STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	) IN THE ADMINISTRATIVE COURT) FOR THE CITY OF FOLLY BEACH) BUSINESS LICENSE APPEALS
Warren Yeager, Jr. and Melinda Messina, Appellants, v. The City of Folly Beach, Respondent.	**FINAL ORDER** (In re: 1406 E. Cooper Ave.)

This matter comes before me pursuant to § 110.16 of the Folly Beach Code of Ordinances ("Code") by Appellants Warren Yeager, Jr. and Melinda Messina ("Appellants") appealing the decision of the License Official of the City of Folly Beach ("City") to suspend the short term rental business license for the dwelling unit on the property located at 1406 E. Cooper Ave. ("Property").

PROCEDURAL BACKGROUND

By letter dated May 21, 2024, the City's Business License Official, Stacee Ritchie ("Ritchie"), provided Appellants with notice of her decision to suspend the business license for the short term rental of the dwelling unit located at the Property, pursuant to § 110.17 of the Code, based on her finding that Appellants were in violation of § 117.02(D)(4). (*App. Ex. 17.*) Appellants submitted a Notice of Appeal on June 20, 2024, via email. (*Court Ex. A.*)[1]

Counsel for the parties participated in a pre-hearing teleconference on July 10, 2024, at which time they 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, at 10:30 a.m. On the evening of July

---

[1] Because neither party designated as exhibits the Notice of Appeal or the Amended Notice of Appeal, the Hearing Officer has marked those documents as *Court Ex. A* and *Court Ex. B*, respectively, for purposes of the record, but the documents are not admitted into evidence.

17, 2024, Appellants' counsel advised that upon receipt of the City's exhibits, Appellants had submitted a Freedom of Information Act ("FOIA") request for additional records from the City and asked that the hearing be continued. Given the lateness of the motion and the vagueness of the reasons for the delay in making the FOIA request, I agreed to hear arguments on the matter at the start of the hearing set for the following morning.

The parties and counsel appeared before me on August 18, 2024, with City Attorney Joseph C. Wilson, IV, Esquire representing the City and, Eli Lachenman, Esquire and Bijan K. Ghom, Esquire representing Appellants. After hearing Appellants' arguments and ascertaining that there was a potentially material issue concerning an alleged discrepancy between two versions of a key document, I granted Appellants' motion to continue the hearing until August 27, 2024. The parties agreed the City would respond to Appellants' pending FOIA request and Appellants would produce their records by August 2, 2024. Therefore, as a result of my granting the motion for continuance, the appeal hearing was set for more than 30 days after receipt of the notice of appeal, pursuant to § 110.16(C).

On August, 23, 2024, Appellants submitted an Amended Notice of Appeal, outlining 16 grounds for appeal, including several grounds not set forth in or suggested by the initial notice. (*Court Ex. B.*) Upon review of the Amended Notice and because a judgment rendered by an adjudicating body without subject matter jurisdiction is void and without legal effect, I addressed subject matter jurisdiction as a threshold matter. On August 26, 2024, I issued an Order finding that the Hearing Officer does not have jurisdiction over Appellants' Issues 7 (a-e), 8, 9, 12, and 14, which presented 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. In addition, I found the Hearing Officer does not

have the authority to provide the relief requested in Issue 13, which is compensation for lost property value based on an alleged regulatory taking. Accordingly, the parties were advised that since Issues 7 (a-e), 8, 9, 12, 13, and 14 were not properly brought before this forum, I would not hear arguments on those matters at the hearing but would note in the record that my determination is made without prejudice to the parties to address those Issues upon appeal to the Circuit Court, should that take place. I reserved judgment concerning subject matter jurisdiction over Issues 10 and 11, pending further explanation by Appellants of the bases for the arguments.

Thereafter, the City objected to the timeliness of the Amended Notice. Under § 110.16(C)(1)(c) of the Code, "Additional issues not referenced in the notice of denial or suspension and the notice of appeal may not be raised at the hearing unless approved by" the Court. I agreed that Appellants' submission of an Amended Notice containing several new grounds for appeal only two business days prior to the hearing and during the time when (as discussed during the rescheduling process) the City's counsel was on vacation was untimely and prejudicial to the City's being able to be prepared to address the new arguments/issues and submit additional documents (if needed) as exhibits. Nonetheless, I advised the parties I would allow Appellants' counsel the opportunity at the hearing to explain why the grounds for appeal were either not new or could not have been submitted earlier and the City would be permitted leeway to respond as needed to any issues that were ultimately allowed to be presented at the hearing.

The parties and counsel appeared at the hearing before me on August 27, 2024, with City Attorney Joseph C. Wilson, IV, Esquire representing the City and Eli Lachenman, Esquire and Bijan K. Ghom, Esquire representing Appellants. After hearing arguments from both parties, I found that I lack jurisdiction over Issues 10 and 11 for the same reasons as stated above and excluded Issue 5 as a new issue that was untimely presented and not reasonably ascertainable from

the grounds as stated in the original notice of appeal or contemporaneous discussions and Appellants presented no reasonable explanation why the issue was not timely presented. The hearing then went forward based on Appellants' Issues 1, 2, 3, 4,[2] 6, 15, and 16.

Appellants presented testimony by Warren Yaeger ("Yaeger") and Liz Bernthal ("Bernthal"). The City presented testimony by License Official Ritchie. Each party was given the opportunity to cross-examine the witnesses.

Appellants entered into evidence *Appellant's Exhibits 1-18,* all without objection by the City. The City entered into evidence *City Exhibits 1*[3] through *18*,[4] without objection by Appellants. 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. Following the hearing, the City submitted a memorandum addressing Issues 1-4 and 6 from the Amended Notice of Appeal.

ISSUES ON APPEAL

As set forth in the initial Notice of Appeal, Appellants assert that although they applied for an Investment Short Term Rental ("ISTR") business license on February 5, 2023, and were granted an ISTR on May 5, 2023, the License Official unilaterally revoked the ISTR business license and instead changed it to an Owner-Occupied Short Term Rental ("OSTR") business license; and

---

[2] Upon further consideration, I find I also do not have jurisdiction over Issue 4, as discussed in more detail below.

