

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

Martin Vorko and 1310 E. Ashley Ave.,)

Appellants,)

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 Martin Vorko (“Vorko”) and 1310 E. Ashley Ave. (“Property”) (collectively “Appellants”) appealing the decision of the License Official of the City of Folly Beach (“City”) denying their application for an Investment Short Term Rental (“ISTR”) business license for the Property.

The City’s License Official issued her letter of denial on August 21, 2023. (*City Ex. 1.*) Appellants served the City with notice of an appeal of the License Official’s denial on September 20, 2023. (*City Ex. 2.*)

The parties appeared before me at a pre-hearing conference held on October 5, 2023, at which Appellants were represented Nathan A. White, Esquire and the City was represented by City Attorney, Joseph C. Wilson, IV, Esquire. The parties were ordered to exchange exhibits by 5:00 p.m. on October 17, 2023. The deadline was extended by consent to noon on October 18, 2023. The appeal hearing was held on October 20, 2023, with counsel for both parties present. The hearing was timely held within 30 days after receipt of a request for appeal, pursuant to § 110.16(C).

Appellants presented testimony by Vorko and License Official Stacey Ritchie (“Ritchie”). The City presented testimony by Ritchie in its case-in-chief, as well. Each party was given the opportunity to cross-examine the witnesses. Appellants entered into evidence *Appellants Exhibits 1-15*, without objection by the City. The City entered into evidence *City Exhibits 1-9*, of which *City Exhibits 1-4* were admitted without objection. Appellants objected to the City’s *Exhibits 5-9* as untimely because they were not submitted until the hearing. The objection was overruled on the grounds that there would be no prejudice since Appellants were permitted to argue a new issue concerning the timing of renewals and the exhibits were copies of code sections and the ISTR Cap Petition, which had already been referenced as part of the testimony.

Following the hearing, upon determination that the version of Chapter 117 of the Folly Beach Code of Ordinances submitted as *City’s Ex. 7* was an old version, the current version of Chapter 117 was substituted as *City’s Ex. 7(sub)*. Appellants consented to the substitution, but preserved their objection to the exhibit that was overruled at the hearing.

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 § 117.03 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 taxes.” (*City Ex. 7(sub)*.) 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.*

2. 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. (*City Ex. 9.*)
3. Pursuant to the Standardization Act, business licenses are issued for “a twelve-month period beginning May first and ending April thirtieth. Each business license issued must expire April thirtieth The business license must be renewed before May first of the year in which it expires.” S.C. Code Ann. § 6-1-400(B)(1). (*City Ex. 9.*)
4. Ordinance 32-22 was enacted on October 18, 2022, following the City’s receipt of a citizen petition (*City Ex. 6*) to limit the number of ISTRs to 800, and upon the acknowledgement that the City had issued 1,112 ISTRs for the 2022 business license year as of that date. (*City Ex. 5.*)
5. Ordinance 32-22 stated 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.” (*City Ex. 5.*)
6. In furtherance of that stated desire, Ordinance 32-22 prohibited the “issuance of new business licenses for short term rentals within the City” for residential dwellings taxed at a 6% property tax rate, but contained exceptions for “[r]enewals of short term rental licenses for properties that were legally licensed as of October 18th, 2022” (*City Ex. 5.*)
7. The moratorium in Ordinance 32-22 had an expiration date of January 11, 2023. The moratorium 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 rentals.

8. 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. Accordingly, Chapter 117 of the Folly Beach Code of Ordinances was amended to add the language in the petition, which set the cap of ISTRs at 800 and included an exception, which stated: “After enactment, all existing [ISTR] business License [sic] holders in good standing may continue to renew annually, even if the initial number of [ISTRs] exceeds the CAP [sic].” (*City Ex. 6.*) This language was codified in § 117.02(C)(2).
9. Section 117.02(C)(2) was amended on April 11, 2023, and currently states: “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. 7 (sub).*)
10. Vorko has owned the Property since 2004 and has used it as a rental property since its purchase.
11. Appellants had a 2020 ISTR business license for the Property, which expired on December 31, 2020.
12. On February 24, 2021, Vorko sent an email to a Charleston County employee in an unidentified department requesting a change to his mailing address for the Property from 1266 North Highland Ave., Atlanta, GA to 118 E. Hancock St. #1027, Milledgeville, GA.¹ (*App. Ex. 1.*) There is no indication whether the County received this communication or took any action on it. As of August 17, 2023, the Charleston County property records still showed the Atlanta address. (*City Ex. 1.*)

¹ This is the street address of the post office where Appellants’ post office boxes are located.

