STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE COURT
	)	FOR THE CITY OF FOLLY BEACH
COUNTY OF CHARLESTON	)	BUSINESS LICENSE APPEAL
Cynthia Campbell,	)	
	)	
Appellant,	)	
	)	
v.	)	**FINAL ORDER**
	)	(In Re: 220 W. Arctic Ave., Folly Beach, SC)
The City of Folly Beach,	)	
	)	
Respondent.	)	
	)	
	)	

This matter comes before me pursuant to § 110.16 of the Folly Beach Code of Ordinances ("Code") by Appellant Cynthia Campbell ("Appellant") appealing the decision of the License Official of the City of Folly Beach ("City") denying Appellant's application for an Investment Short Term Rental ("ISTR") business license for the property located at 220 West Arctic Ave. ("Property").

PROCEDURAL BACKGROUND

Appellant submitted a business license application for both a long term rental and an ISTR, as well as a Rental Registration Form, for a six bedroom rental dwelling on the Property on August 15, 2023. *(City Ex. 21.)* The City's License Official issued a letter denying Appellant's application for an ISTR license on December 21, 2023, on the basis that the number of licenses issued to ISTRs exceeds the cap established by § 117.02 of the Code and the dwelling did not have a Certificate of Occupancy ("CO"). (*City Ex. 1.)* By letter dated January 15, 2024, Appellant's husband, Alan Campbell, provided notice on Appellant's behalf of an appeal of the License Official's decision, asserting that a short term rental business license should have been issued for the Property based on his wife's November 16, 2021 application because there was no requirement

at the time the application was submitted that a CO had to be in place on the dwelling in order to obtain a business license and short term rental permit. (*City Ex. 3.*)

The parties participated in a pre-hearing conference held via teleconference on January 25, 2024, at which time the parties agreed to exchange documents relevant to the matter by February 2, 2024. Thereafter, counsel for the parties agreed to a briefing schedule and each side submitted its briefs, with the understanding that a hearing would be set shortly thereafter. As a result, with the consent of the parties and to accommodate the schedules of all involved, the appeal hearing was set for more than 30 days after receipt of the notice of appeal, pursuant to § 110.16(C).

Appellant submitted her brief of legal issues on February 29, 2024, which was accompanied by Appellant's Brief Exhibits A-D. The City submitted its legal brief on March 29, 2024, which included City's Exhibits 1-25.

The parties and counsel appeared at the hearing before me on April 8, 2024, with City Attorney Joseph C. Wilson, IV, Esquire representing the City and Ryan A. Earhart, Esquire representing Appellant. Appellant presented testimony by Alan Campbell and Cindy Campbell (collectively the "Campbells"). The City presented testimony by License Official Stacee Ritchie ("Ritchie"). Each party was given the opportunity to cross-examine the witnesses. Appellant entered into evidence Appellant's Hearing Exhibits A-C[1] ("App. Hrg. Ex.") as well as Appellant's Brief Exhibits A-D ("App. Br. Ex.") that were submitted with Appellant's brief, all without objection by the City. The City entered into evidence City Exhibits 1-25, without objection by Appellant. Upon request, parties' briefs were also made part of the record. 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.

[1] Appellant's Hearing Exhibits A-C differ from Appellant's Brief Exhibits A-C that were submitted with her brief.

FINDINGS

Having carefully considered the evidence and 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. The Campbells have developed several properties on Folly Beach prior to this Property. (*App. Br. Ex. A, ¶ 3.*)
2. Alan Campbell is the chairman of the Folly Beach Construction and Fire Board of Adjustments and Appeals. (*App. Br. Ex. A, ¶ 4.*)
3. Mr. Campbell is also a licensed engineer, who has rendered expert witness testimony in numerous construction cases and is very familiar with the building codes and the City of Folly Beach Zoning Ordinances.
4. Appellant operates a property management company to manage the Campbells' rental properties.
5. Appellant purchased the Property on June 18, 2021, for the purpose of developing it as a short term rental property as an investment.
6. The previous owners of the Property had operated a licensed short term rental in the existing dwelling on the Property.
7. The house on the Property was fully upfitted with appliances and could have been used as a rental property upon Appellant's purchase in 2021. (See *App. Hrg. Ex. C.*)
8. While they initially planned to renovate the existing house on the Property, the Campbells eventually decided to demolish the building and construct two new dwellings on the Property to be used as rental units.

