COURT OF APPEALS
DECISION
DATED AND FILED

August 18, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP725 **Cir. Ct. No. 2009CV19052**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

LADY BUG CLUB, LLC,

PLAINTIFF-APPELLANT,

V.

CITY OF MILWAUKEE, CITY OF MILWAUKEE COMMON COUNCIL, CITY OF MILWAUKEE COMMON COUNCIL LICENSES COMMITTEE AND CITY OF MILWAUKEE POLICE DEPARTMENT,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Affirmed*.

Before Lundsten, P.J., Vergeront and Sherman, JJ.

¶1 LUNDSTEN, P.J. Lady Bug Club, LLC, which operates a nightclub in the City of Milwaukee, sought to renew its tavern license. The City's

Common Council granted the renewal, but imposed a 60-day suspension, based on complaints from neighbors and incidents requiring police involvement. Lady Bug challenged the Council's decision, arguing that the Council's proceedings were flawed in various ways. On review, the circuit court affirmed the Council's decision. We agree with the circuit court that Lady Bug fails to show that the Council's decision warrants reversal. Accordingly, we affirm.

Background

¶2 Lady Bug Club operates in Milwaukee pursuant to a Class B tavern and tavern amusement license. Such licenses must be renewed on a yearly basis. After Lady Bug submitted a renewal application in 2009, the City sent Lady Bug a notice indicating a possibility of denial and that a hearing would be held on the renewal application.

¶3 The City of Milwaukee Common Council Licenses Committee conducted the hearing. At the hearing, evidence included a police synopsis of incidents inside Lady Bug or in the nearby vicinity of Lady Bug. These incidents included the repeated need for crowd control of Lady Bug patrons, fights involving patrons, physical and verbal altercations between patrons and Lady Bug's security personnel, battery incidents involving a bottle and a glass, and a nearby shooting. People living near Lady Bug also appeared at the hearing and testified that, associated with Lady Bug patrons coming and going, there were adverse effects on the neighborhood that included excessive noise, general "chaos," litter, and broken bottles. Based on the police synopsis and the neighbors' testimony, the Committee voted to recommend renewal with a 20-day suspension.

¶4 A Committee report was submitted to the full Council with findings of fact, conclusions of law, and the recommended action. After confirming that each Council member had read the Committee report, the Council took up the matter. Citing past warnings, a previous 45-day suspension, and the need for progressive discipline, an alderperson moved to amend the Committee recommendation to increase the suspension to 60 days. That motion carried, and the Council voted to adopt the recommendation as amended.

¶5 Lady Bug sought review in the circuit court, alleging various errors in this process and seeking to reverse the Council's decision. The circuit court rejected Lady Bug's challenges and affirmed the Council's decision. Lady Bug appeals. We include additional facts as needed below.

Discussion

¶6 The tavern license proceedings here are governed by statute and Milwaukee ordinances. *See* WIS. STAT. ch. 125 (alcohol beverage license requirements and procedures); WIS. STAT. § 125.10(1) (authorizing municipalities to enact regulations incorporating chapter 125 and to "prescribe additional regulations for the sale of alcohol beverages, not in conflict with this chapter").[1] The statutes provide that a municipality may suspend or refuse to renew a license for a number of reasons, including that the licensee "has violated [chapter 125] or municipal regulations adopted under s. 125.10" or "keeps or maintains a disorderly or riotous, indecent or improper house." *See* WIS. STAT.

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

§ 125.12(2)(ag) and (3). Section 125.12(2)(d) allows for judicial review by the circuit court of municipal decisions on licenses.

