

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

Del Diversified, Inc.,)
Appellant,)
v.)
The City of Folly Beach,)
Respondent.)

ORDER
(In re: 1110 E. Ashley Avenue)

This matter comes before me pursuant to § 110.16 of the Folly Beach Code of Ordinances (“Code”) by Appellant Del Diversified, Inc. (“Appellant”) appealing the decision of the License Official of the City of Folly Beach (“City”) denying Appellant’s Investment Short Term Rental (“ISTR”) business license application for the property located at 1110 E. Ashley Ave. (“Property”).

PROCEDURAL BACKGROUND

By letter dated June 3, 2024, the City’s Business License Official, Stacey Ritchie (“Ritchie”), provided Appellant with notice of her decision to deny its application for an ISTR business licenses for the rental of the dwelling unit located at 1110 E. Ashley Ave., pursuant to § 110.02(C)(1) of the Code. (*App. Ex. 1.*) Appellant submitted a Notice of Appeal on June 10, 2024, setting forth several grounds for appeal.

The parties participated in a pre-hearing conference held via teleconference on June 26, 2024, at which time counsel for the parties agreed to exchange exhibits and identify witnesses to be called at the hearing by July 16, 2024, and for the hearing to be set for July 18, 2024. Therefore,

with the consent of the parties and to accommodate the schedules of all involved, the appeal hearing was set for more than 30 days after receipt of the notice of appeal, pursuant to § 110.16(C).

The parties and counsel appeared at the hearing before me on July 18, 2024, with City Attorney Joseph C. Wilson, IV, Esquire representing the City and Matthew Tillman, Esquire representing Appellant. Appellant presented testimony by company president, Nathan Delpino (“Nathan”), and his wife, Kara Delpino (“Kara”) (collectively “the Delpinos”). The City presented testimony by License Official Ritchie. Each party was given the opportunity to cross-examine the witnesses.

Appellant entered into evidence *Appellant’s Exhibits 1-21*, all without objection by the City. The City entered into evidence *City Exhibits 1-3 and 11A-17*,¹ without objection by Appellant. Counsel for the parties were permitted to make opening statements and closing arguments setting forth their positions and responding to questions posed by the Hearing Officer.

Thereafter, both parties submitted supplemental comments to the Hearing Officer via email, further addressing the legal definition of a “site specific development plan,” as discussed at the hearing. Appellant sought to enter *Appellant’s Exhibits 22, 23, and 24* into the record, over the City’s objections to their untimeliness. I overruled the City’s objections and accepted the exhibits into evidence in rebuttal to the City’s post-hearing argument.

ISSUES ON APPEAL

Appellant has appealed the License Official’s decision to deny its ISTR business license application (the “Decision”), asserting Appellant purchased the Property with the intent to use it as an ISTR, based on the understanding that the Property, which is in a “Residential Single Family”

¹ There are no City exhibits numbered 4-10. *City Exhibits 11A* and *11B* are versions of Chapter 117 of the Code, with *11A* being the version of § 117.01 as of April 11, 2023, and *11B*, containing the most recent amendments to § 117.01, enacted on February 2, 2024.

zoning district, would be eligible to be used as a short term rental. The grounds stated in the Notice of Appeal are summarized as follows:

1. By purchasing the Property without knowledge of and prior to the amendment to Chapter 117 implementing the cap, Appellant acquired vested rights to operate the Property as an ISTR pursuant to Foly Beach Ordinance § 160.10 and S.C. Code Ann. §§ 6-29-1540 and 6-29-1550. Further, by obtaining a building permit prior to the enactment of the cap, Appellant also obtained vested rights to use the property as an ISTR.
2. The City's act of amending a business license ordinance to restrict the use of the Property as an ISTR after Appellant acquired the Property is a regulatory taking and Appellant must be compensated for the loss in value to the Property.
3. Chapter 117 violates the Equal Protection Clauses of the U.S. Constitution and the S.C. Constitution because the classification of property owners into owner-occupied and investor owners for the purpose of issuing short term rental licenses bears no reasonable relation to the purpose of the Ordinance and has no rational basis.
4. Chapter 117 is unconstitutional and in violation of the dormant Commerce Clause because it discriminates against non-resident and out of state property owners by issuing unlimited short term rental licenses to owner-occupied properties while limiting licenses to non-residents and does not advance a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.
5. Chapter 117 is unconstitutional because it subjects nonresident owners to a cap precluding them from obtaining a business license while places no such cap on resident property owners.
6. The City is equitably estopped from enforcing the cap as to Appellant because Appellant purchased and developed the Property, to its financial detriment, in reliance on the licensing ordinance in effect at the time of purchase that did not cap the number of ISTRs.
7. The License Official does not have authority over the use and/or conformance of "specific structures" or real property in the City and, in any event, Appellant has complied with all applicable Land Usage Ordinances.
8. Chapter 117 violates S.C. Code Ann. § 5-7-30 because a municipality is without power or authority to levy a business license tax based on anything other than gross income, including tying the license to "specific structures" not gross income.
9. Chapter 117 violates S.C. Code Ann. § 6-1-400 by improperly transforming a tax into a restriction on the use of real property; by violating the requirement that upon payment of the "business license tax [which] must be computed based on gross income for the calendar year preceding the due date, for the business's twelve-month fiscal year preceding the due date," a "business license must be issued to a taxpayer;" by requiring the submittal of a

different application for a business license other than that established by the South Carolina Director of Revenue and Fiscal Affairs Office; imposing an improper, discriminatory, and non-uniform application procedure; calling for the revocation of a business license for reasons other than nonpayment of taxes or fines; and imposing non-standard, unreasonable regulation that is contrary to the statutorily required standardized class schedule.

