No. 125443

IN THE
SUPREME COURT OF ILLINOIS

MEDPONICS ILLINOIS, LLC, an Illinois Limited Liability Company, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF AGRICULTURE; RAYMOND POE, Director of the Illinois Department of Agriculture; JEFFREY G. COX, Chief of the Bureau of Medicinal Plants of the Illinois Department of Agriculture; and CURATIVE HEALTH CULTIVATION, LLC, an Illinois Limited Liability Company, Defendants-Appellees.	)	Appeal from the Illinois Appellate Court, Second Judicial District, Nos. 2-17-0977, 2-18-0013, and 2-18-0014 (consol.) There on Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois, No. 15-MR-2061 The Honorable MICHAEL J. FUSZ, Judge Presiding.

BRIEF AND SUPPLEMENTAL APPENDIX OF STATE DEFENDANTS-APPELLEES

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NATURE OF THE ACTION

State Defendant-Appellee Illinois Department of Agriculture ("Department") awarded Defendant-Appellee Curative Health Cultivation, LLC ("Curative"), a cultivation center permit under the Compassionate Use of Medical Cannabis Pilot Program Act ("Act"), 410 ILCS 130/1 *et seq.*, after it received the highest score on its application out of eight total applications in Illinois State Police District 2. Plaintiff-Appellant Medponics Illinois, LLC ("Medponics"), the fifth-place applicant, filed a complaint for administrative review in circuit court, arguing that the proposed location of Curative's cultivation center was within 2,500 feet of an area zoned exclusively for residential use, in violation of the Act and corresponding administrative regulation, 8 Ill. Admin. Code § 1000.10. The circuit court reversed the Department's issuance of the permit to Curative and remanded to the Department for rescoring of applications. The Department and Curative appealed, and the appellate court reversed the judgment of the circuit court, thereby upholding the Department's award to Curative. Medponics filed a petition for leave to appeal, which this Court granted.

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ISSUE PRESENTED FOR REVIEW

Whether the Department's interpretation of its own administrative regulation — that an "area zoned exclusively for residential use" does not include areas that allow both residential use *and* non-residential uses — was reasonable.

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STATEMENT OF FACTS

Background

The Act permits the medical use of cannabis for patients with specified debilitating medical conditions. 410 ILCS 130/5(g)[1] The Act allows the Department to register up to 22 cannabis cultivation centers for operation, with one registration allowed in each Illinois State Police District boundary. 410 ILCS 130/85(a). The Act sets forth specified application requirements for cultivation center registration, including identifying the proposed location of the center. 410 ILCS 130/85(d). The Act further delegates enforcement duties to the Department for "the registration and oversight of cultivation centers," 410 ILCS 130/15(b), as well as rulemaking authority "related to registered cultivation centers," 410 ILCS 130/165(c), (c)(8).

The Act includes a setback requirement for cultivation centers, providing that they may not be located within 2,500 feet of "an area zoned for residential use":

[1] The Act predates the passage of the Cannabis Regulation and Tax Act, which legalized the use of cannabis in Illinois for adults over the age of 21. 410 ILCS 705/1-1, *et seq*. Despite the legalization of cannabis use in Illinois, the Act has not been superseded, as qualifying patients under the Act maintain unique privileges, including the ability to cultivate up to five cannabis plants for personal use, *see* 410 ILCS 705/10-5(b)(1). Under the Cannabis Regulation and Tax Act, existing registered medical cannabis cultivation centers may apply for licensure to produce cannabis for adult use at existing facilities. 410 ILCS 705/20-10(a). The Cannabis Regulation and Tax Act further provides that, on or after July 1, 2021, the Department by rule may modify or change the number of cultivation centers available, with a maximum of 30 cultivation center permits allowed. 410 ILCS 705/20-5.

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> *A registered cultivation center may not be located within 2,500 feet of* the property line of a pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home, part day care facility, or *an area zoned for residential use*.

410 ILCS 130/105(c) (emphasis added).

The phrase "an area zoned for residential use" is undefined in the Act. Pursuant to its rulemaking authority, the Department defined the phrase as "an area zoned exclusively for residential use" for municipalities with populations under 2,000,000 people:

> *"Area zoned for residential use" means an area zoned exclusively for residential use*; provided that, in municipalities with a population over 2,000,000 people, "an area zoned for residential use" means an area zoned as a residential district or a residential planned development.

8 Ill. Admin. Code § 1000.10 (emphasis added).

In its opening brief, Medponics states that it "does not contend that the rule at issue is invalid" and "contends only that the [Department's] interpretation of the rule is wrong and asks only that the rule be applied as written." AT Br. at 30.[2]

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[2] The record on appeal consists of five common law volumes, cited as C__, three secured volumes, and one supplemental common law volume. The appellant brief of Medponics is cited as AT Br. at __ and its appendix as A__. The supplement appendix of the State Defendant-Appellees is cited as Supp. A__ and the supplement appendix of Defendant-Appellee Curative as Curative Supp. A__.

