest the violation. The Village sent a "notice to appear at civil hearing" dated October 26, 2016, to Tobin, which reflected a hearing date of November 22, 2016. On that date, Tobin presented a motion to dismiss to Administrative Hearing Officer Russel Syracuse, arguing that Tobin had attempted to view the video footage numerous times but could not due to her computer's configurations. A "Findings Decision and Order," dated November 23, 2016, reflected a "FINDING AND JUDGMENT" of "LIABLE" against Tobin, and in relevant part, stated the following:

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process, and thus we refer to the proceedings as a "hearing." However, when referring to Tobin's arguments, we use the term "trial" in order to more precisely set forth her position.

"This matter having been addressed at an Administrative Hearing, due notice having been given, and the Administrative Hearing Officer being fully advised, IT IS ORDERED, as follows:

As a defense to this violation, you have asserted an excuse or reason that is not recognized. An Administrative Hearing Officer has reviewed all of the evidence submitted, either in person or by mail, by the Village of Melrose Park and you.

It is the finding of this Administrative Hearing Officer that you did not raise one of the permitted defenses to the violation as set forth in the ordinance." (Emphasis in original.)

¶ 5 Tobin filed a *pro se* complaint for administrative review in the circuit court of Cook County on December 13, 2016. The complaint stated that Tobin was requesting judicial review of the administrative decision entered against her. The complaint also stated, "The Village of Melrose Park is hereby requested to file an answer consisting of the record of proceedings had before said administrative agency." On February 27, 2017, the Village filed its record of proceedings, with the cover page stating,

"NOW COMES the Village of Melrose Park *** and hereby submits as its answer to the complaint on administrative review pursuant to 735 ILCS 5/3-108(b) the RECORD OF PROCEEDINGS under review which constitutes the entire available record of proceedings, including such evidence as may have been heard by it and the findings and decisions made by it." (Emphasis in original.)

¶ 6 The record of proceedings consisted of four photographs, a compact disc containing the video footage of Tobin's red light violation, the Notice dated October 4, 2016, the notice to appear at civil hearing dated October 26, 2016, the Findings Decision and Order dated November

23, 2016, a notice of final determination of liability dated December 22, 2016, a copy of Tobin's complaint for administrative review, and a copy of the motion to dismiss that Tobin presented at the administrative hearing. The record of proceedings did not contain an audio recording or a transcript of the administrative hearing.

¶ 7 On March 24, 2017, Tobin filed a Rule 237(b) Request to Appear and Produce at Trial (Ill. S. Ct. R. 237(b) (eff. Jul. 1, 2005)), wherein she "command[ed] the Defendant *** to present an employee of the Village, the traffic compliance administrator, for trial on March 31, 2016[2] in Room 111 of the Maybrook Court, at 9:30 a.m." The Rule 237(b) request also stated that the administrator was to bring the following materials to court at that time:

> "1. The audio recordings made of both the Plaintiff's hearing before a hearing administrator on November 22, 2016, and those audio recordings of all other defendants in the court room on that date as well;
>
> 2. A certified copy of the transcript of proceedings of Plaintiff's hearing;
>
> 3. An accurate record of the fines and penalties collected by the Village from all defendants found on that date to be liable for violation of the Automated Traffic Law Enforcement System ('ATLES') at that same location for the same offense; and
>
> 4. The notice of appeal procedures published and distributed by the Village to all defendants found to be liable for this offense on this date."

¶ 8 The hearing before the circuit court took place on March 31, 2017. A transcript from the hearing is included in the record on appeal. At the outset, the court was informed that no transcript or recording of the administrative hearing was available. When the Village's attorney was asked why, he explained, "I spoke directly with the IT person for the police department, and

[2] Although March 31, 2016, was the date listed on Tobin's Rule 237(b) Notice, trial was actually set for, and took place on, March 31, 2017.

they said that there was no recording available for this day." The court responded, "And how am I supposed to make a determination, other than I actually can look at the, I can look at the red light camera, which tells the whole story in reality." The court then heard argument from both parties, and ultimately sustained the decision of the administrative hearing officer, but reduced Tobin's fine from $100 to $50. Specifically, the court's order stated:

> "Judgment for Defendant Village of Melrose Park after trial, the underlying finding decision and order of the admin. [*sic*] hearing officer being sustained; however the fine amount is reduced by the court to $50.00, due [and] payable in 30 days, by or before [May 1, 2017], after-which routine interest [and] late penalties may apply."