10. Chapter 117 is invalid because it violates S.C. Code Ann. § 6-1-310, which prohibits the imposition of new local taxes.
11. Chapter 117 constitutes invalid, illegal, and impermissible zoning and regulation of land use disguised as a business license ordinance.
12. Chapter 117 violates Article X, Sec. 6 of the South Carolina Constitution, including because the Decision states licenses are “issued for specific structures,” making it invalid as a non-uniform tax or assessment on real property.
13. The Decision violates South Carolina law, which holds that a legal business is entitled to be licensed.

Appellant’s requested relief is the reversal of the Decision and the issuance of an ISTR license to Appellant.

JURISDICTION AND SCOPE

“Subject matter jurisdiction is ‘the power to hear and determine cases of the general class to which the proceedings in question belong.’” Gantt v. Selph, 423 S.C. 333, 337, 814 S.E.2d 523, 525 (2018) (quoting Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994)). Because a judgment rendered by an adjudicating body without subject matter jurisdiction is void and without legal effect, this is a threshold matter that must be addressed before proceeding further. See Travelscape, LLC v. S.C. Dep’t of Revenue, 391 S.C. 89, 109, n. 10, 705 S.E.2d 28, 38, n. 10 (2011); Katzburg v. Katzburg, 410 S.C. 184, 187–88, 764 S.E.2d 3, 5 (Ct. App. 2014).

In general, “[t]he jurisdiction of a court is determined by the sovereign creating it,’ so reference must be made to local law, such as the constitution and the laws of the state.” Seels v. Smalls, 437 S.C. 167, 172, 877 S.E.2d 351, 353 (2022) (quoting Peterson v. Peterson, 333 S.C. 538, 547–48, 510 S.E.2d 426, 431 (Ct. App. 1998) (citation omitted). Where a forum is created by

legislative action, its jurisdiction is limited to that “expressly or by necessary implication conferred by statute.” Katzburg, 410 S.C. at 188, 764 S.E.2d at 5 (quoting State v. Graham, 340 S.C. 352, 354, 532 S.E.2d 262, 263 (2000)).

I.

In this business license appeal, my authority as Hearing Officer and designee of City Council comes from § 110.16 of the Code, which states in relevant part: “Except with respect to appeals of assessments under § 110.11 hereof, which are governed by S.C. Code Ann. § 6-1-410, any person aggrieved by a determination, denial, or suspension and proposed revocation of a business license by the License Official may appeal the decision to the Council or its designee [the Hearing Officer] by written request stating the reasons for appeal” § 110.16(B). (*City Ex. 12*.) The Code further provides that following the hearing, the Hearing Officer “shall render a written decision based on findings of fact and conclusions on application of the standards herein.” § 110.16(C)(2). The Hearing Officer’s decision serves as “the final decision of the municipality.”

Id.

In contrast with the City’s Municipal Court, which is established in Chapter 34 of the Code and provides a judicial forum that is part of the unified judicial system of the state pursuant to S.C. Code Ann. § 14-25-5 et. seq.,² the business license appeals process provides, as an executive function, a means for administrative review of the License Official’s decisions. As such, the role of City Council and its designee is limited.

² “Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.” S.C. Code Ann. § 14-25-45.

“An administrative agency has only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose. It may not validly act in excess of its powers, nor has it any discretion as to the recognition of or obedience to a statute. The agency must obey a law found upon the statute books until in a proper proceeding its constitutionality is judicially passed upon.” 2 Am.Jur.2d *Adm. Law* § 188, p. 21. “The authority and powers of reviewing boards and officers must be strictly confined to the limits marked out by the statutory or constitutional provisions from which their existence is derived; and acts in excess of their jurisdiction are void.” 84 C.J.S. *Taxation* § 519, p. 995.

Administrative officers cannot issue orders which “materially alter or add to the law.” Lee v. Michigan Millers Mut. Ins. Co., 250 S.C. 462, 467, 158 S.E.2d 744, 766 (1968).³ Rather an administrative agency must follow the law as written until its constitutionality is judicially determined and has no authority to pass on the constitutionality of a statute. Beaufort Cnty. Bd. of Educ. v. Lighthouse Charter Sch. Comm., 335 S.C. 230, 241, 516 S.E.2d 655, 660–61 (1999) (recognizing that neither the state nor county boards of education may rule on the constitutionality of provisions of the Charter Schools Act); South Carolina Tax Comm'n v. S.C. Tax Bd. of Review, 278 S.C. 556, 299 S.E.2d 489 (1983) (holding that neither the Tax Commission nor the Tax Board of Review had authority to rule on whether a portion of the tax code violated the South Carolina Constitution). Accordingly, administrative officers cannot decide facial challenges to a statute or regulation, which “are legal questions that are properly raised for the first time on appeal or in a

³ Thus, while Appellant is correct that under S.C. Code Ann. § 5-7-30 City Council may not enact ordinances that are inconsistent with the Constitution and the general laws of South Carolina, neither Council nor its designee are permitted to alter or amend an ordinance by the issuance of an order in an administrative proceeding. To amend or repeal an ordinance, Council must follow its legislative process.

declaratory judgment action before the circuit court.” Travelscape, 391 S.C. at 109, 705 S.E.2d at 39.