¶7 Lady Bug sought review in the circuit court, asserting a basis in WIS. STAT. § 125.12(2)(d) and further asserting that review under that provision is conducted by applying certiorari review. On appeal, the parties do not discuss why certiorari review (either common law or statutory) applies, given the language of § 125.12(2)(d).[2] In the absence of a dispute on this topic, we will assume they are correct that certiorari review is appropriate. As stated in ***State ex rel. Bruskewitz v. City of Madison***, 2001 WI App 233, 248 Wis. 2d 297, 635 N.W.2d 797:

> On certiorari review, we are limited to determining whether: (1) the governmental body's decision was within

[2] WISCONSIN STAT. § 125.12(2)(d) states:

> (d) *Judicial review.* The action of any municipal governing body in granting or failing to grant, suspending or revoking any license, or the failure of any municipal governing body to revoke or suspend any license for good cause, may be reviewed by the circuit court for the county in which the application for the license was issued, upon application by any applicant, licensee or resident of the municipality. The procedure on review shall be the same as in civil actions instituted in the circuit court. The person desiring review shall file pleadings, which shall be served on the municipal governing body in the manner provided in ch. 801 for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. The municipal governing body, applicant or licensee shall have 20 days to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The decision of the court shall be filed within 10 days after the hearing and a copy of the decision shall be transmitted to each of the parties. The decision shall be binding unless it is appealed to the court of appeals.

> its jurisdiction, (2) the body acted according to law, (3) the decision was arbitrary or oppressive, and (4) the evidence of record substantiates its decision.

Id., ¶11. The challenger of a municipality's decision bears the burden on review. *See* ***Ottman v. Town of Primrose***, 2011 WI 18, ¶50, 332 Wis. 2d 3, 796 N.W.2d 411 ("[o]n certiorari review, the petitioner bears the burden to overcome the presumption of correctness" that applies to a municipality's decision). We review the Common Council's decision, not the decision of the circuit court. ***Bruskewitz***, 248 Wis. 2d 297, ¶11. In the following discussion, we address and reject each of Lady Bug's arguments.

A. Hearing Notice

¶8 Lady Bug argues that it received improper notice of the Committee hearing on its renewal application. We disagree.

¶9 After submitting its application for renewal, Lady Bug received a notice informing it that there would be a hearing on its application. The notice informed Lady Bug that "[t]here is a *possibility* that your application may be denied for the following reasons: [listing reasons]" (emphasis added).[3] Lady Bug argues that this notice did not comply with the applicable statute and ordinance because it did not specifically state an "intention not to renew," but rather only indicated a "possibility" that the application may be denied.

[3] The notice states, in part:

> There is a possibility that your application may be denied for the following reasons:
>
> See attached police report. Neighborhood objections to loitering, littering, loud music and noise, parking and traffic problems, drug and criminal activity ....

¶10 WISCONSIN STAT. § 125.12(3) states, as pertinent here:

> Prior to the time for the renewal of the license, the municipal governing body or a duly authorized committee of a city council shall notify the licensee in writing of the municipality's intention not to renew the license and provide the licensee with an opportunity for a hearing.

Similarly, Milwaukee's ordinances state that the notice shall contain "[a] statement of the common council's intention not to renew the license or suspend the license in the event any objections to renewal are found to be true." CITY OF MILWAUKEE, WIS., CODE OF ORDINANCES § 90-11-2-a-2-b (2009).[4] Lady Bug argues that these provisions require the notice to contain the exact phrase "intention not to renew."

¶11 In our recent decision in ***Questions, Inc. v. City of Milwaukee***, No. 2010AP707, unpublished slip op. (WI App July 19, 2011), we addressed and rejected this argument. We find the reasoning in ***Questions, Inc.*** persuasive, and adopt it here:

> While WIS. STAT. § 125.12(3) and MILWAUKEE, WIS., ORDINANCE § 90-11-2 do both require the Common Council to notify the applicant of the Common Council's "intention not to renew," the statute and ordinance also require that the notice inform the applicant of a hearing at which the matter will be affirmatively decided. As the matter cannot be affirmatively decided before the hearing, it is of course only a possibility that the applicant's license will not be renewed at the time the notice is sent. If there was no possibility that the hearing would persuade the Common Council that the license should be renewed, and in fact the Common Council's intent to deny was not a mere possibility but affirmatively set in stone, Questions would be before us arguing that its due process rights had been violated. In other words, by informing Questions that "[t]here is a possibility that your application may be

[4] References to Milwaukee's ordinances are to the 2009 versions.