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Applications and Scoring

In 2014, eight applicants sought a cultivation center permit for Illinois Police District 2. C2690-93. The Department's regulations establish a scoring process, by which the highest scoring applicant will be awarded the cultivation center permit in the particular Police District. 8 Ill. Admin. Code § 1000.110. As the highest scoring applicant in Illinois Police District 2, the Department awarded Curative a permit for its proposed location at 2229 Diehl Road in Aurora, Illinois, on October 20, 2015. C3731-32; C5226-28. Medponics, with a proposed location at 2809 Damascus Avenue in Zion, Illinois, finished fifth in the scoring process for that Police District. C2692-93.

Circuit Court Proceedings

Medponics filed a complaint for administrative review in the circuit court, alleging that Curative's proposed location was within 2,500 feet of an area zoned exclusively for residential use. C2045-60; C2178-80. Specifically, it argued in its memorandum supporting the complaint that the location was within 2,500 feet of Aurora's "R-1" and "R-5" "residential districts." C2490 (citing C2180, an excerpt of the 2015 Aurora zoning ordinance ("zoning ordinance"), attached to its complaint).

In response, the Department and Curative asserted that the permit award was proper, since the R-1 and R-5 residential districts were not "zoned exclusively for residential use," because the districts permitted non-residential special, accessory, and permitted uses. C2548-80; C2583-2635. They attached

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to their responses an appendix to the zoning ordinance that identifies various special, accessory, and permitted uses allowed in the R-1 and R-5 districts. C2561-70; C2607-16; Curative Supp. A1-10.[3]

Following briefing and oral argument, the circuit court set aside the permit awarded to Curative. C3721-23. The court concluded that the phrase "zoned exclusively for residential use" did not mean that the setback requirement applied only when "nothing but residences are permitted." *Id.*[4] It thus concluded that an area is zoned exclusively for residential use, even when non-residential uses are permitted. *Id.* The court thus remanded the matter to the Department for rescoring of the applications. *Id.*

The Department and Curative appealed. C5514-21; C5494-96.[5] As part of its appeal, Curative also challenged an order of the circuit court denying its

[3] Specifically, the R-1 district permits a number of non-residential uses, including: transportation services; air passenger terminals; rail transportation; non-residential parking facilities; electric utility facilities; utilities and utility services; alternative energy services; community centers; golf courses; natural and other recreational parks; educational services; public facilities and services; health and human services; day care; hospitals or sanatoria; cemeteries or mausoleums; social service agencies, charitable organizations, health related facilities, and similar uses when not operated for profit; truck gardening; stormwater management facilities, drainage areas, and common landscaping areas; and planned developments. The R-5 district allows for all of those uses, as well as uses including automated business devices; nursing, supervision, and other rehabilitative services; and mental health facilities. C2561-70; C2607-16; Curative Supp. A1-10.

[4] The court misquoted the regulation as stating "exclusively zoned for residential use."

[5] The City of Aurora also appealed the circuit court's denial of its petition to intervene. C5483. On appeal, the appellate court dismissed the appeal as moot after finding in favor of the Department and Curative. A22.

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request to supplement the record with a letter from City of Aurora to the Department stating that the cultivation center was not within 2,500 feet of any area zoned exclusively for residential use. C5496; C5271-72; A29-30.

Appellate Court Proceedings

The appellate court reversed the circuit court's judgment. A1-23. In doing so, it explained that the term "exclusively" in the Department's regulation was unambiguous, and cited dictionary definitions of the word, demonstrating that it means "apart from all others," "solely," and "to the exclusion of all others." A17 (quoting Oxford Online Dictionary). The court then noted the "litany" of non-residential uses permitted in the R-1 and R-5 districts. A4-5, 17. Because non-residential uses were permitted, the court concluded that the districts were not zoned "exclusively" for residential use. A18. It acknowledged Medponics' interpretation of the regulation, which was that an area remains zoned exclusively for residential use even when non-residential uses are permitted. *Id.* The court concluded that even if this were a reasonable interpretation, it did not render the Department's interpretation unreasonable. *Id.* Because the Department's interpretation of its regulation was reasonable, the court concluded that the interpretation was entitled to deference, and upheld the award of the permit to Curative. *Id.*

Medponics filed a petition for leave to appeal, which this Court granted.

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ARGUMENT

I. The Standard Of Review Is *De Novo* And This Court Defers To An Agency's Reasonable Interpretation Of Its Own Regulation.

The issue before this Court is whether the phrase "an area zoned exclusively for residential use" in the Department's regulation, *see* 8 Ill. Admin. Code § 1000.10, includes areas that allow residential use *and* non-residential accessory, permitted, and special uses. The question therefore requires interpretation of an administrative regulation, subject to the *de novo* standard of review. *See Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 16 ("interpretation of statutes and regulations" are "both questions of law which [this Court] review[s] *de novo*").