9. The Campbells received a permit to totally demolish the existing house on November 15, 2021. (*City Ex. 4.*)

10. Appellant submitted a business license application for a short term rental for the Property on November 16, 2021. ("November 2021 Application," *City Ex. 5.*)

11. Appellant did not submit a rental registration form along with the November 2021 Application.

12. In conjunction with the November 2021 Application, Appellant contacted then-License Official Amberly Flowers ("Flowers") via email to enquire about keeping the prior owner's short term rental business license "going" and the cost of a short term business license for the Property if rentals were not anticipated to start until mid- to late 2022. ("Flowers' Email," *City Ex. 6.*)

13. Flowers initially quoted a base rate for the license of $2000, but later that afternoon advised Appellant in an emailed response that the "dwelling on the above address was issued a Permit for complete demolition; therefore, we cannot issue a Business License at this time. A Business License for this property cannot be issued until the Certificate of Occupancy has been issued for the newly built dwelling." (*City Ex. 6.*)

14. Appellant responded to Flowers' Email less than an hour later, stating: "Thanks Amberly. I wasn't sure how that worked and if we needed to keep the Short Term Licenses going while we will be under construction. I will check back in 2022!" (*City Ex. 6.*)

15. The City contends that Flowers' Email constituted a denial by the Licensing Official of the November 2021 Application sufficient to trigger an appeal under § 110.16 and § 110.18 of the Code as it was in effect in 2021, had the Campbells wished to appeal at that time. (*City Ex. 22.*)

16. Appellant claims that Flowers' Email was notice that her November 2021 Application remained "pending" while the Property was undergoing the zoning and permitting process rather than being a formal denial, thus failing to put her on notice that she could appeal the decision at that time. (*App. Br. Ex. A, ¶ 9.*)

17. Appellant asserts the City Attorney admitted the November 2021 Application "withered on the vine" rather than being denied by the License Official but has provided no evidence this statement was made, and the City denies it.

18. In further support of her position that the November 2021 Application was not denied, Appellant asserts that the City has not produced evidence of a denied application form and the "For Office Use Only" section of her November 2021 Application was not marked either "yes" or "no" in response to the "Approved?" box on the form. (*City Ex. 5.*)

19. Ritchie testified the business license application form[2] was not created by the City and the City has never used the "For Office Use Only" section with any applications.

20. Appellant concedes she did not receive a business license for the Property in 2021 and she did not pay the City for a business license for the Property in 2021.

21. Appellant did not submit an appeal within 30 days after her acknowledged receipt of Flowers' Email, as would have been required under § 110.18(A) of the Code as it was in effect on November 16, 2021. (*City Ex. 22.*)

22. On November 9, 2021, prior to receiving Appellant's first application, City Counsel held a first reading on Ordinance 036-21, which proposed amendments to the Business License Code, with the intent to make changes to comply with the statewide Business License

[2] The form states "Application produced by the South Carolina Business Licensing Officials Association." (*City Ex. 5.*)

Standardization Act ("Standardization Act"), which was to become effective on January 1, 2022. (*App. Br. Ex. D; City Ex. 23.*)

23. Ordinance 036-21 was passed by City Counsel on December 14, 2021, and became effective on January 1, 2022. (*City Ex. 23.*)

24. Appellant provided no credible evidence to support her contention that the City's taking steps to amend the business license provisions of the Code in November and December of 2021 is evidence that "the City was aware that its current practices were out of line with statewide standards of due process for applicants seeking business licenses" at the time it was processing Appellant's November 2021 Application. (*App. Br., p. 10-11.*)

25. Section 110.16(B) of the business license provisions of the Code as they were in effect on November 16, 2021, stated: "A decision of the License Official to deny a license may be appealed. See § 110.18, which explains the procedures for appealing decisions of the License Official." (Ordinance 02-18, *City Ex. 22.*)

26. Under § 110.18(A) of the Code as it was in effect on November 16, 2021, "Any person aggrieved by a license suspension, . . . or a denial of a business license by the License Official may appeal the decision by written request stating the reason for the appeal. The appeal may be filed with the License Official within thirty days after service by certified mail or personal service of the notice of the License Official's decision." (Ordinance 02-18, *City Ex. 22.*)

27. There was no specific provision in the Code on November 16, 2021, concerning what form the License Official's denial of a business license needed to take in order to trigger a right to appeal other than notice of the decision needed to be delivered to a party either by certified mail or via personal service. (§ 110.18(A), *City Ex. 22.*)

28. Under § 110.14 as amended effective January 1, 2022, "A decision of the license official shall be subject to appeal as herein provided. Denial shall be written with reasons stated." (Ordinance 36-21, *City Ex. 23.*)

29. Under § 110.16(A) as amended effective January 1, 2022, "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 by written request stating the reasons for appeal, filed with the license official within ten (10) days after service by mail or personal service of the notice of determination, denial, or suspension and proposed revocation." (*City Ex. 23.*)

30. The dwelling on the Property was demolished in December of 2021 or January of 2022.

31. On July 12, 2022, following an appeal by another property owner of the City's policy of rejecting short term rental business license applications for properties without a CO, I ruled that under the applicable Code provisions at the time, the City could not properly deny a business license application due to the lack of a CO, but could properly require that a building have a CO in place prior to issuing a short term rental permit. (HSI LLC and 0 Sandbar Lane v. The City of Folly Beach, Final Order, p.12 (July 12, 2022); *City Ex. 7.*) I further ruled that both a short term rental business license and short term rental permit were required before a property could be legally operated as a short term rental. (Id.)