> denied," the Common Council properly informed Questions of its "intention not to renew."

Id., ¶37.

¶12 Moreover, Lady Bug does not assert that it was misled by the language used in the notice. Lady Bug does not dispute this point or explain why, standing alone, this is not reason enough to reject Lady Bug's argument. *Cf.* ***State ex rel. DeLuca v. Common Council of Franklin***, 72 Wis. 2d 672, 679-80, 242 N.W.2d 689 (1976) (on certiorari review, rejecting a challenge to the notice of a common council hearing, and stating that one reason was that the party did not explain that the alleged flaw impaired his ability to defend himself at the hearing).

¶13 Lady Bug also complains about another aspect of the notice. The notice, after stating a possibility that the application for renewal may be denied, listed possible reasons. These reasons included a list of categories labeled "[n]eighborhood objections." For example, the notice referred to "[n]eighborhood objections to loitering, littering, loud music and noise, parking and traffic problems, drug and criminal activity, prostitution, trespassing ...." Lady Bug asserts that this list of possible reasons for denial did not all specifically apply to Lady Bug and that the inclusion of inapplicable reasons was a "critical jurisdictional flaw."

¶14 We need not discuss this argument in detail because it is insufficiently developed. First, Lady Bug does not support its premise that the inclusion of superfluous reasons for denial somehow constitutes a "critical jurisdictional flaw." Lady Bug simply asserts that the flaw is jurisdictional, but merely asserting it does not make it so. Second, Lady Bug once again does not argue that it was prejudiced. Likely it does not argue prejudice because, in

addition to the list of neighborhood objections, the notice referenced an attached police synopsis. The attached police synopsis detailed incidents that *did* specifically apply to Lady Bug, seemingly giving Lady Bug all the notice it needed to present a defense. In sum, Lady Bug does not provide support for reversal in these circumstances.

B. Renewal Hearing Mechanism

¶15 Lady Bug contends that Milwaukee's ordinance scheme, properly read, required that Lady Bug's license renewal be automatic without a hearing. This argument is premised on Lady Bug's interpretation of particular ordinance sections as providing two paths to a Committee hearing on a license renewal application. More specifically, Lady Bug argues that an ordinance section, titled "Procedure for Renewal," controls and provides only two paths to a renewal hearing. Lady Bug asserts that the first path appears under the subheading "Objection," which states, in part:

> A written objection to the renewal of the license may be filed with the city clerk by any interested person provided that the objection is filed at least 45 days prior to the date on which the license expires and sets forth specific charges against an applicant which could form a basis for nonrenewal of the license.

CITY OF MILWAUKEE, WIS., CODE OF ORDINANCES § 90-11-1-b. Lady Bug asserts that the second path is in the subsequent "Warning Letter" subheading, where it states that a police summary of arrests and convictions of the applicant may, in certain circumstances, form a basis for nonrenewal or, in other circumstances, may simply warrant a warning letter. *See* ORDINANCE § 90-11-1-c-1.

¶16 The parties apparently agree that these paths to a hearing were not used here. It follows, according to Lady Bug, that no hearing was authorized and that renewal of its license should have been automatic.

¶17 Lady Bug, however, fails to demonstrate its underlying proposition—that there are two and only two paths to a Committee hearing on a license renewal application. Lady Bug discusses the two paths it identifies, but does not provide a full discussion of the several complex and interrelated ordinance provisions and statutes. For example, Lady Bug does not meaningfully address the provisions that the City argues provide the authority relevant to the proceedings here. Specifically, in its briefing, the City relies on WIS. STAT. § 125.12(3) as providing the City's authority to refuse to renew Lady Bug's license. That section provides:

> **(3)** REFUSALS BY LOCAL AUTHORITIES TO RENEW LICENSES. A municipality issuing licenses under this chapter may refuse to renew a license for the causes provided in sub. (2)(ag) [including that the licensee has violated the applicable regulations or that the licensee keeps or maintains a disorderly or riotous, indecent, or improper house]. Prior to the time for the renewal of the license, the municipal governing body or a duly authorized committee of a city council shall notify the licensee in writing of the municipality's intention not to renew the license and provide the licensee with an opportunity for a hearing.

