

No. 1-15-0370

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SOUTH SHORE JEWELRY & LOAN, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
CITY OF CHICAGO and CITY OF CHICAGO –)	No. 14 CH 2879
ZONING BOARD OF APPEALS,)	
)	
Defendants-Appellants.)	The Honorable
)	Neil H. Cohen,
)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The Zoning Board of Appeals' decision to deny a special use permit to a pawn shop owner was not against the manifest weight of the evidence, and the circuit court therefore erred in reversing the decision. This court reversed the circuit court's judgment.

¶ 2 Appellee South Shore Jewelry & Loan, Inc. (South Shore Pawn), sought a special use permit to open a pawn shop in Chicago's South Shore neighborhood. Following a public hearing on the matter before the Chicago Zoning Board of Appeals (the Board), the Board denied South Shore Pawn the permit, determining a pawn shop would have an adverse impact on the general welfare of the neighborhood. South Shore Pawn filed a complaint for administrative review in

the circuit court. The court reversed the Board's decision and ordered the City to issue the permit. The City and Board now appeal from that judgment and argue primarily that the Board's decision denying the permit was not against the manifest weight of the evidence.¹ We agree and therefore reverse the trial court's judgment.

¶ 3

BACKGROUND

¶ 4 South Shore Pawn, through its president Robert Woolf, filed the special use application on May 10, 2013, with Chicago's department of housing and economic development seeking to open the pawn shop in an existing building, zoned "B-3 Community Shopping District," at 1861 East 71st Street in South Shore. See Chicago Municipal Code §17-3-0104 (amended July 29, 2015). The primary purpose of the B3 ("Business 3") community shopping district is to accommodate a broad range of retail and service uses, often in the physical form of shopping centers or larger buildings than found in the B1 and B2 districts, and accommodate certain types of uses that are not allowed in B1 and B2 districts. *Id.* A "special use" includes uses that are necessary or generally appropriate for a community but may require special regulation due to their unique or unusual impacts. *City of Chicago Heights v. Living Word Outreach Full Gospel Church and Ministries, Inc.*, 196 Ill. 2d 1, 16 (2001) (inclusion of special use in zoning ordinance is tantamount to legislative finding that permitted use is in harmony with general zoning plan and will not adversely affect neighborhood). Examples include community homes, churches, fortune telling services, and, as here, pawn shops. See Chicago Municipal Code §17-3-0207 (amended July 29, 2015).

¹ The Jackson Park Highlands Association has filed an *amicus curiae* brief. The Association largely relies on matters outside the record and that were not presented before the Board. To the extent it does so, we have not considered its brief. See *Arvia v. Madigan*, 209 Ill. 2d 520, 528 (2004) (generally, issues or defenses not raised before the administrative agency are waived).

¶ 5 To obtain special use permit, section 17-13-0905-A of the Chicago Municipal Code (Chicago Municipal Code §17-13-0905-A (amended Sept. 24, 2015)) requires the following:

"Except as otherwise expressly provided in this Zoning Ordinance, no special use application may be approved unless the Zoning Board of Appeals finds that the proposed use in its proposed location meets all of the following criteria:

- (1) complies with all applicable standards of this Zoning Ordinance;
- (2) is in the interest of the public convenience and will not have a significant adverse impact on the general welfare of the neighborhood or community;
- (3) is compatible with the character of the surrounding area in terms of site planning and building scale and project design;
- (4) is compatible with the character of the surrounding area in terms of operating characteristics, such as hours of operation, outdoor lighting, noise, and traffic generation; and
- (5) is designed to promote pedestrian safety and comfort." *Id.*

¶ 6 *Zoning Board of Appeals Hearing*

¶ 7 The Board conducted the public hearing on October 18, 2013, and witnesses testified for and in opposition to the special use. At the outset, we note the record reveals the South Shore neighborhood is a mixed residential and commercial area. Vacant commercial buildings abut \$400,000 to \$1-million-dollar homes, thus making a pawn shop presumably attractive to some and not to others in the neighborhood. The proposed pawn shop on 71st Street (which runs East-West) would be located by public transportation stops. To the north is the Jackson Park Highlands, an historic area containing over 200 homes with average property taxes of about \$10,000. The Department of Housing and Economic Development recommended approval of the special use application, and hearing testimony followed.

