BY THE COURT:

DATE SIGNED: November 16, 2022

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

BRANCH 47

KOOL PETRULIUM, INC.,

and

KULWANT DHILLON,

Plaintiffs/Petitioners,

v.

Case No. 19CV7347

CITY OF MILWAUKEE COMMON COUNCIL,

and

CITY OF MILWAUKEE, a municipal corporation,

Defendants/Respondents.

NEIGHBORHOOD PETRO, INC.,

Plaintiff,

v.

Case No. 19CV7347

CITY OF MILWAUKEE,

Defendant.

NEETI PREETI, INC.,

and

MANWINDER SINGH BHAGAT,

Plaintiffs,

v.

CITY OF MILWAUKEE COMMON COUNCIL,

and

CITY OF MILWAUKEE, a municipal corporation,

Defendants.

DECISION AND ORDER

Three separate petitioners—Kool Petroleum, Neighborhood Petro, and Neeti Preeti, Inc., — (collectively "Petitioners") filed writs of certiorari regarding the City of Milwaukee and the City of Milwaukee Common Council's decision to deny licenses for Extended Hours Establishment, Food Dealer, Filling Station, and Weights & Measures. The three cases were subsequently combined into this one case, 19-CV-7347.

On September 24, 2019, Kool Petroleum and Kulwant Dhillon ("Dhillon") filed a petition for writ of certiorari, requesting judicial review of the decision issued on September 4, 2019, denying renewal of Petitioner's Extended Hours Establishments, Food Dealer, Filing Station and Weights & Measures licenses. On October 28, 2019, this Court granted a temporary injunction, restraining the Respondents and its agents, attorneys, and those in participation with them from taking any action to enforce or cite Petitioner pursuant to its licenses, or from taking other action related to the Common Council's decision not to renew said licenses. This Court granted review of the decision on this matter.

Neighborhood Petro and its agent, Baljinder Dhillon ("Baljinder") executed a sale agreement with Dhillon to purchase the "Hometown" gas station, on the contingency that Neighborhood Petro's licenses would be approved. The Common Council did not approve Neighborhood Petro's license applications. On October 22, 2020, Neighborhood Petro filed for a writ of certiorari in this court, which was granted on January 23, 2021. On February, 25, 2021, this Court ordered consolidation of Kool Petroleum's case with Neighborhood Petro's case (Case No. 20-CV-6287).

Following the denial of Neighborhood Petro's licenses, Neeti Preeti, Inc. and its agent Manwinder Singh Bhagat ("Singh Bhagat") attempted a similar arrangement to purchase "Hometown" from Kool Petroleum contingent upon license approval. On October 12, 2021, the Common Council affirmed denial of Neeti Preeti, Inc.'s license applications. On October 28, 2021, Neeti Preeti, Inc. filed a writ of certiorari in this court seeking review of the same Common Council decision to not renew Extended Hours Establishment, Food Dealer, Filing Stations, and Weights & Measures licenses. On January 25, 2022, the case was once again consolidated to add Neeti Preeti, Inc. and Singh Bhagat as Petitioners (original case no. 21-CV-6667). The cases are consolidated under Case No. 19-CV-7347. The Court has reviewed the

record, evidence, and arguments, and for the reasons set forth herein, **REVERSES** the License Committee and Common Council's decision of nonrenewal.

STATEMENT OF FACTS

Kool Petroleum

First Hearing

Kool Petroleum, Inc., operates a gas station, called "Hometown", at 3381 N. 35th St. in Milwaukee, Wisconsin. *Dkt. #29* at 3. Kulwant Dhillon ("Dhillon") is the agent for Kool Petroleum. *Id*. at 4. On May 31, 2019, Kool Petroleum applied for a renewal of its Extended Hours Establishment, Food Dealer, Filing Stating and Weights and Measures licenses. *Id*.

On or about July 6, 2019, Petitioner received Committee Meeting Notice stating that on July 16, 2019, the Committee would be meeting to discuss issuance of licenses. *Id*. at 22. Contained in the meeting notice was a list of reasons why the applications may be denied, instructions regarding the right to counsel, and copy of police reports and neighborhood complaints related to the establishment. *Id*. Petitioner appeared on July 16, 2019, at the committee meeting, with counsel. *Id*. at 25.

At the meeting, Dhillon acknowledged receipt of the complaint and the possibility that the renewal application would be denied. *Dkt. #137* at 2. Sgt. Raden of the Milwaukee Police Department's License Investigation Unit read synopses of four police reports into the record. *Id.* at 4. The first incident was an update on a previously reported item involving the sale of cigarettes to a minor, which was resolved by a guilty finding. *Id*. The second incident pertained to a meeting on August 20, 2018, between Dhillon, his attorney, an Assistant District Attorney, the local alderperson, and police regarding a sex tape that was filmed in the establishment and subsequently posted online. *Id*. According to the report, the video shows two employees behind the counter refusing to stop the individuals. *Id*. Additionally, the report indicates that Dhillon acknowledged the video was recorded in the establishment and would cooperate with police to identify the employees. *Id*. at 4-5.

The third item in the police report pertained to another meeting on October 9, 2018, between the same parties present at the August 20 meeting. *Id*. at 5. The report indicates that the same information was shared and there was no new information or developments. *Id*. Fourth on the report was an incident pertaining to a licensed premise check conducted by the Department of

Revenue and the Milwaukee Police Department on January 16, 2019. *Id*. During this check, an open bottle of alcohol, an open pack of cigarettes, and Quest cards were found behind the front counter. An employee stated that the alcohol and cigarettes belonged to other employees and the Quest cards were left by customers. *Id*. at 6.

Following the reading of the synopses, Dhillon was then invited to respond. Dhillon's counsel clarified that the October meeting was a follow up to the August meeting, and asked Dhillon clarifying questions. *Id*. at 6-7. Dhillon answered that the employee who sold cigarettes to the minor was terminated, confirmed that the open bottle of alcohol and cigarettes belonged to an employee, and that the Quest cards were held to return to patrons if they returned to the store. *Id*. at 6-11.

Dhillon then answered questions from his counsel regarding the sex tape incident. *Id*. at 11. Dhillon stated the incident occurred during the summer of 2018 and that he was present at the time, and an employee came into his office to tell him what was happening. *Id*. at 12. Dhillon stated he came out of his office and told the two individuals making the sex tape to stop, but the male participant responded by threatening to shoot up the establishment if Dhillon called police. *Id*. This frightened Dhillon, which is why he did not call the police. *Id*. Dhillon then stated he recognized the individual as someone who frequented the establishment. *Id*. at 16.

At the October meeting, Dhillon acknowledged that he should have called the police during the sex tape incident, offered to submit a sworn statement, and to testify. *Id*. at 16-17. At this October meeting, Dhillon learned of this individual's name. *Id*. at 18. Upon learning of the individual's name, Dhillon filed a temporary restraining order against him on January 24, 2019. *Dkt. #29* at 31-32.

Dhillon indicated that a couple of months following the sex tape incident, the male involved beat up another individual outside of the establishment on Fond du Lac and 35th Street. *Id*. at 15. Dhillon recognized the man and called police. *Id*. Dhillon explained that the battery took place following an accident near one of his establishments. *Id*. at 21. The victim entered the store, bleeding, and Dhillon contacted the police for assistance despite the perpetrator being present and making threats. *Id*. at 22. Dhillon cooperated with police, offering surveillance footage and testimony. *Id*. The perpetrator was charged with battery and Dhillon served as the main witness twice for the State. *Id*. at 22. Following questioning of Dhillon by his own counsel, his counsel

emphasized how cooperative Dhillon was in the battery case despite being afraid of the perpetrator, and how good of a community member he is. *Id*. at 25-28.

Next, Dhillon's counsel answered questions from the Committee. *Id*. at 29. Ald. Coggs asked how the sex tape incident came to light if Petitioner did not call the police. *Id*. at 35. Sgt. Raden responded that the investigation began when Ald. Rainey's office contacted the police to report the video. *Id*. Sgt. Raden stated he watched the video and observed Dhillon and the employee at the counter with a cell phone in one of their hands. *Id*. Dhillon's counsel indicated the other employee filmed the incident. *Id*. Ald. Coggs asked why Dhillon was too scared to call police but allowed an employee to film the incident. *Id*. at 39. Dhillon responded it was his mistake, and his counsel clarified that Dhillon knew he made the wrong decision and that a security guard has been hired to prevent further incidents. *Id*. at 39; 43.

Following the questions from the Committee, the Committee allowed neighborhood testimony. *Id*. at 46. The neighbors who testified were placed under oath and sworn in. *Id*. First, Shawn Norwood testified and expressed his support for the establishment because of the positive things the establishment brings to the community. *Id*. at 47. Next, Tamara Carson also expressed her support for the establishment. Carson stated it's the only place she can get baby formula when everywhere else is closed. *Id.* at 48. Joseph Miller testified next, expressing understanding of Dhillon's fears surrounding the sex tape incident and why he did not call police. *Id.* at 50. Next, David Romero, an employee, expressed his appreciation for his employment, the help he has received from Dhillon, and the help others in the community have received from Dhillon. *Id*. at 51. The next neighbor to testify was Cortina Childs, who also expressed support for Dhillon. *Id*. at 52-53. Next, Bill Hutchins, stated he was a long time resident and never had any issues with Petitioner. *Id*. at 53-54. Latina Campbell testified and expressed support for Dhillon and the contributions he makes to the community. *Id*. at 55. Raymond Willis, a former employee, testified that while Dhillon should have called the police regarding the sex tape, there was not much he could have done. *Id*.