WIS. STAT. § 125.12(3). Further, the City relies on an ordinance section as providing authority for the hearing here. That section appears in the ordinance code immediately after the renewal section that Lady Bug relies on. It states, in part:

> **2.** PROCEDURE FOR NON-RENEWAL. a. Notice. a-1. The licensing committee shall be responsible for holding hearings regarding the nonrenewal of licenses. If there is a possibility that the committee will not renew a

> license, a motion should be entertained to hold the application in committee and instruct the city clerk to forward proper notice to the applicant, unless such proper notice has already been sent, in which case the hearing shall proceed.

CITY OF MILWAUKEE, WIS., CODE OF ORDINANCES § 90-11-2-a-1.

¶18 Lady Bug does not address this apparent alternative, which appears to have been followed in this case. Thus, we conclude that Lady Bug's argument is deficient; it does not demonstrate that the City lacked the authority to proceed as it did.[5]

C. The Committee Report's Findings Of Fact

¶19 Lady Bug argues that we should reverse the Council's decision because that decision is based on an invalid Committee report produced by a city attorney. We are not persuaded.

¶20 That report must contain the Committee's findings of fact, conclusions of law, and a recommendation of what action the Council should take. *See* WIS. STAT. § 125.12(2)(b)3. The full Council then considers that Committee

[5] We note that Lady Bug makes assertions in the course of its "two path" argument that could be read as raising one or more closely related, but separate issues. For example, Lady Bug points out that a police captain appeared at the Committee hearing to state the police department's opposition to the renewal. Lady Bug asserts that, as a prerequisite to the captain appearing at a renewal hearing, the police department was required to, but did not, file a formal objection under CITY OF MILWAUKEE, WIS., CODE OF ORDINANCES § 90-11-1-b. Similarly, Lady Bug asserts that the police synopsis had to be formally submitted pursuant to that ordinance. If Lady Bug means to raise these as distinct challenges, we conclude that they are insufficiently developed. Furthermore, we addressed what appears to be the same issue in ***Questions, Inc. v. City of Milwaukee***, No. 2010AP707, unpublished slip op. (WI App July 19, 2011). There, we stated that ORDINANCE § 90-11-1-b "permitted, but did not require, the [police department] to file a written objection" and that it "does not require a party to file a written objection to renewal before objecting in person at a hearing." ***Questions, Inc.***, No. 2010AP707, ¶¶18-19. We find that reasoning to be persuasive, and adopt it here.

report when voting on the matter. *See* ***id.*** ("If the city council, after considering the committee's report and any arguments presented by the complainant or the licensee [regarding the report], finds the complaint to be true, … the license shall be suspended or revoked …."); § 125.12(3) (stating that the same procedures apply to refusals to renew).

¶21 Here, with a city attorney present, the Committee heard evidence. A Committee member then moved for a vote on the recommended suspension and identified, in general terms, what evidence that motion was based on. After the motion carried, and as is established practice, the city attorney drafted the Committee's findings of fact based on the evidence identified by the motion. Subsequently, the Council members—including the Council members who were Licenses Committee members—read the report prior to the Council vote.

¶22 Lady Bug's argument concerns the statutory requirement that the Committee report contain the Committee's findings of fact. Lady Bug, however, does not take issue with the fact that the findings were prepared by the city attorney. Rather, Lady Bug seizes on the fact that the Committee did not review the report prior to it being submitted to the full Council. Lady Bug argues that, given this, the report does not contain the full and genuine fact finding by the Committee.

¶23 We reject this proposition for the reasons discussed in ***Questions, Inc.***, which addressed substantially the same argument. We are not bound by that case, but follow its reasoning here. There, we also addressed the Committee report prepared by a city attorney, and explained:

> In other words, on the record before the Common Council, all members of the Licenses Committee acknowledged reading the Findings of Fact and

> Conclusions of Law drafted by the City Attorney's Office and no member of the Committee spoke up to say that they did not approve of the document as drafted. Each committee member's acknowledgement of receipt and failure to object is sufficient to demonstrate that the document accurately represented the Committee's findings and recommendations. Questions points to no statute or ordinance stating that more needed to be done to secure the committee members' approval.