¶ 9 Tobin filed her timely notice of appeal on April 27, 2017. On June 29, 2017, Tobin filed a motion to supplement the record on appeal that stated:

> "Upon getting the record on appeal from [Room] 801 of the Daley Center, I noted that the DVD upon which the judge based her decision was not included. I was told that I needed a court order from the appellate court to get that."

In an order dated June 30, 2017, this court allowed Tobin's motion to supplement the record, and further ordered that "[the] supplemental record shall be filed and must be prepared and certified by clerk of circuit court on or before [July 26, 2017]." Tobin never filed a supplemental record[3], and thus, the record on appeal does not contain the video footage of Tobin's red light violation.

¶ 10 ANALYSIS

¶ 11 At the outset, we find it pertinent to point out that although Tobin failed to supplement the record on appeal with video footage of her red light violation, we nonetheless were able to

[3] We note that on June 30, 2017, Tobin filed another motion to supplement the record. However, her second motion to supplement was unrelated to her first motion, and sought to supplement the appellate record with a letter from counsel for the Village regarding a Freedom of Information Act request that Tobin submitted. On July 10, 2017, this court denied Tobin's second motion to supplement "without prejudice to filing a bound and certified record." Tobin did not file any subsequent motions to supplement the record.

view and consider the footage of Tobin's violation in reaching our decision. This court may take judicial notice of information on a public website even though the information was not in the record on appeal. *People v. Clark*, 406 Ill. App. 3d 622, 633-34 (2010) (recognizing that "case law supports the proposition that information acquired from mainstream Internet sites such as Map Quest and Google Maps is reliable enough to support a request for judicial notice"). Thus, we take judicial notice of the video footage of Tobin's red light violation, (notice number 1700900400554034), which this court viewed on www.RedLightViolations.com.

¶ 12 The dissent proposes that "[t]he missing record problem is exacerbated here by the fact that the red-light camera video recording is also missing from the circuit court record before us, replaced by a few still photographs." *Infra* ¶ 36. We point out this characterization by our dissenting colleague to emphasize our disagreement therewith. First, because we have taken judicial notice of the video footage of Tobin's violation, and have considered it in reaching our conclusion, we disagree that any supposed "missing record problem is exacerbated." Second, the "missing record problem" refers to the record of proceedings from the administrative hearing, not the circuit court's hearing, and there is no dispute that the video footage of Tobin's violation was provided to, and viewed by, the circuit court. Thus, we are perplexed as to how a "missing" red light camera video recording that is not actually "missing" for purposes of this appeal, could exacerbate an unrelated problem, when there is no dispute that said video was before the circuit court.

¶ 13 On appeal, Tobin argues that the circuit court erred by: (1) allowing trial to proceed when it did not have before it the entire record for review; (2) allowing trial to proceed when Tobin's motion to dismiss had not been ruled upon by the administrative hearing officer; (3) not

conducting a fair and impartial trial; (4) making errors of law and fact; and (5) making a clearly erroneous decision.