[3] As determined at the hearing, *City Ex. 1* is a hybrid of sorts with page CoFB-0001 being from the April 12, 2023 application and including a handwritten note made by a City employee in the top right corner and pages CoFB -0002 to -0004 being from the February 5, 2023 application. *City Ex. 18* is the complete version of the February 5, 2023 application, as submitted by Bernthal. *City Ex 2* is a copy of the April 12, 2023 application including a handwritten note made by a City employee in the top right corner noting "2nd RR corrected with 4% tax class" and with the change made by a City employee to page CoFB-0006 removing Bernthal's checkmark on the Secondary Residence 6% line and adding a checkmark to the Primary Residence (Owner Occupied) 4% line. Neither party provided the unedited/altered version of the April 12, 2023 application as submitted by Bernthal as an exhibit.

[4] *City Exhibits 11A* and *11B* are versions of Chapter 117 of the Code, with *11A* being the version of § 117 as of April 11, 2023, and *11B*, containing the most recent amendments to § 117, enacted on February 20, 2024.

Appellants were not made aware of this change until April 11, 2024, when they were prevented from renewing the ISTR license. (*Court Ex. A.*) Appellants contend there was "a tax error" in their paying only 4% property tax on the Property rather than the 6% rate, which they later addressed with the Charleston County Tax Assessor's Office and paid the back taxes. (*Id.*) Appellants assert the City should honor the retroactive tax classification, thus finding they paid the appropriate tax for the ISTR that they applied for and claim they received prior to the cap and reinstate their ISTR business license. (*Id.*)

In their Amended Notice of Appeal, Appellants set forth the following arguments, which are summarized as follows:

1. The License Official's actions in replacing Appellants' 2023 ISTR license with an OSTR violated Appellants' due process rights afforded under § 110.5 and § 110.6 of the Code by failing to provide them with the required notice and an opportunity to be heard.

2. The City's reliance on *City Ex. 2*, which was altered to reflect a 4% tax status instead of the 6% tax status submitted by Appellants on their application, violates the Statute of Frauds (S.C. Code § 32-3-20) because Appellants never signed any document stipulating to a 4% homestead nor did they agree to amending any previously executed document to reflect the same.

3. Respondent has no rational basis to refuse to reinstate Appellants' ISTR license and any basis that they do have is arbitrary and capricious because the only rational and reasonable response to Appellants correcting the tax error would be to reinstate the ISTR license that the License Official previously revoked.

4. Appellants' ISTR license was improperly revoked by the Ordinance Compliance Officer because, under the council-manager form of government, such administrative functions are reserved for performance by the city manager pursuant to S.C. Code § 5-13-40(c) (2004).

5. Appellants' ISTR license should be restored under a hardship exception due to confusion by the City and its local businesses in its implementation and because the preparation and mailing of tax bills are neither intended nor adequate to adjudicate qualification of a property as an ISTR versus an OSTR.

6. Appellants' original ISTR license was properly issued (and improperly revoked) in compliance with South Carolina law, including South Carolina's statute governing

Business License Tax Standardization (S.C. Code § 6-1-400) and/or Folly Beach Code of Ordinances § 110. Appellants' ISTR license was not contrary to any valid or enforceable law in place at the time it was granted.

7. Code § 117 violates S.C. Code § 6-1-400, including by:

    a. Improperly transforming a tax into a restriction on the use of real property;
    b. Violating the requirement of § 6-1-400(B) that, upon payment of the "business license tax [which] must be computed based on the 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."
    c. 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;
    d. Imposing an improper, discriminatory, and non-uniform application procedure; and
    e. Imposing non-standard, unreasonable regulation that is contrary to the statutorily required standardized class schedule.

8. Code § 117 violates S.C. Code § 5-7-30 because a municipality is without power or authority to levy a business license tax based on anything other than gross income.

9. Code § 117 is invalid because it violates S.C. Code § 6-1-310, which prohibits the imposition of new local taxes.

10. The revocation of Appellants' properly issued ISTR license deprives Appellants of the economically viable use of their property, for which the property is zoned, and interferes with Appellants' reasonable expectations, including their investment expectations.

11. The revocation of Appellants' ISTR license infringes on Appellants' vested rights, including the right to use real property in the manner for which it is zoned, in compliance with the Land Usage provisions of the Folly Beach Code of Ordinances (Title XV).

12. Code § 117 constitutes invalid, illegal, and impermissible zoning.

13. The revocation of Appellants' ISTR license amounts to a taking for which the City of Folly Beach has not provided just compensation in violation of South Carolina Constitution, Art. 1, Sec. 13 and the Fifth and Fourteenth Amendments of the United States Constitution.

14. Code § 117 is unconstitutional and in violation of the dormant Commerce Clause. U.S. Const. Art. I, § 8, cl. 3.

15. The revocation of Appellants' ISTR license violates South Carolina law, which holds that a legal business is entitled to be licensed.

16. Respondent did not provide a legally sufficient reason for revoking Appellants' long-held business license.

(*Court Ex. B.*)

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)). 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 v. Katzburg, 410 S.C. 184, 188, 764 S.E.2d 3, 5 (Ct. App. 2014)(quoting State v. Graham, 340 S.C. 352, 354, 532 S.E.2d 262, 263 (2000)).

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.*)

Consistent with the law regarding administrative bodies in general[5] and based on the clear language in § 110.16, 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.

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, suspend, 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. *See,* Travelscape,

---

[5] "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). 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).

LLC v. S.C. Dep't of Revenue, 391 S.C. 89, 109, 705 S.E.2d 28, 39 (2011)(finding facial challenges to a statute or regulation "are legal questions that are properly raised for the first time on appeal or in a declaratory judgment action before the circuit court" rather than before an administrative officer).

However, 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 has jurisdiction over the as-applied challenge. *See* Id. at 109, 705 S.E.2d at 39; 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 an administrative tribunal "can only rule on whether a law violates constitutional rights as applied, not whether a law is constitutional on its face.").

Accordingly, upon review of the issues on appeal as stated in the Amended Notice in the light most favorable to Appellants, I initially found that as the Hearing Officer, I do not have jurisdiction over Issues 7 (a-e), 8, 9, 12, and 14, which 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 in general as a business license function rather than as a zoning function. Upon further consideration of Appellants' arguments, I find that Issues 4, 10, and 11 also fall into that category.