32. As a result of that ruling, between July 12, 2022 and September 13, 2022, there was a window of time in which the City accepted short term rental business license applications for properties without a CO, but the owners could not obtain a short term rental permit for the units until after the CO was in place. (*App. Br. Ex. C; City Ex. 7.*)

33. Although the ruling was a matter of public record, the City did not advise Appellant of that opportunity between July 12 and September 13, 2022, and Appellant did not submit a new application for a short term rental business license for the Property or inquire about proceeding with the November 2021 Application during that time.

34. On September 13, 2022, the City adopted Ordinance 027-22, which significantly revised the Short Term Rental section of the Code and included at § 117.02(A)(1):[3] "No business license shall be issued for the rental of a residential unit which is planned or under construction until a certificate of occupancy is issued for the unit." (*City Ex. 8.*)

35. I find that notice of the window would have been futile for Appellant, however, since even if she received short term rental business licenses for the yet-to-be constructed dwellings on the Property during the window, she would not have been able to obtain short term rental permits for the units without COs and she would not have been able to renew the business licenses in 2023 because the COs were not issued by May 1, 2023.

36. On October 11, 2022, the City received a citizen's petition ("Petition") initiating an ordinance to cap the number of what it defined as "Investment Short Term Rental" business licenses at 800. (*City Ex. 17.*) The Petition included new definitions to be added to Chapter 117, differentiating between an Investment Short Term Rental ("ISTR") and an Owner-Occupied Short Term Rental ("OSTR"). (*Id.*)

37. On October 18, 2022, upon the acknowledgement that the City had issued more than 800 short term rental business licenses for the 2022 business license year as of that date, the City enacted Ordinance 32-22, which contained a moratorium on the issuance of new short term rental business licenses within the City for residential dwellings taxed at a 6%

[3] This section was later codified as § 117.03(A)(1). (*City Ex. 2.*) The provision has since been modified in Ordinance 001-24, which was adopted on February 20, 2024, but was not addressed by either party in their briefs or at the hearing.

property tax rate, with exceptions for the renewals of short term rental licenses for properties "that were legally licensed as of October 18th, 2022." (*City Ex. 11, CoFB-0053-0054.*) The moratorium in Ordinance 32-22 had an expiration date of January 11, 2023. (*Id.*)

38. On November 14, 2022, Appellant submitted a new application for a short term rental business license for the Property. (*City Ex. 9.*)

39. There was no dwelling on the Property at this time.

40. Ritchie responded to Appellant via email on November 14, 2022, advising that Appellant could not apply for a license or rental registration until a CO was issued for a dwelling on the Property and explaining that a separate business license and rental registration would be required for each unit to be rented. (*City Ex. 10.*) Ritchie's email did not discuss the appeal procedure but did include a copy of the relevant portions of Ordinance 027-22 supporting her denial. (*Id.*)

41. On November 15, 2022, Mr. Campbell responded to Ritchie's email seeking clarification of the applicability of the moratorium in Ordinance 032-22 in regard to the timing of the short term rental application and whether it would "go on record to reserve a STR license placeholder for our houses" at the Property. (*City Ex. 11.*)

42. Ritchie promptly responded via email with an explanation as to why the exemptions in the moratorium did not apply to Appellant's Property and re-confirming that a CO was required for licensing. (*City Ex. 11*).

43. On November 17, 2022, noting that two houses were going to be built on the Property, Appellant submitted two short term rental business license applications – one for each house – to Ritchie via email. (*City Ex. 12.*)

44. Appellant testified that although she believed her November 2021 Application was still "pending," she submitted these new applications in November of 2022 out of precaution because she was aware of changes to the City's ordinances, and she wanted to have the paperwork on file.