Questions, Inc., No. 2010AP707, ¶31. Consistent with this reasoning, we reject Lady Bug's premise that the Committee report findings do not represent the Committee's findings. Here, as in ***Questions, Inc.***, each member of the Committee acknowledged having read the Committee report and none spoke up to say that he or she did not approve of the document as drafted.

¶24 Lady Bug attempts to avoid this result by pointing to statements made by a Committee member, Alderman Hamilton, at the Committee hearing. Lady Bug views Hamilton's statements as evidence that the Committee members rejected as unreliable certain police synopsis items that were, nonetheless, included in the Committee report as findings of fact. We reject this argument because it ignores the fact that Hamilton subsequently acknowledged having read the Committee report at the Council vote and did not speak up to state that the report did not represent the Committee's findings. Under the reasoning of ***Questions, Inc.***, which we adopt, this suffices as Hamilton's ratification of the report.

¶25 Further, Lady Bug's characterization of Alderman Hamilton's statements does not hold up. Hamilton did not indicate that he was rejecting any significant allegation contained in the evidence. Rather, at the place in the record cited by Lady Bug, Hamilton, speaking in general terms about how the Licenses Committee functions, stated that the Committee "look[s] at each incident and we

evaluate how to weigh it, and the assumption is not that everything in the police report is absolutely right." Hamilton, however, did not go on to state that the police synopsis in this case was unreliable, and he did not cast doubt on any significant allegation in it. To the contrary, Hamilton ultimately moved for renewal of the license with a suspension "*based on* neighborhood testimony and the police report," by which he referred to the police synopsis (emphasis added).[6]

D. 60-Day Suspension

¶26 Lady Bug refers us to the Council motion to amend the 20-day recommended suspension to a 60-day suspension. The Council ultimately voted to adopt the renewal with a 60-day suspension. Lady Bug contends that the Council lacked the authority "to increase the Committee's recommended 20-day suspension and impose a 60-day suspension." We are not persuaded.

¶27 Lady Bug's specific argument is that the "plain language" of CITY OF MILWAUKEE, WIS., CODE OF ORDINANCES § 90-11-2-d-3 gives the Council only two options: to reject the Committee recommendation or to adopt the Committee recommendation without changes. The entirety of the ordinance language that Lady Bug relies on is as follows: "then a roll call vote shall be taken as to whether or not the recommendation of the committee shall be accepted."[7]

[6] Lady Bug also asserts that the Committee report improperly included as findings of fact the list of categorical neighborhood objections originally contained in the hearing notice, even those for which Lady Bug asserts no evidence was presented. Lady Bug is mistaken. The list of categorical objections appears in the report as background information about the proceedings in this case. A different report item contains the findings of fact from the Committee hearing and does not include the categorical objections.

[7] CITY OF MILWAUKEE, WIS., CODE OF ORDINANCES § 90-11-2-d-3 states:

> Prior to voting on the committee's recommendation, all members of the council who are present shall signify that they

(continued)

ORDINANCE § 90-11-2-d-3. Having quoted this sentence fragment, however, Lady Bug does not proceed to engage in an analysis of the language's plain meaning. *See* ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 (when analyzing plain meaning of a statute, "statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results"); *see also* ***Murr v. St. Croix Cnty. Bd. of Adjustment***, 2011 WI App 29, ¶9, 332 Wis. 2d 172, 796 N.W.2d 837 ("The rules for construction of statutes and ordinances are the same.").

¶28 Once again, we are presented with an insufficiently developed argument.