¶ 14 "When a party appeals from the circuit court's decision on a complaint for administrative review, our role is to review the administrative decision rather than the decision of the circuit court." *Farrar v. City of Rolling Meadows*, 2013 IL App (1st) 130734, ¶ 12. "The appropriate standard of review concerning administrative decisions is contingent upon whether the question being reviewed is one of fact, one of law, or a mixed question of fact and law." *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 847 (2007). If the question is one of fact, then our review is based on a manifest weight of the evidence standard, but if the question is one of law, then our review is *de novo*. *Id.* However, "[f]or mixed questions of fact and law, or where a case involved an examination of the legal effect of a given set of facts, the court must apply a 'clearly erroneous' standard of review." *Id.* In this case, we are faced with mixed questions of fact and law, and thus we determine whether the administrative hearing officer's decision was clearly erroneous. Therefore, we afford some deference to the agency's experience and expertise and we must accept the officer's findings unless we are firmly convinced that a mistake has been made. *Id.*

¶ 15 Tobin first argues that the circuit court should not have allowed trial to proceed where it did not have before it the entire record for review. Specifically, Tobin argues that the Village was required to record her administrative hearing and provide an audio recording thereof with the record of proceedings that it filed. The Village responds that because there was no audio recording of the administrative hearing available for the date of Tobin's hearing, the record that it presented as its answer to Tobin's complaint was the entire record available, and thus was sufficient to allow the circuit court's review. The Village points out that the record of

proceedings that it presented to the circuit court contained both the evidence that was reviewed during the administrative hearing, and the Findings Decision and Order that contained Hearing Officer Syracuse's decision.

¶ 16 Section 11-208.3(b)(4) of the Illinois Vehicle Code (Code) states, in its entirety, as follows:

> "An opportunity for a hearing for the registered owner of the vehicle cited in the parking, standing, compliance, automated speed enforcement system, or automated traffic law violation notice in which the owner may contest the merits of the alleged violation, and during which formal or technical rules of evidence shall not apply; provided, however, that under Section 11-1306 of this Code the lessee of a vehicle cited in the violation notice likewise shall be provided an opportunity for a hearing of the same kind afforded the registered owner. *The hearings shall be recorded*, and the person conducting the hearing on behalf of the traffic compliance administrator shall be empowered to administer oaths and to secure subpoena both the attendance and testimony of witnesses and the production of relevant books and papers. Persons appearing at a hearing under this Section may be represented by counsel at their expense. The ordinance may also provide for internal administrative review following the decision of the hearing officer." (Emphasis added.) 625 ILCS 5/11-208.3(b)(4) (West 2016).

Tobin argues that the italicized portion of the Code requires that hearings must be recorded. We agree with Tobin, and find that our legislation intended that hearings of this nature be recorded in some form. See *County of Du Page v. Illinois Labor Relations Board*, 231 Ill. 2d 593, 604 (2008) ("The most reliable indicator of [legislative] intent is the language of the statute, which is to be given its plain and ordinary meaning."). Based on the plain language of the statute, the

Village was required to record the hearing. As an aside, we point out that section 11-208.3(b)(4) is silent as to what type of recording must occur, and contrary to Tobin's argument, does not state that a transcript must be made from that recording, or that a copy of that recording must be presented to the circuit court if a claim for administrative review is filed.

¶ 17 Rather than require a copy of the recording or transcript to be filed, section 3-108(b) of the Administrative Review Law[4] states, "the administrative agency shall file an answer which shall consist of the original or a certified copy of the entire record of proceedings under review, including such evidence as may have been heard by it and the findings and decisions made by it." 735 ILCS 5/3-108(b) (West 2016). In this case, Tobin was cited for a red light violation and requested an in-person hearing, which was conducted by Hearing Officer Syracuse and resulted in a finding of liability and a $100 fine against Tobin. Thereafter, Tobin filed a complaint for administrative review in the circuit court of Cook County. As its answer, the Village filed the record of proceedings from the administrative hearing, which it asserted contained "the entire available record of proceedings, including such evidence as may be heard by it and the findings and decisions made by it." The matter proceeded to hearing and the circuit court sustained Hearing Officer Syracuse's finding of liability against Tobin, but reduced her fine to $50.