13. On March 4, 2021, Vorko emailed a support address for the City, stating, “I had called about my renewal a couple months ago. I was able to finally login [to Charleston County’s on-line business license portal] and it said it was inactive.” (*App. Ex. 2.*)
14. Appellants paid the 2021 renewal for their ISTR business license for the Property on March 6, 2021.²
15. Appellants’ 2021 ISTR business license expired on May 2, 2022. (*App. Ex. 13.*)
16. Appellants did not renew their 2022 ISTR business license.
17. On October 19, 2022, Vorko emailed Charleston County noting he had received a business license assessment letter with a penalty, but thought he was up to date on the license. He further noted that the mailing had an incorrect mailing address and business name on it. (*App. Ex. 4.*) Vorko could not find the assessment letter and could not recall which address it was sent to, but acknowledged that he received it in the mail.
18. Starting in February of 2023, Vorko communicated with the City and Charleston County on several occasions for assistance in renewing Appellants’ ISTR business license for the Property and paying the fees due and expressing concern that the City and County had an incorrect physical mailing address and company name. (*App. Ex. 3, 5, 6, 7, 8, 9, 10, 11, and 14.*)
19. On May 1, 2023, Ritchie emailed Vorko, explaining that Appellants’ 2021 ISTR business license had not been renewed and that their only path forward would be to apply for a new license and permit, which would be denied due to the ISTR cap. (*App. Ex. 12.*)

² Ritchie explained that although a print-out of the Charleston County business license portal shows a system note referencing “Paid in Full” on March 17, 2022, this is the date that the information was transferred by the County to its new system and the actual payment date of “3/6/2021” is noted towards the bottom of the page. (*City Ex. 3.*)

20. Vorko testified that he spent considerable time traveling out of the country and also dealing with a family illness in 2022, which occupied his attention.
21. The mailing address on the 2023 City Business License Renewal Application that Vorko attempted to submit in March of 2023 read “VORKO MARTY C/O VACASA SC, P.O. BOX 996, MILLEDGEVILLE GEORGIA 31059.” (*App. Ex. 14.*)
22. Vorko testified that his first post office box address in Milledgeville was #996, but it was changed at some point to #1027 because the box for #996 was too small. Vorko submitted a forwarding request to the USPS from #996 to #1027. Both post office boxes are located in the same post office building in Milledgeville. Vorko attempted to communicate an address change to the #1027 box address to at least one department with Charleston County in February of 2021. (*App. Ex. 1.*) There is no record of this address change being submitted to the City.
23. Vorko testified that the correct mailing address in 2023 would have been P.O. Box 1027 in Milledgeville.
24. Vorko further testified that Appellants had no affiliation with a business named Vacasa SC.
25. On March 17, 2023, Vorko emailed the City providing an address change to 607 Hugenin Drive, Beaufort SC. (*App. Ex. 7.*) Ritchie testified that her attempt to send certified mail to Appellants at this Beaufort address on August 21, 2023, was unsuccessful. (*City Ex. 1.*)
26. Upon renewal of a business license, the City issues a hard copy of the license which includes the owner’s name and address and the license’s expiration date.
27. Appellants submitted an application for a renewal of an ISTR business license for the Property on March 17, 2023, which was received on March 21, 2023, and denied on July 28, 2023. (*City Ex. 3.*)

28. Appellants submitted an application for a new ISTR for the Property on August 17, 2023, which was denied on August 21, 2023. (*City Ex. 1.*)
29. Based on the plain and ordinary meaning of the words in Ordinance 32-22, the City's intent to exclude from renewal of ISTR licenses those businesses which did not have a valid, existing ISTR license as of October 18, 2022, is clear and unambiguous.
30. The Property was not legally licensed by the City as an ISTR as of October 18, 2022.
31. Appellants could have renewed their delinquent ISTR business license up to October 18, 2022, with payment of the late fee, until the moratorium went into place.
32. Based on the plain and ordinary meaning of the words in §117.02(C)(2), in order for an ISTR business license to be renewed in 2023, the ISTR business license must have been in place and remained in good standing since February 7, 2023.
33. Appellants did not have an ISTR business license in good standing on February 7, 2023.

