IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GRACIE SUMMERLIN, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
CLARK COUNTY; 5335 LAS VEGAS, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND NATURE X, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

No. 86066-COA

ORDER OF AFFIRMANCE

Gracie Summerlin, LLC (Gracie) appeals from a district court order denying a petition for judicial review following the grant of a special use permit by the Clark County Board of County Commissioners. Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.[1]

Gracie operates a jiu jitsu studio located in a retail center in Summerlin.[2] The parcel on which Gracie is located contains a building and a parking area. Adjacent parcels contain a smoke shop, a convenience store, and a gas station—each business has its own building. Respondent NatureX, dba Zen Leaf, operates a retail cannabis dispensary in the Summerlin area and sought to apply for a special use permit from the Clark County Board of County Commissioners (the Board) in order to be able to

[1]Pursuant to Rule 2.11(C) of the Nevada Code of Judicial Conduct, all parties stipulated to waive any disqualification of the Honorable Deborah Westbrook, Judge, from taking part in the consideration of this appeal.

[2]We recount the facts only as necessary for our disposition.

build a cannabis dispensary on a vacant parcel adjacent to Gracie.[3] Before applying, NatureX reached out to Gracie in an apparent attempt to determine if Gracie was a "community facility" pursuant to NRS 678B.250(8)(e), as the dispensary's entrance would be less than 300 feet from Gracie's parcel.[4]

In response to its inquiry, NatureX received a letter from Mica Cipil of Gracie Humaita Las Vegas (Cipil letter) in December 2020. While the name of the business on the letter is different than the one identified in the case caption of the matter presently before the court, the business address is substantially the same.[5] We also note that the letter refers to a proposed development by Lone Mountain Partners LLC, dba Zen Leaf. NatureX explains this apparent discrepancy by stating that NatureX and Lone Mountain Partners are owned by the same parent company. The Cipil letter stated that the primary purpose of the business was not to provide recreational services to children or adolescents but was instead to prepare "aspiring Jiu Jitsu students to compete at the highest level possible." In March 2021, Lone Mountain Partners received a letter from the Nevada Cannabis Compliance Board (CCB) that stated that the letter was written

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[3]We note that 5335 Las Vegas, LLC has the same parent company as NatureX and filed its answering brief with NatureX. For the sake of simplicity, we refer to these two entities as NatureX throughout the brief.

[4]Cannabis dispensaries are not allowed to operate within 300 feet of a community facility. *See* NRS 678B.250(3)(a)(2)(II). A community facility is defined as, "[a] center or facility, the primary purpose of which is to provide recreational opportunities or services to children or adolescents." NRS 678B.250(8)(e).

[5]We note that the Cipil letter appears to contain the correct address of Gracie while appellant's opening brief appears to contain the address of another business in the same retail area.

in response to a request for review of a jiu jitsu facility prior to a possible proposed change of location. The CCB letter stated that it determined that Gracie did not meet the definition of a "community facility" at that time.

NatureX proceeded to apply for a special use permit in September 2021. NatureX provided images of the proposed building in its permit application, as well as site plans documenting the location of the building and the parking for the dispensary. The front door of the proposed building was located 147.57 feet from the closest edge of the parcel that Gracie occupies. The Board considered NatureX's application at a November 2021 zoning meeting. At the meeting, NatureX's attorney provided examples of other businesses in the retail center including the smoke shop, convenience store, and gas station. NatureX also stated that a managing member of Gracie at the time had no objection to NatureX relocating to the proposed location and that Gracie was not a community facility. Both the Cipil letter and the CCB letter appear to be among the materials presented to the Board before the meeting.

Two individuals spoke in opposition to granting the permit. The first individual identified herself as a community advocate. She stated that 200 children per day attend classes at Gracie and requested that a 30-day extension be given to allow community members to comment on the issue. A. Almeida, the owner of Gracie, also spoke. Almeida stated that the Cipil letter was from an individual not associated with Gracie Summerlin but was instead associated with three other Gracie jiu jitsu locations in Las Vegas. Almeida also stated that over 200 kids attend classes at Gracie. NatureX responded that it deliberately reached out to Gracie before applying for the special use permit; that it received the Cipil letter in response; and that the Cipil letter was sent by Mica Cipil, who was listed as one of the managing

members of Gracie Summerlin on the Nevada Secretary of State website at the time the letter was sent.

Following the statements of the interested parties and before the vote, Commissioner Jones opined that a dispensary was appropriate in the proposed location because there was already a smoke shop and convenience store in the area and because the CCB thought that Gracie was not a community facility. The Board then unanimously voted to grant NatureX the special use permit.