Following the neighborhood testimony, Ald. Coggs invited the representative from the local alderperson's office to speak. *Id*. at 56. The representative stated that Ald. Rainey was in favor of nonrenewal because Petitioner failed to proactively respond to issues and was only helpful after being caught. *Id*. at 56-57. The representative highlighted the Quest cards, open alcohol, open cigarettes, and cigarette sales to minors were only improved because Dhillon got caught. *Id*. at 57.

The representative expressed concern Dhillon only did the right thing after being caught, pointing to the failure to report the sex tape incident as an example. *Id*. The representative stated that Dhillon's presence during the sex tape incident and subsequent failure to report were of serious concern to Ald. Rainey. *Id*.

Dhillon's counsel then gave closing remarks. His counsel stated that Dhillon acknowledged he should have done the right thing, and highlighted the small number of incidents in the record and the civic involvement of Dhillon. *Id*. at 59. Dhillon's counsel reiterated that Dhillon was eventually cooperative and did the right thing, and wants to continue to do so. *Id.* at 59-63.

Alderman Nic Kovac then moved for renewal with a 20-day suspension based on the incidents discussed, and expressed concerns about competency of Dhillon in light of the incidents. *Id*. at 66. The motion prevailed on a vote of 4-0-1. *Dkt. #29* at 40.

On or about July 19, 2019, the Committee completed its report of Findings of Fact and Conclusions of Law and provided a copy to Dhillon. *Id*. at 36-40. Dhillon's counsel alerted the City of their intentions to present exceptions at the Common Council meeting on July 30. *Id*. at 41. At the Common Council meeting on July 30, 2019, Ald. Rainey moved to return the item to the Licenses Committee and the motion was approved. *Id*. at 42.

Second Hearing

On or about August 29, 2019, Dhillon received a new Committee Meeting Notice, which was identical to the original notice received for the previous Committee Hearing. *Id*. at 46. The new Committee Meeting would be held on September 10 to discuss the licenses. *Id*. Dhillon appeared with counsel. *Id*. at 50. The same police report of items was once again read into the record. *Dkt. #138* at 3.

At the second Committee Meeting, Ald. Rainey expressed concerns about the sex tape. *Id*. at 7-11. His concerns stemmed from the fact that he is just now meeting with Dhillon over a year following the incident, and that Dhillon and an employee remained behind the counter while the incident took place and refused to contact the police during or after. *Id*. Ald. Rainey, in his opinion, found the failure to respond to the sex tape incident disqualifying. *Id*.

The meeting then opened to neighborhood testimony. Mabel Lamb, of the Sherman Park Community Association, expressed her support for the wishes of the residents. *Id*. at 12. John Reid then testified, expressing concerns over littering, loitering, and drug use at the location, as well as

concerns over the sex tape. *Id*. at 13. He expressed his belief that the establishment and Dhillon do nothing for the community and expressed concerns that Dhillon and the employees do not even live in the community. *Id*. Claudia Reid also testified expressing concerns about litter and expired, overpriced products being sold at the establishment. *Id*. at 16. Paula Bangura, a former employee at the DA's office, testified about the prevalence of calls received regarding drug dealing at the establishment. *Id*. at 17-18. Clinton Day testified that he was appalled by the sex tape and expressed concerns about the effects on the neighborhood by the 24-hour schedule of the establishment. *Id*. at 20-23. Ald. Rainey then suggested the sex tape took place over a 20-minute period which was enough time to act. *Id*. at 23. Dhillon's counsel did not object to the length of the incident, but asserted that Dhillon had taken responsibility and provided testimony that helped put the perpetrator in jail.[1] *Id*. at 26. Dhillon's attorney offered a letter of support from the DA's office which stated, "had we needed to go to trial, his testimony would have made the State's case far stronger." *Id*. at 26-27. Clarifications were made, namely that Dhillon did not testify, did not bring the sex tape to attention of police, and only began cooperating with them after the battery incident and after the local alderpersons was notified of the sex tape. *Id*.

Next, Martin Childs, a pastor of a neighborhood church, testified in opposition to renewal due to the sex tape incident, the lack of effort to stop it, and the video appearing to show one of the employees filming the incident. *Id*. at 44. Childs also expressed that he perceived a lack of concern from the business in the relation to the incident. *Id*. David Romero, an employee, testified in support of renewal and expressed dissatisfaction with comments in opposition, stating that the sex tape should not be held against Dhillon. *Id*. at 53 Romero also reiterated the positive things the establishment does for the community. *Id*. at 54. He also denied there was expired food and denied the employees do not live in the community. *Id*. at 55. The next to testify was "Mr. Howard" who expressed support for the establishment and their good work in the community, albeit acknowledging that the sex tape incident was wrong. *Id*. at 57-58. Jamal McCall testified Dhillon should not be blamed for people doing an unofficial act in his store because he was afraid. *Id*. at 60-61. He noted that a lot of crime goes on in the neighborhood it was his belief that issues plaguing the location were the fault of the police, and that Dhillon worked hard to run his business. *Id*. Donell Poe expressed admiration for Dhillon and stated that bullet proof glass around the counter would have made calling the police during the sex tape incident safer. *Id.* at 62. Sujit Kaur Dhillon,

[1] However, the battery case was resolved by plea which did not necessitate Dhillion's testimony.

Dhillon's brother and former owner of the business, testified to the difficulties of operating the gas stations and the positive relationships built over the years with the community. *Id*. at 64. Terry Traper, a nearby pastor, noted the general decline of the neighborhood and admitted the sex tape incident was wrong, but expressed support for Dhillon and the positive things he does for the community. *Id*. at 65-72.

Warren May testified in support of renewal, because it is his belief that the establishment has been good for the community. *Id*. at 73. Ashley Torrence, a former employee, also testified in support of Dhillon, due to the convenience it provided her. *Id*. at 74. She also noted that this is something that could happen anywhere, and if she was working at the store that night, she would not know what to do either. *Id*. at 75. Next, "Mr. McCall" testified that Dhillon should have called police, Dhillion's livelihood should not be ruined because of the actions of someone else. *Id*. at 76. Tamika Scott also expressed support for renewal because Dhillon has helped her a lot with formula and things for her kids when she was short on money. *Id*. She also noted that the man involved in the sex tape has been doing this all over the city, and questioned why the police have not done anything, expressing that Dhillon should not be the one to pay the price for this. *Id*. at 78. Finally, Joseph Bogan, an employee, stated that some punishment may be needed for this incident, but did not think the gas station should be shut down. *Id*. at 80.

Ald. Rainey then clarified that Dhillon was not responsible for the sex tape, but that he was responsible for failing to report the incident, and reiterated his belief that the lack of response to the incident was so egregious that nonrenewal was justified. *Id*.

Dhillon's counsel then gave closing remarks. *Id*. at 82. His counsel reiterated that Dhillon was afraid to contact police but accepts that this was the wrong decision. *Id*. at 83. Dhillon's counsel highlighted the support from community members and requested renewal of the licenses. *Id*.

Ald. Dodd then moved for nonrenewal of all licenses. *Id*. at 88. The motion prevailed on a vote of 3-0-2, with two Committee members excused. *Id*. at 89. The Committee completed its report of Findings of fact and Conclusions of Law around September 13, 2019, of which a copy was given to Dhillon. *Dkt. #29* at 55. Dhillon's counsel submitted timely written exceptions and alerted the City of his intention to present them at the September 24 Common Council meeting. *Id*. at 61.

At the Common Council meeting, the Council voted unanimously to affirm the Committee recommendation. *Id*. at 64. At that meeting, Ald. Rainey distributed three still shots from the sex tape to members of the Council. *Id.* at 65-67. Dhillon filed a petition for judicial review citing due process violations related to notice of the still shots. *Dkt. #1* at 1. The issues were briefed, and on May 19, 2020, the matter was remanded back to the Committee for a new hearing. *Dkt. #48* at 1. In its decision, the Court concluded that the Common Council violated Kool Petroleum's right to procedural due process because Kool Petroleum has a constitutionally protected property interest in license renewal, and that the distribution of the three screenshots at the Common Council meeting without prior notice was improper. The Court remanded the matter back to the Committee for the limited purpose of affording Kool Petroleum their right to due process.

Third Committee Hearing

On September 8, 2020, Dhillon, with counsel, appeared at the third Committee hearing. *Dkt. #136* at 1. The same police report items were once again read into the record. *Id*. at 41-43. Dhillon's counsel began with opening remarks, saying that Dhillon has worked relentlessly to undo the harm associated with the sex tape incident, including filing a civil suit against the man involved with the intent of getting the video taken down. *Id*. at 45. His counsel highlights the good work Dhillon does in the community, specifically noting a give-back program providing school supplies for neighborhood children. *Id*. at 46. He also noted that for the last year and a half there have been no additional incident reports at the establishment. *Id*. at 47. Counsel then highlighted efforts made by Dhillon to rebuild trust as a result of the sex tape incident and asked for renewal of the licenses. *Id*. at 48.