¶ 8 *1. Testimony for the Pawn Shop*

¶ 9 Woolf testified in favor the special use permit that he has over 28 years of experience in the pawn industry and currently owns a pawn shop located at 645 East 79th Street, some two

miles from the proposed location on 71st Street. He asserted over 2,500 of the shop's customers travel from the South Shore neighborhood to do business at his pawn shop, thus suggesting the need for a pawn shop in South Shore, and further, that the nearest pawnshop to South Shore's proposed location is about a half-mile away. Woolf stated his business generally deals in pawning electronics and jewelry but does not pawn firearms or drug paraphernalia. He also would offer a short-term loan to customers in exchange for an item to sell. The proposed pawnshop would have normal business operating hours of Monday through Saturday and be equipped with a security and surveillance system, security-grade glass, and metal bars in all windows, and also a restricted entry system, all in effort to prevent crime. Woolf's pawn shop maintains records of all transactions, including photographs of all items and a record of customer drivers' licenses or state identification cards. This information is reported daily to the local police department and the national law enforcement agencies data system (LEADS). Woolf testified that 1 percent of items transacted at pawn shops are stolen, according to State reports, but in his opinion the number was somewhere between 1-5 percent.

¶ 10 Retired Detective Greg Miller, a 23-year veteran of the Chicago police, testified in favor of granting the special use permit. When serving the police, Detective Miller would make monthly unannounced visits to pawn shops and check licenses and inventory lists, comparing serial numbers with those in the department's database. South Shore Pawn retained Detective Miller as a consultant, and he opined it had complied with local ordinances and statutes.

¶ 11 Terrence O'Brien, a professional real estate appraiser and consultant, testified in support of the permit that there were 23 vacancies in retail outlets along the 71st-Street stretch by the proposed pawnshop. The shop would allow for financial services and general retail sales, which would benefit the neighborhood and he was not aware of any existing pawn shops within about

one mile. O'Brien opined that if a special use were granted, the pawn shop would comply with the zoning ordinance. He also opined that the pawn shop would be compatible with the area's character in terms of operating characteristics. O'Brien submitted a written report in addition to his testimony, concluding the proposed pawn shop would fulfill a need, provide employment, productively use the property, increase sales tax revenue, and be harmonious with the surrounding land use without an adverse impact on other properties in the area.

¶ 12 Additionally, four customers of Woolf's other pawnshop testified in support of South Shore Pawn's application. Robert Threatte, a ten-year patron of Woolf's shops, opined that Woolf had converted blighted properties into attractive spaces. He declared Woolf's operation deterred crime and that Woolf was meticulous in record-keeping and reporting. Threatte stressed the need for a pawn shop and the valued service it offers to its customers. He stated the loan rates Woolf offered were much better than automobile title and other loan establishments. Harlan Chambers opined that the pawn shop is helpful to those on a set income.

¶ 13 *2. Testimony against the Pawn Shop*

¶ 14 Objectors, residing near the proposed pawn shop, testified against South Shore Pawn's application, largely focusing on the potential for crime and the shop's compatibility in the area.

¶ 15 Susan Campbell, an urban planner and a 30-year area resident of Jackson Park Highlands who worked on the master plan to improve 71st Street, testified about the neighborhood's character and her opposition to the permit. Campbell said over the last five years, crime in the area had dramatically increased. She pointed to recent criminal activity in the area, including loitering, drug and cigarette sales, shootings, and home burglaries. Campbell testified that her home and those of several neighbors had been burglarized within the past year. Because of the crime, people had moved away, and the community was unable to attract "good businesses."

Campbell submitted a list identifying names of 23 neighbors opposed to the pawn shop who were unable to come forth and testify.

¶ 16 Byron Mason, an attorney and 15-year area resident of Jackson Park Highlands, testified similarly that the 71st-street corridor was the subject of "dubious behavior[,] muggings, shootings, [and] loitering." Marijuana filled the air, and he and his daughter were present when shots rang out at the pizza shop, located just across from the proposed pawn shop. Robert Vanpvyenbroek, an area resident living just half a block from the proposed pawn shop, testified there was loitering and periodic burglaries and robberies in the area. Vanpvyenbroek worried about his son taking public transportation and made him check in when traveling. Mason added that when homes in the Jackson Park Highlands were broken into, electronics were stolen. "So, we're going to be in the position of going to the pawn shop and buying back our own items which I think is ridiculous[.]" he said. He said the pawn shop was inconsistent with the goal of "cleaning up" the neighborhood.