45. Ritchie responded via email to Appellant's November 17, 2022, email again stating that she could not issue a business license without a CO and further noting that in accordance with the new ordinance passed in September of 2022, Applicant must also submit a rental registration form before a business license could be issued. (*City Ex. 13.*)

46. Appellant did not submit rental registration forms for the yet-to-be constructed units in November of 2022.

47. Appellant did not submit a notice of appeal within 10 days following her acknowledged receipt of Ritchie's November 17, 2022, email rejecting the business license applications, as would have been required under § 110.16(A) as it was in effect at that time. (Ordinance 36-21, *City Ex. 23.*)

48. The building permits for the new units on the Property were issued on November 21, 2022. (*City Ex. 14.*)

49. On December 13, 2022, Council enacted Ordinance 34-22, which extended the expiration date for the moratorium to April 15, 2023, or five business days after any special election called to adopt the Petition.

50. The City held a special election on the referendum 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.

51. Accordingly, Chapter 117 of the Code was amended to set a cap of ISTR business licenses at 800 and 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)(2). (*City Ex. 2.*)

52. Upon passage of the referendum by popular vote on February 7, 2023, the number of the City's ISTR business licenses was capped at 800, but the number of ISTR licenses already in existence exceeded the cap.

53. The City also issued Guidelines concerning ISTR business license renewals, which make clear that licenses are for specific structures and if a dwelling is torn down, the owner will need to apply for a new license under the cap. (*City Ex. 19.*) This administrative policy was presented to City Council on March 6, 2023. (*City Ex. 20.*)

54. On May 30, 2023, City Administrator Aaron Pope informed Mr. Campbell via email that the requirement to have a CO prior to the issuance of a short term rental business license was an administrative policy at the time Applicant submitted her November 2021 Application and that the City considered Appellant's November 2021 Application and the November 2022 Applications to be inactive after the respective windows for appeals had expired. (*App. Br. Ex. C.*)

55. On August 15, 2023, Applicant submitted a business license application for both "Long & Short Term Rental," accompanied by a rental registration form for the six bedroom unit. (*City Ex. 21.*) The application did not include a rental registration form for the two bedroom unit.

56. Appellant contends Ritchie suggested she resubmit her business license application at that time so that it could be denied and thereby trigger the appeal process, She further contends

this was the first time the City had notified Appellant of her right to appeal, despite her having submitted three previous short term rental license applications.

57. A temporary CO was issued for the six bedroom unit on the Property on December 15, 2023, with an expiration date of January 15, 202[4].[4] (*City Ex. 15.*)

58. Ritchie issued a certified letter denying Appellant's application for an ISTR license on December 21, 2023, on the basis that the number of licenses issued to ISTRs exceeds the cap established by § 117.02 of the Code and the unit did not have a CO. (*City Ex. 1.)*

59. The COs for the new units on the Property were issued on February 29, 2024 (two bedroom unit) and March 7, 2024 (six bedroom unit). (*City Ex. 16.*)

60. Pursuant to § 110.14 of the Code as amended effective April 11, 2023, "[a] decision of the License Official shall be subject to appeal as herein provided. Denial shall be written in compliance with § 110.16." (*City Ex. 18.*)

61. Under § 110.16(A) of the Code as amended effective April 11, 2023, 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."[5] (*City Ex. 18.*)

[4] The document actually references 2023, but I find that to have been a scrivener's error.

[5] Appellant's assertion that this language was included in Ordinance 36-21, adopted in December of 2021, is inaccurate. This language did not become part of the Code until April of 2023. (*City Ex. 18.*)

62. Pursuant to § 110.16(B) of the Code as amended effective April 11, 2023, "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. 18.*)

63. Under § 10.05 of the Code, the terms "written" or "in writing" are defined to include "printing and any representation of words, letters, symbols or figures."

64. The terms "service by mail" and "personal service" are not defined in the Code.

65. Pursuant to S.C. Code § 6-1-400(B)(1), which became effective on January 1, 2022, business licenses are issued to taxpayers "for a twelve-month period beginning May first and ending April thirtieth. Each business license issued must expire April thirtieth."

66. Prior to September 13, 2022, § 117.02 of the Code read: "Any owner wishing to operate a short term rental must maintain a current business license, comply with rental registration requirements, and make proper payment of local, county, and state taxes." *(City Ex. 8, excluding redline revisions.)* Under Section (A), business licenses had to "be renewed annually by the submittal of a form and fee as established by the city." *(Id.)* Under Section (B), "[e]ach new short term license application must be accompanied by an application form provided by the city and must be renewed on an annual basis." *(Id.)*

67. When § 117.02 of the Code was amended via Ordinance 027-22, effective September 13, 2022, it was revised to read: "Any 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." *(Ex. 8, including redline*

revisions.) Under Sections (A) and (B) as amended, business licenses and rental registration permits "must be obtained and renewed annually by the submittal" of the appropriate forms and paying the required fees established by the City. *(Id.)* The amendment also added Section (A)(1): "No business license shall be issued for the rental of a residential unit which is planned or under construction until a Certificate of Occupancy is issued for the unit." and Section (B)(1)(a): "No new business license to operate a short-term rental shall be issued prior to the approval of a rental registration permit."