And while typically under the *de novo* standard a court owes no deference to an agency's decision, this Court will defer to an agency's reasonable interpretation of its enabling statute and any regulations promulgated thereunder. *See Hadley v. Ill. Dep't of Corr.*, 224 Ill. 2d 365, 371 (2007) ("A court will not substitute its own construction of a statutory provision for a reasonable interpretation adopted by the agency charged with the statute's administration.") (quoting *Church v. State of Ill.*, 164 Ill. 153, 162 (1995)); *see also Hartney Fuel Oil Co.*, 2013 IL 115130, ¶ 16 ("[E]ven where review is *de novo,* an agency's interpretation of its regulations and enabling statute are 'entitled to substantial weight and deference.'") (quoting *Provena Covenant Med. Ctr. v. Dep't of Revenue,* 236 Ill. 2d 368, 387 n.9 (2010)) (superseded by statute on other grounds).

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But with or without such deference, this Court should uphold the Department's determination that the phrase "an area zoned exclusively for residential use" does not include areas that allow both residential *and* non-residential uses, as that is the only reasonable interpretation. Alternatively, applying deference, the interpretation is, at least, *one* reasonable interpretation, such that it should not be disturbed by the Court.

II. The Department's Interpretation Of Its Regulation — That An Area Is No Longer Zoned Exclusively For Residential Use When It Permits Non-Residential Uses — Affords The Regulation Its Plain Meaning And Thus Should Be Upheld.

This Court has held that "[i]n interpreting an agency regulation," the "primary objective is to ascertain and give effect to the intent of the agency." *People ex rel. Madigan v. Ill. Com. Comm'n*, 231 Ill. 2d 370, 380 (2008). And "[t]he surest and most reliable indicator of intent is the language of the regulation itself"— its "plain meaning." *Id.* To afford the regulation its plain meaning, this Court should give effect to every term, and render no term superfluous. *See People ex rel. Ill. Dep't of Corr. v. Hawkins*, 2011 IL 110792, ¶ 23 ("The statute should be read as a whole and construed so as to give effect to every word, clause, and sentence; we must not read a statute so as to render any part superfluous or meaningless."); *see also M.A.K. v. Rush-Presbyterian-St.-Luke's Med. Ctr.*, 198 Ill. 2d 249, 257 (2001) ("Familiar principles of statutory construction apply to the interpretation of regulations of an administrative agency.").

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Here, by its plain terms, the Department's regulation intends only to prohibit cultivation centers within 2,500 feet of areas zoned "exclusively" for residential use. 8 Ill. Admin. Code § 1000.10. Because the R-1 and R-5 districts are not zoned "exclusively" for residential use — and instead permit non-residential uses — the setback requirement does not apply to these areas.

Despite this plain language, Medponics seeks affirmance of the circuit court's order, which ruled that the regulation did not mean "*nothing* but residences are permitted." C3722 (emphasis in original). But by its ordinary meaning, "exclusively" means just that: nothing but. *See, e.g.,* Oxford Online Dictionary, https://en.oxforddictionaries.com/definition/us/exclusively ("exclusively") ("To the exclusion of others; only; solely.") (cited by *People v. Haberkorn*, 2018 IL App (3d) 160599, ¶ 28). The R-1 and R-5 districts do not permit only, and to exclusion of all other uses, residential use. They are therefore not "zoned exclusively for residential use."

Medponics appears to take the position that because the district where Curative applied to locate its cultivation center was zoned as a "residential district," there can be no further "zoning" within the district that would render the setback requirement inapplicable to it. AT Br. at 15-21. Cases make clear, however, that the phrase "zoned for" is frequently used to describe areas that are also "zoned for" a special or permitted use. *See, e.g., Christian Assembly Rios de Agua Viva v. City of Burbank*, 408 Ill. App. 3d 764, 774 (1st Dist. 2011) (noting a particular property was not "zoned for use as a church");

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Falcon Funding, LLC v. City of Elgin, 399 Ill. App. 3d 142, 154 (2d Dist. 2010) (describing a developer's argument regarding property "zoned for" a special use planned unit development); *Cnty. of Cook v. Monat*, 365 Ill. App. 3d 167, 169 (1st Dist. 2006) (discussing area not "zoned for keeping horses" without required special-use permit); *In re Disconnection of Certain Territory from Vill. of Machesney Park*, 122 Ill. App. 3d 960, 963 (2d Dist. 1984) ("Tract I contains 350 acres of land presently zoned for planned community development under a special use permit.").

Here, it is undisputed that the R-1 and R-5 districts were zoned for residential use as they were zoned as residential districts. But they were also zoned for non-residential special, permitted, and accessory uses. C2607-16. They were therefore not "zoned exclusively for residential use," and the Department was correct in concluding that they were not subject to the setback requirement.

