

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN**

JULIE CROWE,

Plaintiff,

v.

CITY OF BLOOMINGTON, a Municipal
Corporation,

Defendant.

No. 12 MR 45

FILED
AUG 28 2013
McLEAN COUNTY
CIRCUIT CLERK

ORDER

THIS CAUSE comes on for hearing on the parties' cross Motions for Summary Judgment on June 4, 2013. The Plaintiff appeared in person and by counsel, Jacob Huebert; the Defendant appeared by Todd Greenberg. The Court, after considering the motions, supporting memoranda, exhibits and arguments of counsel, finds and orders as follows:

1. Plaintiff filed a Complaint for Declaratory Judgment on February 28, 2012, alleging that the Defendant's Certificate of Convenience provisions of the Bloomington City Ordinance violate Plaintiff's right to due process of law.
2. Specifically, Plaintiff alleges: 1) her procedural rights of due process were violated; 2) her substantive rights of due process were violated; and 3) the Defendant's rejection of Plaintiff's application for a vehicle for hire license was against the manifest weight of the evidence.

3. In 2007, the City of Bloomington enacted an ordinance pertaining to the regulation of vehicles for hire (VFH), including their entry into the marketplace and operation. The ordinance was amended in 2010 to require new VFH companies, or existing VFH companies wishing to expand their fleet, to receive a certificate of convenience (COC) from the City. The then-existing VFH licensees supported the amendment, which provided that a COC would be granted only if the City Manager “finds that further vehicle for hire service in the City of Bloomington is desirable and in the public interest, and that the applicant is fit, willing and able personally and financially to perform such public transportation and to conform to the provisions of this Ordinance and the rules promulgated by the City Manager.” Bloomington City Code §§1002A, 1002E. The then-existing VFH companies obtained exemptions from the restrictions insofar as they were automatically granted COC’s.
4. Applications for a VFH certificate are filed with the City Clerk and forwarded to a Deputy City Manager, as the City Manager has delegated all VFH responsibilities to that office. The Deputy City Manager subsequently holds a public hearing and makes a determination to approve or deny the application. Notice of the public hearings must be published in the newspaper, and notice must be given to all “interested persons,” defined as “all persons to whom certificates of public convenience have been theretofore issued.” *Id.* §1002D.

5. The Ordinance is silent as to what an applicant may say or do at the hearing. Furthermore, it fails to note any procedures for the conduct of the hearing, such as any requirement that evidence be taken under oath, provisions for cross-examination, among other items. However, it does provide that the existing licensees to submit evidence supporting or opposing the application and to testify at the hearing. *Id.* §1002D(b).
6. Upon completion of the public hearing, the City takes action on the COC, either issuing or denying the same. The City is required to send a copy of the findings supporting the decision to both the applicant and all “interested parties.” *Id.* §1002E. The decision letter includes notice of the basis, or bases, for a rejection. If an application is denied, the applicant may appeal to the City Council. It is undisputed that there are no city rules, regulations, policies or procedures that govern the appeal process.
7. Plaintiff filed a VFH COC application on May 4, 2011. A public hearing was held on her application on June 24, 2011. Prior to the hearing, Plaintiff was given no information as to the nature of the evidence she could present or the procedures that would govern the hearing. Plaintiff spoke at the hearing and provided an explanation of her business plan. The Deputy City Manager also heard evidence from existing licensees, who are “interested persons” under the Ordinance. This evidence consisted of unsworn testimony (without any opportunity for cross-examination) and a letter. Plaintiff was not given any opportunity to rebut the evidence from the “interested persons.”

8. Plaintiff's application was denied by the Defendant on August 25, 2011.
The one sentence denial letter stated: "The City of Bloomington has determined that there is not a need to have an additional Vehicle for Hire Shuttle, there (sic) your request has been denied."
9. In September of 2011, Plaintiff appealed to the Bloomington City Council. A hearing was scheduled for September 26, 2011. Prior to the hearing, the City Clerk prepared a packet of information for the council members, which consisted only of documents selected by the City Manager's office. The council members were unaware that they had not received all information relating to the application, such as Plaintiff's financial statement and letters of support of her application and appeal, a petition from downtown bar owners supporting her application, or any transcript of the public hearing. A memorandum included in the packet of information, which was authored by the Deputy City Manager, stated not one, but two, bases for denying the Plaintiff's application—neither of which were set forth in the rejection letter provided to Plaintiff.
10. Some council members stated their confusion over how the appeal hearing was to proceed or what standards were to apply. Plaintiff was allowed to present her argument in support of her application at the appeal hearing. Ultimately, the City Council voted 8 to 1 to uphold the Deputy City Manager's decision to deny Plaintiff's application.
11. Summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is

no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c).