68. When the City amended Chapter 117 in April of 2023, following the referendum, § 117.02 became § 117.03. *(City Ex. 2.)*

69. Based on the plain and ordinary meaning of the words in §117.02(C)(2), as amended in 2023, since the cap had been exceeded, in order for an ISTR business license to be issued or renewed in 2023, the ISTR business license must have been in place prior to and have remained in good standing since February 7, 2023. (*City Ex. 2.*)

70. Appellant did not have any ISTR business licenses prior to and in good standing for the dwelling units on the Property on February 7, 2023, and, therefore, does not satisfy the requirements to be grandfathered in under § 117.03.

71. Appellant's attempts to submit short term rental business license applications prior to the issuance of the COs on the new dwellings on the Property were intended as a means to "carry through" the short term rental business license held by the prior owner of the Property, but there was no such provision available under any version of the City's business license code.

72. Even if Appellant had been awarded a business license for a short term rental on the Property in November of 2021, or during the 2022 "window," because Appellant's

dwellings did not have CO's in May of 2023, her license applications would have been properly denied due to the September 2022 amendment requiring a CO for short term rental business licenses.

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 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 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 unambiguous and conveys a clear and definite meaning. In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998). 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." 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).

Licensing officials who are given administrative duties under an ordinance are vested with discretionary powers in administering the law. Momeier v. John McAlister, Inc., 203 S.C. 353, 27 S.E.2d 504, 509–10 (1943); see also, Landing Development Corp. v. City of Myrtle Beach, 285 S.C. 216, 329 S.E.2d 423 (1985); Kerr v. City of Columbia, 232 S.C. 405, 102 S.E.2d 364 (1958). "The 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)).

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 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). "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)).

DISCUSSION

Appellant's stated reasons in her notice of appeal can be summarized as asserting that when Appellant submitted the November 2021 Application, the License Official improperly failed to issue the business license because the administrative policy interpreting the Code to require that a CO had to be in place for the business dwelling in order to obtain a business license and a short term rental permit was illegal. In her brief, Appellant further characterized the reasons for the appeal as follows:

1. The City denied Appellant the process due under the United States and South Carolina Constitutions by failing to give her notice and a meaningful opportunity

to be heard when she submitted her applications in November of 2021 and November of 2022, because but for the City's failure to provide proper notice of the denial of the applications, the applications would have been processed and approved.

2. The City was aware in November 2021 that it was denying Appellant's business license application without due process because its current practices were out of line with statewide standards of due process at that time.

During his closing, Appellant's counsel also raised arguments concerning estoppel and equal protection.[6] Those issues were not stated in Appellant's notice of appeal or developed in her legal brief submitted prior to the hearing. Under § 110.16(C)(c) of the Code, "[a]dditional 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. Because Appellant had ample opportunity to address these grounds during the briefing process and failed to do so, the Court will not entertain them at this point.

I. Appellant has been afforded due process in connection with all of her applications.

Under Article 1, § 22 of the South Carolina Constitution, "no person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard." "The fundamental requirements of [procedural] due

[6] In addition, the Court has recently addressed a similar equal protection argument in another matter and found no merit to the argument that the property owner was treated differently because other property owners received short term rental business licenses without a CO during the brief window in 2021. In re: 704 E. Erie, Larichiuta v. City, Final Order issued March 8, 2024. The Equal Protection Clause of the Fourteenth Amendment "keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." Nordlinger v. Hahn, 505 U.S. 1, 10 112 S.Ct. 2326, 120 L.Ed.2d1 (1992). To prevail under an alleged violation of the equal protection clause, Appellant must demonstrate she "has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Vill. of Willowbrook v. Olech, 528 U.S. 562, 564, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000). In the Larichiuta appeal, I found that the only applicants who received business licenses without a CO were those few whose 2022 applications were still under active consideration or were submitted during that window. As discussed below, Appellant's November 2021 Application was not pending in July-September of 2022 and, although the ruling was a matter of public record, Appellant did not submit a new application or inquire about proceeding with the November 2021 Application during the time the window was open. Accordingly, Appellant has presented no evidence to indicate she was similarly situated to those other applicants, such that an equal protection claim could be supported. Moreover, the business license would have been useless without the short term rental permit, which could never be issued without a CO in place.