¶ 18 The dissent states that, "Section 11-208.3(b)(4) of the [Code], in turn, explains the 'entire record' requirement" of section 3-108(b) of the Administrative Review Law. *Infra* ¶ 36. We find it pertinent to stress our confusion with this summarization of the "entire record" requirement, because section 11-208.3(b)(4) of the Code is completely silent as to the "entire record" requirement of section 3-108(b). Nowhere in section 11-208.3(b)(4)of the Code is the "entire record" requirement even referenced. The dissent's depiction makes it seem as though

[4] To be clear, the Administrative Review Law applies here because section 11-208.3(b)(4) of the Code states: "Judicial review of final determinations of *** automated traffic law violations *** shall be subject to provisions of the Administrative Review Law." 625 ILCS 5/11-208.3(b)(4) (West 2016).

section 11-208.3(b)(4) of the Code explicitly sets forth the requirements for filing the "entire record" after an administrative hearing. This is simply not accurate. Subsection (b) of section 11-208.3 of the Code begins, "Any ordinance establishing a system of administrative adjudication under this Section shall provide for:" 625 ILCS 5/11-208.3(b)(4) (West 2016). Subsection 11-208.3(b)(4) of the Code completes that sentence with: "An opportunity for a hearing." Subsection 11-208.3(b)(4) states that "[t]he hearings shall be recorded" later in the subsection, but does not mention whether said recording relates in any way to the "entire record" requirement mentioned in section 3-108(b) of the Administrative Review Law. Thus, we disagree with the dissent's reading of this section of the Code, which we believe does not consider the plain and ordinary meaning of the statute, and instead presumes an explanation of the "entire record" requirement that is not present. See *County of Du Page*, 231 Ill. 2d at 604.

¶ 19 Although not cited by either party, we find this case to be analogous to *Express Valet, Inc.*, 373 Ill. App. 3d 838 (2007). In that case, a valet parking service was found liable for numerous code violations after an administrative hearing, during which six witnesses testified. *Id.* at 839, 842. The circuit court affirmed the administrative agency's decision but remanded the matter back to the agency on the issue of fines. *Id.* at 839. On appeal, the valet parking service argued that the record filed by the administrative agency, as required by section 3-108 of the Administrative Review Law, was inadequate because the transcript of proceedings was so incomplete it could not be reviewed due to inaudible portions of the hearing. *Id.* at 845, 848. This court determined that the record submitted by the administrative agency as its answer to the valet parking service's administrative review complaint "fully complied with section 3-108(b) of the Administrative Review Law." *Id.* at 848. This court reasoned that the valet parking service's argument that the record was incomplete lacked merit because it failed to show how it was

prejudiced. *Id.* at 848-49. The valet parking service merely argued that the gaps in the transcript related to necessary testimony, but failed to present a specific argument regarding its defense to the finding of liability that it was prevented from presenting due to the inaudible portions of the record. *Id.* at 849.

¶ 20 In this case, there is no transcript of the proceedings from Tobin's administrative hearing. At the hearing in circuit court, counsel for the Village stated that when he contacted the party responsible for recording hearings, he was informed that there was "no recording available for this day," and further explained that without an audio recording, a transcript cannot be made. We recognize Tobin's frustration with this explanation by the Village, and we are also frustrated by it. However, it is crucial to note that there is no evidence in this case that the hearing that took place on November 22, 2016, before Hearing Officer Syracuse was not recorded. Section 11-208.3(b)(4) of the Code merely states, "The hearings shall be recorded[.]" 625 ILCS 5/11-208.3(b)(4) (West 2016). The Code does not state what type of recording, *i.e.* video or audio, must occur. Further, Tobin has never argued that the Village failed to comply with the statute because the administrative hearing was not recorded. Rather, she argued (and continues to argue) that trial should not have been conducted without an audio recording or a transcript from the administrative hearing. Tobin has not cited, and we have not found, any statute requiring an audio recording or a transcript of the administrative hearing. Counsel for the Village informed the circuit court that "there was no recording available for this day," not that no recording took place on this day. Simply put, there is no evidence that Tobin's administrative hearing was not recorded.

