

STATE OF SOUTH CAROLINA) IN THE ADMINISTRATIVE COURT
) FOR THE CITY OF FOLLY BEACH
 COUNTY OF CHARLESTON) BUSINESS LICENSE APPEAL

Shelabrating Life, LLC,

Appellant,

v.

The City of Folly Beach,

Respondent.

FINAL ORDER

This matter comes before me as an appeal pursuant to § 110.16 of the Folly Beach Code of Ordinances by Appellant Shelabrating Life, LLC appealing the December 6, 2022, decision of the License Official of the City of Folly Beach (“City”) to deny its application for a short term rental (“STR”) license for the property located at 1009 W. Ashley Ave. because it was precluded by the moratorium imposed by Ordinance 32-22,¹ which barred the issuance of new business licenses for short term rentals within the City as of October 18, 2022.²

¹ Ordinance 32-22 states in pertinent part:

1. The City of Folly Beach imposes a moratorium, to be effective immediately upon ratification of this Ordinance, on the issuance of new business licenses for short term rentals within the City:
 - a. Subject to Section (b) hereof, no application shall be approved for a business license to for [sic] any residential dwelling taxed at a 6% property tax rate.
 - b. Subject to the limitations set forth in Section (c) excepted from the provisions of Section 1 (a) are each of the following:
 - i. Renewals of short term rental licenses for properties that were legally licensed as of October 18th, 2022.
 - ii. New licenses resulting from the transfer of ownership of properties that were legally licensed as short term rentals as of October 18th, 2022.
 - iii. New licenses for properties in Downtown Commercial district for which Final Approval has been granted by the Design Review Board prior to the ratification of this ordinance.
 - iv. New licenses for a short term rental for which an application has been filed with the City of Folly Beach prior to ratification of this Ordinance and that has been deemed sufficient for approval.

² The moratorium in Ordinance 32-22, which passed on October 18, 2022, and had an expiration date of January 11, 2023, was extended by Ordinance § 34-22, which passed on December 13, 2022, and extended the expiration date to April 15, 2023, or five business days after any special election called to adopt the petition for a cap on short term

Appellant served the City with notice of its appeal of the Business License Official's denial on December 21, 2022. (App. Ex. 8.) By consent and agreement of the parties, the ten business day hearing period set forth in § 110.16(A) was extended to accommodate the schedules of counsel and the parties. The parties appeared before me at a pre-hearing conference held on January 10, 2023, at which Appellant was represented by Edward K. Pritchard, III, Esquire and the City was represented by City Attorney, Joseph C. Wilson, IV, Esquire.

The appeal hearing was held on February 14, 2023, with counsel for both parties present. Appellant presented testimony by Rhiannon Shelbourne ("Shelbourne"). The City presented testimony by City Business License Official Stacey Ritchie ("Ritchie"). Each party was given the opportunity to cross-examine the witnesses.

Appellant entered into evidence Appellant Exhibits 1-10, without objection by the City. The City entered into evidence City Exhibits 1-5, without objection by Appellant. The City also submitted a Memorandum in Opposition to the Appeal on February 13, 2023, which is made part of the record. The Court marked a timeline relied on by Ritchie during her testimony as Court's Exhibit 1.

FINDINGS OF FACT

Having carefully considered all evidence and arguments presented, taking into account the credibility of the witnesses and the accuracy of the evidence, and having reviewed all of the parties' submissions, I make the following findings by a preponderance of the evidence:

1. Pursuant to § 117.02 of the Folly Beach Code of Ordinances, "[a]ny owner wishing to operate a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state

rentals. A special election was held on February 7, 2023, in which a majority of the registered voters of Folly Beach voting in the election voted in favor of the cap.

taxes.” Business licenses and rental registration permits “must be obtained and renewed annually by the submittal” of the appropriate forms and paying the required fees. *Id.* STR registration renewals must “be completed prior to June 1 of each year.” § 117.02(B)(1).