Consistent with the law regarding administrative bodies in general and based on the clear language in the ordinance, as the Hearing Officer, I have the authority to determine whether or not the License Official’s decision was proper based on the “standards herein,” which are the applicable Code provisions in Chapters 10, 110, and 117 and supporting legal authorities and doctrine. In other words, the administrative appeal process authorized is the oversight of the License Official’s actions. On the other hand, nothing in § 110.16 confers authority on the Hearing Officer to rule on facial challenges to the validity or constitutionality of Chapter 117 in its entirety or the process by which it was enacted – those would be the decisions and actions of City Council (rather than those of the License Official) in either the manner in which Council adopted the ordinance or the language they incorporated therein. Such matters are not expressly or impliedly decisions of the License Official to deny or revoke a license or the actions taken by her in that process. Therefore, such determinations are beyond my jurisdiction and the scope of the authority granted to the Hearing Officer in the Code and are more appropriately brought before the Charleston County Circuit Court in a declaratory judgment proceeding pursuant to S.C. Code Ann. § 15-53-30.

On the other hand, to the extent presented with a challenge asserting that the way in which the License Official applied the ordinance to a particular party violated state law or the party’s constitutional rights, this tribunal would have jurisdiction. In general, administrative bodies may address as-applied challenges to statutes and regulations. Travelscape, 391 S.C. at 109, 705 S.E.2d at 39 (noting that a finding by an Administrative Law Court (“ALC”) that a statute or regulation was applied to a specific party in an unconstitutional manner does not affect the facial validity of

the provisions); Dorman v. Dep't of Health & Envtl. Control, 350 S.C. 159, 565 S.E.2d 119, 126 (Ct. App. 2002); Ward v. State, 343 S.C. 14, 538 S.E.2d 245 (2000). *See also*, S.C. Elec. & Gas Co. v. Randall, 331 F. Supp. 3d 485, 495 (D.S.C. 2018) (relying on Travelscape and Dorman to find “the [South Carolina Public Service Commission] can only rule on whether a law violates constitutional rights as applied, not whether a law is constitutional on its face.”).

II.

In regard to concerns that Appellant must raise any facial challenges in this forum and have the Hearing Officer rule on them so that they may be preserved, a party is not required to raise an issue before this tribunal over which it has no jurisdiction. Courts do “not require parties to engage in futile actions in order to preserve issues for appellate review.” Staubes v. City of Folly Beach, 339 S.C. 406, 415, 529 S.E.2d 543, 547 (2000). Rather, Appellant may craft its pleadings to raise its facial constitutional and statutory challenges before the circuit court on appeal, which has jurisdiction over such matters. *See* S.C. Code Ann. § 18-7-190. Under S.C. Code Ann. § 18-7-140, the reviewing court has the “same power over its own determinations, and shall render judgment thereon in the same manner, as the circuit court in actions pending therein, without trial by jury” The parties may move for a new trial before the court under S.C. Code Ann. § 18-7-160. Finally, the court may affirm or reverse the Hearing Officer’s judgment for errors of law or fact. S.C. Code Ann. § 18-7-170. Where there is an alleged error in fact, the circuit court may take new testimony if it deems appropriate. S.C. Code Ann. § 18-7-180.

I acknowledge some seemingly contrary findings in other cases, but they are distinguishable from this action. In City of Greenville v. Bryant, 257 S.C. 448, 453, 186 S.E.2d 236, 237 (1972), the Supreme Court found that because a bookseller failed to raise before either city council or the circuit court its challenges that the procedure provided in the city code for

revoking a business license as applied to sellers of allegedly obscene materials failed to afford them rights guaranteed under the First and Fourteenth Amendment of the U.S. Constitution, the constitutional issues were not preserved for the appeal. While Bryant's concerns with the city's procedure are not spelled out in the opinion, it appears that the grounds were not direct facial challenges to the constitutionality of the business license code, but rather sought review of the procedure as applied to him and his store. In that event, the as-applied constitutional issues were within the city council's jurisdiction as a part of its administrative review. Regardless, however, under ordinary circumstances the circuit court would have had jurisdiction even of a facial constitutional challenge and the issues could have been preserved by being raised before that tribunal but for the fact the parties had stipulated to a different procedure whereby "the matter would be heard by the lower court as if 'on appeal and/or certiorari' from the ruling of City Council. The circuit judge therefore properly considered that the matter was before him on certiorari. Since the matter was before the court on certiorari, review was properly limited to the record of the proceedings and evidence upon which City Council acted in revoking the license." Id. That is not how this tribunal operates, however, and there are no such stipulations in place here.

In another unique situation, I presided over a proceeding under City Emergency Ordinance No. 06-20, to address civil fines levied against Fred Holland Realty, Inc. for violations of measures enacted due to the pandemic, in which I served in the role of a special municipal court, rather than an administrative tribunal. In an unreported opinion, the Court of Appeals found the appellants therein should have raised a constitutional challenge before the hearing officer in order to preserve that issue for appeal because, in acting as a municipal court in that instance, I had had jurisdiction to review the constitutionality claim and grant a remedy. Fred Holland Realty, Inc. v. City of Folly Beach, No. 2021-000105, 2024-WL-36068 (S.C. Ct. App. Jan. 3, 2024) (referencing S.C. Code

Ann. § 14-25-45 (2017) (“Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which [they are] established.”)); *see also* City of Pickens v. Schmitz, 297 S.C. 253, 255, 376 S.E.2d 271, 272 (1989) (“Municipal [c]ourts comply with the constitutional mandate that they be part of a unified judicial system.”). Here, in this administrative review, I do not have jurisdiction to rule on facial challenges to the constitutionality of the ordinances or to grant the remedy of finding the Code unconstitutional or improperly enacted. Accordingly, the ruling on preservation in Fred Holland Realty is not controlling over the proceedings in this administrative tribunal.

Moreover, the Fred Holland appellants not only failed to assert the argument that the emergency ordinance was arbitrary or capricious before the hearing officer, they also failed to bring that issue before the circuit court and only raised it for the first time in the appellate court. They should have raised the issue before the circuit court in order to preserve it. Here, Appellant can raise its facial constitutional and statutory challenges to Chapter 117 before the circuit court on appeal or bring a declaratory judgment action directly in circuit court to have those issues decided by the appropriate tribunal.