¶ 17 James Norris, a 13-year area Jackson Park Highlands resident serving as a neighborhood association safety security chairperson, stated that he had heard testimony from criminals at "keeping it real meetings," which are meetings between homeowners and criminals where criminals are invited into homes to demonstrate what they do during break-ins. The criminals responded the first place they dispose of "equipment" is a pawn shop. "When we have a break-in in the Highlands, the commander will always say, we go to the pawn shop," Norris said. Additionally, Norris challenged Woolf's assertion that 1-5 percent of the items in his shop are stolen. Norris opined that percentage was actually much higher. Ranjana Pargov, a 35-year resident of Jackson Park Highlands, testified that about six months before the hearing her home was broken into and several items were stolen, including her son's iPad. That iPad and other

stolen items were later discovered in Woolf's pawn shop. The police, however, were unable to help, and Pargov had not recovered most of the stolen items. An unidentified objector stated jewelry is a commonly stolen item, but gold and silver do not have serial numbers, and they would therefore be difficult to track.

¶ 18 Alisa Starks, a long-time Jackson Park Highlands' resident and business owner with a marketing background, was opposed to the pawn shop based on the bars on the windows, deeming it offensive to the community. The pawn shop would not help revitalize the neighborhood. She also noted the number of pawn shops already in close proximity to the proposed location, making another unnecessary. There was in fact a jewelry pawn shop on the corner of 71st and Jeffrey, a mere block and a half from Woolf's proposed shop, and another pawn shop about one-half mile away. Starks said a pawn shop would not help revitalize the area. Several residents also raised concerns about insufficient parking for the pawn shop.

¶ 19 Steven Stern, an attorney and 20-year area resident of the Jackson Park Highlands, noted the neighborhood was close to Lake Michigan, Jackson Park harbor, and two golf courses. Stern said the neighborhood already had so much to offer, but the pawn shop was not "the type of store that's going to help its advancement." He wanted to see other "quality stores" in the area. Vanpvyenbroek similarly testified the pawnshop would not promote the type of economic development the local residents wanted; they wanted "more viable businesses." Another resident noted the area needed a grocery store but believed a pawn shop would detract from a Mariano's, for example, establishing itself there. She added the neighborhood needed clothing and department stores.

¶ 20 Alderman Leslie Hairston testified there were four gang factions along the "71st Street stretch" between Stony Island and Oglesby Avenues. Over several months in 2013, the area had

seen two to five murders, two shootings, and two burglaries. She said the area already had financial service businesses, including two other pawn shops, two currency exchanges and a cash-for-car loans business. This testimony directly conflicted with Woolf's testimony regarding the need for a pawn shop in the area. The proposed pawn shop would be located across the street from a community center with youth activities and near a daycare center (four blocks down). She said, "I think that the pawn shop undermines the efforts of the community that we have been working on. It will negatively impact the community." Additionally, Alderman Hairston noted there were 100 or more parolees released into the area with insufficient employment opportunity, and the police simply did not have the manpower to check the pawn shop registers. Regarding the vacant lots in the area, Alderman Hairston testified that these lots are used to display artwork and exhibits, in effort to attract more positive business.

¶ 21 *Rebuttal Evidence*

¶ 22 O'Brien countered in rebuttal that fewer vacancies in the storefronts would lead to fewer crimes, as there would be more people in the area, and noted Woolf would not tolerate loitering in front of his business. O'Brien said there was no evidence the pawn shop would deter development in the area or "add to the deterioration of the retail environment." He specifically pointed to crime statistics on two other city pawn shops, as represented in his report, and stated, "there's no indication that crime has increased as a result of the location of these pawn shops in this area." Detective Miller stated similarly that pawn shops do not cause increased crime. He said a pawn shop was not in fact the first place to deposit a stolen item because one must have state identification to pawn the item and a criminal wouldn't want to be identified.

¶ 23 *Zoning Board of Appeals Decision*

¶ 24 The Board denied South Shore Pawn's special use application, determining that South Shore had "not proved its case by testimony and evidence covering the five specific criteria" of the ordinance. Specifically, the Board determined South Shore Pawn failed to establish the special use would "not have a significant adverse impact on the general welfare of the neighborhood or community," which is factor number two under the ordinance. See Chicago Municipal Code §17-13-0905-A(2) (amended Amend Sept. 24, 2015). The Board found on the contrary that the evidence showed the special use would in fact adversely impact the neighborhood. In support, the Board cited the testimony of Mason and Vanpyenbroek about the many home burglaries in South Shore. It cited Mason's² testimony that many of the burglarized items are electronics, one of the two types of items accepted by South Shore. Further, the Board relied on Pargov's testimony regarding the stolen electronics that were later located at Woolf's current pawn shop. The Board wrote, "The specific testimony of these four objectors regarding this particular Applicant and this particular neighborhood outweighs any general testimony by Mr. O'Brien and Detective Miler [*sic*] regarding the non-linkage of pawnshops to an increase in crime."