Finally, the suggestion by Medponics that the setback requirement should apply whenever an area is zoned as a "residential district" does not comport with the plain language of the regulation. AT Br. at 15-21. The regulation specifically addresses a situation where the setback requirement will apply simply because an area is zoned as a residential district — when the municipality's population exceeds 2,000,000 people:

> "Area zoned for residential use" means an area zoned exclusively for residential use; *provided that, in municipalities with a population over 2,000,000 people, "an area zoned for residential use" means an*

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> *area zoned as a residential district* or a residential planned development.

8 Ill. Admin. Code § 1000.10 (emphasis added). If it were the case that the setback requirement *per se* applies to areas zoned as residential districts, regardless of population, this second clause would be unnecessary. Because Medponics' interpretation would render this part of the regulation superfluous, it should be rejected based on well-established principles of statutory construction. *See Hawkins*, 2011 IL 110792, ¶ 23 ("we must not read a statute so as to render any part superfluous or meaningless").

In sum, the Department's determination that "an area zoned exclusively for residential use" does not include areas that also permit non-residential uses, affords the regulation its plain meaning and thus should be upheld regardless of whether the Court affords the Department any deference.

III. Even If This Court Concludes That Medponics' Interpretation Of The Regulation Is Reasonable, It Should Defer To The Department's Equally Reasonable Interpretation.

Nevertheless, Medponics argues that a district remains zoned "exclusively" for residential use, even when it also allows non-residential accessory, permitted, and special uses. For the reasons explained, Medponics' interpretation is inconsistent with the regulation's plain meaning. But even if this Court were to deem Medponics' interpretation reasonable, the Department's interpretation should still be upheld, so long as it, too, is reasonable. *See Hadley*, 224 Ill. 2d at 371. Therefore, Medponics must

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demonstrate that the Department's interpretation is *unreasonable*, which it cannot do.

A. Medponics' Preliminary Statement, By Focusing On The Act Itself, Overlooks The Issue Before the Court: The Proper Interpretation Of The Department's Regulation.

In its "preliminary statement," Medponics attempts to avoid demonstrating that the Department's interpretation of the regulation is unreasonable by arguing that no deference is owed because the Act is unambiguous. AT Br. at 12-15. But this misapprehends the issue before the Court. The validity of the Department's regulation — interpreting the Act's setback requirement as applying to areas zoned "exclusively" for residential use — is not at issue because Medponics admits the regulation is valid. *See* AT Br. at 30 (arguing that the Department's "*interpretation of the rule* is wrong" and seeking "that *the rule be applied* as it is written") (emphasis added).[6] Thus, the issue before the Court is not the proper interpretation of the Act, but the proper interpretation of the regulation. Medponics' argument that no

[6] Specifically, Medponics has not challenged the Department defining "an area zoned for residential use" as "an area zoned exclusively for residential use." Because Medponics has not raised this argument in its opening brief to this Court, it has forfeited the argument. *See* Ill. Sup. Ct. R. 341(h)(7) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010) ("Consistent with the plain language of the rule, this court has repeatedly held that the failure to argue a point in the appellant's opening brief results in forfeiture of the issue.").

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deference should be afforded the Department's interpretation of the regulation because the Act is unambiguous thus should be rejected.

B. Medponics Fails To Demonstrate That The Department's Interpretation Of The Regulation Is Unreasonable.

Medponics alternatively asserts that the Department's interpretation is unreasonable because it rests on determinations that: (1) allowing non-residential uses changes the zoning designation of a district; and (2) the setback requirement does not apply statewide. AT Br. at 15-17. Medponics is incorrect on both points.

First, Medponics asserts that the Department "maintain[s] that the availability of special use permits within [the R-1 and R-5] districts changes their zoning designations to something other than exclusively residential." *Id*. at 18-19; *see id.* at 18-21. The Department has never argued this. Rather, it has correctly reasoned that the R-1 and R-5 districts, while residential districts, are not zoned *exclusively* for residential use because they permit non-residential uses. As such, Medponics' cited cases — standing for the undisputed proposition that a special use permit does not change the zoning designation of an area — are irrelevant. *See id.* at 20-21 (listing cases).

Second, Medponics argues that, under the Department's interpretation of the regulation, the setback requirement "does not apply to all municipalities in the state." *Id.* at 25-30. In support, Medponics notes that certain municipalities do not designate districts as residential without also allowing non-residential uses in those districts. Medponics appears to be arguing that

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because the setback requirement would not be triggered in these municipalities, the municipalities are somehow excluded from the requirement. This is incorrect. The setback requirement is not inapplicable to a municipality simply because under the existing facts in that municipality, the requirement could not be invoked.[7]

In sum, Medponics has failed to demonstrate that the Department's interpretation of the regulation — that an area that allows non-residential uses is not "exclusively" residential — is unreasonable. As such, it has failed to show why this Court should not defer to the Department's reasonable interpretation of its own regulation.