III.

Looking then at the issues on appeal, both in their plain wording as framed and as argued, at the start of the hearing, I ruled that Issues 2, 3, 4, 5, 8, 9, 10, 11, and 12 are facial challenges to the validity or constitutionality of Chapter 117 in general under various constitutional or state statutes or to the regulation of short term rentals as a business license function rather than as a zoning function. I further find I do have the authority to provide the relief requested in Issue 2, which is compensation for the loss in value to the Property based on an alleged regulatory taking. *See* Folly East Indian Co., LLC v. City of Folly Beach, C.A. No. 2023-CP-10-0264, p. 7, n. 2 (S.C.

Ct. of Common Pleas, March 7, 2024) (J. Burch). None of these Issues fall within the Hearing Officer's jurisdiction.

IV.

In addition, I take notice of the recent rulings by the Honorable Judge Paul M. Burch in addressing cross motions for summary judgment in Folly East Indian Co., LLC v. City of Folly Beach, which I find are controlling on several of the arguments herein, even if Judge Burch's Order is currently on appeal. In that opinion, Judge Burch dismissed Folly East Indian's claims that are similar in many respects to those made by Appellant concerning the adoption of the ordinance via referendum and zoning challenges. To the extent they fall within this forum's jurisdiction, I am not in a position to overrule or disagree with Judge Burch's legal analysis or rulings, as follows:

- Based on the plain language of S. C. Code Ann. § 5-17-10, the amendment to Chapter 117 of the City's Code creating the category of ISTRs and capping their number can be adopted by Petition and Referendum. (Id., p.3.)
- The amendment is not an amendment to the City's Zoning Code contained in Title XV, but rather is only a change to the City's existing Business Regulations in Title XI of the Code. (Id., p. 4.)
- "No state law requires that the City follow the South Carolina Comprehensive Planning Act to amend its Business Regulations." (Id., p. 5.)
- Municipalities may regulate businesses through the Home Rule Act's general police powers in S.C. Code Ann. § 5-7-30. (Id.)
- Appellants have no vested rights in a business license. (Id., p.7, n. 2.)
- A proceeding seeking declaratory or injunctive relief is not the appropriate forum for a takings challenge. (Id.)

Thus, to the extent I might otherwise have jurisdiction over Appellant's Issues 2, 8, 9, 10, and 11, they are precluded based on the findings in Judge Burch's Order and are, therefore, denied.

V.

Accordingly, at the start of the hearing I found that the following Issues remained before this tribunal, pending further understanding of Appellant's arguments:

1. By purchasing the Property without knowledge of and prior to the amendment to Chapter 117 implementing the cap, Appellant acquired vested rights to operate the Property as an ISTR pursuant to Foly Beach Ordinance § 160.10 and S.C. Code Ann. §§ 6-29-1540 and 6-29-1550. Further, by obtaining a building permit prior to the enactment of the cap, Appellant also obtained vested rights to use the property as an ISTR.
6. The City is equitably estopped from enforcing the cap as to Appellant because Appellant purchased and developed the Property, to its financial detriment, in reliance on the licensing ordinance in effect at the time of purchase that did not cap the number of ISTRs.
7. License Official does not have authority over the use and/or conformance of "specific structures" or real property in the City and, in any event, Appellant has complied with all applicable Land Usage Ordinances.
13. The Decision violates South Carolina law, which holds that a legal business is entitled to be licensed.

STANDARD

In addition to the discussion on jurisdiction above, I have applied the following legal standards in evaluating the evidence and arguments. 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 Dev. 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 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 Dunton v. S.C. Bd. of Examiners in

Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)). Licenses are not property rights, but rather are permits issued by a governmental entity. Army Navy Bingo, Garr. No. 2196 v. Plowden, 281 S.C. 226, 314 S.E.2d 339 (1984.)

On the other hand, a business license fee is a tax on the privilege of doing business within a county or municipality. 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). “In the absence of positive evidence to the contrary, acts or ordinances licensing or taxing an occupation or privilege are presumed to be reasonable, and the courts will not interfere unless their unreasonableness and oppressiveness is clearly apparent, the burden of proving their unreasonableness or invalidity being on the one who asserts it, usually the licensee.” U.S. Fid. & Guar. Co. v. City of Newberry, 253 S.C. 197, 204, 169 S.E.2d 599, 603 (1969) (quoting 53 C.J.S. Licenses § 16, p. 511 (1948)).

In regard to the analysis of the applicable Code provisions, 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 Code 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.” Under § 10.07, “[t]he provisions of this code, so far as

they are consistent with any prior ordinances, shall be construed as continuations of the prior provisions and not as new enactments.”

“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 Cnty. Parks & Rec. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995)).

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 Cnty. 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 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 the words in an ordinance are unambiguous, the court should apply their literal meaning. Id. at 498, 640 S.E.2d at 459. Under § 10.06 of the Code, “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.”