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. Com'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 County, 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 County 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 the plain meaning rule, a court may not employ the rules of statutory interpretation where an ordinance is plain and unambiguous and conveys a clear and definite meaning. In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998). If an ordinance is ambiguous, however, the courts must construe its terms by following the “settled rules of construction.” Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001).

“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)). 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 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).

DISCUSSION

In their appeal letter, Appellants assert they were not provided with sufficient notice that their 2021 license had expired and needed to be renewed. (*City Ex. 2.*) They claim the 2022 license renewal application was mailed to an incorrect address and the City failed contact them to follow up on the delinquency. (*Id.*) At the hearing, Appellants argued that when Vorko communicated with Ritchie in February of 2023, she failed to tell him that his license had expired and could not be renewed. As a result of these alleged errors, Appellants contend they should have been permitted to pay late fees to renew their 2022 and 2023 ISTR business licenses to avoid their application being precluded by the cap and asks this court to do the “fair and correct thing” to correct this “honest mistake.” (*Id.*)

As the undisputed facts demonstrate, Appellants’ ISTR business license for the Property expired on May 2, 2022. Therefore, Appellants’ ISTR business license was neither “existing” nor “in good standing” when the moratorium was put in place on October 18, 2022, or on February 7, 2023, when the cap was instituted following the referendum. Accordingly, by the time Vorko contacted the City on October 19, 2022, concerning the business license assessment late notice he admits he received in the mail, it was already past the date on which the City could accept Appellants’ renewal application, based on a plain reading of the language in the controlling

ordinances. Whether Appellants were personally informed then or several months later that they could no longer renew their ISTR business license is immaterial; Appellants were already too late.

While the court is not without sympathy for Appellants' position, 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 v. U.S. Fidelity & Guar. Co., 322 S.C. 207, 210–11, 470 S.E.2d 858, 860 (Ct.App.1996)). Here, pursuant to § 117.03, Appellants had a duty to ensure they maintained an up-to-date business license in order to offer the Property for rent to paying customers. By the time Appellants' 2021 business license expired, the deadline for renewing the license was a matter of state statute. S.C. Code Ann. § 6-1-400. The duty to timely renew a business license is not based on receipt of an individual notice. Rather, it is incumbent on all business owners to know and timely comply with the law.

Moreover, I do not find persuasive the argument that Appellants' failure to timely renew their business license was due to an error of the City or County in sending renewal notices to an incorrect address. Although Appellants' 2020 ISTR business license expired in December of 2020, they did not renew it until March of 2021. There is no evidence in the record that any notices for 2021 were sent to the wrong address. Indeed, Vorko's email informing the County of his address change was not sent until February of 2021, several months after the 2021 renewal notices would have been sent out. In addition, Vorko admitted that he received the County's assessment letter in the mail in October of 2022 and both post office boxes were located in the same Milledgeville post office. Similarly, Appellants failed to demonstrate that the inclusion of "c/o Vacasa SC" following Vorko's name on the notice affected the delivery since Vorko's name appeared first, the post office

box address had been associated with Vorko not Vacasa, and Vorko admitted receiving the October 2022 mailing.


In regard to Appellants' characterization of their failure to timely renew as an "honest 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).

The court is also not in a position to excuse Appellants' failure to comply with the law or otherwise grant 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*, 322 S.C. at 210, 470 S.E.2d at 860 (citing 27 Am.Jur.2d *Equity* § 41). Here, the ordinances are clear and unambiguous: Appellants did not have an existing ISTR business license in good standing after May 2, 2022, and, therefore, did not meet the exceptions to the cap in March of 2023, when they submitted their renewal application. The City followed the ordinance in denying their renewal application. Similarly, Appellants' August 2023 application for a new ISTR business license was properly denied due to the cap on new licenses imposed by § 117.02.

CONCLUSION

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

IT IS SO ORDERED.


Christie Companion Varnado
Hearing Officer
City of Folly Beach

October 30, 2023

Charleston, South Carolina