Issue 4 concerns Appellants' assertion that under the Home Rule Act, only the city manager may perform administrative functions such as revoking or suspending a business license. Under § 110.09, the License Official is the person designated to administer the provisions of the City's business license chapter. Given Appellants' claim, it appears that such an argument is a challenge

to Chapters 110 and 117, in general. That being the case, as discussed above, this Hearing Officer does not have jurisdiction over Issue 4.

In Issue 10, Appellants contend that the "revocation of [their] properly issued ISTR license deprives [them] of the economically viable use of their property, for which the property is zoned, and interferes with Appellants' reasonable expectations, including their investment expectations." (*Court Ex. B, p.6.*) In Issue 11, Appellants assert the purported revocation "infringes on Appellants' vested rights, including the right to use real property in the manner for which it is zoned, in compliance with the Land Usage provisions of the Folly Beach Code of Ordinances (Title XV)." (*Id.*) As argued at the hearing, Appellants are challenging the City's adoption of its short term rental restrictions via its business license ordinance rather than via its zoning ordinance. As these constitute facial challenges to the validity of Chapter 117 or the process by which it was enacted, I also do not have jurisdiction over these claims.

Moreover, 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 Appellants. 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:

- 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.)

C.A. No. 2023-CP-10-0264 (S.C. Ct. of Common Pleas, March 7, 2024) (J. Burch).

In addition, I do not have the authority to provide the relief requested in Issue 3, which is compensation for the loss in value to the property based on an alleged regulatory taking or deprivation of the use of property. *See* Folly East Indian Co., LLC, C.A. No. 2023-CP-10-0264, p. 7, n. 2.

Having found Issues 3, 4, 7 (a-e), 8, 9, 10, 11, 12, 13, and 14 are not properly brought before this forum, I note for the record such determination is made without prejudice to the parties to address those Issues upon appeal to the Circuit Court, should that take place. I further find that Issue 5 was not timely presented and not reasonably ascertainable from the grounds as stated in the original notice of appeal or contemporaneous discussions and Appellants presented no reasonable explanation why the issue was not timely presented. Accordingly, I excluded Issue 5 under § 110.16(C)(1)(c).

STANDARD OF REVIEW

In addition to the jurisdictional limitations discussed 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. Every person engaged or intending to engage in any business . . . or activity engaged in/with the object of gain, benefit or advantage, in whole or in part within the limits of [City] is required to pay an annual tax for the privilege of doing business and obtain a business license as herein provided." § 110.01 (*City Ex. 12.*)
2. Pursuant to § 110.03 of the Code and in compliance with the South Carolina Business License Tax Standardization Act at S.C. Code Ann. § 6-1-400(B)(1) (2021), business licenses are issued for a twelve-month period each year beginning May 1st and ending April 30th. (*City Ex. 12 & 13.*)
3. This matter concerns the License Official's suspension of Appellants' short term rental business license and permit for the Property for the year 2024, the term of which commenced on May 1, 2024. (*City Ex. 7; Court Ex. A.*)
4. Appellants purchased the Property in November of 2015.
5. Appellants occupied the Property as their primary or legal residence from late 2016 to May of 2022 and applied for and obtained the special 4% tax assessment ratio applicable for an owner's legal residence under S.C. Code Ann. § 12-43-220(c)(1), starting in 2016. (*City Ex. 6.*)
6. For the purposes of the 4% tax assessment ratio, "legal residence" is defined as the location where the owner is "domiciled at the time of th[e] application." S.C. Code Ann. § 12-43-220(c)(2(i).

7. Under this section, a homeowner is permitted to rent out their legal residence and still maintain the 4% assessment ratio so long as the number of rental days does not exceed 72 days in a calendar year. S.C. Code Ann. § 12-43-220(c)(1).
8. "If a change in ownership or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change." S.C. Code Ann. § 12-43-220(c)(2)(vi).
9. In 2022, Appellants retained Bernthal with Dunes Property Management to manage the Property as a short term rental. (*City Ex. 10.*)
10. On January 3, 2022, Appellants executed an application for a business license to operate a short term rental on the Property under the name Phoenix Consulting Services, LLC ("Phoenix"). (*App. Ex. 1.*)
11. Bernthal submitted Phoenix's application to the City on January 25, 2022, indicating that rentals would not start until May of 2022. (*App. Ex. 2.*)
12. After May of 2022, Appellants no longer occupied the Property as their legal residence.
13. Appellants failed to notify the Charleston County Assessor that they were no longer occupying the Property as a legal residence within six months of the change as required by S.C. Code Ann. § 12-43-220(c)(2)(vi), so that the 4% tax assessment ratio would no longer be applied to the Property. (Per the statute, Appellants should have notified the Assessor of this change by December of 2022, at the latest.)
14. On July 14, 2022, the City issued business license number LIC044941 for short term rentals at the Property to Phoenix, with an expiration date of April 30, 2023. (*App. Ex. 3.*) The license referenced STR22-00845, as the rental permit number. (*Id.*)

15. Due to a pending citizen initiative petition to establish a cap on the number of short term rentals (the "Petition"), the City imposed a moratorium on the issuance of new business licenses for short term rentals for any residential dwelling taxed at the 6% property rate within the City, effective as of October 18, 2022. City Ordinance 32-22(1)(a). (*City Ex. 14, 15, & 16.*)

16. Ordinances 32-22 and 34-22 contained some exceptions from the moratorium, which allowed for the renewal of licenses for properties that were legally licensed as of the date of the moratorium and for new licenses "resulting from the transfer of ownership of properties that were legally licensed as short term rentals as of October 18th, 2022." City Ordinance 32-22(1)(b). (*City Ex. 15 & 16.*)

17. The moratorium did not apply to residential dwellings, like the Property, which were being taxed at the 4% property tax rate at that time. (*Id.*)

18. With the knowledge of pending potential changes to the City's short term rental ordinance, Bernthal endeavored to get all of her clients' short term rental licenses updated and corrected to comply with the new requirements. Because Phoenix was not the owner of record for the Property, Bernthal submitted a new City Business License Application, Rental Registration Form, and a Consolidated License & Account Application for an Accommodations Fee Account in Appellants' names on February 5, 2023. (*App. Ex. 4, 5, 6, & 7.*)

19. Consistent with her understanding of Appellants' use of the property at that time, Bernthal checked the line on the February 5, 2023 Rental Registration Form indicating that the Property was a "Secondary Residence" taxed at 6% (as opposed to a Primary Residence at 4%). (*App. Ex. 6.*) This was inaccurate, however, because the Property was still being taxed

at the 4% ratio at that time due to Appellants' failure to update the status with the County Assessor. (*City Ex. 18.*)

20. Neither party submitted into evidence a copy of the license the City issued to Appellants as a result of their February 5, 2023 application, but the parties do not dispute that the City issued Appellants a 2022 short term rental business license for the Property that was valid through April 30, 2023.