¶29 First, Lady Bug does not develop its own premise. Rather, Lady Bug merely asserts that this "plain language" states the asserted limit on the Council's power, but Lady Bug does not explain why this must be true. For example, why is it plain that the term "recommendation" in the ordinance is intended to refer both to a recommended suspension and the length of the suspension? It seems unlikely that Lady Bug would have argued before the Council that the Council lacked the authority to reduce the time of the

---

> have read the recommendation and report of the licensing committee and any written statements in response that have been filed thereto. If they have not, the chair shall allocate time for the members to do so. If they have read the report and recommendation, then a roll call vote shall be taken as to whether or not the recommendation of the committee shall be accepted. The applicant shall be provided with written notice of the results of the vote taken by the common council.

recommended suspension. If the issue here was whether the Council improperly reduced the recommended suspension period, Lady Bug could reasonably argue that it is an absurd interpretation of the ordinance to say that the ordinance gives the Council the ultimate authority to impose a suspension, but not the authority to amend a recommended suspension if the Council concludes that the suspension is too harsh.

¶30 Second, Lady Bug does not address related provisions, such as the related statutory provisions. For example, WIS. STAT. § 125.12(2)(b)3. provides, as relevant here:

> If the city council, after considering the committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the license shall be suspended or revoked as provided under subd. 2.

The cross-reference provides that the Council shall suspend "for not less than 10 days nor more than 90 days." *See* § 125.12(2)(b)2. On its face, this statute appears to give the Council itself direct authority to suspend within this range. Lady Bug does not address this statutory language.

E. Police Synopsis

¶31 Lady Bug argues that the police synopsis of incidents related to Lady Bug's operation should not have been considered at the Committee hearing because the synopsis was hearsay and no hearsay exception applied.

¶32 We need not decide, however, whether the synopsis was hearsay or whether a hearsay exception would apply. That is because Lady Bug's argument—which is directed at whether a hearsay

exception applies—necessarily assumes that the statutory evidence code, and the hearsay prohibition found in WIS. STAT. § 908.02 in particular, applies to such proceedings. Lady Bug does not provide support for this assumption. We point Lady Bug to our discussion in ***Questions, Inc.***, where we addressed and rejected substantially the same argument directed at the police synopsis in that case. There, we explained:

> [E]ven assuming, without deciding, that the police report synopsis is hearsay, the Wisconsin Statutes only prohibit the admission of hearsay evidence from "proceedings in the courts of the state of Wisconsin." *See* WIS. STAT. §§ 901.01, 908.02 & 911.01. The Common Council and its Licenses Committee are not courts and, therefore, are not bound by the statutory rules of evidence. As such, the synopsis was properly admitted.

Questions, Inc., No. 2010AP707, ¶21.

¶33 Lady Bug also cites ***Gehin v. Wisconsin Group Insurance Board***, 2005 WI 16, 278 Wis. 2d 111, 692 N.W.2d 572, and asserts that this case stands for the proposition that "the unreliable, uncorroborated, hearsay evidence in the Synopsis … cannot be used as substantial evidence to support the Committee's Findings." Lady Bug, however, does not show that propositions gleaned from ***Gehin***, a case addressing hearsay evidence in the context of a state administrative agency hearing, are applicable to the Committee hearing in this case. *See* ***id.***, ¶81.

¶34 And, even assuming for argument's sake that ***Gehin*** has some application here, Lady Bug's premise lacks substance. Lady Bug argues that the police synopsis was uncorroborated and was also "*proven* to be inaccurate and unreliable" at the hearing and that, under ***Gehin***, that means we may not consider it. *See* ***id.***, ¶110 (concluding "that the uncorroborated written hearsay medical

reports alone that were controverted by in-person testimony did not constitute substantial evidence" to support the board's decision).

¶35 We conclude that the main allegations in the police synopsis were neither uncorroborated nor unreliable. First, the hearing included testimony that, either specifically or circumstantially, corroborated almost every item in the police synopsis. For example, the testimony of three neighborhood residents—including testimony about unruly crowds, excessive yelling and other noise, and property damage—corroborated the synopsis items detailing crowd-control issues and disturbances where patrons engaged in verbal and physical altercations outside of Lady Bug. The director of operations at Lady Bug also confirmed that specifics in the police synopsis occurred, such as two separate physical altercations between Lady Bug security personnel and patrons, and an incident where one patron hit another patron over the head with a bottle, causing injuries. Another witness confirmed a shooting that occurred in the vicinity of Lady Bug. Second, Lady Bug does not point to any testimony meaningfully controverting the synopsis items. Rather, the testimony that Lady Bug points to merely adds or clarifies details or denies firsthand knowledge of certain items.[8]

[8] Lady Bug points us to testimony from two hearing witnesses.