¶ 25 *Circuit Court Judgment*

¶ 26 South Shore Pawn filed a complaint for administrative review with the circuit court to reverse the Board's denial of the permit. See 65 ILCS 5/11-13-13 (West 2012) (decisions of the board of appeals are subject to judicial review under the administrative review law); *People ex rel. Klaeren II v. Village of Lisle*, 202 Ill. 2d 164, 183 (2002) (municipal bodies act in an administrative or quasi-judicial capacity when they conduct zoning hearings on special use

² The Board actually cited the testimony of Richard Duncan, stating: "Mr. Duncan testified that the majority of these home burglaries resulted in the theft of electronics, one of the two items that will be taken in for pawn by the applicant." The Board clearly misidentified the person testifying. Duncan testified that there was already a pawn shop less than a mile away, while it was Mason who testified that electronics were stolen from homes in the Jackson Park Highlands.

petitions); see also *Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 253 (2003) (administrative review applies where the legislative body transfers to some administrative agency the authority to administer the ordinance). The court agreed, finding the Board's decision was clearly erroneous or against the manifest weight of the evidence.³ The Board timely appealed.

¶ 27

ANALYSIS

¶ 28 In an appeal from the judgment of an administrative review proceeding, we review the decision of the administrative agency, not the decision of the circuit court. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009). Where, as here, the issue raised is one of fact, we will only ascertain whether such findings fact are against the manifest weight of the evidence. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386-87 (2010). "An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). "The mere fact that an opposite conclusion is reasonable or that the reviewing court may have ruled differently will not justify reversal of the administrative findings." *Id.* If the record contains evidence to support the agency's decision, it should be affirmed. *Id.*

¶ 29 The Board argues in the main that the administrative decision denying South Shore Pawn's special use permit was not against the manifest weight and should be affirmed. An applicant for a special use permit has the burden of proving that the proposed use meets all the standards required by the controlling zoning ordinance, and moreover, an administrative zoning agency must adhere to the intent of the zoning ordinance. *City of Chicago Heights*, 196 Ill. 2d at

³ The court's conclusion as to the manifest weight of the evidence was not made on the record, but the parties submitted a bystander's report revealing the court's determination.

20; *Hope Deliverance Center, Inc. v. Zoning Board of Appeals of the City of Chicago*, 116 Ill. App. 3d 868, 872 (1983); see also 65 ILCS 5/11-13-1.1 (West 2012) (special use only granted upon evidence that it meets standards in the ordinance). Municipal ordinances are interpreted under the general rules of statutory construction. *Platform I Shore, LLC v. Village of Lincolnwood*, 2014 IL App (1st) 133923, ¶ 10. As such, the zoning ordinance must be analyzed according to its plain and ordinary language. *Id.*; see also Chicago Municipal Code §17-1-0602 (amended March 9, 2005) (words not defined given to Merriam Webster's Collegiate Dictionary). Under the applicable special use zoning ordinance here, South Shore was required to meet five criteria, so failure to satisfy one allows for denying the special use permit.

¶ 30 The Board determined South Shore had not met any of the criteria, but specifically focused on factor number two, which requires that "the proposed use in its proposed location" is "in the interest of the public convenience and *will not have a significant adverse impact on the general welfare of the neighborhood or community*[" (Emphasis added.) "Adverse" means "acting against or in a contrary direction," "opposed to one's interests," and "causing harm." See www.merriam-webster.com/dictionary/adverse. "Welfare" means "the state of doing well especially in respect to good fortune, happiness, well-being, or prosperity." See www.merriam-webster.com/dictionary/welfare. In addition, under the ordinance, "will" is considered mandatory. Chicago Municipal Code §17-1-0603-C (amended March 9, 2005). Under the ordinance as written, if the Board finds the special use *could have* a meaningfully harmful effect on or be in opposition to the best interests of the neighborhood for general well-being and prosperity, then the Board would be required to deny the special use. The Board now argues for affirming the permit denial because it was reasonable to infer that a pawn shop abutting Jackson Park Highlands could attract criminal activity and adversely affect the neighborhood.