2. Ordinance 32-22 was enacted on October 18, 2022, following the City’s receipt of a citizen petition to limit the number of STRs to 800, and upon the acknowledgement in the ordinance that the City had issued 1,112 STR licenses for the 2022 business license year as of that date.
3. Ordinance 32-22 states that “the City desires to limit further increase in the number of short term rental licenses until the question posed by the petition is settle [sic] by vote of Council or general referendum.”
4. In furtherance of that stated desire, Ordinance 32-22 prohibits the “issuance of new business licenses for short term rentals within the City” for residential dwellings taxed at a 6% property tax rate, but contains exceptions for “[r]enewals of short term rental licenses for properties that were legally licensed as of October 18th, 2022;” transfers of ownership for currently licensed properties; new applications that were filed prior to ratification of the Ordinance; and new licenses “for properties in Downtown Commercial district for which Final Approval has been granted by the Design Review Board prior to” ratification.
5. Appellant has owned 1009 W. Ashley Ave. in Folly Beach (“Property”) since June of 2000.
6. Appellant’s representative Shelbourne and her family live in the Property part-time and make it available as a STR when they are not occupying it.

7. Shelbourne testified that her mother passed away on October 31, 2022, after suffering from early onset dementia and Shelbourne had been going back and forth to her mother's home in Aiken with her six children for several months to be with her mother. She spent little to no time in the Folly Beach area during the summer months of 2022 and was not reading the local newspapers at that time as she was dealing with her mother's illness.
8. Appellant had a City of Folly Beach business license for the Property for 2020 and 2021. (App. Ex. 2 & 3.)
9. The City issued Appellant a STR Registration on July 20, 2021, which expired on December 31, 2021. (App. Ex. 1.)
10. Shelbourne and Appellant's property manager, Linda Scheer, tried multiple times in May of 2022 to renew Appellant's business license via the County's portal, but were unable to do so due to administrative issues. (*See also*, City Ex.1.)
11. Appellant did not have a 2022 STR business license as of October 18, 2022, when the moratorium was passed.
12. Despite not having a STR registration for the Property for 2022, Appellant continued to offer the Property as a rental through October of 2022, and paid the Accommodations taxes associated those rentals. (App. Ex. 9 & 10.)
13. The County of Charleston Department of Revenue Collections ("County") sent Appellant a notice dated October 1, 2022, advising that Appellant had failed to obtain a business license for the 2022 license year. (App. Ex. 4.)
14. Shelbourne, who had been out of town for most of October, opened the notice from the County on October 24, 2022, and took immediate steps to renew the delinquent business license.

15. The County's portal allowed Shelbourne to complete the business license application process on line for Appellant, accepted her payment of \$638.20, and issued a business license referencing the Property on October 24, 2022. (App. Ex. 5 & City Ex. 5.)
16. On November 16, 2022, Shemequa Pringle-Jackson, County Assistant Revenue Collections Director, informed Shelbourne that Appellant's license was processed in error and the payment for the 2022 business license would be refunded. Pringle-Jackson referred Shelbourne to the City for further information regarding the STR license. (App. Ex. 6.)
17. Prior to 2022, the City's business license renewals were due in late December, but the South Carolina Business License Tax Standardization Act ("Standardization Act") became effective on January 1, 2022, making the business license renewal process uniform for all counties and municipalities and setting "a twelve-month period beginning May first and ending April thirtieth" for all business licenses. S.C. Code Ann. § 6-1-400(B)(1).
18. A business license renewal notice "to all businesses located or doing business in the . . . City of Folly Beach" was published in The Post and Courier on April 24, 27, and 29, 2022, stating that "business license renewal applications were mailed early April 2022" and advising that owners had until May 2, 2022 to submit payment without penalty. (City Ex. 4.) The notice further stated that "[f]ailure to receive a renewal application does not relieve you of the responsibility of paying the license fee." Id.
19. The County's business license portal was not operational in early May of 2022, and as a result, renewals were not due until May 31, 2022, and no late fees were charged until June 30, 2022. (City Ex. 2.)

20. It is uncontested that Appellant (or anyone acting on its behalf) did not timely submit payment for the renewal of the business license for the Property by October 18, 2022.
21. Appellant did not submit a 2022 City of Folly Beach Rental Registration Form for the Property until November 16, 2022. (City Ex. 1.)
22. Ritchie denied the application for a STR license for the Property on December 6, 2022. (City Ex. 1.)
23. Appellant's failure to timely renew the Property's STR business license for 2022 the Property was inadvertent.
24. Based on the plain and ordinary meaning of the words in Ordinance 32-22, the City's intent to exclude from renewal of STR licenses those businesses which did not have a valid, existing STR license as of October 18, 2022, is clear and unambiguous.
25. The Property was not legally licensed by the City as a STR as of October 18, 2022.
26. The Property does not meet any of the exceptions to the moratorium in Ordinance 32-22(b).