21. The City held the special referendum election on the Petition on February 7, 2023, during which a majority of the registered voters of Folly Beach voting in the election voted in favor of the cap. (*City Ex. 14.*)

22. As a result of the passage of the referendum, Chapter 117 of the Code was amended to include for the first time language distinguishing between Investment Short Term Rental ("ISTR") and Owner-Occupied Short Term Rental ("OSTR") business licenses. (*City Ex. 11A.*) Business licenses and permits for short term rentals issued prior to the referendum were the same regardless of the owners' tax status or use as a primary or secondary residence. (*City Ex. 17.*)

23. Under the Code as amended as a result of the new cap, an ISTR business license was defined as "[a] license issued for a dwelling unit that is not the legal residence of the owner to be used as a short term rental." § 117.01(B). (*City Ex. 11A.*)

24. An OSTR business license was defined as "[a] license issued for a dwelling unit that is the legal residence of the owner to be used as a short term rental." § 117.01(B). (*Id.*)

25. Legal residence was defined as "[a] dwelling unit assigned a 4% property tax ratio by the Charleston County Assessor's Office under the requirements of S.C. Code § 12-43-220." § 117.01(B). (*Id.*)

26. Pursuant to § 117.02 of the Code as amended on April 11, 2023 and as the result of the passage of the referendum on February 7, 2023, the maximum number of ISTR business licenses issued was limited to 800 (known as to as the "cap"), but there was no limit imposed on the number of OSTR licenses. (*Id.*) In addition, no new ISTR business licenses can be issued unless the total number of ISTR business licenses falls below the cap. § 117.01(C)(1). (*City Ex. 11A & 14.*)
27. The amended ordinance also included an exception, which stated: "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." § 117.02(C)(1). (*Id.*)
28. Ritchie testified that upon passage of the referendum, her office manually categorized properties with existing short term rental business licenses as being ISTR versus OSTR based on whether they met the definition of Legal Residence in the ordinance. In other words, all properties with existing short term rental business licenses that were listed on the County records as being taxed at the 4% tax assessment ratio were categorized as OSTRs, while those with the 6% ratio were categorized as ISTRs.
29. At that time, the number of ISTR licenses exceeded the cap.
30. Because Appellants had failed to timely comply with the requirements of S.C. Code Ann. § 12-43-220(c)(2)(vi), the Property was still being taxed at the 4% tax assessment ratio by the County on February 7, 2023. (*City Ex. 6.*) Accordingly, under the newly-adopted Code, the Property was appropriately categorized as an OSTR as of that date and was not eligible for an ISTR for the 2023 license year.

31. On April 12, 2023, Bernthal submitted paperwork to renew the short term rental business license and permit for the Property. (*App. Ex. 8; City Ex. 1.*)

32. Again, based on her understanding of Appellants' use of the property, Bernthal checked the line on the April 12, 2023 Rental Registration Form indicating that the Property was a "Secondary Residence" taxed at 6% (as opposed to a primary residence at 4%). This again was incorrect because the Property was still being taxed at the 4% ratio, as documented on the property tax information submitted with the application.

33. While Appellants and Bernthal believed they were renewing an ISTR license, the Property did not qualify as an ISTR and was not eligible for renewal as an ISTR at that time.

34. Under § 117.02(C)(2) as in effect as of April 11, 2023, to be eligible for renewal, the ISTR business license must be "in good standing." (*App. Ex. 11A.*)

35. The term "in good standing" was not defined in the ordinance at that time, but the "plain and ordinary meaning" of the term is generally understood to indicate being up-to-date with all requirements, including the payment of fees and taxes.

36. Section 117.03 sets forth the requirements, which include making "proper payment of local, county, and state taxes." (*App. Ex. 11A.*)

37. Appellants had not properly paid their county taxes on the Property at the 6% ratio at this time.

38. Bernthal contacted Ritchie on April 13, 2023, to advise of an error in the fee calculation on the initial form she had submitted. Ritchie replied that her staff would invoice the correct amount without the need for the submission of a corrected form. (*App. Ex. 8.*) They did not discuss the tax status of the Property or whether the license requested was an OSTR or ISTR.

39. Ritchie testified that as long the application was submitted prior to the deadline, her office allows as a courtesy for an applicant to fix or update an incomplete application without the application losing its place in line rather than requiring the submission of a new or amended application.

40. Ritchie also testified that if possible her staff corrected incorrect or inaccurate information on applications rather than simply reject the applications outright under § 110.4(a)(1).

41. Neither Bernthal nor Appellants attempted to correct the improper tax designation on the application at any time in 2023.

42. On April 24, 2023, Bernthal reached out to Ritchie to confirm that the applications she submitted for her clients were being processed and expressed an understanding that the renewal process was taking up to 28 days. Ritchie responded that her office was handling applications in the order received and that the date of submission of the application is the date used to confirm renewal prior to the April 30, 2023 deadline. (*App. Ex. 9.*)

43. As documented in *City Ex. 2*, at some point during the processing of Appellants' application, an employee in Ritchie's office removed the checkmark from the Secondary Residence – 6% line and wrote in a checkmark on the Primary Residence (Owner Occupied) – 4% line on the application to correct the information in the application to conform to the "Legal Residence" (or 4%) designation that was noted on the County tax records submitted with the application.