IV. Medponics' Argument That The City Of Aurora Zoning Ordinance Indicates That The R-1 And R-5 Districts Are "Used Exclusively For Residential Purposes" Is Incorrect.

Medponics does not dispute that the R-1 and R-5 zoning districts permit non-residential accessory, permitted, and special uses. Nevertheless, it contends that these districts remain zoned "exclusively" for residential use based on a misconstruction of the City of Aurora's zoning ordinance.

Medponics notes that the zoning ordinance divides the City into "use districts," with the R-1 and R-5 districts identified as "residential districts." At Br. at 17 (citing A89). It concedes that the term "residential district" is

[7] For example, Illinois has a statewide ban on owning dangerous animals as pets. *See* 720 ILCS 5/48-10. If a municipality had no resident who owns a dangerous animal, that would not mean that the municipality is excluded from the ban — it simply would mean that the law would not be invoked.

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undefined in the zoning ordinance, but points to a different term in the ordinance, "residential area," which is defined as "[a] zoning lot or portion of a zoning lot designed or used exclusively for residential purposes." *Id.* at 17 (citing A88). Although there is no indication that "residential district" and "residential area" are the same, Medponics asserts that the R-1 and R-5 districts are "residential areas." *Id.* (citing C2180). But not only does Medponics point to nothing to suggest that the City of Aurora zoning ordinance uses "residential area" and "residential district" interchangeably, there are several indications to the contrary.

For starters, as Medponics notes, *id.*, a "residential area" is defined, in pertinent part, as a "zoning lot" or "portion of a zoning lot," C2179. The common understanding of the term "lot" is a single plot of land — rather than an entire district. *See, e.g.,* Merriam-Webster Online Dictionary, "lot," "a measured parcel of land having fixed boundaries and designated on a plot or survey" (available at https://www.merriam-webster.com/dictionary/lot). Thus, while the City of Aurora designated certain "single plots of land," or lots, as "exclusively for residential purposes," there is no indication that it similarly designated entire residential districts (*i.e.*, R-1 and R-5) as such.

Moreover, additional portions of the City of Aurora's zoning ordinance demonstrate that "residential area" and "residential district" are distinct terms. *See* Supp. A6 (defining "zoning lot" as "*[a] plot of ground*, made up of one (1) or more parcels that is or may be occupied by a use, building or

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buildings including the open spaces required by this ordinance") (emphasis added); *see also* Supp. A8 (stating that the purpose of creating "residential *districts*" was to "protect residential *areas*") (emphasis added). This Court may take judicial notice of these additional portions of the ordinance. *See PACE, Suburban Bus. Div. of Reg'l Transp. Auth. v. Reg'l Transp. Auth.*, 346 Ill. App. 3d 125, 132 (2d Dist. 2003) (taking judicial notice for the first time on appeal of submitted ordinances) (citing 735 ILCS 5/8-1002).

Thus, the definition of "residential area" in the Aurora zoning ordinance does not demonstrate that only residential uses are allowed in residential districts in Aurora. This argument should be rejected as well.

V. Medponics Has Not Demonstrated Any Improper Reliance On Extra Record Material By The Appellate Court; Alternatively, Any Such Consideration Would Not Merit Reversal.

Finally, Medponics argues that the appellate court improperly considered a letter from the City of Aurora to the Department stating that Curative's cultivation center was not within 2,500 feet of an area zoned exclusively for residential use. AT Br. at 24-25; A29-30. In support, the City relied on the Department's statement, in a "frequently asked questions" ("FAQs") section of its public website, that an area that allows non-residential uses, "such as churches, parks, schools, utility substations, and/or other planed used including commercial uses," is not subject to the setback requirement. A29-30; A33. The circuit court excluded this letter from the administrative

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record because it was unclear whether the Department considered it in awarding the permit to Curative.

As an initial matter, the Department did not challenge the circuit court's decision to exclude letter from the record because the letter is unnecessary to affirm the Department's decision. Moreover, even if the appellate court improperly considered the letter or the FAQs in reaching its decision, at most, Medponics would be entitled to a remand to the appellate court for reconsideration of the issue, not a complete reversal. *See, e.g.*, *In re Marriage of Hassiepen*, 269 Ill. App. 3d 559, 568 (1st Dist. 1995) (remanding issue for further proceedings where court improperly relied on certain evidence in reaching determination). But a remand is unnecessary here, because whether the Department properly interpreted its own regulation presents a question of law that this Court reviews *de novo*. *See, e.g., Myers v Health Specialists, S.C.*, 225 Ill. App. 3d 68, 76 (1st Dist. 1992) ("This is a question of law, not of fact. Thus, remand is not necessary.").