LEGAL STANDARDS

I have applied the following legal standards in evaluating the evidence and arguments. A municipal business license ordinance should be interpreted based on the general rules of statutory construction. Olds v. City of Goose Creek, 424 S.C. 240, 246, 818 S.E.2d 5, 9 (2018). Similarly, § 10.02 of the City's Ordinances instructs "[u]nless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law."

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the [enacting body].” Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). “When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used.” City of Myrtle Beach v. Juel P. Corp., 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001) (citing Charleston County Parks and Rec. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995)). The terms in the ordinance should be given their “plain and ordinary meaning without resort to subtle or forced construction to limit or expand the [ordinance’s] operation.” Sloan, 371 S.C. at 499, 640 S.E.2d at 459. Where words are unambiguous, the court should apply their literal meaning. Id. at 498, 640 S.E.2d at 459.

In addition, “the [ordinance] must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.” S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Similarly, the ordinance should be read “in a manner consonant and in harmony with its purpose.” CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citing State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010)). “The construction of a[n ordinance] by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” Brown v. S.C. Dep't of Health & Env't Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting Denton v. S.C. Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)).

A business license fee is a tax on the privilege of doing business within a county or municipality, the imposition of which has been upheld as a constitutional exercise of municipal powers. Town of Hilton Head Island v. Kigre, Inc., 408 S.C. 647, 648, 760 S.E.2d 103, 103

(2014); City of Columbia v. Niagara Fire Ins. Co., 249 S.C. 388, 391, 154 S.E.2d 674, 675 (1967). “It is a well-established principle of law that tax statutes cannot be extended by implication beyond the clear import of the language used, and in case of doubt, such doubt must be resolved against the government, and in favor of the taxpayer.” Hadden v. S.C. Tax Comm’n, 183 S.C. 38, 190 S.E. 249, 251 (1937); Triplett v. City of Chester, 209 S.C. 455, 40 S.E.2d 684 (1946).

DISCUSSION

In its appeal letter, Appellant cited the basis for its appeal as: (1) the denial violates the South Carolina Vested Rights Act; (2) the denial violates procedural and substantive due process provisions of the State of South Carolina and United States Constitutions; (3) the appeal procedure violates the South Carolina Administrative Procedures Act; and 4) the denial violates the South Carolina enabling legislation. (App. Ex. 8.) At the hearing, Appellant’s counsel did not provide legal authority in support of any of these grounds, but posed an argument challenging the moratorium as a zoning matter and further requested relief based on equitable considerations. The City objected to Appellant relying on arguments not articulated in its Notice of Appeal. Nonetheless, Appellant was given the opportunity to brief all of its legal arguments after the hearing, but elected not to do so.

Looking at Appellant’s first appeal point, I find no basis to support a claim that the City’s denial of Appellant’s business license renewal after the enactment of the moratorium violates the South Carolina Vested Rights Act. The Act, found in S.C. Code § 6-29-1530(A)(1), provides a two year vested right time period for approved site specific development plans. Section 6-29-1520(9) defines a “site specific development plan” as

a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for

a specific property or properties. The plan may be in the form of, but is not limited to, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or special use permit plan; conditional or special use district zoning plan; or other land-use approval designations as are used by a county or municipality.

A STR business license application is not a development plan. I find no instances where the Vested Rights Act has been applied to business licenses nor any language in the Act that would support such an application. In addition, there are no vested rights which attach to a business license. See S.C. Dep't of Revenue & Tax'n v. Rosemary Coin Machines, Inc., 331 S.C. 234, 243-44, 500 S.E.2d 176, 180-81 (Ct. App. 1998), *rev'd sub nom. on other grounds* S.C. Dep't of Revenue v. Rosemary Coin Machines, Inc., 339 S.C. 25, 528 S.E.2d 416 (2000) (finding that a business license is a “special privilege and not a contract” and creates “neither a vested nor a permanent right” (citations omitted)); Dantzler v. Callison, 230 S.C. 75, 94–95, 94 S.E.2d 177, 188 (1956). Rather a “license is to be enjoyed only so long as the licensee complies with the restrictions and conditions governing its continuance.” Feldman v. South Carolina Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943).