44. Neither the employee nor Ritchie notified Appellants or Bernthal of this change to the form.

45. On May 5, 2023, the City issued business license number LIC049202 to Appellants, with an expiration date of April 30, 2024. (*App. Ex. 10; City Ex. 3.*) The license referenced <u>ISTR</u>23TG as the rental permit number. (*Id.*)(emphasis added.)

46. Ritchie testified the reference to an ISTR permit number rather than an OSTR on the 2023 business license was a typo and that according to the City's records, the Property was listed as an OSTR.

47. No one from the City advised Appellants or Bernthal at that time that the 2023 license issued was for an OSTR rather than an ISTR.

48. On February 20, 2024, the Code was amended to define ISTR as "[a] license issued for a dwelling unit, to be rented as a short term rental, that: (a) is not the legal residence of the owner. . . ." § 117.01(B). (*City Ex. 11B.*)

49. The amendment changed the definition of OSTR to state "[a] license issued for a dwelling unit to be rented no more than 72 nights annually that: (a) That [sic] is the legal residence of the owner. (b) That [sic] is the legal residence of the owner but given a 6% property tax rate by Charleston County and is licensed after February 7, 2023." (*Id.*)

50. "Legal Residence" is defined as a "dwelling unit assigned a 4% property tax ratio by the Charleston County Assessor's Office under the requirements of S.C. Code § 12-43-220." (*Id.*)

51. Under §117.02(C)(2), "[a]ny [ISTR] business licenses which remain in good standing may continue to be renewed annually, even if the number of [ISTR] business licenses exceeds the cap." (*Id.*)

52. Under the Code as adopted on February 20, 2024, a license is in "Good Standing" if it has not been denied, revoked, or suspended in the current license year, has not expired, and the dwelling unit for which the license was issued was rented for a minimum of 28 nights in the current business license year. § 117.01(B). (*City Ex. 11B.*)

53. On April 3, 2024, Bernthal submitted an application to renew LIC049202 for 2024 on behalf of Appellants. (*City Ex. 4.*)

54. On April 11, 2024, City Ordinance Compliance Officer Teri Garmon ("Garmon") advised Bernthal via email that "this license will now be an OSTR, they claimed 4% homestead." (*App. Ex. 15.*)

55. On April 12, 2024, Appellants for the first time advised the County Assessor that their use of the Property as their legal residence had changed in 2022 and the Property was no longer eligible for the 4% ratio. (*App. Ex. 12.*)

56. Appellants were charged and paid only the 4% tax assessment ratio on the Property instead of the 6% ratio for tax year 2023. (*App. Ex. 13.*)

57. Upon receipt of Appellants' letter in April of 2024, the County Assessor confirmed that the Property no longer qualified for the 4% ratio, changed the tax ratio to 6% for 2024 tax purposes, and "back taxed" (or retroactively taxed) Appellants for tax year 2023 at the 6% rate. (*App. Ex. 13; City Ex. 6.*) The Assessor noted that Appellants had failed to notify the County Assessor of the loss of eligibility for the 4% exemption within six months as required by S.C. Code 12-43-220(c)(2)(vii). (*App. Ex. 13.*)

58. On April 23, 2024, the County Auditor issued a new 2023 property tax bill for the Property at the 6% ratio, which increased Appellants' property taxes by $9,606.48, which Appellants subsequently paid. (*App. Ex. 14 & 18.*)

59. On April 29, 2024, Bernthal submitted documentation to Garmon that Appellants had corrected the tax status issue with the County and requested that the City renew the 2023 ISTR license. (*App. Ex. 15.*) Garmon responded that the matter had been referred to the City attorney.

60. On May 20, 2024, Bernthal emailed Garmon advising that they had received an OSTR license for the Property and asserting it should be corrected to an ISTR. (*App. Ex. 16.*)

61. Ritchie replied that the City had the Property "listed as an OSTR as of 2023. The rental registration application you submitted on 4/11/23 shows the status as a 4% property as do the tax classification records. I see where Teri Garmon sent a license for 2023 showing ISTR but then corrected it to OSTR due to tax classification in 2023 and the Charleston County records you submitted showing 4% legal residence. The business license renewal should not have been renewed this year due to the tax status changing to 6% as we are over the cap for ISTR licenses." (*Id.*)

62. At the hearing, Ritchie acknowledged the error in her May 20th emailed response was made prior to her completing her investigation and agreed that Appellants had applied for a 6% ISTR license and her staff changed the application to a 4% OSTR without informing Appellants of the change.

63. On May 21, 2024, Ritchie issued a letter to Appellants suspending business license number LIC049202, finding that Appellants were in violation of § 117.02(D)(4), which states that "[OSTR] business licenses terminate upon loss of 4% property tax assessment status and are non-transferable." (*App. Ex. 17.*)

64. Ritchie further explained that the Property "was classified as a 4% legal residence on the date the business license renewal application was submitted to the City (April 3, 2024). After the license was renewed, the City received notice from Charleston County that the property tax classification had been changed to 6% as of April 23, 2024." (*Id.*)

65. Ritchie also advised Appellants that if they timely filed an appeal of her decision to suspend their license, Appellants could continue to rent the Property until a final ruling is made on appeal. (*Id.*)

66. As of the date of the hearing, Appellants have not suffered any lost revenue because they have been permitted under the Code to continue to operate the Property as a short term rental pending the outcome of the appeal.

67. Appellants rented the property over 72 nights in 2023 and were never cited by the City for exceeding the number of rental nights permitted of OSTR licenses.

68. Ritchie testified that a dwelling unit's eligibility for an ISTR license is based on the tax status of the property as reflected in the County tax records as of February 7, 2023, the date of the passage of the referendum. On the other hand, since there is no cap on OSTR licenses, OSTR status can be retroactively changed with no effect.

69. While it was always Appellants' intent to apply for an ISTR license not an OSTR, the Property did not qualify for an ISTR due to the 4% tax status as of February 7, 2023.