In December 2021, Gracie petitioned for judicial review or, in the alternative, for a writ of mandamus. After briefing, the district court denied Gracie's petition in January 2023, finding that substantial evidence supported the Board's decision. Gracie now appeals and argues that the Board abused its discretion in approving the special use permit.[6]

The Board did not abuse its discretion when it granted NatureX a special use permit

Gracie argues that the Board ignored the evidence before it and improperly considered the Cipil Letter and CCB letter, that NRS 678B.250(3)(a)(2)(II)'s 300-foot separation mandate is not waivable, and that a commissioner's opinion cannot justify the Board's decision.[7] Clark County

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[6]We note that "mandamus petitions are generally no longer appropriate to challenge the Board's final decision." *Kay v. Nunez*, 122 Nev. 1100, 1104-05, 146 P.3d 801, 805 (2006) (addressing petitions for mandamus in response to zoning decisions). However, as Gracie does not argue mandamus on appeal, we do not address it. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

[7]It is undisputed that NRS 678B.250(3)(a)(2)(II) prohibits a cannabis establishment from being within 300 feet of a "community facility" as defined in NRS 678B.250(8)(e).

argues that substantial evidence supports the Board's decision and that no evidence was introduced in front of the Board showing that Gracie was a community facility. Clark County also argues that Gracie waived its procedural arguments about the Cipil letter and CCB letter by not raising them below. Finally, Clark County argues that Gracie only attacks the credibility of the evidence and that this argument lacks merit. NatureX concurs and responds that there was no evidence that Gracie was a community facility within the definition of the statute, and that the letters were substantial evidence to support the Board's decision.

When reviewing a district court's order disposing of a petition for judicial review, we review the administrative record to determine if substantial evidence supports the administrative decision. *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006). The grant "of a request for a special use permit is a discretionary act." *City of Las Vegas v. Laughlin*, 111 Nev. 557, 558, 893 P.2d 383, 384 (1995). An administrative body abuses its discretion when it makes a decision that is not supported by substantial evidence. *Id.* Substantial evidence is that "which a reasonable mind might accept as adequate to support a conclusion." *Id.* (internal quotation marks omitted).

A cannabis establishment must be located at least 300 feet away from a community facility that existed prior to the creation of the cannabis establishment. NRS 678B.250(3)(a)(2)(II). A community facility includes "[a] center or facility, the primary purpose of which is to provide recreational opportunities or services to children or adolescents." NRS 678B.250(8)(e).

In support of its first argument that the Board ignored the evidence before it, Gracie argues that it was the only party to submit evidence and that the evidence it presented showed that Gracie is a community facility. The record does not support this argument. The record

reveals that the Board was presented with the Cipil letter and the CCB letter. The record also reveals that both letters were discussed by NatureX's attorney during the meeting. Finally, the record reveals that the objections of a community advocate and Almeida were heard during the meeting. We note that the record in front of the Board also contained documents noting the official approval and recommendation of the Clark County Town Advisory Board/Citizen Advisory Council and Spring Valley.

The Cipil letter stated that the primary purpose of Gracie was to help students "compete at the highest possible level" and specifically stated that the "primary purpose is *not* to provide recreational services to children or adolescents." (emphasis added). The CCB letter stated that Gracie did not meet the definition for a community facility. Additionally, while the community activist and Almeida both told the Board that at least 200 children attended Gracie at the time of the hearing, they failed to inform the Board how many adults attended Gracie or the ratio of adult participants to child participants. Nor did they specifically state that Gracie is a community facility.

The evidence given at the Board meeting does not necessarily prove that Gracie is a community facility. Instead, while the evidence reveals that children train at Gracie in martial arts, it does not show that Gracie's primary purpose is to provide recreational opportunities for children. *See* NRS 678B.250(3)(a)(2)(II). Additionally, neither the Cipil letter nor the CCB letter deny that students train at Gracie; they simply conclude that Gracie's primary purpose is not to provide recreational opportunities for children. Accordingly, we conclude that Gracie has not demonstrated that the Board abused its discretion. The Board was presented with conflicting evidence and opinions, which we will not reweigh. *See Nellis Motors v. State, Dep't of Motor Vehicles*, 124 Nev. 1263, 1269-70,

197 P.3d 1061, 1066 (2008) ("We will not reweigh the evidence, [or] reassess the witnesses' credibility."). Thus, under the deferential standard of review, we conclude that substantial evidence supports the Board's decision.

Turning to Gracie's second argument, that the Board should not have considered the Cipil letter or the CCB letter, we disagree. Gracie specifically argues that the person that wrote the Cipil letter does not own Gracie, is not affiliated with Gracie, and has no personal knowledge of the participants at Gracie. Gracie also argues that the Cipil letter is hearsay. We note that Gracie stated at the hearing only that the person who wrote the Cipil letter does not own Gracie. NatureX agreed at the hearing that Cipil was no longer affiliated with Gracie, so the Board not only heard Gracie's argument that Cipil had never been affiliated with Gracie, but it also heard NatureX's concession that Cipil was undisputedly no longer involved with Gracie. We also note that the Cipil letter identifies the correct address for Gracie and with more precision than was present in Gracie's briefing before this court. *See Nellis*, 125 Nev. at 1269-70, 197 P.3d at 1066. Further, Gracie failed to raise the hearsay argument before the Board and thus it is waived, and we need not consider it. *See State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008) (stating that arguments not raised before an administrative body in the first instance are waived); *see also Highroller Transp., LLC v. Nev. Transp. Auth.*, 139 Nev., Adv. Op. 51, 541 P. 3d 793, 800 (Ct. App. 2023).[8]