FINDINGS

Having carefully considered the evidence and those arguments properly before the tribunal, 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 § 117.01 of the Folly Beach Code of Ordinances, an ISTR Business License is defined as “[a] license for a dwelling unit, to be rented as a short term rental, that: (a) Is not the legal residence of the owner; or (b) is not the legal residence of the owner and was inherited from the person named as of record on February 7, 2023 . . . ; or (c) Is owned by the owner of record on February 7, 2023 upon certification that the owner no longer resides on the premises and is housed in a care facility, or requires care at another provide location; or is no longer capable of performing at least three activities of daily living.” (*City Ex. IIB.*) Section (c) is referred to as “hardship.”
2. Short term rentals are defined as “[a] dwelling unit, or any portion thereof, rented for any period less than 30 days and used in a manner consistent with the residential character of the dwelling.” § 117.01. (*City Ex. IIB.*)
3. Pursuant to § 117.03, “[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 taxes.” (*City Ex. IIB.*) 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.*)

4. Nathan and Kara met on Folly Beach. Over the years, they, with their children, have spent considerable time on the island and have strong emotional ties to Folly. They currently live on Daniel Island.
5. Nathan and Kara are licensed real estate agents. Nathan is also a licensed general contractor and builder in the area.
6. Appellant (Del Diversified, Inc.) was incorporated on December 13, 2012. (*App. Ex. 19.*)
7. In furtherance of their dream to own a home on Folly, Nathan and Kara developed a plan to build a house they could enjoy as a family periodically and also use as a short term rental property until they could afford to move to the house permanently.
8. Neither Appellant nor the Delpinos had owned a property that was previously operated as a short term rental in the City, although they had owned and operated other short term rental properties elsewhere in the area.
9. In preparation for buying the Property in 2021, Nathan performed “due diligence” and “underwriting” on behalf of Appellant by crunching the numbers to evaluate the costs of the investment and determined they could afford the purchase as long as they were able to recoup expenses by using the house as a short term rental. In so doing, he confirmed that the Property was located in a “Residential Single Family” zoning district in the City, which permits short term rentals.
10. Appellant purchased the Property in September of 2021. (*App. Ex. 3.*)
11. The Delpinos testified that at the time of their investigation into the investment and purchase of the Property, they had no knowledge that their ability to use the property as a short term rental could be in jeopardy based on the City’s business license code provisions.

12. In November of 2021, Appellant/Nathan obtained a permit from DHEC to construct an onsite wastewater system on the Property (*App. Ex. 4*); a City permit to clear the empty lot and a business license to construct the house under Delpino Construction Homes, LLC (*App. Ex. 5*); and a soil evaluation and design plan for the engineered sewer system (*App. Ex. 6*). None of these documents includes a statement of Appellant's intention to use the house to be built on the Property as short term rental property.
13. On September 13, 2022, the City enacted Ordinance 027-22, which amended § 117.02(A) to include the language that "No business license shall be issued for the rental of a residential unit which is planned or under construction until a Certificate of Occupancy is issued for the unit." (*City Ex. 17.*)
14. In October of 2022, the City received a citizen's petition ("Petition"), submitted pursuant to S.C. Code Ann. § 5-17-10, initiating an ordinance to significantly alter Chapter 117 of the Code concerning business licenses for short term rentals. (*City Ex. 14.*) The Petition included new definitions to be added, differentiating between an ISTR and an Owner-Occupied Short Term Rental ("OSTR") and also imposed a cap limiting the number of ISTR business licenses to a maximum of 800. (*Id.*)
15. The Petition stated the purpose in seeking the referendum was that "the unrestricted growth of the number of *investment short terms rentals* within the City of Folly Beach: lowers the quality of life for its residents; stresses the city's infrastructure & environment; places extraordinary [sic] burdens on the city's public sector; and poses an existential threat to the community." (*City Ex. 14 (emphasis in original).*)

16. On October 11, 2022, the City enacted Ordinance 32-33, which imposed a moratorium on the issuance of new business licenses for short term rentals within the City, subject to certain exceptions. (*City Ex. 15.*)
17. Nathan testified he was aware of the moratorium but believed that the pre-moratorium rules would apply to the Property because it was purchased prior to that date and the investment was already underway. He did not engage in any discussions with the City officials to confirm his belief. On the other hand, he received nothing in the mail, and nothing was posted on the Property to inform him that the ability to use the Property as a short term rental could be impacted by the moratorium or the referendum.
18. On October 25, 2022, Appellant entered into a Nonconversion Agreement for Elevated Structures in the Floodplain with the City in order to obtain a building permit for the house on the Property. (*App. Ex. 8.*) The Nonconversion Agreement does not contain any reference to Appellant's intended use of the Property as a short term rental.
19. The City issued Appellant a building permit for the construction of a new single family residence on the Property on December 7, 2022. (*App. Ex. 7.*) The building permit contains the description "New S[ingle] F[amily] R[esidence] with elevated pool." (*Id.*) The permit does not state Appellant's intended use of the Property as an investment short term rental (or otherwise).
20. On December 13, 2022, finding that the City had issued approximately 1058 short term rental licenses, which exceeded the proposed 800 cap, the City enacted Ordinance 034-22, which extended the moratorium through April 15, 2023, or five business days after any special election called to adopt the ordinance proposed by petition. (*City Ex. 16.*)

21. While the new dwelling at the Property was still under construction, a majority of the voters voting in the referendum election on February 7, 2023, cast their ballots in favor of the changes to Chapter 117 that imposed a cap of 800 on ISTR business licenses in the City.
22. Notices of the referendum election were published and the election was well-publicized by local media.
23. The Delpinos, as non-residents, could not vote in the referendum election.
24. As the result of the passage of the referendum, Chapter 117 of the Code was amended to set a cap of ISTRs at 800. (*City Ex. 11A.*)
25. The amendment made no changes to the City's Zoning Code, contained in Title XV.
26. On February 21, 2023, Nathan reached out to Ritchie via email to inquire about the process to obtain a short term rental license for the Property, indicating Appellant had purchased the property in 2021 with the intention of using it as a short term rental. (*App. Ex. 21.*) Ritchie replied that if the Property was Nathan's "legal (4%) residence," he could apply at any time for the business license, but if it is a "6% secondary property," the number of ISTRs in the City had exceeded the cap passed on February 7, 2023, and the City had not yet opened the waitlist program. (*App. Ex. 21.*) Nathan replied that the Property "was purchased in November 2021 and we have a construction permit for the home from the town [sic] of Folly Beach. The property was purchased for the specific purpose of being used as a short-term rental." (*Id.*) This is the first documented notice to the City of Appellant/Delpinos' intention to use the Property as a short term rental. (There is no record of Ritchie's response, if any.)
27. On April 11, 2023, the City amended the exception language in § 117.02(C)(2), to read ~~"Any existing [ISTR]-business license issued prior to February 7, 2023 which remains in~~

good standing may continue to be renewed annually, even if the number of [ISTR] business licenses exceeds the cap.” (*City Ex. 11A.*)