¶ 21 Assuming *arguendo* that the hearing was not recorded, resulting in error, we must "first *** determine the nature of the error, technical or non-technical, and if technical, then next

determine whether any prejudice resulted." *Security Savings and Loan Ass'n of Hillsboro v. Griffin*, 56 Ill. App. 3d 903, 908 (1978). Our analytical framework is codified in section 3-111(c) of the Administrative Review Law, which states:

> "Technical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision unless it appears to the court that such error or failure materially affected the rights of any party and resulted in substantial injustice to him or her." 735 ILCS 5/3-111(c) (West 2016).

We find that the failure to record the hearing, which we are assuming *arguendo* occurred, was a technical error. Most cases that deal with this subject are concerned with violations of the rules of evidence. *Security Savings*, 56 Ill. App. 3d at 908. Some examples of errors in proceedings, rather than evidential errors, that were found to be technical errors include: the failure to cite the record for a particular finding (*Aluminum Coil Anodizing Corp. v. Pollution Control Board.*, 40 Ill. App. 3d 785 (1976)); the notification of the Board's decision a few days prior to the release of its official decision (*Forberg v. Board of Fire & Police Commissioners*, 40 Ill. App. 3d 410 (1976)); and the misstatement of a date (*Schwartz v. Civil Service Commission of Chicago*, 1 Ill. App. 2d 522 (1954). This court finds that the failure to record an administrative hearing, or as specifically occurred in this case, the failure to present a recording or a transcript from an administrative hearing, is similar to the aforementioned examples, and thus a technical error.

¶ 22 We must next determine whether this error "materially affected the rights of any party and resulted in substantial injustice to him or her" or in other words whether it prejudiced Tobin. See 735 ILCS 5/3-111(c) (West 2016). We find that similar to the plaintiff valet parking service in *Express Valet, Inc.*, Tobin has failed to show any prejudice, even assuming that her

administrative hearing was not recorded. See *Express Valet, Inc.*, 373 Ill. App. at 848. The Village points out, and Tobin does not refute, that she has never denied that she turned right on red without stopping on the day in question. In fact, during the hearing before the circuit court, Tobin stated, "it's pretty clear from that video alone that I crossed over the white line when there was a red light." The record before us further shows that Tobin's primary reason for requesting an in-person hearing after receiving the Notice of red light violation was to argue that she was unable to access the video footage of her red light violation, and that it was a violation of her due process rights to require a certain type of computer software in order to view video footage of alleged violations. In fact, that argument is the basis of the motion to dismiss that Tobin presented to Hearing Officer Syracuse. Tobin has not presented any argument regarding how she was prejudiced by the lack of a recording or a transcript from the administrative hearing. It is clear that the circuit court reviewed the same evidence presented to Hearing Officer Syracuse, and was fully aware of the hearing officer's decision as set forth in his Findings Decision and Order. Thus, we are unaware how Tobin could have been prejudiced by the lack of recording from the administrative hearing. Because the circuit court was able to conduct an informed review of the administrative hearing with the record of proceedings filed by the Village, and because Tobin has not argued that she was prejudiced by the lack of recording or transcript, we find that, similar to *Express Valet, Inc.*, the circuit court did not err in proceeding with the hearing on Tobin's administrative review complaint.

¶ 23 We further recognize that although "[n]o court — trial or appellate — can function in a vacuum" (*Pisano v. Giordano*, 106 Ill. App. 3d 138, 139 (1982)), no vacuum exists here. The Village filed the entire record of proceedings that was available from Tobin's administrative hearing, which consisted of four photographs, a compact disc containing the video footage of

