

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

Marsha Pardee,

Appellant,

v.

The City of Folly Beach,

Respondent.

FINAL ORDER

This matter comes before me pursuant to § 110.16 of the Folly Beach Code of Ordinances by Appellant Marsha Pardee appealing the December 6, 2022, decision of the License Official of the City of Folly Beach (“City”) to deny her application for a short term rental (“STR”) license for the property located at 1202 Tabby Drive 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

Appellant served the City with notice of her appeal of the Business License Official's denial on December 8, 2022. 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. Counsel for the parties appeared before me at a pre-hearing conference held on January 24, 2023, at which Appellant was represented by Spencer Wetmore, Esquire and Grady Query, Esquire and the City was represented by City Attorney, Joseph C. Wilson, IV, Esquire. At the conference, counsel and I consented to Appellant's testimony being offered via remote access since she resides out of the country and travel to appear in person would be a hardship.

The appeal hearing was held on January 31, 2023, and counsel for both parties were present. Appellant presented testimony by Marsha Pardee, via Zoom. 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 1-4, without objection by the City. The City entered into evidence City Exhibits 1-7, without objection by Appellant. The Court marked a timeline created by Ritchie as Court 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, "[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." Business licenses and rental

term 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.

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 STRs 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 is the owner of 1202 Tabby Drive in Folly Beach (“Property”). (App. Ex. 1.)
6. Appellant and her family are long-time, active members of the Folly Beach community. (App. Ex. 1.)
7. The City issued Appellant a business license for rentals on the Property from the years 2013 until 2021. (App. Ex. 1.)

8. The last active STR permit on the Property was for 2020. (Ct. Ex. 1.)
9. Appellant currently resides in Turks and Caicos. (App. Ex. 1.)
10. Due to her husband's illness and disability, Appellant and her husband, who used to handle the management of the Property, were recently unable to travel to Folly Beach to transact business as was their usual practice.
11. Despite not having a STR license for the Property for 2021 and 2022, Appellant continued to offer the Property as a rental through October of 2022, and paid her Accommodations taxes associated those rentals. (App. Ex. 2; City Ex. 4.)
12. Appellant testified that when she paid her 2021 business license fee she did not receive a renewal notice or link from the County of Charleston, alerting her to complete the paperwork for the City's STR registration for 2021.
13. There is no evidence in the record demonstrating whether the County sent Appellant the link for STR renewal for 2021 after Appellant renewed her business license in 2021.
14. Appellant provided evidence of payment made to the Charleston County Revenue Collection Department in the amount of \$233.57 in January of 2021, which was posted on February 8, 2021, for the renewal of Appellant's 2021 business license. (App. Ex. 4.)
15. Prior to 2022, the City's business license renewals were due in late December, but the South Carolina Business License Tax Standardization Act became effective on January 1, 2022, making the business license renewal process uniform for all counties and municipalities in South Carolina 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).

16. As a result of the Standardization Act and difficulties with the County's business license portal, business license renewals were mailed on April 11, 2022, with payment due on May 31, 2022, but late fees were not imposed until June 30, 2022. (City Ex. 2.)
17. It is uncontested that Appellant did not timely submit payment for the renewal of the business license for the Property by May 31, 2022.
18. In general, assessment letters for delinquent businesses were sent at the beginning of October of 2022. (City Ex. 2.)
19. The County did not issue a delinquency notice to Appellant for the 2022 business license until October 1, 2022, and the notice was not postmarked until October 10, 2022. (City Ex. 3 & 7.)
20. Appellant testified that the letter was not in her post office box on October 17, 2022, when checked by her friend.
21. Appellant's friend picked up the delinquency notice from Appellant's mailbox on October 31, 2022, and Appellant took steps on November 1, 2022, to contact the Charleston County Revenue Collections Department to address the delinquency. (City Ex. 3.)
22. Appellant submitted a Business License Application and a City of Folly Beach Rental Registration Form on November 4, 2022. (City Ex. 5 & 6.)
23. Ritchie denied the application for a STR license for the Property on December 6, 2022. (City Ex. 1.)
24. Appellant does not challenge the validity of Ordinance 32-22.
25. Appellant's failure to timely renew the Property's STR registration license for 2021 and her business license for 2022 the Property was inadvertent.

26. 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.
27. The Property was not legally licensed by the City as a STR as of October 18, 2022.
28. 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 Com’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).

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 the license in accordance with the controlling ordinance. *See* Wall v. South Carolina Alcoholic Beverage Control Com'n, 269 S.C. 13, 15, 235 S.E.2d 806, 807 (1977).

DISCUSSION

Appellant does not have a right to a STR license; 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, 229, 314 S.E.2d 339, 807 (1984.) Here, Appellant does not challenge the validity of Ordinance 32-22 or the moratorium it imposes; she does not claim that the ordinance was vague or ambiguous; nor does she assert that the Business License Official's interpretation or application of Ordinance 32-22 was improper. Appellant also concedes that she does not meet any of the exceptions in Ordinance 32-22, as written. Rather, she seeks to avoid the effect of her inadvertent failure to timely renew her 2022 business and STR licenses by having that error excused. In support of this proposition, counsel posed arguments in favor of reversing the Business License Official's denial based on concepts of excusable neglect and mutual mistake.

I do not find any legal basis for applying the concepts of unilateral or mutual mistake as an excuse for failure to comply with a valid ordinance, however. Rather, those concepts apply to the rescission of a contract or other instrument. *See, e.g., Truck South, Inc. v. Patel*, 339 S.C. 40, 49-50, 528 S.E.2d 424, 429-30 (2000). Even if they were applicable, Appellant has not provided evidence that her mistake in failing to timely renew her STR license was based on a mutual misunderstanding or that there was any fraud or misrepresentation on behalf of the City that induced the error. *See King v. Oxford*, 282 S.C. 307, 313, 318 S.E.2d 125, 128 (Ct.App.1984) (finding contracts may be rescinded based upon mutual mistake where the

mistake is in reference to facts upon which the contract is based, or where there is an “omission or insertion of some material element affecting the subject matter or the terms and stipulations of the contract, inconsistent with the true agreement of the parties” and, as a result, the parties have done what neither intended); State Farm Mut. Auto. Ins. Co. v. Turner, 303 S.C. 99, 101-02, 399 S.E.2d 22, 23 (Ct.App.1990)(finding that to rescind a contract based on unilateral mistake, the error must have been “induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, without negligence on the part of the party claiming rescission, or when the mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement”).

Similarly, the concept of excusable neglect is not applicable to the failure comply with an ordinance. Rather, excusable neglect is found in Rule 60(b)(1), SCRCPP, which allows a party to seek relief from a final judgment or order on the grounds of “mistake, inadvertence, surprise, or excusable neglect.” *See, e.g., Paul Davis Sys., Inc. v. Deepwater of Hilton Head, LLC*, 362 S.C. 220, 225, 607 S.E.2d 358, 360 (Ct. App. 2004). There is no judgment at issue here.

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. Com’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 personal challenges, 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 she had both an up-to-date business license and a STR registration in order to offer the Property for rent to paying customers. She was out of compliance with this requirement by several months before she attempted to renew the licenses for 2022. It is indeed unfortunate that the County’s notice of the delinquency of the license fees that prompted her to recognize her error and undertake the renewal process and the City’s passage of the moratorium happened nearly simultaneously, but it 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

February 23, 2023

Charleston, South Carolina