The meeting was then opened for neighborhood testimony. *Id*. Again, Martin Childs testified that the sex tape and the lack of response were unacceptable. *Id*. at 50-51. Clinton Day testified the incident was unacceptable and expressed concern about the high volume of traffic coming from in and out of the station at all times. *Id*. at 56. Day also expressed frustration that Dhillon did not live in the area and his belief that the station does not enhance the community. *Id*. Charles Davis testified that the only talk is about Dhillon feeling bad, but it's the community that feels bad too, because they are living there. *Id*. at 64. John Reid testified again regarding the poor quality of life in the neighborhood due in part to traffic issues and loitering and reiterated his opposition to a 24-hour schedule. *Id*. at 66.

Next, neighbors in support of renewal testified. *Id*. at 70. Cory Kirkwood testified in support of the establishment, stating that it served a need in the area, and that the problems in the neighborhood are not coming from the gas station. *Id*. at 73. Joseph Bogan, an employee, testified again, stating that he was in support of renewal because the establishment served a need in the community, and that it is not right Dhillon is being blamed for issues of crime in the community. *Id*. at 78. Latina Campbell testified that Dhillon was a good man and the issues with crime should not be blamed on him. *Id*. at 80. Terry Taper, a local pastor, testified again about the need for the gas station and their positive relationship with Dhillon. *Id*. at 82. Debra Carson expressed support for Dhillon and testified to the importance of the station at that location, because not everyone has transportation to go somewhere further to get food or supplies. *Id*. at 84.

Following the neighborhood testimony, Ald. Rainey reiterated his support for nonrenewal. *Id*. at 87. Dhillon's counsel then gave closing remarks. *Id*. Dhillon's counsel reiterated the positive work that Dhillon did in the community and dismissed testimony from neighbors in opposition to renewal as anecdotal. Counsel stated that if a decision of nonrenewal is made, it would not be based on facts, but based on opinion and secondhand hearsay and passion. *Id*. at 90-91.

Ald. Kovac then spoke, noting that the sex tape was only addressed because of aldermanic intervention, not action taken by the Dhillon, and that the incident had a significant effect on the neighbors. *Id*. at 92. Ald. Kovac moved for nonrenewal based on the police report, neighborhood testimony, and aldermanic testimony. *Id*. at 93. The motion passed unanimously. *Id*. The committee's report of Findings of Fact and Conclusions of Law was prepared and mailed to Dhillon on September 11, 2020. *Dkt. #142* at 2.

Neighborhood Petro

On March 5, 2020, Neighborhood Petro purchased the business assets of Kool Petroleum's gas station located at 3381 N. 35th St., Milwaukee, Wisconsin. *Dkt. #130* at 2. Baljinder Dhillon ("Baljinder") is the agent for Neighborhood Petro. *Dkt. #130* at 2. The purchase was contingent upon Neighborhood Petro obtaining all of the licenses that Kool Petroleum currently had from the City of Milwaukee. As such, on May 21, 2020, Baljinder applied for Food Dealer, Public Entertainment Premise, Filling Station, Weights and Measures, and Extended Hours licenses for the gas station "Hometown." *Id*. On or around Tuesday, September 1, 2020, Baljinder received a Committee meeting notice to discuss issuance of the licenses. *Dkt. #130* at 17. The notice included

a list of reasons why the application may be denied, instructions pertaining to the right of counsel, a copy of the police report and a copy of neighborhood complaints. *Id*.

On September 8, 2020[2], Baljinder appeared at the hearing with counsel. *Dkt. #136* at 2. Baljinder acknowledged receipt of the Committee Meeting Notice and the possibility the applications may be denied. *Id*. at 3. Sgt. Raden of the Milwaukee Police Department's License Investigation Unit then read in the synopses of three citations received at the establishment. *Id*. at 3-4.

Following the reading of the synopses, Ald. Rainey, the local alderperson, requested clarification on Baljinder's plans to purchase the business. *Id*. at 5. Mr. Arena responded and clarified that Baljinder was in an arm's length transaction to purchase the business from the current owner. *Id*. at 6. Mr. Arena explained it was a purchase and a lease agreement. *Id*. Mr. Arena further elaborated that Baljinder, along with the building owner, intended to expand the business to include some retail spaces, which will involve a new building to be built. *Id*. Ald. Rainey asked further questions about what will be done differently to prevent some of the issues associated with the "Hometown" gas station. Mr. Arena responded there are plans to have additional security cameras, and a full-time security guard to patrol in and around the premises. *Id*. at 7. The security guard would be in charge of apprehending, calling the police, collecting video evidence, and keeping overall order. *Id*.

Ald. Rainey then requested to hear neighborhood testimony. *Id*. at 7. Mr. Arena objected to this based on the item pertaining to new applications. *Id*. The Assistant City Attorney staffing the meeting stated Mr. Arena was largely correct and the only real issue relative to the new application is the fitness of the applicant to run this type of business or the fitness of this location to be a gas station. *Id*. at 8-9. The Assistant City Attorney advised neighborhood testimony could be heard but only if it was pertaining to the fitness of Baljinder or the fitness of the location to be a gas station. *Id*. at 9.

Ald. Coggs allowed for neighborhood testimony, but advised neighbors to limit their commentary to the only two issues to be considered. *Id.* at 9-11. After the oath was administered to those who wished to testify, Claudia Reid testified first. *Id*. at 12. Reid expressed her concern

[2] At the September 8, 2022 hearing, considered the Third Committee Hearing, herein, all petitioners were in attendance including Kool Petroleum, Dhillon, Neighborhood Petro Inc, Neeti Preeti, Inc., Manwinder Singh Bhagat, and their respective counsels.

that the current owner, Dhillon, is selling to a relative, Baljinder. *Id*. Reid expressed her lack of confidence things will improve. *Id*. The Assistant City Attorney clarified that this type of transaction happens routinely, and that people have a constitutional right to dispose of their property interest in a manner they see fit. *Id*. at 13.

Ald. Coggs then asked Ald. Rainey if there has been an opportunity for neighbors to meet with then new potential owner, Baljinder. *Id*. at 14. Ald. Rainey responded "no," and asked if there could be an opportunity for that to happen. The Assistant City Attorney said while under normal circumstances maybe, but the circumstances of this case did not allow for it because of court imposed deadlines, and the committee needs to decide on the new application on its own merits. *Id*. at 15.

Reid was then able to continue her testimony, expressing her concern over the terms of the sale, whether the sale was at market value and if this situation is a loophole. *Id*. at 15-16. Mr. Arena responded and objected to the legal conclusions being offered by Reid. *Id*. at 16. He reiterated that this is an arm's-length transaction, there is a written contract which has been submitted with the application to give standing to the applicant. *Id*. Mr. Arena asked that the meeting proceed on the merits of the application, and that his client has experience in operating this same type of business with the same licenses. *Id*. at 17. He reiterated there are no loopholes at play whatsoever. *Id*.

Ald. Coggs then asked for clarification on the relationship between the current owner, Dhillon, and the new owner Baljinder. *Id*. Mr. Arena affirmed that they are related, but explained that the current owner would have nothing to do with the business once the sale is complete. *Id*.

Reid again continued her testimony, reiterating her opposition to a gas station at that location. *Id*. at 18. Martin Childs, a local pastor, then testified expressing his concerns about the fitness of the location. *Id*. at 19-20. He noted the amount of garbage and litter, the physical upkeep of the establishment, and how a gas station in the community does not improve the quality of life within the community. *Id*. at 20. Clinton Day then testified and expressed concerns over the fitness of the location due to the establishment being open 24-hours. *Id*. at 29-30. Day also stated there is a lot of noise and trouble in the neighborhood, which he believes will not stop with the new owner. *Id*. at 30. Charles Davis then gave his testimony expressing his opposition to the new owner and was concerned about the lack of a neighborhood meeting during which residents could have met the new operator and discussed issues. *Id*. at 34.

The Assistant City Attorney then gave an explanation of the procedural poster of the existing owner's, Dhillon, court case. *Id*. at 35. Ald. Rainey then stated he does not support issuing the new licenses to Baljinder, due to the neighborhood testimony and the lack of outreach on Baljinder's part. *Id*. at 37. Mr. Arena then delivered closing remarks, stating there is no basis to deny the new application. *Id*. Mr. Arena pointed that there has been no testimony about the new operator, and only some anecdotal testimony to different things happening in the neighborhood. *Id*. Mr. Arena stated the testimony does not support that the operator nor the location is unfit. *Id*. at 38.

Ald. Kovac then moved for denial based on neighborhood testimony and aldermanic testimony. *Id*. at 39. The motion for denial passed unanimously. On September 22, 2020, the full Common Council voted to affirm the Committee's recommendation, and Bajlinder received the notice. *Dkt. #130* at 23. Bajlinder then filed for a writ of certiorari with this Court for review of the Common Council's decision, and the matter was consolidated with Dhillon's action. *Dkt. #68* at 1.

Neeti Preeti, Inc.