Tobin's red light violation, the Notice dated October 4, 2016, the notice to appear at civil hearing dated October 26, 2016, the Findings Decision and Order dated November 23, 2016, a notice of final determination of liability dated December 22, 2016, a copy of Tobin's complaint for administrative review, and a copy of the motion to dismiss that Tobin presented at the administrative hearing. Thus, all of the evidence upon which Hearing Officer Syracuse relied or could have relied was before the circuit court. We note that the missing portions of the transcript were found not to be so crucial as to prevent review in *Express Valet, Inc.* and there were six witnesses who gave testimony in that case. *Id.* at 842. At the administrative hearing here, no witnesses testified, but the Village presented evidence consisting of photographs and video, both of which were presented to the circuit court. Additionally, and perhaps more importantly, the record of proceedings contained Hearing Officer Syracuse's Findings Decision and Order, dated November 23, 2016. The Findings Decision and Order clearly stated that Tobin was found liable and that none of the defenses she presented were recognized. We believe that having before it the evidence presented during the administrative hearing and Hearing Officer Syracuse's Findings Decision and Order more than adequately allowed the circuit court to conduct an informed review. See *Shallow v. Police Board of City of Chicago*, 60 Ill. App. 3d 113, 118 (1978) (explaining that "[w]e do not mean *** that a transcript of the arguments before the trial court, a recommendation by the hearing officer, or detailed findings by the Board are essential components of a reviewable record, only that they may have provided some assistance in our understandings of the proceedings below").

¶ 24 As further support for our determination, we find it pertinent to point out that section 3-108 does not require an audio recording or transcript to be part of the record of proceedings filed by the administrative agency. Rather, section 3-108 refers to the "entire record of proceedings

under review, including such evidence as may have been heard by [the agency] and the findings and decisions made by [the agency]." 735 ILCS 5/3-108(b) (West 2012). The Village's record of proceedings contained the evidence presented at the hearing and Hearing Officer Syracuse's Findings Decision and Order, which are the two items specifically listed in section 3-108 of the Administrative Review Law. Tobin has not presented and we have not found any authority supporting the proposition that failure to present an audio recording, transcript, or other form of a report of proceedings in an administrative agency's answer to a complaint for administrative review renders the circuit court unable to conduct review. Although we can understand Tobin's frustration, we do not find support in the law for her assertions. By this ruling, we do not mean nor intend to suggest that the statutory language stating that these types of "hearings shall be recorded" may be ignored by municipalities.625 ILCS 5/11-208.3(b)(4) (West 2016). Accordingly, we caution the Village that under different facts, failure to produce a recording of the administrative procedure, as occurred in this case, may yield a different result from that which we have reached today.

¶ 25 Tobin further argues that the circuit court should not have allowed trial to commence because her motion to dismiss was not ruled on during her administrative hearing. We similarly find this contention to be without merit. It is undisputed that Tobin presented her motion to dismiss to Hearing Officer Syracuse. Additionally, the Findings and Decision Order stated, "An Administrative Hearing Officer has reviewed all of the evidence submitted," and "[a]s a defense to this violation, you have asserted an excuse or reason that is not recognized." This language expressly indicates that Hearing Officer Syracuse took into consideration the arguments advanced by Tobin. Thus, we reject Tobin's argument that her motion to dismiss was not ruled on.

¶ 26 Tobin next argues that the circuit court erred by not conducting a fair and impartial trial, by making errors of law and fact, and by making a clearly erroneous decision. As previously stated, it is well-established that "[w]hen a party appeals from the circuit court's decision on a complaint for administrative review, our role is to review the administrative decision rather than the decision of the circuit court." *Farrar*, 2013 IL App (1st) 130734, ¶ 12. We therefore presume that Tobin intended to argue that Hearing Officer Syracuse's decision was erroneous and conduct our analysis consistent therewith.

¶ 27 The two decisions made by Hearing Officer Syracuse that we must review are the denial of the motion to dismiss and the finding of liability against Tobin. We find that neither decision of Hearing Officer Syracuse was clearly erroneous. Tobin's motion to dismiss argued that if all red light violation notices indicate that video footage of a violation may be viewed on a computer, said video should be accessible to all, not only to those with computers of a certain specification. Tobin further argued that her inability to view the video footage on her own computer resulted in her being treated differently from other red light violators, and caused her constitutional rights to due process and equal protection to be infringed. Tobin's motion to dismiss did not cite any legal authority to support her arguments.

¶ 28 We find Tobin's constitutional arguments to be without merit.

> "The constitutional guarantee of due process encompasses both procedural and substantive due process. [Citation.] Procedural due process is about the specific procedures that have been used to deny a person's life, liberty, or property. [Citation.] *** Substantive due process prevents the government from taking certain action even if it does provide proper procedural safeguards. [Citation.]" *Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, ¶ 15.