¶ 31 We observe that the findings and conclusions of an administrative agency on questions of fact are *prima facie* true and correct, and we will not determine witness credibility, reweigh evidence, or substitute our judgment for that of the agency. See *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 534 (2006); *Hurst v. Dep't of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). Analyzing the ordinance in light of the testimony in this case, we cannot say the Board's decision was against the manifest weight of the evidence. The Board found the neighborhood objectors' testimony that the pawn shop could exacerbate the already substantial problems with crime in the neighborhood outweighed South Shore Pawn's testimony that pawn shops generally do not lead to increased crime. See *Hope Deliverance Center, Inc.*, 116 Ill. App. 3d at 875 (each case of this kind must be decided on its own facts and circumstances); *Mile Square Service Corp. v. City of Chicago Zoning Board of Appeals*, 42 Ill. App. 3d 849, 858 (1976) (drug rehab center not in best interests of particular neighborhood). The Board based its decision on testimony that there were burglaries in the area, electronic items were stolen, and the proposed pawn shop would deal in such items. Moreover, there is no dispute that a portion of a pawn shop's goods are stolen, as Woolf admitted this fact himself. Pargrov provided a specific example that thieves stole electronic and other items from her South Shore home and deposited them in Woolf's existing pawn shop, located about two miles away. Police could not help recover those items, thus contradicting any suggestion that meticulous reporting of pawned items allows for their easy recovery and thus affirming objector testimony that South Shore police lacked the institutional capacity to address pawned items. Norris testified, in opposition to Detective Miller's contrary general assertions, that criminals operating in the Jackson Park Highlands pawned stolen items. Testimony showed the 71st-Street corridor already suffered from significant crime, gang activity, and shootings. It was not unreasonable to

conclude that a pawn shop located in this particular area, next to high-end residential real estate, could potentially lead to additional crime and safety concerns that would adversely affect the neighborhood. See *Bat-A-Ball, Inc. v. City of Chicago*, 184 Ill. App. 3d 776, 781-83 (1989); *E.P.A. v. Pollution Control Board*, 252 Ill. App. 3d 828, 830 (1993) (if administrative agency's factual inferences are reasonable, they are entitled to acceptance on review).

¶ 32 The Board's finding of adverse impact on the neighborhood's well-being is also supported by ample testimony that a pawn shop, bearing window bars and dealing in a percentage of stolen items and low-cost loans, was not the type of business that would economically advance the area and was not even necessary given two other pawn shops in close proximity. The Board was not obligated to find that a pawn shop would be more conducive to promoting business in the area over vacant storefronts with art displays. See *Mile Square Service Corp.*, 42 Ill. App. 3d at 858. For reasons stated, the opposite conclusion to that of the Board was not clearly evident. See *Abrahamson*, 153 Ill 2d at 88.

¶ 33 We therefore reject South Shore Pawn's argument that the Board's decision was based on general assumptions about pawnshops and unrelated to overall health, safety and welfare. Our analysis reveals the hearing testimony opposing the permit directly related to the general welfare of South Shore, including Jackson Park Highlands. The Board did not merely base its decision on the proposed type of use, but on its effect in the neighborhood given the already present problems. See *City of Chicago Heights*, 196 Ill. 2d at 22 (stating that " 'the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any *adverse effects above and beyond those inherently associated with such a special exception use*

irrespective of its location within the zone.' " *Id.* at 22 (citing 3 E. Ziegler, *Rathkopf's Law of Zoning and Planning* § 41.08, at 41-36 (4th ed. 1992)).

¶ 34 We similarly reject South Shore Pawn's assertion that it presented "expert" testimony, which should be believed over that of the neighborhood residents. South Shore Pawn did not purport to formally qualify its hearing witnesses as experts or raise objections as to corroborative documentary evidence and also has not cited any legal authority to support its assertion, resulting in double waiver. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (arguments must be supported with citation to legal authority); *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855 (2007) (issues insufficiently presented under Rule 341(h)(7) can be waived); *Arvia v. Madigan*, 209 Ill. 2d 520, 528 (2004) (generally, issues or defenses not raised before the administrative agency are waived). Regardless, administrative hearings are subject to relaxed rules of evidence, and again, it is for the administrative agency to make credibility determinations, not this court. See *Hurst*, 393 Ill. App. 3d at 329; *MJ Ontario, Inc. v. Daley*, 371 Ill. App. 3d 140, 147, 149 (2007). We observe that it is not unreasonable to credit repeated testimony by longtime residents over that of non-residents with respect to matters in the residents' own neighborhood. *MJ Ontario*, 371 Ill. App. 3d at 147 (testimony based on personal observations was not "speculative").

¶ 35 **CONCLUSION**

¶ 36 We affirm the Board's decision, denying the special use permit to South Shore and therefore reverse the circuit court judgment.

¶ 37 Reversed.