12. Plaintiff argues the Defendant’s COC provision is unconstitutionally vague and arbitrary as it grants City officials overly broad discretion and deprives applicants of due process of law. While §1002E states a COC shall be granted when the City Manager finds that further VFH service is “desirable and in the public interest,” there are no definitions for either of those terms, nor are there any objective criteria to establish the meaning of those terms. The deputy City Manager has focused only on the “public interest” component, defining it as “whether an additional vehicle...is needed on the street.” In determining need, the deputy City Manager considers criteria created solely by her. The application of these arbitrary criteria has led to arbitrary, inconsistent results as cited by Plaintiff.
13. Due process demands application of “objective criteria or facts,” not the “opinions and whims” of an individual or group. *General Motors Corp. v. State Motor Vehicle Rev. Bd.*, 224 Ill.2d 1(2007). In order to avoid unconstitutional vagueness, a law must “be sufficiently explicit to advise everyone what his rights are under it and how he will be affected by its operation.” *McDougall v. Leuder*, 389 Ill.141 (1945).
14. An additional problematic area for the Ordinance is the absence of any standards by which the City Council is to affirm or reverse the City Manager’s denial of an application. Illinois courts look with disfavor upon

ordinance provisions that do not sufficiently constrain local officials' discretion to grant or deny a permit or license.

15. Plaintiff additionally argues the Defendant's COC provision is not rationally related to the public's health, safety or welfare and instead serves only to protect established businesses from competition. Under the rational basis test, the Court must determine if the legislation: 1) contains a legitimate state interest and; 2) whether there is a reasonable relationship between that interest and the means chosen to pursue it. *People v. Johnson*, 225 Ill.2d 573 (2007). The City's stated purpose for the COC is to: 1) prevent saturation of the market in order to "ensure the economic survival" of existing VFH operators; and 2) establish a public hearing process in which the "main issue is whether the market will support a new company." In sum, the COC provision of the ordinance was enacted to regulate the number of VFH's allowed to operate in the City of Bloomington. Furthermore, the COC provision grants the existing COC holders special privileges not extended to applicants, as noted by Plaintiff. Contrary to the City's argument, there is nothing within the stated purpose and special privileges that advances the health, safety or welfare of the public. Furthermore, there is no evidence that the City Manager is bound to grant or deny a COC on any criteria relating to the public's health, safety or welfare.
16. Plaintiff claims the City's law, policies and procedures regarding the award of vehicle for hire certificates violated Plaintiff's right to procedural

due process. There were several instances in which Plaintiff's right to procedural due process was violated at both the public hearing and appeal before the City Council. At each stage, the City presented evidence of which Plaintiff had no prior notice, leaving her without any meaningful response. Further, at the public hearing, Plaintiff was not afforded an opportunity to cross examine witnesses or present any evidence in rebuttal to the City's presentation. Finally, the record of the public hearing and actions up to the point of appeal was only partially presented to the City Council—the members were only presented with hand-picked items by the City Manager's office. As a result, for the reasons stated above, the City violated the Plaintiff's right to procedural due process.

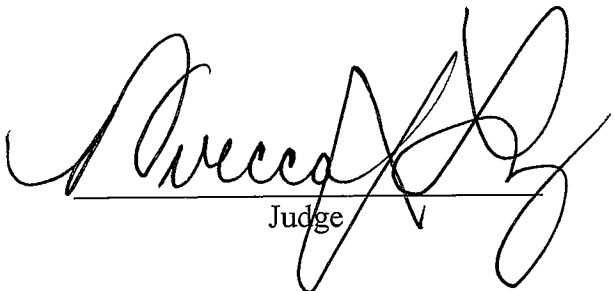
17. Plaintiff's final argument is that the City's denial of Plaintiff's application was unreasonable and contrary to the manifest weight of the evidence. Under the manifest weight of the evidence standard, the Court must determine if "an opposite conclusion is apparent" from the record "or when findings appear to be arbitrary, unreasonable, or not based on evidence." *In re Estate of Parisi*, 328 Ill.App.3d 3 (2002). The letter denying Plaintiff's COC certificate states the basis for denial was the lack of a "need" for another VFH shuttle in Bloomington. Despite the assertion that need is determined by looking at the number of currently licensed VFH seats, the record before the Court lacks any evidence regarding the accurate number of seats, or how many licensed seats operate on any given night. At appeal, the City represented that another VFH company

would “saturate the community.” Again, as stated above, the record before the Court lacks any evidence regarding the actual number of licensed seats, or the number of licensed seats that operate each night. Finally, the record before the Court lacks evidence regarding Plaintiff’s cash flow—an item that was represented by the Defendant to the City Council as limiting Plaintiff’s ability to act as a VHF operator.

18. During the application process and at public hearing, Plaintiff presented evidence that: her service to young females would be desirable; her diversity as a female driver and operator would be desirable, in the public interest and serve the needs of consumers and the public; and that she was an experienced driver. She further presented evidence that her service would provide up to 15 passengers a different alternative. Her application was supported by several downtown bar owners. None of these items were disputed by the Defendant.
19. Accordingly, for the reasons stated above, that the City’s COC ordinance is unconstitutional, both on its face and as applied to Plaintiff, and because the City’s denial of Plaintiff’s application was unreasonable and contrary to the manifest weight of the evidence, Plaintiff’s Motion for Summary Judgment is allowed and Defendant’s Motion for Summary Judgment is denied.

SO ORDERED.

Enter: August 28, 2013


Judge