Here, there has been neither a procedural nor substantive due process violation. "Procedural due process generally refers to notice and the opportunity to be heard." *Id.* ¶ 16. It is undisputed that Tobin received notice of the red light violation and was given the opportunity to be heard. Tobin requested and was granted an in-person hearing. There similarly is no substantive due process violation. "Substantive due process depends on the existence of a fundamental liberty interest." (Internal quotation marks omitted.) *Id.* ¶ 16. Tobin has not cited, and we have not found, any authority that supports the proposition that the ability to view video footage of a red light violation on one's home computer is a fundamental liberty interest. As such, we decline to hold as much here.

¶ 29 Further, no equal protection violation occurred here. "The equal protection clause guarantees that similarly situated individuals will be treated in a similar manner, unless the government can demonstrate an appropriate reason to treat those individuals differently." *In re M.A.*, 2015 IL 118049, ¶ 24. Here, there is no indication that the Village treated Tobin differently than anyone else who received a red light violation. She was provided notice of the date, time, and location of the violation, as well as photographs that constituted *prima facie* evidence of her violation. The Notice also stated, "Please visit www.RedLightViolations.com to view video footage of violations, *where available*." (Emphasis added.) The use of the words "where available" indicates that video footage may not be available for every violation or in every municipality. Tobin does not argue that the video footage was not available to her, just that it was not available to her given the specifications of her computer. Simply put, this is not a violation of equal protection. Merely because Tobin's personal computer software was not of the requisite specifications to be able to view the video does not signify that she was treated differently by the Village. Presumably, Tobin could have accessed the video on a public

computer located in the court house, library, or any other forum where computer access is made available to the public. There is no allegation in her motion to dismiss that Tobin ever attempted to access the video footage on any computer besides her own. Thus, we find no basis for an equal protection violation.

¶ 30 As to the administrative finding of liability, we find the video footage of Tobin's red light violation clearly evidences Tobin's liability. Based on our review of the video, the administrative hearing officer's finding that Tobin committed a red light violation was not clearly erroneous, where her vehicle can be seen approaching and crossing the white line without ever coming to a stop, with a red traffic light clearly displayed throughout the video. Additionally, as previously mentioned, Tobin admitted that she did not stop at the red light during the hearing before the circuit court when she stated, "it's pretty clear from that video alone that I crossed over the white line while there was a red light." Therefore, we find that the administrative hearing officer's decision was not clearly erroneous due to the clear evidence supporting Tobin's liability, the deference we afford the administrative hearing officer's decision, and the lack of any indication that a mistake was made. *Express Valet, Inc.*, 373 Ill. App. 3d at 847. As a result, we affirm the circuit court's judgment[5] that sustained the administrative hearing officer's decision.

¶ 31 As a final matter, we find it pertinent to address Tobin's argument regarding the circuit court's failure to enforce her Rule 237(b) request. Supreme Court Rule 237(b) provides, "The appearance at the trial of a party or person who at the time of trial is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear." Ill. S. Ct. R. 237 (b) (eff. Jul. 1, 2005). Prior to the hearing, Tobin

[5] We note that in affirming the circuit court's judgment, we also affirm its decision to reduce Tobin's fine from $100 to $50.

filed a Rule 237(b) request, asking that the Village "present an employee of the Village, the traffic compliance administrator, for trial" and that the traffic compliance administrator also bring four specific pieces of evidence. We find that neither the testimony of the traffic compliance officer, nor any evidence that was not contained in the record of proceedings, would have been properly before the circuit court. Section 3-110 of the Administrative Review Law states:

> "Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2012).

It is clear that neither the testimony of the traffic control administrator nor any of the four pieces of evidence that Tobin sought from the Village were ever presented during the administrative hearing, and thus the circuit court would have been prohibited from considering that additional evidence under section 3-110 of the Administrative Review Law. 735 ILCS 5/3-110 (West 2012). As such, the circuit court did not err in refusing to enforce Tobin's Rule 237(b) request.