DISCUSSION

The Code provisions in Chapter 117 regarding ISTR and OSTR license qualifications are clear and unambiguous. In order to qualify as an <u>investment</u> rental or ISTR rather than an <u>owner-occupied</u> rental or OSTR, the dwelling unit to be rented could not be "the legal residence of the owner" as of February 7, 2023, the date when the referendum passed. § 117.01(B). (*City Ex. 11A.*) The Code defines "legal residence" as "a dwelling unit assigned a 4% property tax ratio by the Charleston County Assessor's Office under the requirements of S.C. Code § 12-43-220." (*Id.*) Appellants admit the Property was their legal residence between late 2016 and May of 2022. When they moved out of the Property in 2022, Appellants failed to timely comply with the tax code's

requirements to notify the Assessor of the change in their use of the Property as their legal residence within six months. As a result of Appellants' failure in their legal duty, when the referendum passed on February 7, 2023, and the License Official's staff sorted the existing 2022[6] short term rental business licenses and permits into the newly-established ISTR and OSTR license categories, Appellants' Property was still listed on the Charleston County tax records as being taxed at the 4% ratio and, therefore, did not qualify for an ISTR license as of February 7, 2023.

Because of the implementation of the cap, in order to be "grandfathered in" and qualify for an ISTR license for the 2023 license year, Appellants needed to have an existing ISTR license in place as of February 7, 2023, which remained in good standing. §117.02(C). (*City Ex. 11A.*) The term "in good standing" was not defined in the ordinance as in effect in May of 2023, but the "plain and ordinary meaning" of the term is generally understood to indicate being up-to-date with all requirements, including the payment of fees and taxes. Because I find the meaning of "in good standing" is unambiguous here, no further statutory construction is necessary. *See* In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (finding a court has no right to employ the rules of statutory interpretation where an ordinance is plain and unambiguous and conveys a clear and definite meaning).

Section 117.03 sets forth the requirements for an ISTR business license, which include maintaining "a current business license" and making "proper payment of local, county, and state taxes." (*City Ex. 11A.*) While Appellants inaccurately indicated on their April 12, 2023 application for the 2023 license that the Property was taxed at the 6% ratio, they now do not dispute that the Assessor's tax records still assigned a 4% property tax ratio to the Property at that time. Not only

[6] A business license "year" runs from May1st to April 30th of the following year. The referendum took place during the 2022 license year, which was May 1, 2022 to April 30, 2023. The 2023 license year ran from May 1, 2023 to April 30, 2024.

did Appellants not have a current ISTR business license to renew for the 2023 license year, but they had also not properly paid their county taxes at the 6% tax ratio as of that time. Accordingly, when Appellants applied for a business license in April of 2023, the Property did not have an ISTR license in good standing and, therefore, was not eligible for renewal of an ISTR license by the plain meaning of the ordinance. The only license the Property qualified for in April of 2023 was an OSTR license.

Looking then at the 2024 license year, although Appellants sought an ISTR business license in submitting their April 3, 2024 application, the Property was still listed on the County tax rolls at the 4% tax rate at that time. When advised that the Property would not qualify for an ISTR because of the 4% tax rate, Appellants informed the County Assessor for the first time on April 12, 2024, of the change in use to the Property. As a result, the Assessor removed the 4% tax rate and back-taxed Appellants for the difference. Because the Property is now no longer taxed at the 4% ratio as of April 23, 2024, and is no longer Appellants' legal residence, it no longer qualifies as an OSTR for the 2024 license year. Accordingly, the License Official followed the law in suspending the OSTR license under § 117.02(D)(4), which states that "[OSTR] business licenses terminate upon loss of [the] 4% property tax assessment status and are non-transferable." (*App. Ex. 13; City Ex. 7 & 11B.*) I find that the Property does not qualify for an OSTR license as of April 4, 2024.

It is Appellants' failure to timely comply with the law that has placed them in their current situation. "[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. Fidelity & Guar. Co., 322 S.C. 207, 210–11, 470 S.E.2d 858, 860 (Ct. App. 1996)). Had Appellants followed state law and timely

updated their residence information with the County Assessor within six months of the change in May of 2022, as they were required to do under S.C. Code Ann. § 12-43-220(c)(2)(vi), the Property would have been assigned a 6% ratio as of February 7, 2023, and the existing short term rental business license and permit for the Property would have been eligible for the new ISTR designation for the remainder of the 2022 term and for renewal in 2023 under § 117.02(C)(1). (*City Ex. 11A.*) Appellants' late notification of the change to the County Assessor and payment of delinquent taxes in April of 2024 does not alter the fact that the Property was assigned a 4% ratio on February 7, 2023, and, therefore, was only eligible for an OSTR license and permit at that time.

There is also no provision in the Code to permit corrections to a property's tax status to be applied retroactively. Appellants' late payment of their 2023 taxes at 6% rather than the 4% ratio that they initially paid and the County's retroactive change in the designation once Appellants provided notice in April of 2024 do not alter the fact that the Property was listed on the Charleston County tax records as being taxed at 4% on February 7, 2023, and therefore was not eligible for an ISTR as of that date.

Issue 1: Procedural Due Process

In Issue 1 in their Amended Notice of Appeal, Appellants contend they were denied procedural due process when the License Official revoked their ISTR license and subsequently changed it to an OSTR license without their being afforded notice and the opportunity to be heard in accordance with the Code. (*Court Ex. B, p.1-2.*) "The fundamental requirements of [procedural] due process include notice, an opportunity to be heard in a meaningful way, and judicial review." Kurschner v. City of Camden Plan. Comm'n, 376 S.C. 165, 171–72, 656 S.E.2d 346, 350 (2008)(citing S.C. Const. art. 1, § 22; Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991)). Procedural due process requirements are not technical, however. In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416

(2003). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002) (quoting Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484, 494 (1972)). The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. S.C. Dep't of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997).