Manwinder Singh Bhagat ("Singh Bhagat") is the agent for Neeti Preeti, Inc. *Dkt. #126* at 1. On July 26, 2021, Singh Bhagat applied for Food Dealer, Public Entertainment Premise, filling Station, Weights and Measures, and Extended Hours licenses for "Hometown", a gas station located at 3381 N. 35th St., Milwaukee, WI 53216. *Id*. at 1-10. Singh Bhagat subsequently withdrew the Public Entertainment Premise License. *Id*. at 13. On or around Thursday, September 16, 2021, Singh Bhagat received a Committee Meeting Notice requesting his presence at a September 28, 2021 License Committee Meeting. *Id*. at 14. In the notice, a list of reasons why the applications may be denied, instructions regarding the right to counsel, and a copy of neighborhood complaints were included. *Id*.

On September 28, 2021, Singh Bhagat appeared at the committee with counsel. *Id*. at 18. Singh Bhagat acknowledged receipt of the meeting notice and the possibility that the applications may be denied. *Dkt. #129* at 2-3. Singh Bhagat then informed the committee of his plans for the location, which are to run the gas station similarly to how he runs his other gas station on West Burleigh Street. *Id*. at 3. Singh Bhagat said he would operate it accordingly and keep it clean. *Id*.

Ald. Kovac then asked for witness testimony and placed them under oath. First, Charles Davis testified that although there may be new owners, he was opposed to the gas station altogether. *Id*. at 5. John Reid then testified, expressing concern that the previous owners still worked at the gas station. *Id*. at 7. Reid also expressed concerns about the 24-hour schedule and lack of parking for customers. *Id*. at 9. Singh Bhagat's Counsel, Jason Luczak ("Mr. Luczak") clarified that the public entertainment premises application was withdrawn. *Id*. at 10. Mr. Luczak also clarified there is currently an injunction in place that allows the previous owners to continue to operate. *Id*. at 10. Mr. Luczak also asked Reid if he had received a notice to meet virtually to discuss the licenses, and Reid responded that he did but believed the meeting should have been held in the community, and wanted to talk to the applicant, not the lawyers. *Id*. at 7-12.

Next, Clinton Day testified and expressed his opposition to a gas station at that location because of the noise, and the general deterioration of the neighborhood. *Id*. at 13-14. Martin Childs, a Pastor, also testified his opposition to the licenses due to the 24-hour schedule. *Id*. at 15. Mr. Luczak then asked Childs if he also received an invitation to a Zoom meeting hosted on behalf of the Petitioner. *Id*. at 16. Childs said he did not receive the e-mail. *Id*. Mr. Luczak then asked Childs if he was opposed to any gas station at that location, and Childs said he wanted an operator who would be committed to the community. *Id*. at 16-17. Claudia Reid then testified and expressed her opposition to the 24-hour schedule. *Id*. at 17. Mr. Luczak explained that Singh Bhagat was not a relative of previous ownership. *Id*. at 20. Reid emphasized that if Singh Bhagat would run the same type of establishment the current owners have, she would be in opposition. *Id*.

Ald. Kovac asked Mr. Luczak for clarity on the ownership situation at the location. Mr. Luczak explained that the initial license, applied for by Dhillon, was not renewed. *Id*. at 21. At that point, the owner attempted to sell the business to family member, and that application was denied. Subsequently, Singh Bhagat entered into a purchase agreement through his LLC for the purchase of the gas station. *Id*. Singh Bhagat clarified he knows the previous owner, Dhillon, not because they are related, but because he bought a different gas station from him in the past. *Id*. He clarified that until licenses get approved, he cannot take over ownership. *Id*. at 22. It was further clarified that the sale of the gas station was contingent upon license approval. The prior owner is operating under an injunction and continues to own it, but will cease to own it if the licenses are approved. *Id*. at 22. Mr. Luczak clarified that the original revocation case and the second attempted new

owner are both in court right now, so if the licenses today are denied, the court cases will play out. *Id*. at 22-23.

Reid then asked Singh Bhagat if the other gas station he operates on Burleigh is open 24-hours, to which he responded no. *Id*. at 23. Reid asked why the hours would be different at this location, and Singh Bhagat responded because at the other location, there are several other gas stations surrounding them, one of which is open 24 hours. *Id*. Reid then pointed out several other gas stations in the area and reiterated her opposition to a 24-hour license. *Id*. at 24. Singh Bhagat responded he was "here for the neighbors" and explained that the new owners cannot take over until the licenses are approved, and that the old owner is still operating. *Id*. at 25.

Pointing out the significant testimony regarding the 24-hour schedule, Ald. Kovac asked Singh Bhagat if he would consider altering the hours. *Id*. at 25. Singh Bhagat responded he would need to speak to Dhillon, the old owner, because he would need to negotiate different sale terms if he changed the 24-hour schedule. *Id*.

Next, the committee heard testimony from neighbors in support of the licenses. *Id*. at 26. First, Joseph Bogan, a current employee, testified that in the past five or six months the establishment has been very quiet and peaceful and there has been no incidents. *Id*. Mr. Luczak asked Bogan if in the late 18 months there has been any police calls for incidents at the gas station. *Id*. at 28. Bogan responded no. *Id*. Patrick Hinkles testified he was a frequent customer, and has never seen any trouble there. Hinkles further testified the operators have a good rapport with people in the neighborhood and benefit from the convenience of the station. *Id*. at 29. Tanya Lowe testified she has never had a problem or seen a problem at the gas station, and appreciated the convenience of the establishment. *Id*. at 30.

Ald. Rainey then said he would support denial based on neighborhood testimony. *Id*. at 31. Mr. Luczak then gave closing remarks. Mr. Luczak highlighted that Singh Bhagat would be new ownership, and a lot of the testimony seemed to be related to issues with the old ownership. *Id*. at 32. Mr. Luczak stated he did not think these were appropriate considerations for the committee to make. *Id*. Mr. Luczak stated that Singh Bhagat should be given a chance and is willing to listen to the concerns addressed and make changes. *Id*. at 33. Mr. Luczak also argued that approval of the licenses would be a good adequate remedy to move on from the previous owners to the new ones, due to the injunction and pending court cases. *Id*.

Ald. Borkowski then moved for denial based on aldermanic and neighborhood testimony. *Id*. at 34. The motion passed with a vote of 3-0-1, with one member excused. *Id*. The full Common Council affirmed the denial on October 12, 2021. *Dkt. #126* at 18. Following this decision, the City provided Singh Bhagat and his counsel with written confirmation. *Id*. at 19-20. Neeti Preeti, Inc., then filed a petition for a writ of certiorari with this Court seeking review of the Common Council's denial. This case was consolidated with the actions of Kool Petroleum, Inc., and Neighborhood Petro, Inc. *Dkt. #121*.

STANDARD OF REVIEW

Wisconsin Statute section 125.12(2)(d) authorizes judicial review of an action by a municipal governing body to grant, fail to grant, suspend, or revoke any license. Wis. Stat. § 125.12(2)(d). The Court's judicial review under § 125.12(2)(d) is limited to a determination of:

(1) Whether the Licenses Committee and Common Council kept within their jurisdiction;
(2) Whether they acted according to law;
(3) Whether their actions were arbitrary, oppressive or unreasonable and represented their will and not their judgment; and
(4) Whether the evidence was such that it might reasonably make the order or determination in question.

See State ex rel. Mitchell Ero v. Board of Review of City of Milwaukee, 74 Wis. 2d 268, 281-82, 246 N.W.2d 521, 528 (1976). The decision to revoke a license is discretionary and is vested with the licensing authority. *Ruffalo v. Common Council of the City of Kenosha*, 38 Wis. 2d 518, 525-26, 157 N.W.2d 568, 571 (1968). A reviewing court cannot substitute its judgment for the properly exercised discretion of the Common Council on the merits. *Id.* The Common Council's discretionary determination can only be set aside if the Council's decision was arbitrary, capricious, or discriminatory. *Id.*; *Norton v. Town of Sevastopol*, 108 Wis. 2d 595, 598, 323 N.W.2d 148 (Ct. App. 1982).

An administrative agency engages in arbitrary and capricious action "'when it can be said that such action is unreasonable or does not have a rational basis.'" *State ex rel. Smits v. City of De Pere*, 104 Wis. 2d 26, 37-38, 310 N.W.2d 607, 612 (1981) (quoting *Olson v. Rothwell*, 28 Wis. 2d 233, 239, 137 N.W.2d 86 (1965)). Arbitrary action is "'the result of an unconsidered, willful and irrational choice of conduct, and not the result of 'winnowing and sifting' process.'" *Id*. (quoting *Olson*, 28 Wis. 2d at 239). In applying the arbitrary and capricious standard, the Court

must determine "whether the agency's action had a rational basis, not whether the agency acted on the basis of factual findings. Rational choices can be made in a process which considers opinions and predictions based on experience." *J.F. Ahern Co. v. Wisconsin State Building Comm'n*, 114 Wis. 2d 69, 96, 336 N.W.2d 679, 692 (Ct. App. 1983), *review denied*, 114 Wis. 2d 601, 340 N.W.2d 201 (1983).