In any event, Medponics has not demonstrated any improper reliance on extra record materials by the appellate court. Medponics merely notes that the letter was part of the appellate court's recitation of facts, but does not explain how it affected the appellate court's analysis. AT Br. at 24-25.[8] The FAQs are available on a public government website and thus the appellate court properly

[8] Notably, in its brief, Medponics' statement of facts includes a description and citation of other documents that the circuit court did not allow in the record. *See* AT Br. at 11, n.3.

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took judicial notice of them. *See Leach v. Dep't of Emp. Sec.*, 2020 IL App (1st) 190299, ¶ 44 (holding information available on government websites to be sufficiently reliable such that judicial notice may be taken).

But whether the letter and FAQs are considered or not, the appellate court reached the proper result. It afforded the Department's regulation its plain meaning, and correctly concluded that the Department's interpretation of its regulation was not unreasonable. Thus, the court's decision upholding the Department's issuance of the cultivation center permit to Curative should be affirmed.

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CONCLUSION

For the foregoing reasons, State Defendants-Appellees request that this Court affirm the decision of the appellate court reversing the judgment of the circuit court, and thereby affirm the decision of the Illinois Department of Agriculture.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 314(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.

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SUPPLEMENTAL APPENDIX

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CURRENCY EXCHANGE:	An establishment, except a bank, a post office, trust company, savings bank, savings and loan association, credit union, industrial loan and thrift company, engaged in the business of cashing checks, drafts, money orders or traveler's checks, exchanging currency or transmitting money within the United States or overseas by any means for a fee. Check cashing shall not include stand-alone services located inside buildings so long as service incorporates no signage in the windows of the building visible from public view. For purposes of zoning, a currency exchange is considered an Alternative Financial Service.
DOG RUN	An enclosed outdoor area intended for the exercising and/or containment of dogs.
DOWNTOWN CORE:	The downtown core shall be as described in the Downtown Core Section hereof.
DOWNTOWN FRINGE:	The downtown fringe shall be as described in the Downtown Fringe Section hereof.
DISH ANTENNA:	A parabolic-shaped receiver and/or transmitter for entertainment and communication transmissions.
DRIVE-IN ESTABLISHMENT:	A business establishment, other than a drive-in or drive-through restaurant, so developed and used that its retail or service character is dependent, in whole or in part, on providing a driveway approach for motor vehicles to serve patrons while in the motor vehicle rather than within a building or structure.
DRIVE-THROUGH RESTAURANT:	An eating establishment that provides a driveway approach for the serving of food and beverages to customers in a motor vehicle and which may also provide an indoor seating area with a minimum of two (2) tables and four (4) chairs. Accessory outdoor seating may be provided. Carryout and delivery service must be an accessory use.
DWELLING:	A building or portion thereof, but not including a house trailer or mobile home, designed or used exclusively for residential occupancy, including one-family dwelling units, two-family dwelling units and multiple-family dwelling units, but not including hotels, boardinghouses or lodging houses.
DWELLING, GROUP:	Two (2) or more one-family, two-family or multiple-family dwellings, or boardinghouses or lodging houses, located on one (1) zoning lot, but not including tourist courts or motels.

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RECREATIONAL VEHICLE:	A vehicle originally designed or modified for living quarters, human habitation, or recreation and not used as a commercial vehicle, including, but not limited to, the following: A.. Camper Trailer. A folding or collapsible vehicle without its own motive power, designed as temporary living quarters for travel, camping, recreation, or vacation use. B. Motorized Home. A vehicular unit on a self-propelled motor vehicle chassis, primarily designed as temporary living quarters for travel, camping, recreation, or vacation use. C. Off-the-road-vehicle. A vehicle intended primarily for recreational use off of roads where state vehicle licenses are required, such as a dune buggy, go-cart or snowmobile. D. Racing car or cycle. A vehicle intended to be used in racing competition, such as a race car, stock car, or racing cycle. E. Travel Trailer. A vehicle without its own motive power, designed to be used as a temporary dwelling for travel, camping, recreational or vacation use. F. Truck Camper. A structure designed primarily to be mounted on a pick-up or truck chassis and designed to be used as a temporary dwelling for travel, camping, recreational or vacation use. When mounted on a truck, such a structure and the truck shall together be considered one vehicle.
RESIDENTIAL AREA:	A zoning lot or portion of a zoning lot designed or used exclusively for residential purposes.
RESTAURANT:	An establishment where food and beverages can be purchased and eaten on the premises. Must provide an indoor seating area with a minimum of two (2) tables and four (4) chairs. Accessory outdoor seating may be provided. Carryout and delivery service may only be an accessory use. Establishments with drive-in or drive-through services are not permitted.
RESTAURANT, HOTEL:	An establishment where food and beverages can be purchased and eaten on the premises. Must provide an indoor seating area with a minimum of seventy five (75) seats, room service, and must have outside signage. Accessory outdoor seating may be provided.
RINGELMANN NUMBER:	The "Ringelmann Number" is the number of the area on the Ringelmann Chart that coincides most nearly with the visual density of emission.
ROOF LINE:	The part of the roof or parapet that covers the major area of the building.

