IN THE CIRCUIT COURT OF THE 16th JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY,

APPELLATE DIVISION

Case No.: 24-AP-4-K

LKT SERVICES & COMPANIES, LLC,
a Florida Limited Liability Company,

Petitioner,

v.

CITY COMMISSION, sitting as the
BOARD OF ADJUSTMENT OF
THE CITY OF KEY WEST, FLORIDA,

Respondent.
_____/

ORDER ON PETITION FOR WRIT OF CERTIORARI

THIS CAUSE is before the Court on LKT SERVICES & COMPANIES, LLC's ("Petitioner") Petition for Writ of Certiorari to review Resolution No. 23-354 issued by the Key West Board of Adjustment ("Respondent"). Having heard arguments of counsel, considered Petitioner's Petition, Respondent's Response in Opposition to the Petition, Petitioner's Reply, pertinent legal authority, and being otherwise fully advised in the premises, the Court finds and orders as follows:

I. Factual and Procedural Background

Petitioner owns the property located at 409 Caroline Street, Key West, Florida ("Subject Property"). The original zoning ordinance permitted the previous owner to establish a bar and restaurant business on the Subject Property. (Pet. App. 41). In 1997, the City of Key West ("City")

amended its zoning laws and included the Subject Property within the Historic Residential/Office (HRO) zoning district which prohibited the operation of a bar or restaurant outside of the Appelrouth Business Corridor. (Pet. App. 41). Acknowledging that the bar and restaurant business constituted a legal nonconforming use, the City permitted forty-nine (49) seats on the Subject Property. (Pet. App. 18, 41, 42). When Petitioner acquired the Subject Property in 2018, the City issued Petitioner a business tax receipt for a bar and restaurant business with forty-nine (49) seats. (Pet. App. 41).

After performing a restaurant seat license compliance audit in early 2023, the Code Compliance Department cited Petitioner for having sixty-nine (69) unlicensed seats on the Subject Property. (Pet. App. 41). In response, Petitioner submitted a request to the Planning Department to increase seating on the Subject Property from forty-nine (49) seats to one hundred and fifty-six (156) seats. (Pet. App. 42). On September 20, 2023, the Planning Director denied Petitioner's seating request pursuant to Section 122-32(d) of the Key West Code of Ordinances. (Pet. App. 42). Petitioner filed its Notice of Appeal on September 26, 2023, to appeal the Planning Director's denial of the request to increase seating. (Pet. App. 8).

After conducting a quasi-judicial hearing on Petitioner's appeal, Respondent issued Resolution No. 23-354 ("Resolution") denying the appeal and affirming the Planning Director's denial of Petitioner's seating request. (Pet. App. 22-24). In the Resolution, Respondent concluded that "the

proposed additional seats in [sic] an extension or an expansion or an intensity of non-conformity at Subject Property." *Id.* at 23.

On January 18, 2024, Petitioner filed a petition for writ of certiorari seeking to quash the Resolution.

II. Standard of Review

Certiorari review of an administrative action is given in the circuit court as a matter of right. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). First-tier certiorari review is limited to reviewing whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. *Id.* Neither party raised the issue of procedural due process and it is not at issue in this proceeding. Regarding the evidence, circuit courts are not permitted to analyze the record and make their own factual findings. See *Haines City Com'ty Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). Circuit courts cannot usurp the fact-finding authority of the agency and are constrained to determining whether the agency's decision is supported by competent substantial evidence. See *Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1093 (Fla. 2000).

III. Analysis

A. Adherence to the Essential Requirements of Law

Petitioner argues that Respondent departed from the essential requirements of the law because Respondent did not accurately interpret

and apply the Key West Code of Ordinances ("Code") in its Resolution. The Court disagrees.

A circuit court reviewing an agency action looks to whether the agency "applied the correct law," which is synonymous with "observing the essential requirements of law." *Haines City Cmty. Dev.*, 658 So. 2d at 530. An administrative agency departs from the essential requirements of law if it applies the wrong law. *Id.* at 531 n.7.

In this case, the Respondent observed the essential requirements of law by applying the correct law to the evidence. Since the bar and restaurant business on the Subject Property is a legal nonconforming use, Respondent applied Section 122-32(d) of the Code to determine whether to affirm the Planning Director's denial of Petitioner's seating request. (Pet. App. 58, 81-83). Code Section 122-32(d) pertains to the modification of nonconforming uses and provides that "[a] nonconforming use shall not be extended, expanded, enlarged, or increased in intensity." Immediately before voting on the Resolution to affirm the Planning Director's denial of Petitioner's seating request, the City Attorney explained that Code Section 122-32(d) prohibits the extension, expansion, enlargement, or intensity of a nonconforming use. (Pet. App. 83). The Court agrees that Section 122-32(d) of the Code is not limited to prohibiting the intensification of nonconforming uses.