Therefore, the action of the Licenses Committee and the Common Council will be upheld if it has a rational basis and is supported by substantial evidence in the record. "Substantial evidence" does not mean a preponderance of the evidence. *Hilton ex rel. Pages Homeowners' Association v. Dep't of Natural Resources*, 2006 WI 84, ¶ 16, 293 Wis. 2d 1, 13, 717 N.W.2d 166 (2006). "Instead, the test is whether, after considering all the evidence of record, reasonable minds could arrive at the same conclusion." *Id.* A reviewing court may not pass on the credibility of witnesses or the weight of the evidence. The Court can only pass on the reasonableness of the governing body's findings. *Copeland v. Dep't of Taxation*, 16 Wis. 2d 543, 554-56, 114 N.W.2d 585, 864 (1962). The governing body's decision must be sustained even if an alternative, but equally reasonable view of the evidence exists. *Dep't of Revenue v. Lake Wisconsin Country Club*, 123 Wis. 2d 239, 242-43, 365 N.W.2d 916, 918 (Ct. App. 1985), *review denied*, 123 Wis. 2d 548, 371 N.W.2d 375 (1985). If there is substantial evidence in the record, the Court must uphold the governing body's determination. *See id.*; *Responsible Use of Rural and Agric. Land (RURAL) v. Public Service Com'n of Wisconsin*, 2000 WI 129, ¶ 20, 239 Wis. 2d 660, 675-76, 619 N.W.2d 888 (2000).

ANALYSIS

Kool Petroleum

Kool Petroleum brings several arguments in support of reversing the Common Council's decision of nonrenewal: (1) the City failed to comply with Due Process requirements of the law, and (2) the decision of nonrenewal was arbitrary, capricious, and not supported by substantial evidence.

I. The City failed to comply with Due Process requirements of the law

Kool Petroleum argues the Committee failed to act in accordance with the law because

> [I]t violated the Kool Petroleum Parties' due process rights by failing to provide or use a pre-calibrated standard of proof during its licensing hearings, failing to provide the Kool Petroleum Parties with an opportunity to cross examine Alderman Rainey, entering a video in to the record that was never actually seen by the Committee members or provided to the

> Kool Petroleum Parties, and then subsequently acting to obstruct and frustrate the Kool Petroleum Parties attempt to transfer the Gas Station to bona-fide buyers.
>
> Dkt. #148 at 9.

Due process arguments fall under the second category of review under § 125.12(2)(d), acting according to law. "The phrase 'acted according to law' has been interpreted as including 'the common law concepts of due process and fair play.'" *Marris v. City of Cedarburg*, 176 Wis. 2d 14, 24, 498 N.W.2d 843 (1993). See also *Family Dollar Stores of Wisconsin LLC v. City of Milwaukee*, 2022 WL 6590183, ¶24. Petitioners are guaranteed a right to due process in administrative hearings. MCO § 85-1 states:

> It is the further purpose of the common council to grantee to licensees, permittees, and members of the public those protections of due process of law respecting a full and fair right to be heard upon adequate notice, to confront and cross examine witnesses, and to have the benefit of rules of evidence, and to present evidence and arguments of law and fact.
>
> MCO 85-1.

First, Kool Petroleum argues that a lack of a clearly identifiable standard of proof violated their due process rights: "[I]t is undisputed that the written prior notice received does not identify a standard of proof. It is undisputed that neither the licensing committee, the systems fact finders, nor license holders are advised of any applicable standard of proof before a licensing hearing." *Dkt. # 148* at 12. Kool Petroleum argues there are three levels of proof that have been recognized. First is the preponderance of evidence standard, typically found in civil cases. Second is the beyond a reasonable doubt standard typically found in criminal cases. The third standard falls in the middle and is known as the clear and convincing standard. According to Kool Petroleum, this standard is typically used when the interests at stake are more substantial than loss of money, involves important individual interests, or risks tarnishing one's reputation. Kool Petroleum then states that when the legislature has failed to ascribe a standard of proof applicable to the contested proceedings, the judiciary typically defines the standard. Petitioner concludes that the city uses no ascertainable standard of proof in its licensing scheme.

Kool Petroleum points to *Carey v. Piphus* which held:

> Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. Thus, in deciding what process constitutionally is due in various context, the Court repeatedly has

> emphasized that 'procedural due process rules are shaped by the risk of error inherent in the truth-finding process…'[citations omitted].
>
> *Carey v. Piphus*, 435 U.S. 247, 259-90 (1978).

Therefore, Kool Petroleum argues, the procedures a court or municipal body uses to determine facts of a case are just as important as the validity of the substantive rule of law to be applied to those facts. The *Carey* case, however, dealt with elementary and secondary school students who were suspended without a disciplinary hearing. In that case, the lack of a hearing was the procedural due process violation. The instant case presents a different issue such that Kool Petroleum's argument is the lack of standard of proof is a violation of due process.

In its response brief, the City argues that Kool Petroleum is incorrectly analogizing standards of proof in courts of law to administrative hearings. The City cites to *AllEnergy Corporation v. Trempealeau County Environment and Land Use Committee*, 375 Wis.2d 329 (2017). In *AllEnergy*, a local zoning board considered the approval of permits for a fracking operation. The Environment and Land Use Committee called a meeting, during which the mining operation offered a presentation and public testimony was heard. The Committee voted in favor of imposing several conditions on the conditional use permit. After deciding on the approved conditions, the Committee voted to deny AllEnergy's application for the conditional use permit, even with the approved conditions in place. AllEnergy appealed, arguing that substantial evidence supported the denial and whether the Committee comported with the Rules of Evidence and other court of law procedures. The court stated:

> Substantial evidence is evidence of such convincing power that reasonable persons could reach the same decision as the local governmental entity, even if there is also substantial evidence to support the opposite decision. Reasonable inferences may be drawn from credible evidence. If 'credible, relevant and probative evidence upon which reasonable persons could rely to reach a decision' supports the decision of the [committee], the court will uphold the decision. Quantitatively, substantial evidence is less than a preponderance of the evidence [quoting] *Smith v. City of Milwaukee*, 2014 WI 95, ¶ 22 but "more than a 'mere scintilla' of evidence and more than conjecture and speculation.' [quoting] *Gehin v. Wis. Group Ins. Bd.*, 2005 WI 16, ¶ 48.
>
> *Id.* at 366.

The Court stated that AllEnergy erred in trying to apply the Wisconsin Rules of Evidence to the present case because "[A]n agency or hearing examiner is not ordinarily bound by common law or statutory rules of evidence." *Id*. at 367. Further, "[s]ubstantial evidence means evidence having

rational probative force, that is, relevant evidence accepted by a reasonable mind as adequate to support a conclusion." *Id*. at 368. The Court found that "AllEnergy has the burden of proof (persuasion) to demonstrate satisfaction of the criteria for a conditional use permit." *Id*. at 373. In applying this standard, the Court found that there was substantial evidence to support the denial decision. *Id*. at 377-380.

The City argues that *AllEnergy* is analogous to the instant case. As in *AllEnergy*, the City argues the burden of proof is persuasion, and Kool Petroleum failed in persuading the Committee to renew its licenses. However, Kool Petroleum argues that this "substantial evidence" test is a standard of review rather than a standard of proof.

Municipal administrative hearings must act in accordance with law to ensure that its procedures are consistent with the concepts of due process and fair play. *Marris v. City of Cedarburg*, 176 Wis.2d 14, 24, 498 N.W.2d 842 (1993).

> Standards of proof, like other 'procedural due process rules, are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases, not the rare exceptions.' [citations omitted]. Since the litigants and the factfinder must know at the outset of a given proceeding how the risk of error will be allocated, the standard of proof necessarily must be calibrated in advance.
>
> *Santosky v. Kramer*, 455 U.S. 745, 757 (1982).

While this Court could find no Wisconsin case law regarding the due process requirements of a clearly stated standard of proof in administrative hearings, Kool Petroleum cites to a case from Washington to support their position. In *Mansour v. King Cnty*, a pet owner filed a writ of certiorari challenging a Notice and Order of Removal from the city's Animal Control. *Mansour v. King Cnty.*, 131 Wash. App 255, 258-259, 128 P.3d 1241 (2006). Mansour appealed the Removal order to the King County Board of Appeals and there was a hearing. *Id*. at 261. Mansour argued that the Board violated his procedural due process rights because the Board imposed an inadequate burden of proof on Animal Control and did not allow Mansour from subpoenaing records and witnesses. *Id*. at 263. The court agreed with Mansour and stated, "An adequate standard of proof is a mandatory safeguard… the nature and importance of the interest subject to erroneous deprivation establishes the minimum standard of proof required to satisfy due process." *Id*. at 265. Neither the King County Code nor the Board rules required a particular standard of proof, nor did the record indicate which standard was applied. *Id*. The court further noted that 'substantial evidence' is not an evidentiary standard but rather a standard of review. *Id*. The court ruled that due process requires

more than proving the Board's decision was not arbitrary and capricious, they could not review the Board's findings and conclusions when it may have used a wrong standard in making those findings, and that the "lack of a clearly ascertainable adequate standard of proof violated Mansour's procedural due process rights."

Kool Petroleum argues persuasively to the Court that the *Mansour* case is similar to the instant case. Kool Petroleum was subjected to a due process hearing without any ascertainable standard of proof. As in *Mansour*, the city neither informed nor applied any identifiable standard of proof. Appellate review cannot overcome an inadequate standard of proof. *Santosky v. Kramer*, 455 U.S. 745, 757, n.9 (1982). As such, the Court finds that Kool Petroleum's procedural due process rights were violated by the absence of a clear and adequate standard of proof.