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)). "Due process is flexible and calls for such procedural protections as the particular situation demands." Bundy v. Shirley, 412 S.C. 292, 303, 772 S.E.2d 163, 169 (2015) (quoting Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)).

a. August 2023 Application

Pursuant to § 110.16(B) of the Code as amended effective April 11, 2023, "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. 18.*) Under § 110.14 of the Code as amended effective April 11, 2023, "[a] decision of the License Official shall be subject to appeal as herein provided. Denial shall be written in compliance with § 110.16." (*City Ex. 18.*) Under § 110.16(A) of the Code as amended effective April 11, 2023, 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." (*Id.*)

Here, the License Official sent Appellant a certified letter on December 17, 2023, informing her that her 2023 application for an ISTR business license had been denied. (*City Ex. 1.*) The letter, which constitutes "notice" for purposes of due process, met all of the requirements of § 110.16(A) and Appellant does not contend otherwise. Following receipt of the letter, Appellant submitted a notice of appeal within 30 days of the issuance of the letter. (*City Ex. 3.*) As a result, the parties' counsel were permitted to brief all legal issues and Appellant was afforded a hearing before me at which time she was permitted to submit evidence and cross-examine witnesses. Accordingly, I find that Appellant has been, and continues to be, afforded ample due process in regard to her 2023 Application.

b. November 2021 Application and Flower's Email response

While the appeal provisions under the City's business license regulations in effect in November of 2021 were different than those in place in 2023, they nonetheless met the minimum requirements of procedural due process by affording those whose interests were affected by the Licensing Official's decisions with notice, an opportunity for a hearing, and the ability to appeal. Under § 110.16(B) of the business license provisions of the Code as they were in effect on November 16, 2021, "[a] decision of the License Official to deny a license may be appealed. See § 110.18, which explains the procedures for appealing decisions of the License Official." (*City Ex. 22.*) At that time, § 110.18(A) stated: "Any person aggrieved by a license suspension, . . . or a denial of a business license by the License Official may appeal the decision by written request stating the reason for the appeal. The appeal may be filed with the License Official within thirty days after service by certified mail or personal service of the notice of the License Official's decision." (*City Ex. 22.*) Thereafter, then-§110.16(B) & (C) provided for a hearing to be set before a hearing officer, at which time the appealing party would have the right to be represented by

counsel, present evidence, and cross-examine witnesses and would receive a "written decision based on findings of fact and conclusions on application of the standards herein." (*Id.*) This written decision by the hearing officer would be final. (§ 110.16(C), *Id.*) Then, as now, an aggrieved party could appeal the hearing officer's final decision to the Charleston County Circuit Court pursuant to S.C. Code § 18-7-10. Accordingly, I find the Code met all the constitutionally mandated requirements for procedural due process.

Appellant argues nonetheless that the City was aware in November of 2021 that "its current practices were out of line with statewide standards of due process for applicants seeking business licenses" and should have applied the provisions adopted in 2022 to her November 2021 Application. Appellant provides no legal authority to support this position, however. Moreover, while the City was in the process of amending its business license ordinance in 2021 in preparation for the standardization requirements under S.C. Code § 6-1-400 *et seq.* becoming effective on January 1, 2022, the Standardization Act does not include any minimum or standard requirements addressing due process procedures for the denial of a business license. (Section § 6-1-410 addresses the appeal procedure for notices of final assessment, which is not applicable here.) Moreover, Appellant confuses the more rigorous notice and appeal procedure in the 2022 Ordinance with that adopted in 2023, rendering this argument moot.

Appellant next argues that her November 2021 application was never denied and so she was not given notice that the application had been ruled on by the Licensing Official, thereby triggering a right to appeal. Rather, Appellant contends it was reasonable for her to believe the November 2021 Application remained pending until 2023 or 2024 and a short term rental business license would be issued in the future as the Property advanced through the zoning and permitting process. As discussed below, I find no merit to this argument.

1. The November 2021 Application was denied.

Review of the Flowers Email makes clear that Flowers denied Appellant's application for a business license on November 16, 2021. On that day, Appellant contacted Flowers via email to inquire about changing[7] the Property's previous owners' short term rental license into her name, explaining that she intended to start offering rentals in 2022, and asking about the appropriate business license fee. (*City Ex. 6.*) Appellant attached a copy of a business license application for "Short/Long Term Rentals" of the Property along with her email. (*City Ex. 5 & 6.*) While Flowers initially quoted a base rate of $2000 for the license, later that afternoon, she advised Appellant in an emailed response that because the "dwelling on the above address was issued a Permit for complete demolition; therefore, we cannot issue a Business License at this time. A Business License for this property cannot be issued until the Certificate of Occupancy has been issued for the newly built dwelling." (*City Ex. 6.*) Appellant responded less than an hour later, stating: "Thanks Amberly. I wasn't sure how that worked and if we needed to keep the Short Term Licenses going while we will be under construction. I will check back in 2022!" (*City Ex. 6.*)

I find nothing in Flowers' emailed statements in the record that could be construed as a promise to keep the application open or "pending" until a CO was issued or that she would hold onto Appellant's application so that it could be processed at a later date. Rather, Flowers made clear she would not issue a license at that time and would not be able to do so until after a CO was issued for the new building. In other words, she communicated to Appellant her decision to deny issuing a 2021 business license for the Property.