Petitioner's claim that Respondent departed from the essential requirements of law by not applying the Code's definition of "intensity" is

incorrect. The Court finds that the legislative intent is unclear from the plain language of the section and that when read in accordance with the doctrine of the last antecedent, Code Section 122-32(d) prohibits the extension or expansion of nonconforming uses. When courts must interpret unclear language to determine legislative intent, they apply the doctrine of the last antecedent which provides that a qualifying phrase is read as limited to the last item in the series when the phrase follows that item without a comma. See *Kasischke v. State*, 991 So. 2d 803, 813 (Fla. 2008). However, the rule is not inflexible and can be overcome where the qualifying phrase is applicable as much to the first and other words as to the last. See *Id.* When applying the rule to Code Section 122-32(d), "in intensity" only modifies the last verb in the series and the context does not support Petitioner's interpretation because "intensity" is defined in the Code as a ratio and ratios can only be increased or decreased. Thus, Respondent observed the essential requirements of law because Code Section 122-32(d) also prohibits the extension or expansion of nonconforming uses and Respondent determined that granting additional seats would constitute an extension or an expansion of the nonconforming use on the Subject Property. (Pet. App. 23).

Therefore, by affirming the Planning Director's decision on the basis that granting the seating request would violate Section 122-32(d), Respondent adhered to the essential requirements of the law.

B. Competent Substantial Evidence

Petitioner argues that Respondent's determination is not supported by competent and substantial evidence because it did not provide studies, data, or expert testimony to support its conclusion that the additional seats would extend or expand the nonconforming use on the Subject Property. The Court disagrees.

Competent evidence is evidence that is sufficiently relevant and material to the ultimate determination that a reasonable mind would accept it as adequate to support the conclusion reached. See *Degroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). Substantial evidence is evidence that provides a factual basis from which a fact at issue may reasonably be inferred. *Id.* Circuit courts are required to defer to the findings of an agency fact-finder in the context of zoning determinations. *Wiggins v. Florida Dep't of Highway Safety & Motor Vehicles*, 87 So. 3d 1165, 1171 (Fla. 2017). When determining whether an administrative decision is founded on competent, substantial evidence, circuit courts may only look for facts in the record that support the agency fact-finder's conclusions. *Id*.

Based on a review of the record in this case, Respondent's determination is supported by competent and substantial evidence. Before voting on the Resolution to affirm the Planning Director's denial of Petitioner's seating request, Respondent heard testimony from the Planning Director, the Assistant City Attorney, and interested citizens regarding whether an increase in seating would extend or expand the nonconforming use on the Subject Property. (Pet. App. 60, 68-72, 79-80). The Court finds

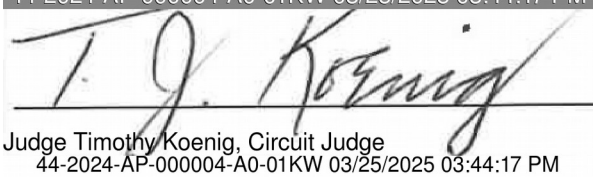
that the testimony included relevant fact-based statements which constitute competent, substantial evidence. Therefore, Respondent's determination that an increase in seating would constitute an expansion or extension of the bar and restaurant business on the Subject Property is supported by competent, substantial evidence.

IV. Conclusion

The Court finds that Respondent observed the essential requirements of the law and based its determination to affirm the Planning Director's denial of Petitioner's seating request on competent, substantial evidence. Therefore, the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED at Key West, Monroe County, Florida this Tuesday, March 25, 2025

44-2024-AP-000004-A0-01KW 03/25/2025 03:44:17 PM



Judge Timothy Koenig, Circuit Judge

44-2024-AP-000004-A0-01KW 03/25/2025 03:44:17 PM

Jacob C McMahon ESQ
jacob@smithhawks.com

Hudson C Gill
hgill@jambg.com
cardona@jambg.com
ostruemke@jambg.com

Ryan A. Abrams
rabrams@abrams-law.com

cindy@abrams-law.com

admin@abrams-law.com