I further find no basis to support a claim that the City has denied Appellant due process rights. There is no question that Appellant was provided with notice of the denial and afforded an appeal process via the hearing held on February 14, 2023. This is all of the procedural due process required to be afforded for business license denials. See Carter v. Linder, 303 S.C. 119, 126, 399 S.E.2d 423, 426 (1990). *See also* Excitement Video, Inc. v. Bd. of Zoning Appeals, No. 2004-UP-553, 2004 WL 6336793 (S.C.Ct App. Nov. 1, 2004). Appellant has not provided any explanation of its position regarding an alleged substantive due process violation and, therefore, I find that ground has been waived.

Appellant's argument that the appeal procedure afforded violates the South Carolina Administrative Procedures Act also fails. The Administrative Procedures Act sets forth procedures to be followed by State agencies in adopting and enforcing State regulations. S.C. Code Ann. §§ 1-23-10; 1-23-111; 1-23-310; 1-23-320. The Act has no applicability to the appeal of a municipal business license denial.

Appellant did not expound upon its argument to explain how or why it contends the denial violates the South Carolina enabling legislation. The Home Rule Act specifically grants municipalities the right to "levy a business license tax on gross income." S.C. Code Ann. § 5-7-30. *See also* Olds v. City of Goose Creek, 424 S.C. 240, 246, 818 S.E.2d 5, 9 (2018) ("One such power possessed by a municipality is the power to 'levy a business license tax on gross income.'"); Kigre, 408 S.C. at 649, 760 S.E.2d at 103 ("The legislature has specifically granted municipalities the authority to enact ordinances and 'levy a business license tax on gross income.'"). In addition, licensing officials who are given administrative duties under an ordinance are vested with discretionary powers in administering the law. Momeier v. John McAlister, Inc., 203 S.C. 353, 27 S.E.2d 504, 509-10 (1943); *see also*, Landing Development Corp. v. City of Myrtle Beach, 285 S.C. 216, 329 S.E.2d 423 (1985); Kerr v. City of Columbia, 232 S.C. 405, 102 S.E.2d 364 (1958). The power to issue a license also involves the power to refuse to grant a license in accordance with the controlling ordinance. *See* Wall v. South Carolina Alcoholic Beverage Control Comm'n, 269 S.C. 13, 15, 235 S.E.2d 806, 807 (1977). Accordingly, I find no merit to this argument.

In addition, Appellant has provided no additional information to the court concerning the zoning issue. Therefore, I consider that argument waived.

The court is also not in a position to grant Appellant equitable relief. “When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent.” Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011)(citing Lochar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)). To the extent this court has the authority to fashion a remedy based in equity, those “powers must yield in the face of an unambiguously worded statute.” Id. (quoting Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)). Further, equity does not provide relief from the consequences of a mistake of law absent undue influence or fraud. Smothers v. U.S. Fid. and Guar. Co., 322 S.C. 207, 210, 470 S.E.2d 858, 860 (Ct. App. 1996) (citing 27 Am.Jur.2d *Equity* § 41).

While the court is not without sympathy for Appellant’s situation, nonetheless, “citizens are presumed to know the law and are charged with exercising ‘reasonable care to protect [their] interest[s].’” Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (quoting Smothers, 322 S.C. at 210–11, 470 S.E.2d at 860. Here, pursuant to § 117.01, Appellant had a duty to ensure that it had both an up-to-date business license and a STR registration in order to offer the Property for rent to paying customers. While there was some delay and perhaps confusion caused by the County’s portal not being fully operational initially, the issue was resolved for several months prior to Appellant’s attempt to renew the license in October. Moreover, as set forth in the Standardization Act, “limitations in portal availability or capability do not relieve taxpayers from existing business license or business license tax obligations.” S.C. Code Ann. § 6-1-400(J)(1). It is indeed unfortunate that Appellant’s realization that it had not renewed its license happened shortly after the City’s passage of the moratorium, but the timing is not a basis to avoid the impact of the ordinance.

CONCLUSION

Therefore, for the foregoing reasons, the appeal is denied.

IT IS SO ORDERED.



Christie Companion Varnado

Hearing Officer

City of Folly Beach

March 17, 2023

Charleston, South Carolina