II. The Committee's decision of nonrenewal was arbitrary, oppressive and unreasonable.

Kool Petroleum argues that the License Committee and the Common Council acted arbitrarily, capriciously, and unreasonably in their decision denying Kool Petroleum's licenses. Kool Petroleum posits that the nonrenewal was arbitrary and unreasonable because although the same facts were presented, the first hearing recommended a suspension, while the second recommended nonrenewal, two very different outcomes.

Kool Petroleum further supports its position by pointing out that the video was not provided to the Committee or put in the record, and additional reasons were added to the second Finding of Fact and Conclusions of Law promulgated by the Committee.

Under Wis. Stat. § 125.12, this Court must determine if the Council acted arbitrarily, oppressively, or unreasonably in their decision of suspension. "[A]n agency does not act in an arbitrary ... manner if it acts on a rational basis"; rather, "[a]rbitrary action is the result of an unconsidered, willful or irrational choice, and not the result of the 'sifting and winnowing' process." *Van Ermen v. DHSS*, 84 Wis.2d 57, 64–65, 267 N.W.2d 17 (1978) (citation and quotation marks omitted). "Rational choices can be made in a process which considers opinions and predictions based on experience." *J.F. Ahern Co. v. Wisconsin State Building Comm'n*, 114 Wis. 2d 69, 96, 336 N.W.2d 679, 692 (Ct. App. 1983), review denied, 114 Wis. 2d 601, 340 N.W.2d 201 (1983). The "sifting and winnowing" process requires the License Committee to view all the evidence and make its decision based on a rational basis. The Findings of Fact and Conclusions

of Law generated by the municipality can be seen as evidence of the fact that sifting and winnowing occurred. *Smith v. City of Milwaukee*, 2014 WI App 95, ¶ 21, 356 Wis. 2d 779, 790, 854 N.W.2d 857, 862.

The City argues proper sifting and winnowing occurred in this case. The Licensing Committee considered several incidents from multiple sources in making its determination. The Committee focused on several incidents in the police report, namely the sale of cigarettes to a minor, the sex tape incident, and the incident in which alcohol and Quest cards were found behind the counter. The Committee heard testimony from Dhillon and his counsel, as well as from neighbors in support of license renewal. The Committee also heard testimony from neighbors who were not in support of renewal. Following the Committee hearings, the Committee compiled their Findings of Fact and Conclusions of Law. Hence, the City posits proper sifting and winnowing occurred; therefore, the City did not have act arbitrarily, oppressively, or unreasonably.

While the Committee may have considered information from multiple sources in making its determination, Kool Petroleum points out the strong role that Ald. Rainey had in the ultimate outcome. At the first hearing, the only testimony in opposition to license renewal was from Ald. Rainey's legislative aide. The Committee recommended renewal of the licenses with a 20-day suspension. However, at the July 30, 2019 Common Council meeting, Ald. Rainey motioned to send the matter back to the licensing committee and stated: "So the committee decided to suspend this establishment for 20 days. And I thought that was unbelievable. You know, I've never seen a situation like this get treated in such a manner." *Dkt. #138* at 9. At the second Committee Hearing, there were no substantial changes in facts considered. Additionally, Ald. Rainey testified in opposition to renewal at this hearing and Kool Petroleum contends it was not afforded a right to cross-examine Ald. Rainey.

In *Marris v. City of Cedarburg*, the Wisconsin Supreme Court reviewed a court of appeals decision affirming the City of Cedarburg Board of Zoning Appeals decision which ruled that the property in question lost its legal nonconforming use status. *Marris v. City of Cedarburg*, 176 Wis.2d 14, 14, 498 N.W.2d 842 (1993). The main issue for the Court was whether "the chairperson of the Board prejudge[d] the matter and create[d] an impermissibly high risk of bias so that his refusal to recuse himself deprived Marris of a fair hearing?" *Id*. at 18. Determining whether a board member prejudged a matter requires an examination of the facts on a case-by-case basis. *Id*. at 26. In *Marris*, the board member made statements referring to Marris' legal position as a "loophole"

in need of "closing"; suggested to other board members they should try to "get her [Marris] on the Leona Helmsley rule." *Id*. at 27. Taken together, the Wisconsin Supreme Court held that the chairperson's comments created a situation in which risk of bias was impermissibly high and indicate prejudgment. *Id*. at 30. As such, our Supreme Court held that Marris was deprived of her right to common law due process and the Board's decision must be vacated and remanded for a new hearing. *Id*. at 31.

In the instant case, the record indicates that Ald. Rainey was not in favor of renewing Kool Petroleum's licenses. Ald. Rainey sent the initial recommendation of suspension back to the Committee, of which he is not on, and stated multiple times he was against renewal of the license committee. Kool Petroleum was unable to cross-examine Ald. Rainey. Moreover, at the second Common Council meeting, Ald. Rainey handed out screenshots of the video incident without proper notice, which the circuit court later held to be a violation of Kool Petroleum's due process rights. This prompted the third Committee meeting, in which Ald. Rainey again reiterated his opposition to license renewal. These facts suggest that Ald. Rainey may have prejudged this matter, violating the legal standard set forth in *Marris*.

If Ald. Rainey prejudged the matter and showed impermissible bias, that calls into question the reliability of the sifting and winnowing process. *Family Dollar Stores of Wisconsin LLC v. City of Milwaukee*, 2022 WL 6590183, ¶38. In *Family Dollar*, the Wisconsin Court of Appeals questioned the reliability of the sifting and winnowing process in part because there had been no further citations issued at the store at the time of the hearings. *Id*. Additionally, the Court in *Family Dollar* noted the difference in the voting between the first and second hearings, and said that this suggested a decision based on will rather than judgment. *Id*. at ¶39. The first Common Council vote resulted in a 9-6 vote in favor of nonrenewal. *Id*. After the remand hearing, the vote by the Council was 13-0, despite virtually identical evidence and witnesses. *Id*. The Court also notes that Ald. Bauman voted in favor of nonrenewal both times when he "had essentially acted as an advocate against Family Dollar throughout these proceedings." *Id*. The Court in *Family Dollar* also pointed out that their case stood in stark contrast to the City's decision in *Questions Inc. v. City of Milwaukee*, 2011 WI App 126, 336 Wis.2d 654, 807 N.W.2d 131. In *Questions*, there were numerous serious issues including armed robberies and shootings. *Id*. at ¶¶ 3-4. However, the Common Council still voted to renew its license with a 25-day suspension. *Id*. at ¶9. Based on these reasons and the evidence set forth in the record, the Court in *Family Dollar* determined that

the City acted arbitrarily in not renewing Family Dollar's licenses. *Family Dollar Stores of Wisconsin LLC v. City of Milwaukee*, 2022 WL 6590183, ¶42.

The situation for Kool Petroleum is similar. Kool Petroleum has not received any further citations at the time of the hearings. At the first Committee Hearing, the Committee voted in favor of renewal with a 20-day suspension with a vote of 4-0-1. After the issue was sent back to the Committee by Ald. Rainey, the second Committee hearing produced a vote of 3-0-2 for non-renewal. The facts presented in the second hearing were essentially the same. The only difference in the hearings were that this time Ald. Rainey testified instead of his aide, and several other community members testified in opposition, although even more still testified in support of Kool Petroleum. At each Common Council meeting, Ald. Rainey voted in favor of nonrenewal while acting as an advocate against renewal. Additionally, this case also stands in stark contrast to the City's decision in *Questions*. Based on the legal standard set forth in *Marris*, and the decision in *Family Dollar*, this Court concludes that the Committee's decision to not renew Kool Petroleum's licenses was arbitrary.

Neighborhood Petro

I. The City of Milwaukee violated Neighborhood Petro's due process rights.

Neighborhood Petro argues that the licensing hearing did not comport with due process because it did not follow its own ordinance on hearing procedures. MCO § 85 contains the standards, procedures, and due process protections afforded to licenses during License Committee meetings. MCO 85-2.7 states:

> 3. DUE PROCESS. A due process hearing shall be conducted in the following manner:
>
> a. All witnesses shall be sworn in.
> b. The chair shall ask those opposed to the granting of the license to proceed first.
> c. The applicant shall be permitted to cross-examine.
> d. After the conclusion of the opponent's testimony, the applicant shall be permitted to present the applicant's own witnesses, subject to cross examination.
> e. Committee members may ask questions of witnesses.
> f. The applicant shall be permitted a brief summary statement.
>
> MCO 85-2.7.

Neighborhood Petro argues there were several instances when their due process rights were ignored under this ordinance. First, Neighborhood Petro points out there were no witnesses registered in rollcall. Notably, there is no requirement to register in advance to testify at Committee hearings. Additionally, Neighborhood Petro claims due process violations because they were not afforded the opportunity to cross examine witnesses, and that some witnesses testified over Zoom without their video cameras on. Neighborhood Petro cites to Wis. JI-Civil 215 to support their argument that no video images of the witnesses eliminate their ability to determine "the witness' conduct, appearance, and demeanor on the witness stand." While this may be true for civil proceedings, the Wisconsin Civil Jury instructions do not apply to administrative hearings. In administrative hearings, witnesses frequently testify by phone or video if they are unable to do so in person. Neighborhood Petro still had the ability to cross-examine witnesses, which it did. Additionally, Neighborhood Petro alleges that none of the witnesses were properly sworn in, which violates MCO 85-2.7-3(a). However, this is not true, as the transcript indicates they were sworn in by Ald. Coggs. *Dkt. #136* at 11.