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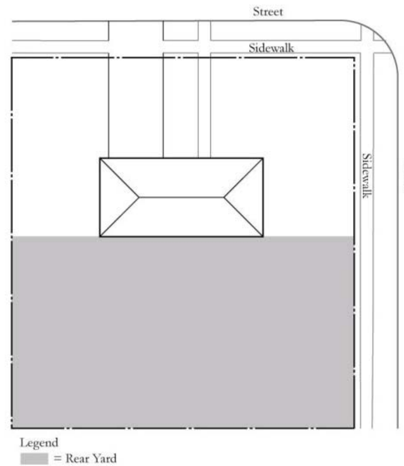
YARD, INTERIOR SIDE: The area lying between the interior lot line and the line or lines of the principal building, and extending from the front yard (or from the front lot line, if there is no front yard) to the rear yard. (see figure in definition of yard)

YARD, REAR:



A yard extending across the full width of the zoning lot and lying between the rear line of the lot and the line or lines of the principal building.

YARD, RIVER: The area lying between the setback line and the Fox River retaining wall, if such exists, or the mean watermark, as determined by the city engineer. The setback shall be measured horizontally. The purpose of such yard shall be to beautify the riverbank, to provide for pedestrian enjoyment, circulation and access among various businesses and activities. Within such yards pedestrian walkways, bicycle paths, pedestrian plazas and landscaping are permitted. Buildings, storage of materials or equipment, or vehicular parking, accessways or maneuvering areas shall not be permitted in the river yard.

YARD, SIDE: That part of the yard lying between the line or lines of the principal building and a side lot line, and extending from the front yard (or from the front lot line, if there is no front yard) to the rear yard. (see figure in definition of yard)

ZONING ADMINISTRATOR: Such officer as may be appointed by the city council for the purpose of administering and enforcing this ordinance.

ZONING BOARD: The Aurora zoning board of appeals.

ZONING LOT: A plot of ground, made up of one (1) or more parcels that is or may be occupied by a use, building or buildings including the open spaces required by this ordinance.

ZONING MAPS: The map or maps incorporated into this ordinance as a part hereof.

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SECTION 4. USE REGULATIONS

4.1. Use Districts

ESTABLISHMENT OF ZONE DISTRICTS	
In order to carry out the purposes and provisions of this ordinance, the City of Aurora, Illinois is hereby divided into the following districts:	
ABBREVIATION	DISTRICT NAME
OPEN SPACE, PARK, RECREATION DISTRICT	
OS-1	Conservation, Open Space, and Drainage District
OS-2	Open Space and Recreation District
P	Park and Recreation District
RESIDENTIAL DISTRICTS	
E	One-Family Dwelling District
R-1	One-Family Dwelling District
R-2	One-Family Dwelling District
R-3	One-Family Dwelling District
R-4	Two-Family Dwelling District
R-4A	Two-Family Dwelling District
R-5	Multiple-Family Dwelling District
R-5A	Midrise Multiple-Family Dwelling District
BUSINESS DISTRICTS	
B-1	Business District Local Retail
B-2	Business District General Retail
B-3	Services and Wholesale District
B-B	Business-Boulevard District
MANUFACTURING DISTRICTS	
M-1	Manufacturing District Limited
M-2	Manufacturing District General
OTHER DISTRICTS	
ORI	Office, Research and Industrial
R-D	Research & Development District
DC	Downtown Core
F	Downtown Fringe
O	Office
PDD	Planned Development District

4.2. Permitted Uses & Structures

4.2-1. Religious Institutions

4.2-1.1. All religious institutions shall comply with all applicable building and fire codes, and Aurora comprehensive plan.

4.2-1.2. Religious institutions built or buildings newly occupied and used as religious institutions on or after July 28, 1986, shall be regulated as follows:

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A. The same regulations as required in the R-1 One-family dwelling District shall apply in addition to the following District specific provisions:

i. Informational and way-finding signs. Such signs shall not be larger than six (6) square feet in area and no more than five (5) feet high

ii. Wall Signs. The maximum area of all wall signs on a façade shall be ten (10) percent of the building façade.

6.6-5.13. Parking And Loading

A. Parking facilities may be developed as appropriate to park use.

SECTION 7. RESIDENTIAL DISTRICTS

7.1. Purpose.

7.1-1. The residential districts set forth herein are established in order to protect public health, and promote public safety, convenience, comfort, morals, prosperity and welfare. These general goals include, among others, the following specific purposes:

7.1-1.1. To protect residential areas against fire, explosion, noxious fumes, offensive noise, smoke, vibrations, dust, odors, heat, glare and other objectionable factors.

7.1-1.2. To protect residential areas to the extent possible and appropriate in each area against unduly heavy motor vehicle traffic, especially through traffic, and to alleviate congestion by promoting off-street parking.