In support of her position that the 2021 Application was never denied, Appellant asserts the City has not provided evidence of a "denied application form" and the "For Office Use Only"

[7] The City did not then and does not now permit business licenses to be transferred to the "name" of a new owner. Rather, a new application is required.

section of her November 2021 Application was not marked either "yes" or "no" in response to the "Approved?" box on the form. (*City Ex. 5.*) Due process does not require that the notice be in writing. *See, e.g.,* Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546, 105 S.CT. 1487, 1495 (1985) (finding oral notice of the charges was adequate for the purposes of due process.) The Code in 2021 did not specify a format or process by which the License Official's decision to deny a business license had to be issued or documented. (*City Ex. 22* at § 110.18(A) and § 110.16(B).) It did not require a formal denial letter and no mention is made regarding filling out the bottom of the business license application form. In fact, Ritchie testified the City did not create the form[8] and has never incorporated the "For Office Use Only" section into its application review process. Appellant did not produce any evidence to the contrary. Rather, Appellant conceded she did not receive a business license for the Property in 2021 and the City did not collect money from her for a business license for the Property in 2021. Moreover, business licenses do not automatically carry over from year to year, but rather must be resubmitted each year. Accordingly, I find that Flowers denied Appellant's November 2021 Application via her email and that Flowers' Email constitutes a form of notice acceptable under the principles of due process.[9]

2. Appellant was given notice of the denial sufficient to trigger a right to a hearing on appeal had she sought one.

While a formal denial letter was not required to trigger an appeal under the 2021 Code, § 110.18(A) did require that the notice of the determination or denial had to be provided to the

[8] The form states, "Application produced by the South Carolina Business Licensing Officials Association." (*City Ex. 5.*)

[9] Appellant also creatively argues Flowers' Email response at 1:38 PM on November 16, 2021, in which she stated "We will process the Business License at the base rate of $2000.00" was actually a decision via email to approve Appellant's business license application and that the follow up email from Flowers at 3:08 PM that day in which she explained that a business license could not be issued because she discovered that Appellant had secured a permit for complete demolition of the dwelling was a decision to revoke the license, thus triggering different due process requirements under § 110.17(B). (*City Ex. 22.)* As Appellant did not pay the City for a 2021 business license or receive a copy of a license and the application was denied, I find no basis to support this argument.

applicant by "mail or personal service." (*City Ex. 2.*) Flowers Email is a writing[10] that communicated the Licensing Official's final decision that she would not issue a 2021 business license for Appellant's Property and stated the reasons for her decision. While the email was not sent to Appellant via certified mail, it was personally sent to her. Appellant not only received Flowers' Email, but responded to it.

The term "personal service" was not defined in the 2021 Code, but the Code does direct that "[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." § 10.06. In addition, "due process is flexible and calls for such procedural protections as the particular situation demands." Kurschner, 376 S.C. at 172, 656 S.E.2d at 350 (citing S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002)).

"Personal service" is generally defined as "[a]ctual delivery of the notice or process to the person to whom it is directed" BLACK'S LAW DICTIONARY 1180 (8th ed. 2004). There is no contextual basis in the 2021 Code or the generally accepted definition of the words to indicate that personal service of decisions or determinations by the Licensing Official needed to be delivered to an applicant via a process server or even hand delivery or another manner similar to that required under the Rules of Civil Procedure, for instance. To operate a government licensing office in such a manner would be overly cumbersome, expensive, and a poor use of taxpayer funds.

Rather, the purpose underlying the concept of personal service is ensuring that the intended person receives reasonable notice of an action. See Roche v. Young Bros. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Indeed, our courts of appeal recognize this concept and

[10] The terms "written" or "in writing" are defined in the Code to include "printing and any representation of words, letters, symbols or figures." § 10.05.

have held that an email sent from the authority issuing the decision and received by the intended party constitutes sufficient service to trigger an appeal before either the South Carolina Court of Appeals or the Supreme Court. See Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC, 422 S.C. 211, 215–19, 810 S.E.2d 856, 858–60 (2018). Thus, I find that notice of Flowers' decision sent via email to Appellant's email address that the parties were actively using to communicate at the time and that Appellant admits she contemporaneously received and, indeed, responded to in the same email string constituted personal service of notice sufficient under then-§ 110.18(A) Code to trigger Appellant's right to appeal in 2021.