Further, Neighborhood Petro argues that witnesses were there to object to Kool Petroleum's operation of the premises were called out of turn to address Neighborhood Petro's license issuances. Following Mr. Arena's opening statements. Ald. Coggs asked if there were any neighbors present to testify. *Dkt. #136* at 5. Ms. Keuther-Steele responded that there were no neighbors to testify on this item, but the next item, which was a hearing for Kool Petroleum. *Id*. Ald. Rainey then asks clarifying questions on how this license hearing relates to Kool Petroleum's hearing. *Id*. Ald. Rainey needed clarification on what type of action they would be taking at the present hearing. *Id*. Ald. Rainey then asked for Mr. Arena to discuss improvements the new owner intends to make. *Id*. at 6. Ald. Rainey stated "I want to speak more to, you know, the issues that are germane for the purpose of being here today, especially considering some of the high-profile things that have occurred." *Id*. Ald. Rainey then asked if it would be inappropriate to go out of order and hear from neighbors before action was taken on the item. *Id*. at 7. Mr. Arena objected, and the Assistant City Attorney stated that Mr. Arena was largely correct, and the only real issue relative to the new application is the fitness of the applicant and the fitness of the location. *Id*. at 8-9. The Assistant City Attorney pointed out the neighbors could testify, but only on the fitness of the location to be a gas station, or the fitness of the person, Bajlinder, applying for the license. *Id*. at 9. Ald. Coggs then asked if any

of the neighbors present wanted to testify about the fitness of this location or the fitness of the applicant. *Id*. Several neighbors stated they wanted to testify, even though they were originally present to testify about Kool Petroleum's license renewal. *Id*.

This leads into Neighborhood Petro's next argument that it reasonably relied on MCO 85-2.7-4 when it purchased the business assets of Kool Petroleum, but that the Committee failed to base its decision on the probative evidence set forth in MCO 85-2.7-4. MCO 85-2.7-4 states:

> 4. RECOMMENDATION. The recommendation of the committee regarding the applicant shall be based on evidence presented at the hearing. Probative evidence concerning whether or not the license should be granted may be presented on the following subjects:
>
> a. Whether or not the applicant meets the municipal requirements.
> b. The appropriateness of the location and premises where the licensed premises is to be located and whether use of the premises for the purposes or activities permitted by the license would tend to facilitate a public or private nuisance or create undesirable neighborhood problems such as disorderly patrons, unreasonably loud noise, litter, and excessive traffic and parking congestion. Probative evidence relating to these matters may be taken from the plan of operation submitted with the license application.
> c. The fitness of the location of the premises to be maintained as the principal place of business, including but not limited to whether there is an overconcentration of business of the type for which the license is sought, whether the proposal is consistent with any pertinent neighborhood business or development plans, or proximity to areas where children are typically present.
> d. The applicant's record in operating similarly licensed premises.
> e. Whether or not the applicant has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the activity to be permitted by the license being applied for.
> f. Any other factors which reasonably relate to the public health, safety, and welfare.
>
> MCO 85-2.7-4.

The Committee meeting notice Neighborhood Petro received stated that per MCO 85-2.7-4, probative evidence may be presented on the following subjects on the above listed subjects. *Dkt. #130* at 17. Neighborhood Petro argues no evidence was provided that related to whether Neighborhood Petro met the municipal requirements, the fitness of the location, or the fitness of the applicant. Neighbors, who were originally there to testify at the subsequent hearing on Kool Petroleum's renewal, were able to testify if they limited their testimony to those two issues. However, the neighbors who testified struggled to keep their testimony within those

two narrow issues. The first person to testify was concerned that Kool Petroleum was just selling to a relative and did not think that was fair. *Id*. at 12-13. The Assistant City Attorney stepped in to say that that is not accurate, that this happens all the time, and that people have a constitutional right to dispose of their property interest in a way they see fit, and selling to a relative is not disqualifying. *Id*. at 13. The witness continued to testify about a "legal loophole" that was being used, and Mr. Arena objected based on relevance.

The next witness testified the gas station was not respectful of the neighborhood. *Id*. at 18. The next witness testified about concerns over overflowing garbage and physical upkeep of the property. He further stated there is a moral obligation for the new owner to meet with the community before taking over. The next witness testified they were in opposition because of the 24-hour schedule and due to too much trouble already in the neighborhood. *Id*. at 30. The following witness was against the renewal and expansion of the gas station because, referring to Baljinder, "we don't know him. We have not met with him. So why would we have to adhere to what they want us to say?" *Id*. at 34. Neighborhood Petro argues these testimonies were not based on criteria from MCO 85-2.7-4, primarily whether the applicant is fit and the location is fit. Neighborhood Petro argues the only evidence listed in MCO 85-2.7-4 that was presented was evidence regarding Bajlinder's record in operating a similarly licensed premise. Therefore, Neighborhood Petro argues the Committee's decision to deny the application was a violation of due process because it relied on faulty witness testimony that did not properly address the evidence that Neighborhood Petro was noticed and that MCO 85-2.7-4 requires.

Petitioners are guaranteed a right to due process in administrative hearings. MCO 85-1 states:

> "It is the further purpose of the common council to grantee to licensees, permittees and members of the public those protections of due process of law respecting a full and fair right to be heard upon adequate notice, to confront and cross examine witnesses, and to have the benefit of rules of evidence, and to present evidence and arguments of law and fact."
>
> MCO 85-1.

The notice provided by the City to Neighborhood Petro stated that probative evidence concerning whether or not a new license should be granted may be presented on the subjects in MCO 85-2.7-4. *Dkt. #130* at 17. "[T]he rules of construction for statutes have been long held applicable to the construction of municipal ordinances[.]" *Family Dollar Stores of*

Wisconsin LLC v. City of Milwaukee, 2022 WL 6590183 ¶ 25 (quoting *State ex rel. B'nai B'rith Found of U.S. v. Walworth Cnty. Bd. Of Adjustment*, 59 Wis. 2d 296, 308, 208 N.W.2d 113 (1973)). The testimony at the hearing did not fairly follow the requirements of MCO 85-2.7-4. The witnesses who testified were there to testify on Kool Petroleum's renewal. As such, much of the witness testimony focused on management issues of Kool Petroleum, concerns over the relationship between the parties, and the witnesses' dissatisfaction that Neighborhood Petro and Bajlinder did not have a community meeting with them. None of these things are listed in MCO 85-2.7-4 as being probative evidence used in the Committee's determination. While the City argues the testimony addressed the factors listed in 85-2.7-4, this Court is not convinced the testimony given satisfied the factors in 85-2.7-4. In particular, much of the testimony seemed to center on the frustrations and issues with the current management of the business. Neighborhood Petro reasonably relied on MCO 85-2.7-4 when it received the meeting notice and prepared for the hearing. Because much of the testimony did not revolve around the factors in that ordinance, Neighborhood Petro did not have proper notice of the issues discussed at the hearing. As such, Neighborhood Petro's due process rights were violated in regard to the Committee failing to base its decision on the probative evidence set forth in MCO 85-2.7-4.

II. The City of Milwaukee did not violate Neighborhood Petroleum's Fifth Amendment right by executing a regulatory taking.

Neighborhood Petro further argues the City violated its Fifth Amendment rights by executing a regulatory taking. Neighborhood Petro contends they had a property interest in the transfer of licenses and purchase of "Hometown," pursuant to the Lease and Business Purchase agreement that was effectuated in March of 2020. Neighborhood Petro argues: "In denying Neighborhood Petro its Licenses, the defendant effectuated a taking under the Fifth amendment because it stented all economically beneficial uses of the property without providing just compensation or demonstrating that the license denial advanced legitimate state interests, defined in accordance with MCO 85-2.7-4, which was not followed." *Dkt. #139* at 12.

In their response brief, the City argues Neighborhood Petro does not possess a property interest in a license that they never held. The City argues that simply applying for the licenses does not create a property interest in those licenses that can be taken.

Milwaukee County Ordinance 85-19 states, "Unless otherwise provided in this code, no license or permit shall be transferable whether as to license, permittee, or location except as herein provided." MCO 85-19. The ordinance lists the exceptions which include change of premises, change of name, death, disability, bankruptcy, transfer of stock, or sole proprietorship or business entity reorganization. *Id*. While the Lease and Business Purchase Agreement between Kool Petroleum and Neighborhood Petro was contingent upon Neighborhood Petro receiving the necessary licenses, the Milwaukee County Ordinances clearly do not allow for the transfer or sale of licenses in commercial transactions. As such, Neighborhood Petro does not have a protected property interest in the licenses, and the City did not violate Neighborhood Petro's Fifth Amendment rights.