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[8]If we consider the merits of Gracie's hearsay argument, we note that "mere uncorroborated hearsay is generally not substantial evidence sufficient to support the findings of a . . . hearing officer." *State, Dep't of Motor Vehicles & Pub. Safety v. Kinkade*, 107 Nev. 257, 260-61, 810 P.2d 1201, 1203 (1991). The Cipil letter had internal corroboration since it contained the correct address of Gracie Summerlin. Additionally, it

Gracie additionally argues that the CCB letter should have been disregarded since the letter refers to Lone Mountain Partners LLC as the applicant; the letter called the jiu jitsu organization "Gracie Humaita Jiu Jitsu," which Gracie alleges is the name of a business at a different location; and the letter's intended recipient is unknown. However, Gracie failed to raise any of these arguments before the Board and thus they are waived, and we need not consider them. *See Barta*, 124 Nev. at 621, 188 P.3d at 1098; *see also Highroller Transp., LLC*, 139 Nev., Adv. Op. 51, 541 P. 3d at 800. Accordingly, we conclude that the Board did not abuse its discretion in considering the Cipil letter or the CCB letter.

In its third argument, Gracie argues that the commissioner's personal opinions are not evidence "and cannot constitute substantial evidence." Gracie appears to concede that it is unknown if the Board granted the special use permit based on the commissioner's statements and the record contains only scant evidence suggesting that the Board did so. First, no other commissioner stated their agreement in whole or in part with Commissioner Jones's analysis. In fact, no other commissioners offered any comments on the matter. Second, as NatureX points out, the commissioner's remarks show an analysis of issues to consider before granting a special use permit. The commissioner stated reasons why he thought it would be appropriate to grant the permit and stated that the CCB thought that Gracie was not a community facility. Accordingly, the opinion expressed by the commissioner was supported by evidence before the Board. While it is true

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correctly identified that the cannabis establishment was doing business as Zen Leaf. Additionally, the Cipil letter was corroborated by the CCB letter which stated that the CCB did not think Gracie was a community facility. Accordingly, there is evidence that the Cipil letter was corroborated and could be considered by the Board.

that substantial evidence does not include the opinions of board members, there was substantial evidence to support the Board's decision without considering the commissioner's statements. *See City Council of City of Reno v. Travelers Hotel, Ltd.*, 100 Nev. 436, 439, 683 P.2d 960, 961 (1984) (stating that opinions of council members, alone, does not constitute substantial evidence).

Whether the Board abused its discretion by not denying the application for procedural reasons

Gracie argues that NatureX failed to obtain a special use permit before it applied to the Cannabis Compliance Board to move to a new location. Clark County responds that Gracie failed to raise this argument before the Board, so it is waived. Clark County also argues that no legal authority required the Board to deny the special use permit merely because NatureX applied to the CCB to relocate before obtaining a special use permit. NatureX argues that it did not submit a written request for relocation before obtaining the County's approval. Instead, NatureX sought guidance from the CCB on a possible relocation.

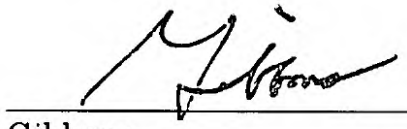
The Nevada Legislature created the CCB and authorized it to adopt regulations necessary to carry out Nevada law. NRS 678A.350; NRS 678A.450. A "cannabis establishment must comply with all local ordinances and rules pertaining to zoning" and a cannabis establishment may relocate to a new location if a local government approves the relocation. NRS 678B.500(2). A local government can only approve the new location after holding a public hearing. *Id.* The CCB requires that a cannabis establishment seeking to relocate must submit a written application including documentation of a public meeting where the relocation was considered. NCCR 6.065(2)(b). The Clark County Code of Ordinances also states that "the County must hold a public hearing" before the cannabis

establishment submits a written relocation request to the CCB. Clark County Code of Ordinances § 8.65.215.

Gracie argues that since the above cited authority required NatureX to obtain a special use permit before applying to the CCB to relocate, Clark County should have denied NatureX's application for a special use permit. Gracie failed to raise this issue before the Board of County Commissioners, so the argument is waived. *Barta*, 124 Nev. at 621, 188 P.3d at 1098. Additionally, Gracie failed to provide any legal support for its argument, so this court need not consider it.[9] *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[10]



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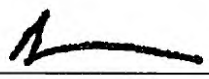

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[9]If we address the merits of the argument, then it does not appear that NatureX submitted a written relocation request to the CCB. The letter referred to in Gracie's brief was written in response to a request for review or guidance, not a relocation request. Accordingly, this argument does not present a basis for reversal.

[10]Insofar as Gracie has raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Chief Judge, Eighth Judicial District Court
Hon. J. Charles Thompson, Senior Judge
Eighth Judicial District Court, Dept. 29
Hayes Wakayama Juan
Kaempfer Crowell/Las Vegas
Clark County District Attorney/Civil Division
Eighth District Court Clerk