Pursuant to § 110.16(B) of the Code at it currently reads, "any person aggrieved by a determination, denial, or proposed suspension and proposed revocation of a business license by the License Official may appeal the decision to the Council or its designee by written request stating the reasons for appeal, filed with the License Official within 30 days after service by mail or personal service of the notice" of the determination or denial. (*City Ex. 12.*) Under § 110.14, "[a] decision of the License Official shall be subject to appeal as herein provided. Denial shall be written in compliance with § 110.16." (*Id.*) The written notice of the denial or suspension of a license must contain "(1) A statement of the reasons for the denial or suspension; and (2) A copy of the applicable provisions of this chapter and any other ordinance relevant to the proposed denial or suspension; and (3) Notice that the applicant or licensee may appeal by serving a notice of appeal on the Business License Official within 30 days and in accordance with the provisions of this section; and (4) Notice to the applicant or licensee that failure to serve notice of appeal within 30 days shall result in denial or revocations as applicable." § 110.16(A). (*Id.*)

The City issued Appellants an OSTR business license for 2024 based on the property tax records as they appeared when Appellants' application was submitted on April 3, 2024. The City then suspended the 2024 license on May 21, 2024, after processing the notice from the County that the property tax classification had been changed to 6% as of April 23, 2024. In compliance with

§ 110.16, the City sent a letter dated May 21, 2024 (entered into evidence herein as *App. Ex. 17*) to Appellants that contained the Business License Official's statement of the reasons for the suspension, provided a copy of the applicable provisions of ordinances relevant to the suspension, and provided notice of the appeal procedures. Following receipt of the May 21, 2024 letter, Appellants timely filed their notice of appeal via email and a hearing followed at which Appellants were permitted to put forth evidence and arguments, including those concerning their allegations that they had an ISTR license that was improperly revoked by the License Official. Accordingly, they have been afforded the notice and opportunity to be heard on the suspension of their 2024 license in accordance with the City's ordinance and in a manner that complies with due process.

What Appellants appear to be arguing, however, is that they were denied due process in 2023 based on the City's actions in correcting Appellants' 2023 application from one for an ISTR license to an OSTR without giving them notice because they claim that action amounted to a revocation of Appellants' ISTR 2022 license. Appellants revocation argument is based in part on an erroneous belief that Appellants were given an ISTR license in 2022, however. Appellants applied for a 2022 short term rental license in their own names (rather than Phoenix's) on February 5, 2023, two days prior to the referendum election. Prior to the passage of the referendum, there were no ISTR or OSTR licenses in existence. By the clear wording of the referendum petition and ordinance, Appellants were not eligible for an ISTR as of the date the referendum passed because their Property was taxed at a 4% ratio at that time and the only short term rental license they were eligible for was an OSTR. Accordingly, the City did not revoke an existing ISTR license held by Appellants in 2023 because Appellants were never eligible for an ISTR license.

While Bernthal testified she checked the 6% line on the April 12, 2023 application, she also submitted with the application the Charleston County Government record which denoted the

Property as being Appellants' legal residence. (*City Ex. 2 at p. 6.*) (The record notes "Y" for yes under the "Legal Residence" category.) A City employee caught the discrepancy and corrected the application to correspond with the County tax records and the City's internal records by moving the checkmark to the 4% line and removing the checkmark on the 6% line. (*City Ex. 2 at p. 2.*) In so doing, the City employee effectively changed Appellants' submission into an application for a renewal of an OSTR license rather than a new application for an ISTR license.[7] Due to the typo on the 2023 license, incorrectly noting an ISTR rather than OSTR, Appellants were not made aware of the change. Appellants, believing they had an ISTR license and permit, rented the Property as an ISTR for more than the 72 nights permitted for OSTRs without the City or County noting the discrepancy or suffering any penalty. When Appellants sought to renew the 2023 license for the 2024 year, they were informed by the City that the 4% tax designation on the Property prevented them from being eligible for an ISTR license. (*App. Ex. 15.*)

"A violation of a plaintiff's procedural due process rights is typically remedied[8] by either injunctive relief or a court order instructing that the plaintiff be afforded the process he was denied." Seabrook v. Knox, 369, S.C. 191, 197, 631 S.E.2d 907, 911 (2006). Here, however, a court order requiring a new hearing on 2023 application would be meaningless. To the extent that the License Official failed to notify Appellants in April of 2023 of the correction made to their application to allow them to renew the only license they were eligible for at that time – an OSTR license – they suffered no prejudice or harm. Rather, the License Official's actions in not making clear that Appellants were being provided with an OSTR license rather than an ISTR resulted in a

---

[7] Pursuant to § 110.14(A)(1), the License Official could have denied Appellants' license because it contained a misrepresentations or false statement. In addition, the License Official could have suspended or revoked Appellants' license due to its being "mistakenly or improperly issued or issued contrary to law." § 110.15 (A)(1).

[8] To the extent Appellants would seek monetary relief for any alleged due process violation, this tribunal does not have authority to make such an award and would not have jurisdiction over such a claim.

benefit to Appellants since they proceeded to operate their Property as an investment rental property for over a year longer than they were otherwise entitled to do so. Accordingly, I find Appellants were not harmed by any perceived lack of notice and deny their appeal on this issue.

Issue 2: Statute of Frauds

Appellants' Issue 2 is based on the Statue of Frauds as found in S.C. Code § 32-3-20:

> No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any person to the intent or purpose that such other person may obtain credit, money or goods thereon unless such representation or assurance be made in writing, signed by the party to be charged therewith or by some person thereunto by him legally authorized.

The Statute of Frauds is a defense that originated under the common law and which requires that in order for certain contracts or agreements to be binding they must be in writing. 30 S.C. Jur. *Contracts* § 16. The City is not seeking to enforce any contract or agreement with Appellants, however, and so it is unclear how the Statute of Frauds is even applicable to this matter.

In their attempt to explain their reliance on this doctrine, Appellants assert they "never signed any document stipulating to a 4% homestead nor did they agree to amending any previously executed document to reflect the same." Appellants are correct in that the short term rental business license and permit applications they submitted falsely asserted that the Property was taxed at the 6% ratio. However, Appellants admit they applied for the special 4% tax assessment ratio for their County property taxes for the Property in 2016. In so doing, Appellants were required to submit a sworn statement attesting "the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose." S.C. Code Ann. § 12-43-220(c)(2)(ii). When their use of the Property changed, Appellants were required to inform the County Assessor of the change within 6 months so that the

assessment ratio could be changed back to the 6% ratio. Appellants did not take that step until April 23, 2024.