28. On February 2, 2024, the City amended § 117.03(A)(1) to state: “No business license shall be issued for the rental of a residential unit which is planned or under construction until a certificate of occupancy is issued for the unit except that a license issued for the rental of an existing residential unit may be renewed, or a new license issued for the rental of a replacement unit on the same site, upon issuance of a new certificate of occupancy and satisfaction of all other requirements for short term rental licenses.” (*City Ex. 11B.*)

29. On February 20, 2024, the City again amended Chapter 117 to provide additional exceptions for hardships and other situations to the limitations in the cap on ISTRs. (*City Ex. 11B.*)

30. The City issued a certificate of occupancy for the house on the Property on April 2, 2024. (*App. Ex. 11.*)

31. On April 4, 2024, Appellant submitted an initial application for a business license and a rental registration form to the City, seeking a license to operate as an ISTR, which the License Official testified was incomplete. (*App. Ex. 1.*)⁴

32. Appellant submitted the missing information/paperwork for the application on May 23, 2024. (*City Ex. 1.*)

33. By letter dated June 3, 2024, Ritchie informed Appellant of her decision to deny its application for an ISTR business license for the rental of the dwelling unit on the Property

⁴ Appellant offered testimony regarding the “delay” in processing its application. Ritchie testified that her department processes the applications in the order they are received and, if approved, the license is dated back to the date of the application, not the date of its issuance. Regardless, although I understand that time is money in regard to Appellant’s investment, whether or not there was a delay in processing the application, it is not material to the outcome of the decision: due to the cap, Appellant’s Property was not eligible for an ISTR either on April 4, 2024 (when the first application was submitted) or on May 23, 2024 (when the License Official deemed she had received a complete application).

because the “number of short-term rental licenses issued to [ISTRs] currently exceeds the allowable number of such licenses established by Section 117.02 of the [Code] .” (*City Ex. 2.*)

34. As of the date of the hearing, there were 956 ISTRs licensed in the City, which includes 156 licenses over the 800 cap, which were grandfathered in.

35. Nathan testified he talked with the City Administrator and City Council members requesting that an amendment be made to the Ordinance to provide an exception for those owners who had purchased property prior to the enactment of the cap with the expectation they would be able to operate investment short term rentals on their property.

36. On February 20, 2024, the City amended § 117.02(C)(1) to state: “No new investment [ISTR] business licenses shall be issued unless the total number of [ISTR] business licenses are below the cap unless the ISTR license is issued due to hardship or after inheritance as defined in § 117.01. (*City Ex. 11B.*) This amendment did not provide redress for Appellant’s situation, however.

37. Appellant provided a spreadsheet documenting the losses it would incur if the Property could not be used as an ISTR for 300 days per year, showing an annual loss of \$43,096 if used as an OSTR, rented for 72 days per year, and of \$88,666 as a long term/yearly rental. (*App. Ex. 20.*)

38. Nathan testified after the purchase of the lot and the initial work to obtain the building permit, the project was “upside down” and to sell the Property at this point would result in a considerable financial loss to him and his family. They are losing a tremendous amount of money each week they are unable to rent out the Property. Nathan further testified that

the effect of the cap has depressed the market value of properties such as theirs due to the market being saturated with such properties offered for sale.

39. Kara testified that they would never have purchased the Property if they were aware it could not be used as an investment short term rental. Because of the cap, her family dream to own a home on Folly Beach has turned into a nightmare.

40. Ritchie testified that she cannot waive the rules for people based on such considerations as a connection to the island or time spent at Folly; she must follow the Code in the same manner as to every applicant.

41. Ritchie testified that the wait list for ISTRs was set to open on August 1, 2024.

DISCUSSION

I.

I will first address Appellant's arguments concerning Issue 13, because my ruling thereon lays the groundwork for some of the other matters. Appellant's premise that a legal business is **entitled** to be licensed as a matter of right is unfounded. Businesses are not "entitled" to be licensed simply because they pay the taxes due or it can be legally operated or their owners have a financial stake in the businesses' operation. To the contrary, business licenses are not and do not confer property rights on the licensee. Army-Navy Bingo, 281 S.C. at 229, 314 S.E.2d at 340. Rather licenses are permits issued by a governmental entity to allow certain business operations within its jurisdiction subject to conditions and requirements. See Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943); 51 Am.Jur.2d *Licenses and Permits* § 18 (1970). A license provides the holder with the "privilege" to do business, not a right or entitlement. Carter v. Linder, 303 S.C. 119, 122, 399 S.E.2d 423, 424 (1990)("A license tax upon persons and businesses is an excise tax on the privilege of doing business . . .").

Licensing officials who are given administrative duties under an ordinance are vested with discretionary powers in administering the law. Momeier, 203 S.C. 353, 27 S.E.2d at 509–10; *see also*, Landing Dev. Corp., 285 S.C. 216, 329 S.E.2d 423; Kerr, 232 S.C. 405, 102 S.E.2d 364. The power to issue a license also involves the power to refuse or revoke the license in accordance with the controlling ordinance. *See* Wall v. S.C. Alcoholic Beverage Control Comm’n, 269 S.C. 13, 235 S.E.2d 806 (1977).