First, Lady Bug points to testimony from a shooting victim. The police synopsis described the shooting and, in particular, described the victim both as "at" Lady Bug and as "waiting outside" Lady Bug at some point prior to the shooting. At the hearing, the victim clarified that he was never *in* Lady Bug that night, although it was true that he had been outside of Lady Bug interacting with patrons and that he was shot in the vicinity of Lady Bug.

Second, Lady Bug points to testimony from its director of operations that, in Lady Bug's words, included testimony "clarifying and providing corrections" to the police synopsis. For example, where a police synopsis item used the term "melee" to describe an incident, the director of operations commented that "the word 'melee' may have been a little strong, in my opinion." The director of operations also clarified that the police synopsis was incorrect when it stated that (continued)

F. Substantial Evidence

¶36 What remains is Lady Bug's assertion that the suspension decision was not supported by substantial evidence. Lady Bug's arguments here are mostly slightly altered versions of arguments we have already addressed.

¶37 Lady Bug opens with the proposition that we must ignore the police synopsis based on the argument that we have just rejected—that the synopsis is inadmissible hearsay that may not be considered. We need not revisit that topic.

¶38 Next, Lady Bug essentially repeats its argument that the police synopsis was found to be unreliable by the Committee and therefore should not be considered, even though the synopsis was credited in the Committee report's findings of fact. We addressed and rejected this general premise in part C above. To the extent that Lady Bug adds specifics to that argument here, they are no more persuasive than the specifics we rejected above.

¶39 For example, Lady Bug points to statements by a Committee member, Alderwoman Coggs, prior to the Council vote. Lady Bug points us to a place in the record where Coggs made two comments. First, Coggs essentially commented that Lady Bug should not be judged solely based on the *quantity* of police incidents, since some of these incidents involved crowd control as opposed to more serious matters. This statement does not support Lady Bug's premise. It is not a statement that either the police synopsis or the Committee report was inaccurate or unreliable.

---

the director made a particular statement to the police relating to the "melee." The director of operations also stated that he had no firsthand knowledge of certain other synopsis items.

¶40 Second, Lady Bug points to Alderman Coggs' reference to an incident in which a shooting victim was described both as "at" Lady Bug and as "waiting outside the club." Hearing testimony revealed that the victim was never *in* the club. Coggs clarified this and essentially commented that she found the wording of the police synopsis and Committee report to be confusing in this regard. It is apparent that this is simply a clarification of the Committee report, not a refutation of the report or the underlying police synopsis.

¶41 Apart from what we have just discussed, Lady Bug does not otherwise develop an argument on the topic of substantial evidence and, accordingly, we need not actually apply the substantial evidence test.

¶42 Finally, included with its substantial evidence argument, Lady Bug raises what we understand to be a separate arbitrariness argument. Lady Bug asserts that the Committee acted arbitrarily when, without adequate explanation, it treated Lady Bug differently than similar entities. Lady Bug focuses on statements by a Committee member, Alderman Kovac, made at the Committee hearing. Kovac's comments related to the fact that Lady Bug posed crowd-control problems. Kovac reasoned that Lady Bug's "context" was different than the typical crowd-control situation, and that this supported a suspension. Lady Bug asserts that this general reasoning did not go far enough in explaining why Lady Bug was different in a way that merited suspension. This argument lacks substance. Kovac's surrounding statements make clear that he refers to the "context" of credible neighborhood complaints that were specific to Lady Bug. Lady Bug ignores this.

Conclusion

¶43 For the reasons discussed, we affirm the circuit court's order affirming the Common Council's renewal of Lady Bug's license with a 60-day suspension.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.