In further support of this argument, Appellants rely on statements made in two emails which erroneously attributed the "corrected" 4% designation on the April 12, 2023, application (*City Ex. 2*) to Appellants rather than to the internal change made by a City employee. Appellants did not include the email from the City Attorney as an exhibit at the hearing, so that email is not properly before this court at this time. As for the email from Ritchie (*App. Ex. 16*), it does not constitute a final decision by the License Official, but rather was part of her investigation into the matter in 2024. In the final analysis, it is not the application that controlled the Property's eligibility for an ISTR license, but rather the 4% tax status assigned by the County that Appellants failed to timely correct and thus continued to be shown on the tax rolls in 2023 and into 2024. Accordingly, I find no merit to Appellants' Statute of Frauds defense.

Issue 3: Substantive Due Process

In Issue 3, Appellants contend the City "has no rational basis to refuse to reinstate Appellants' ISTR license and any basis they do have is arbitrary and capricious." (*Court Ex. B, p. 3.*) They further argue that once Appellants corrected the "tax error" (i.e. their failure to timely advise the County Assessor of the change of use of their Property), the "only rational and reasonable response" is to reinstate the ISTR license Appellants contend the City previously revoked.

While not specifically stated in this appeal point, it is assumed that Appellants intended to make a substantive due process argument by invoking the terms "rational basis" and "arbitrary and capricious." *See,* Dunes W. Golf Club, LLC v. Town of Mt. Pleasant, 401 S.C. 280, 299–300, 737 S.E.2d 601, 611 (2013) (holding trial court did not err by considering substantive due process

challenge under the "arbitrary and capricious" framework. *See, e.g.,* Worsley Cos., Inc. v. Town of Mt. Pleasant, 339 S.C. 51, 56, 528 S.E.2d 657, 660 (2000) (noting "[s]ubstantive due process protects a person from being deprived of life, liberty or property for *arbitrary* reasons" and that "[a] plaintiff must show that he was *arbitrarily and capriciously* deprived of a cognizable property interest rooted in state law" (emphasis added)). Substantive due process "protects a person from being deprived of life, liberty, or property for arbitrary reasons." Seabrook, 369 S.C. at 198, 631 S.E.2d at 911; Worsley, 339 S.C. at 56, 528 S.E.2d at 660. To establish a substantive due process claim, Appellants must show they possessed a constitutionally protected property interest that was deprived by state action so far beyond the limits of legitimate governmental action, no process could cure the deficiency. Sylvia Dev. Corp. v. Calvert County, 48 F.3d 810, 827 (4th Cir.1995).

To the extent that Appellants are making a facial challenge to Chapter 117 or portions thereof under the substantive due process analysis, as discussed above, I do not have jurisdiction to decide a challenge to the ordinance of that nature. To the extent that Appellants are intending an "as-applied" challenge, I note that, as discussed above, the City did not revoke Appellants' ISTR license because they never qualified for one. Setting that aside, however, business licenses 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).

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).

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 an otherwise legal business fails to meet all of the applicable conditions or requirements for a license, the license is properly denied. If during the license period, the business is found to no longer meet the conditions required for licensure, the license may be revoked. Here, due to Appellants' failure to timely update the Property's tax status with the County Assessor, the Property never qualified for an ISTR license under the plain provisions of the Code.

Moreover, there is no provision in the Code that would allow the License Official to retroactively grant Appellants an ISTR license because they belatedly corrected the Property's tax status. If the License Official were to accept Appellants' untimely correction and, in effect, retroactively grant Appellants an ISTR license when they were not eligible for one in 2022 and 2023, because of the cap, it would be unfair to those persons currently on the ISTR license waiting list.

As discussed above, I find that the License Official properly followed the Code I granting Appellants an OSTR license in 2023 and once the 4% tax ratio was removed from the Property in 2024, the License Official properly followed the Code in suspending Appellants' 2024 OSTR license. Accordingly, I find no merit to this issue.

Issues 15: Entitlement to a Business License.

In Appellants' Issue 15, citing City of Greenville v. Bryant in support, Appellants argue that the revocation of their ISTR license "violates South Carolina law which holds that a legal

business is entitled to be licensed." (*Court Ex. B, p. 6.*) As Appellants failed to include a pin cite, it is unclear exactly which portion of the Bryant case they are intending to refer in support of this assertion. After addressing some procedural and evidentiary matters, the holding of Bryant is that the City of Greenville had the power to prohibit the sale of obscene materials within the City limits. 257 S.C. 445, 455, 186 S.E.2d 236, 239 (1972). The case simply does not discuss entitlement to a business license. Accordingly, Appellants provide no legal support for this novel interpretation of the law.

Moreover, the premise that a legal business is **entitled** to be licensed as a matter of right is unfounded in general. Businesses are not "entitled" to be licensed simply because they pay the taxes due or can be legally operated or their owners have a financial stake in the businesses' operation. 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 . . . ."). Accordingly, I find no merit in Issue 15.

Issue 16: Insufficient Reasons for Revocation

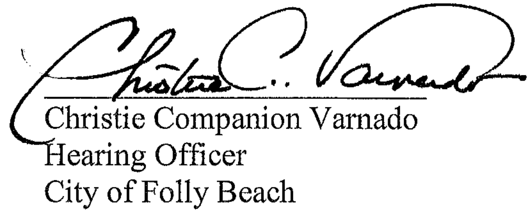
In Issue 16, Appellants assert that the City "did not provide a legally sufficient reason for revoking Appellants' long-held business license." As discussed previously, the City properly advised Appellants in the License Official's letter of May 21, 2024, of the reasons for the suspension of Appellants' 2024 OSTR license upon receipt of notice that the Property was no longer qualified as a legal residence. (*City Ex. 7.*) Appellants' 2022 and 2023 licenses expired and were not revoked. Accordingly, I find no merit to this argument.

CONCLUSION

As discussed above, this Hearing Officer lacks jurisdiction to address Appellants' Issues 4, 7 (a-e), 8, 9, 10, 11, 12, 13, and 14. I excluded Issue 5 as bringing forth an entirely new matter

not addressed in the initial appeal notice and for which Appellants could not articulate a basis for not bringing it in a timely manner. In regard to Issues 1, 2, 3, 15, and 16 and in general, I deny Appellants' appeal for the reasons stated above.

IT IS SO ORDERED.



Christie Companion Varnado
Hearing Officer
City of Folly Beach

October 8, 2024

Charleston, South Carolina