¶ 32 CONCLUSION

¶ 33 Based on the foregoing, we affirm the decision of the circuit court that sustained the decision of the administrative hearing officer.

¶ 34 Affirmed.

¶ 35 JUSTICE DELORT, dissenting:

¶ 36 Drivers who are found liable following an automated traffic law violation hearing may seek judicial review of that adverse determination pursuant to the Administrative Review Law, 735 ILCS 5/3-101 *et seq.* (West 2016). Section 3-108(b) of the Illinois Administrative Review Law requires the municipality which conducted the hearing to file an answer with the circuit court consisting "of the original or a certified copy of the entire record of proceedings under review, including such evidence as may have been heard by it * * *." 735 ILCS 5/3-108(b) (West 2016). Section 11-208.3(b)(4) of the Illinois Vehicle Code, in turn, explains the "entire record" requirement in the particular context of municipal administrative adjudication hearings. 625 ILCS 5/11-208.3(b)(4) (West 2016). That law directs that the hearing "shall be recorded", which implies the maintenance of either an audio recording or written transcript of the adjudication hearing and its inclusion in the administrative record. It is clear that, in this case, the Village of Melrose Park either decided to ignore that requirement, or that the recording of Tobin's hearing was lost or destroyed before she was able to seek administrative review. The missing record problem is exacerbated here by the fact that the red-light camera video recording is also missing from the circuit court record before us, replaced by a few still photographs.

¶ 37 Tobin correctly recognized the deficiency in the village's answer and requested judicial relief to correct it. While the circuit court itself expressed concern about the omission, it proceeded to resolve the administrative review case notwithstanding the lack of a recording of the hearing, whether transcribed or in audio format. This was error.

¶ 38 Allowing municipalities to establish their own administrative hearing departments and adjudicate ordinance violations through self-appointed hearing officers formed the basis of due process challenges in both state and federal courts to the municipal administrative adjudication system. See, *e.g.*, *Van Harken v. City of Chicago*, 103 F.3d 1346 (7th Cir. 1997)

(*Van Harken I*); *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972 (1999) (*Van Harken II*). Both the state and federal courts rejected these challenges and upheld the system, finding there were sufficient safeguards to protect the rights of defendants. *Van Harken I* , 103 F.3d 1351-55; *Van Harken II*, 305 Ill. App. 3d at 977-986. In particular, the *Van Harken II* court noted the statutory requirement that the municipality's hearing officer must be a licensed attorney for at least three years and "successfully complete a formal training program" including instruction on procedural rules, orientation to the codes applicable to various subject areas, observation of administrative hearings, and "participation in hypothetical cases, including rules on evidence and issuing final orders." *Van Harken II*, 305 Ill. App 3d at 980; 65 ILCS 5/1-2.2.40 (West 2016). The recording requirement is clearly an additional safeguard as it ensures that the circuit court can conduct a complete review of what transpired at the adjudication hearing. These two safeguards—the qualifications and training of the hearing officer and the recordation of the hearing—differentiate administrative review of municipal adjudications from, for instance, review of circuit court judgments by appellate courts. Both are crucial protections against the potential that the municipality, and its hearing officers, might act in their own self-interest, and both guarantee that the circuit court can undertake a plenary review of what occurred at the hearing.

¶ 39 Since the Village of Melrose Park could provide no record of what was said at Tobin's hearing, whether in audio or printed form, the circuit court should have vacated the hearing officer's determination order and remanded the matter to conduct a properly recorded hearing.

¶ 40 The majority disagrees with this conclusion, finding that the lack of a record did not preclude the circuit court, or this court, from undertaking a meaningful review. Because of the

nature of the particular violation at issue here, there are some legitimate arguments to be made for that proposition, but I believe that we should not follow that path. Instead, I would take this case as an opportunity to instruct municipalities that they must conduct hearings in strict compliance with the structure which our legislature established to ensure a fair process for motorists. I respectfully dissent.