If an otherwise legal business fails to meet all of the applicable conditions or requirements for a license, the license is properly denied. Moreover, business licenses can only last for 12 months before they expire and must be renewed. S.C. Code Ann. § 6-1-400(B)(1). Because a license is a special privilege, it “is to be enjoyed only so long as the licensee complies with the restrictions and conditions governing its continuance.” Feldman, 203 S.C. at 49, 26 S.E.2d at 25. Therefore, if during the license period, the business is found to no longer meet the conditions required for licensure, the license may be revoked. Accordingly, I deny Issue 13.

II.

Looking next at Appellant’s Issue 1, I find no basis to support a claim that because it purchased the Property prior to the implementation of the cap, Appellant acquired vested rights to operate the Property as an ISTR pursuant to Folly Beach Code § 160 and S.C. Code Ann. §§ 6-29-1530 and 6-29-1550 (the South Carolina Vested Rights Act). 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.

As discussed above, a business license is provided as a privilege; 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); Feldman, 203 S.C. at 49, 26 S.E.2d at 22 (noting a “license is to be enjoyed only so long as the licensee complies with the restrictions and conditions governing its continuance.”).

Appellant then argues that by obtaining a building permit prior to the enactment of the cap, Appellant had a vested right to use the Property as an ISTR. Section 6-29-1530 of the Act provides a two-year vested right time period for approved site specific development plans. A building permit is not a site specific development plan that would trigger vested rights in the use of property as a short term rental, however. 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.” (Emphasis added.) The definition goes on to list examples of a site specific development plan which “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.” Id.

Significantly, the list does not include building permits, which the Act separately defines as “a written warrant or license issued by a local building official that authorizes the construction or renovation of a building or structure at a specified location.” S.C. Code Ann. § 6-29-1520(2). Given that building permits are defined in the Act, if the General Assembly intended to include

them as a site specific development plan, it only makes sense that the lawmakers would have specifically done so in the definition among the other examples.

A site specific development plan concerns the intended uses for a property whereas a building permit concerns the approval of construction means, methods, and requirements for a certain type of structure on the property. Appellant's building permits obtained from the City make no mention of Appellant's intended use of the property as an investment short term rental and none of the documents submitted by Appellant in the process seeking approval of the building permits disclose Appellant's intended use of the property as a rental. (*App. Ex. 4, 5, 6, 7, 8, 22, 23, & 24.*)

Moreover, unlike for site specific development plans, the Act specifically limits the rights vested as a result of a building permit to only the "building, fire, plumbing, electrical, and mechanical codes in force at the time" of issuance. S.C. Code Ann. § 6-29-1540(11). Missing from the list of vested rights accompanying a building permit are the intended uses or the business license codes in effect at the time of issuance. Even if they were included, however, Appellant did not obtain the building permit to construct the dwelling to be used as the rental unit until December of 2022, at which time the moratorium on obtaining ISTRs was already in place. Therefore, the code provisions in effect at the time of the issuance of the building permit did not permit Appellant to obtain an ISTR. Accordingly, I deny Appellant's Issue 1.

III.

In Issue 6, Appellant asserts the City should be equitably estopped from enforcing the cap in this instance because Appellant purchased and developed the Property, to its financial detriment, in reliance on the licensing ordinance in effect at the time of purchase that did not cap the number of ISTRs. A governmental entity can be subject to equitable estoppel under certain circumstances. Ahrens v. State, 392 S.C. 340, 352-53, 709 S.E.2d 54, 60 (2011)(citing Townes Assoc., Ltd. v.

City of Greenville, 266 S.C. 81, 87, 221 S.E.2d 773, 776 (1976) *abrogated on other grounds by* Matter of Est. of Kay, 423 S.C. 476, 816 S.E.2d 542 (2018)). Government agents, acting within the proper scope of their authority, can by their acts give rise to estoppel against a municipality. Landing Dev. Corp., 285 S.C. at 220, 329 S.E.2d at 425 (citing Abbeville Arms v. City of Abbeville, 273 S.C. 491, 257 S.E.2d 716, 718 (1979)). In addition, “the government may be estopped in matters that do not affect the exercise of its police power or the application of public policy.” Grant v. City of Folly Beach, 346 S.C. 74, 81, 551 S.E.2d 229, 232 (2001).

“Estoppel is an equitable doctrine, essentially flexible, and therefore to be applied or denied as equities between the parties may preponderate.” Landing Dev. Corp., 285 S.C. at 220, 329 S.E.2d at 425 (quoting Pitts v. New York Life Ins. Co., 247 S.C. 545, 148 S.E.2d 369, 371–72 (1966)).

“To prove estoppel against the government, the relying party must prove (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position.” Grant, at 80, 551 S.E.2d at 232 (citing Midlands Util., Inc. v. S.C. Dep't of Health & Env't. Control, 298 S.C. 66, 378 S.E.2d 256 (1989)).

In 2021, when Appellant purchased the Property, the cap on short term rentals did not exist. Indeed, neither Appellant nor any other property owner nor, importantly, the City could have predicted with certainty in 2021 or 2022 that the referendum would pass and the law change in such a way as to preclude Appellant from obtaining an investment short term rental license for the Property. But this is not a situation where, as in Landing Dev. Corp., *supra*, the city official changed his interpretation of an existing ordinance to the detriment of the interested parties who had been previously advised by the same official that rentals were permitted in the district and ~~even issued the parties business licenses to permit short term rentals only to later revoke them. In~~

that instance, the parties' investments were made in reliance on the conduct of the City and its officials in enforcing an existing code provision, which prompted the court to explain that "[t]o allow the City to repudiate its former interpretation of permissible rentals and the statements of its zoning director, based upon a re-assessment of the meaning of an undefined term in the ordinance would be unconscionable" 285 S.C. at 221, 329 S.E.2d at 425–26. Here, however, the change was not prompted by a change in the License Official's interpretation of the Code, but rather by City Council's enactment of a revision to the Code following a well-publicized and hotly contested City-wide referendum election.