7.1-1.3. To protect residential areas against undue congestion of public streets and other public facilities by controlling the density of population through regulation of the bulk of buildings.

7.1-1.4. To protect and promote the public health and comfort by providing for ample light and air to buildings and the windows thereof.

7.1-1.5. To promote public comfort and welfare by providing for usable open space on the same zoning lot with residential development.

7.1-1.6. To provide sufficient space in appropriate locations to meet the probable need for future residential expansion and to meet the need for necessary and desirable services in the vicinity of residences, which increase safety and amenity for residents and which do not exert objectionable influences.

7.1-1.7. To promote the best use and development of residential land in accordance with a comprehensive land use plan, to promote stability of residential development and protect the character and desirable development and to protect the value of land and improvements and so strengthen the economic base of the City of Aurora.

7.2. Rules

A. Plat approval. The subdivision of all zoning lots shall be subject to final plat approval pursuant to the Aurora Subdivision Control Ordinance.

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7.5-2. Intent & Purpose

7.5-2.1. The “R-1” One-Family Dwelling District is intended to provide the City of Aurora with a wide range of quality housing opportunities by providing single-family areas of a low-density character containing a minimum lot area of ten thousand (10,000) square feet.

7.5-3. District Specific Regulations

7.5-3.1. Rules. The Rules Section of the Aurora Zoning Ordinance shall apply in addition to the following District specific provisions:

A. Only one (1) principal building shall be allowed on a zoning lot.

B. All single family detached dwelling units shall be constructed on a single recorded lot.

7.5-3.2. Definitions

7.5-4. Use Regulations

7.5-4.1. Permitted Uses. The Permitted Uses for this district as identified in Table One: Use Categories shall apply.

7.5-4.2. Special Uses. The Special Uses for this district as identified in Table One: Use Categories shall apply.

7.5-4.3. Accessory Uses. The Use Regulations Section of the Aurora Zoning Ordinance shall apply.

A. The Permitted Structures and Obstructions for this district are identified in Table Four: Permitted Structures and Obstructions.

7.5-5. Bulk Restrictions

7.5-5.1. Building, Dwelling and Structure Standards

A. One-Story Dwelling. Every one-story dwelling unit shall have a total ground floor area of not less than eleven hundred and fifty (1150) square feet.

B. Dwellings more than one-story. Every dwelling of more than one story shall have a total floor area of not less than fourteen hundred fifty (1450) square feet.

7.5-5.2. Floor Area Ratio.

A. There are no floor area ratio regulations for this district.

7.5-5.3. Height

The Height Section of Bulk Restrictions in the Aurora Zoning Ordinance shall apply in addition to the following District specific provisions:

A. Height of buildings. The maximum height of buildings permitted shall be as follows:

i. Buildings including accessory: Thirty-five (35) feet and not over two and one-half (2 1/2) stories.

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7.9-5.11. Performance Standards

A. The Bulk Restrictions Section of the Aurora Zoning Ordinance shall apply.

7.9-5.12. Setbacks

A. The minimum yard areas required in the R-4A shall be as follows:

i. Front--Thirty (30) feet.

ii. Interior side--Eight (8) feet.

iii. Exterior side--Fifteen (15) feet.

iv. Rear--Twenty (20) feet.

7.9-5.13. Signs

A. There shall be no signs permitted other than specified exceptions as provided for in the Aurora sign ordinance.

B. Nameplate signs shall not exceed two (2) square feet per side.

7.10. "R-5" Multiple-Family Dwelling District.

7.10-1. Title

7.10-1.1. The Multiple-family Dwelling District (hereinafter referenced as the "Multi-family District") shall be designated as "R-5" on the City of Aurora Zoning Map.

7.10-2. Intent & Purpose

7.10-2.1. The Multiple-family District set forth herein is established in order to develop a wide range of quality housing opportunities throughout the City. Specifically, it is intended to allow for quality rental type dwelling units within developments that establish and maintain a safe and secure living environment. The Multi-family District shall be a high intensity land use, generally relating to other high intensity land uses.

7.10-3. District Specific Regulations

7.10-3.1. The Rules and Definitions Section of the Aurora Zoning Ordinance shall apply in addition to the following District specific provisions:

7.10-3.2. Rules

A. General provisions. The Bulk Restrictions Section of the Aurora Zoning Ordinance shall apply in addition to the following District specific provisions:

i. Plat approval. All zoning lots shall be subject to final plat approval pursuant to the Aurora Subdivision Control Ordinance.

ii. Only one principal building shall be allowed on a zoning lot, except where the owner of any such development enters into a Property Management Agreement with the City of Aurora.

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 17, 2020, I electronically filed the foregoing **Brief and Supplemental Appendix of State Defendants-Appellees** with the Clerk of the Court for the Supreme Court, by using the Odyssey eFileIL system.

I further certify that the following participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system on December 17, 2020.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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