Neeti Preeti

I. The City violated Neeti Preeti's due process rights.

Neeti Preeti first argues that the City violated his due process rights by failing to comply with the City's own written notice requirements. Neeti Preeti contends the Committee Meeting Notice did not contain a list of reasons why their application may be denied. Under MCO 85-2.7-1-b, the notice must include "a statement to the effect that the possibility of denial of the license application exists and the reasons for possible denial." MCO 85-2.7-1-b. The Committee Meeting notice only includes a list of probative evidence the License Committee may consider. *Dkt. #126* at 14. Neeti Preeti argues that the failure to provide a statement for the reasons of potential denial prejudiced them and denied them the opportunity to prepare and address the concerns of the licensing committee.

In their response brief, the City argues Neeti Preeti was made aware of potential concerns in the police reports that were included with the Meeting Notice as well as the criteria from the MCO provided in the Meeting Notice. The Meeting Notice lists the probative evidence as outlined in MCO 85-4-4 that the Committee will base their recommendation on. These two things, the City argues, gave Neeti Preeti proper notice to adequately prepare for the Committee hearing.

"Due Process does not require that a property owner receive actual notice before the government may take his property. Rather, we have stated that due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise

interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Jones v. Flowers*, 547 U.S. 220, 226, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006). Neeti Preeti received the same Meeting Notice all petitioners received. The Notice does not list specific reasons why their application may be denied but gives notice that the Committee may deny the application based on probative evidence, and then lists what probative evidence may be considered. Given the various forms of probative evidence listed in the Meeting Notice, as well as the police report attached, Neeti Preeti had proper notice.

Neeti Preeti also argues the City violated MCO 85-2.7-1-b, which requires the City to serve notice on the current owners of the premises, if the possibility of denial is based on the fitness of the location of the premises to be licensed. Neeti Preeti asserts the current owners of the premises were not served this notice, but does not point to anywhere in the record to indicate that this is true. Because the property owner, Dhillon, had been before the Committee in relation to this premises three times already, and was in the process of selling the business to Neeti Pretti, it is unlikely that the property owner was unaware of the hearing. Because Neeti Preeti cannot support its assertion, it is unpersuasive. As such, the City did not violate Neeti Preeti's due process rights on the basis of written notice requirements.

Next, Neeti Preeti argues his due process rights were violated because the City failed to address any of the applicable considerations identified under MCO 85-2.7-4. MCO 85-2.7-4 states:

> 4. RECOMMENDATION. The recommendation of the committee regarding the applicant shall be based on evidence presented at the hearing. Probative evidence concerning whether or not the license should be granted may be presented on the following subjects:
>
> a. Whether or not the applicant meets the municipal requirements.
>
> b. The appropriateness of the location and premises where the licensed premises is to be located and whether use of the premises for the purposes or activities permitted by the license would tend to facilitate a public or private nuisance or create undesirable neighborhood problems such as disorderly patrons, unreasonably loud noise, litter, and excessive traffic and parking congestion. Probative evidence relating to these matters may be taken from the plan of operation submitted with the license application.
>
> c. The fitness of the location of the premises to be maintained as the principal place of business, including but not limited to whether there is an overconcentration of business of the type for which the license is sought, whether the proposal is consistent with any pertinent neighborhood business or development plans, or proximity to areas where children are typically present.

d. The applicant's record in operating similarly licensed premises.
e. Whether or not the applicant has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the activity to be permitted by the license being applied for.
f. Any other factors which reasonably relate to the public health, safety, and welfare.

MCO 85-2.7-4.

Neeti Preeti argues the majority of the testimony related to issues with the current owners and their management. Five individuals from the neighborhood testified in opposition to Neeti Preeti's license applications. *Dkt #129* at 5. Charles Davis in his testimony, referenced the sex tape incident that occurred in 2019, alleged shooting incidents, and cars. *Id*. at 5. He acknowledged that Neeti Preeti was not involved with the current owners but stated "we have not finished with the previous owners yet." Id. at 6. John Reid testified in opposition to Neeti Preeti's application because he had seen the current owners on the premises, and objected to the Entertainment Premises license even though that application was withdrawn in advance of the hearing. *Id*. at 7. Clinton Day also testified against granting of the licenses due to objections over traffic and the business being open 24 hours. Martin Childs also testified, with concerns of the current ownership not being able to control the activities of customers. *Id*. at 14-15. Finally, Claudia Reid, also objected to the licenses on the basis of the way the current owners are running the business. *Id*. at 20.

None of what the community members testified about are listed in MCO 85-2.7-4 as being probative evidence used in the Committee's determination. While the City argues the testimony addressed the factors listed in 85-2.7-4, this Court is not convinced that the testimony satisfied the factors in 85-2.7-4, because much of the testimony seemed to center on the frustrations and issues with the current management of the business. Neeti Preeti reasonably relied on MCO 85-2.7-4 when it received the meeting notice. Because much of the testimony did not revolve around the factors in that ordinance, Neeti Preeti did not have proper notice of the issues that would be discussed at the hearing. Hence, Neeti Preeti's due process rights were violated when the Committee failed to base its decision on the probative evidence set forth in MCO 85-2.7-4.

II. The City's decision was arbitrary, oppressive and unreasonable and did not rely on substantial evidence.

Under Wis. Stat. § 125.12, this Court must determine if the Council acted arbitrarily, oppressively, or unreasonably in their decision of suspension. "[A]n agency does not act in an arbitrary ... manner if it acts on a rational basis"; rather, "[a]rbitrary action is the result of an unconsidered, willful or irrational choice, and not the result of the 'sifting and winnowing' process." *Van Ermen v. DHSS*, 84 Wis.2d 57, 64–65, 267 N.W.2d 17 (1978) (citation and quotation marks omitted). "Rational choices can be made in a process which considers opinions and predictions based on experience." *J.F. Ahern Co. v. Wisconsin State Building Comm'n*, 114 Wis. 2d 69, 96, 336 N.W.2d 679, 692 (Ct. App. 1983), review denied, 114 Wis. 2d 601, 340 N.W.2d 201 (1983). The "sifting and winnowing" process requires the License Committee to view all the evidence and make its decision based on a rational basis. The Findings of Fact and Conclusions of Law generated by the municipality can be seen as evidence of the fact that sifting and winnowing occurred. *Smith v. City of Milwaukee*, 2014 WI App 95, ¶ 21, 356 Wis. 2d 779, 790, 854 N.W.2d 857, 862. A decision is not arbitrary if it is supported by "substantial evidence." *Von Arx v. Schwarz*, 185 Wis. 2d 645, 656, 517 N.W.2d 540 (Ct. App. 1994). Substantial evidence is evidence that is "relevant, credible, probative and of a quantum upon which a reasonable fact finder could base a decision." *Id*.

Neeti Preeti argues no substantial evidence was presented upon which the City could have made a reasonable decision to deny their licenses. Neeti Preeti lists the evidence they presented in support of their application, as well as the evidence presented in opposition to their application. Neeti Preeti posits the evidence and testimony presented in opposition to their application only highlight issues regarding the current ownership, not with Neeti Preeti's fitness to operate a gas station at the premises.

In its response brief, the City argues its decision was not arbitrary, oppressive, or unreasonable because sifting and winnowing of the facts occurred. However, this Court is not persuaded the City relied on substantial evidence. "Substantial evidence" does not mean a preponderance of the evidence. *Hilton ex rel. Pages Homeowners' Association v. Dep't of Natural Resources*, 2006 WI 84, ¶ 16, 293 Wis. 2d 1, 13, 717 N.W.2d 166 (2006). "Instead, the test is whether, after considering all the evidence of record, reasonable minds could arrive at the same conclusion." *Id.* A reviewing court may not pass on the credibility of witnesses or the weight of the evidence. The Court can only pass on the reasonableness of the governing body's findings. *Copeland v. Dep't of Taxation*, 16 Wis. 2d 543, 554-56, 114 N.W.2d 585, 864 (1962).

When reviewing the License Committee and Common Council's decision, this Court looks to whether evidence has been provided in support of the decision of nonrenewal. This Court shall not determine credibility or weight of certain evidence, but whether the evidence submitted can support a decision of nonrenewal. Neeti Preeti presented evidence in support of their licenses including: testimonies they were seeking approval as part of an arm's length transaction, their success operating another gas station at a different location, there have been no recent incidents at the premises, steps were being taken to keep the premises clean and prevent loitering, testimonies from neighbors who support the business, and the holding of a neighborhood forum in which residents could address concerns. Additionally, there was evidence that Neeti Preeti was willing to cooperate with the City to address concerns, including withdrawal of the Entertainment Premises licenses and hiring a security guard, and no new police reports for the subject property. The evidence presented in opposition to the licenses was flawed, as most of it revolved around previous ownership, and not Neeti Preeti. The Aldermanic testimony recommended denial based on the flawed neighborhood testimony. Proper sifting and winnowing only occurs when the License Committee makes its decision on a rational basis. This Court is unpersuaded that the City properly engaged in sifting and winnowing of the evidence, did not act on a rational basis. This Court finds the Committee acted arbitrarily, oppressively, unreasonably, and without substantial evidence. Accordingly, this Court **REVERSES** the decisions of both the License Committee and Common Council.

ORDER

For all of the foregoing reasons:

(1) The decision of the License Committee and Common Council of nonrenewal of licenses for Plaintiffs Extended Hours Establishment, Food Dealer, Filling Station, and Weights & Measures is hereby REVERSED.

SO ORDERED.

THIS IS A FINAL ORDER OF THE COURT FOR THE PURPOSE OF APPEAL