Appellant did not provide evidence of any statement or conduct by the City or its officials that misled it into believing the changes in the short term rental ordinance would not apply to its Property. *See Grant*, 346 S.C. at 81–82, 551 S.E.2d at 233 (holding City not estopped from enforcing its zoning/flood ordinance precluding residential use of downstairs floor where owner had the means of ascertaining the ordinance's effect but failed to do so); *Town of Sullivan's Island v. Byrum*, 306 S.C. 539, 413 S.E.2d 325 (Ct.App.1992) (finding town not estopped from challenging use of garage as apartment where homeowner presented no evidence of any statement or conduct by town that reasonably misled homeowner into believing garage apartment was a permitted use). While the City issued Appellant a permit to clear the land in 2021 and a permit to construct a single family residence on the Property in 2022, Appellant submitted nothing to the City in conjunction with those permits or the other planning documents which informed the City of Appellant's intent to use the dwelling it was building as a short term rental. Indeed, Appellant did not inform the City of the intended use until February of 2023, after the referendum had passed.

"[C]itizens 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 v. U.S. Fid. and Guar. Co., 322 S.C. 207, 210-11, 470 S.E.2d 858, 860 (Ct. App. 1996)). Further, equity does not provide relief from the consequences of a mistake of law absent undue influence or fraud. Smothers, 322 S.C.at 210, 470 S.E.2d at 860 (citing 27 Am.Jur.2d *Equity* § 41). Appellant does not allege fraud or undue influence was at play here. Rather, despite being aware of the moratorium and impending referendum election, Appellant, nonetheless assumed they would not affect his intended use of the Property but did not timely take steps to confirm the assumption by consultation with any City official or other means. Appellant failed to evaluate the City's laws concerning short term rentals and stay abreast of the changes and, instead, proceeded with construction based on an unsupported assumption that the changes would have no impact on its plans.

Thus, while I am not without sympathy for Appellant's and the Delpinos' situation, I am 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)). As evidenced by the numerous appeals filed since the passage of the cap, Appellant is not the only party negatively affected by its enactment. As Nathan testified, he personally urged members of City Council to amend the Code to accommodate property owners in his position. Nonetheless, City Council has thus far declined to do so, and the Code is clear in its terms that preclude Appellant (and others like it) from obtaining an ISTR license for the Property until such time as the number of licenses issued by the City falls below the cap.

Accordingly, I find that the City is not estopped from denying Appellant's ISTR license as requested in Issue 6.

IV.

As set forth in Appellant's Notice of Appeal, Issue 7 reads:

The Business License Official does not have authority over the use and/or conformance of "specific structures" or real property in the City and -- in any event -- Appellants [sic] have complied with all applicable Land Usage Ordinances. *See* City of Folly Beach Ordinance § 169.05.01 ("Responsibility for Enforcement"); see also Ordinance § 164.01 ("Table of Allowed Uses").

Upon clarification of Appellant's argument, I find I do not have jurisdiction for this Issue. Had Appellant's argument been based, for example, on an assertion that the License Official's interpretation of the term "specific structures" in the Code was incorrect as it applied to the facts of its situation, then this matter might have been appropriately before this forum. As argued, however, Issue 7 is a restatement or a different angle on the challenge of using a business license ordinance rather than a zoning ordinance to regulate property usage which is not properly before me and has been resolved in the City's favor by Judge Burch in other proceedings. Accordingly, I decline to address this issue for lack of jurisdiction.

V.

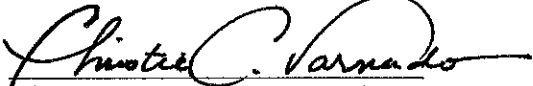
Finally, as a general matter, I find no basis under § 117.02 to reverse the License Official's denial of Appellant's May 23, 2024 ISTR business license application for the Property. In her June 3, 2024 letter, the License Official explained she was denying Appellant's application because the current number of ISTR rental licenses currently issued by the City exceeds the allowable number under the cap pursuant to § 117.02. (*City Ex. 2.*) Appellant does not challenge the License Official's finding in this regard as part of its appeal. Based on a plain reading of the ordinance, ~~which is clear and unambiguous, and the evidence presented, Appellant did not have an existing~~

ISTR business license in good standing prior to February 7, 2023, for the dwelling unit on the Property. Indeed, the Property did not have a CO until April of 2024. The Property also did not meet any of the exceptions to the cap when Appellant submitted its completed ISTR application in 2024. Accordingly, the License Official properly followed § 117.02 in denying the application.

CONCLUSION

As discussed above, this Hearing Officer lacks jurisdiction to address Appellant's Issues 2, 3, 4, 5, 7, 8, 9, 10, 11, and 12, all of which constitute facial challenges to the constitutionality or statutory compliance or enactment of Chapter 117. In regard to Issues 1, 6, and 13 and in general, I find that the License Official acted in compliance with the Code in denying Appellant's 2024 business license application. Therefore, the appeal is denied.

It is so ordered.


Christie Companion Varnado
Hearing Officer
City of Folly Beach

August 16, 2024

Charleston, South Carolina

NOTE: Appeal of this decision may be made to the Charleston County Circuit Court pursuant to S.C. Code Ann. § 18-7-10 et. seq., within 30 days after notice of the judgment. The appealing party must serve notice of the appeal on the Hearing Officer so the Hearing Officer can timely file the Return per S.C. Code Ann. § 18-7-60.