To the extent Appellant contends she was unaware of the opportunity to appeal, while it is true that Flowers' Email did not provide Appellant with a reference to the Code's appeal provisions or explain the appeal procedure to her, that was neither required by the Code at the time, nor is it part of the typical standards required for due process. "Rather 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)). While it is helpful to the public that under the current version of § 110.16(A) of the Code, the appeal procedure is required to be provided to applicants as part of the written notice of denial, such a step is not necessary to effectuate the elements of procedural due process. In 2021, the opportunity for appeal of unfavorable decisions of the license official and the mechanisms of the appeal process were set forth in plain language in the Code, which was published on-line and available to the public. Accordingly, I find no merit in Appellant's argument that she was denied due process in regard to her 2021 application.

c. November 2022 Applications

Appellant submitted via email a new application for a short term business license for the Property on November 14, 2022, and then resubmitted the application on November 17, 2022, indicating there were two new dwellings to be constructed on the Property for which Appellant wished to have rental licenses. (*City Ex. 9 & 12.*) In January of 2022, the City had added to § 110.14, a provision requiring that denials of a business license application must be "written with reasons stated." (*City Ex. 23.*) Under § 110.16(A) as amended effective January 1, 2022, "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 by written request stating the reasons for appeal, filed with the license official within ten (10) days after service by mail or personal service of the notice of determination, denial, or suspension and proposed revocation." (*City Ex. 22.*)

Ritchie's email response to Appellant on November 14, 2022, stated Appellant could not apply for a business license until the CO was issued for the Property and provided her with a copy of the applicable section of the ordinance. (*City Ex. 10.*) Ritchie provided further details about basis for her decision to deny the licenses application in her response to Appellant's November 15, 2022 email. (*City Ex. 11.*) She reiterated this position in her November 17, 2022 email. (*City Ex. 13.*) As discussed above, Ritchie's emails constitute written notice and personal service of the denial of Appellant's November 2022 Applications and the reasons therefor. Appellant did not submit a notice of appeal within 10 days after receipt of Ritchie's emails, as would have been required under § 110.16(A) as amended effective January 1, 2022. Accordingly, I find Appellant was afforded due process in conjunction with the November 2022 applications and filed to timely appeal.

II. To the extent Appellant's appeal is otherwise based on her business license applications submitted for the Property prior to August 15, 2023, the appeal is untimely.

Generally, "[t]he requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) (quoting Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).) Therefore, having found Appellant missed her opportunities to appeal the 2021 and 2022 applications, this Court lacks jurisdiction to further consider the merits of the issues that could have been appealed.

III. The Petition and Referendum creating the cap are not invalid because they are regulated under the City's business license ordinance rather than via its zoning ordinance.

While not relevant to its due process arguments, Appellant adopted by reference the arguments raised by Folly East Indian Co., LLC, in the recently dismissed lawsuit, Folly East Indian Co, LLC v. City of Folly Beach, Case No. 2023-CP-10-0264, in asserting the ordinance capping ISTR licenses is invalid under I'On v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000). I find Judge Burch's Order rejecting those arguments is controlling. (*City Ex. 25.*) I would further note that while the broad discretion afforded to zoning boards is not applicable here, Appellant misses the mark with this argument because licensing officials are also vested with discretionary powers in administering the ordinances governing their duties. Momeier, 27 S.E.2d at 509–10 (1943).

IV. Appellant provides no basis under § 117.02 and § 117.03 to reverse the denial of her August 15, 2023 ISTR business license renewal application, based on the License Official's stated reasons in her December 21, 2023 letter.

In her December 21, 2023 letter, the License Official explained she was denying Appellant's ISTR business license renewal application for the Property because the current number of ISTR rental licenses issued exceeds the allowable number under the cap pursuant to § 117.02 and because the structure to be rented did not have a CO as required under § 117.03. (*City Ex. 1.*) Appellant did not challenge the License Official's findings as part of her appeal. Nonetheless, based on a plain reading of the ordinances, which are clear and unambiguous, Appellant did not have an existing ISTR business license in good standing prior to February 7, 2023, for either of the dwelling units on the Property and neither building had a permanent CO until several weeks after the ISTR business license applications were denied. (*City Ex. 16.*) Therefore, because neither building on the Property met the exceptions to the cap when Appellant submitted her ISTR application in 2023, or the requirement that the dwellings must have a CO in order to be licensed, the License Official properly followed § 117.02 and § 117.03 in denying the application in December of 2023.

CONCLUSION

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

IT IS SO ORDERED.

Christie C. Varnado

Christie Companion Varnado
Hearing Officer
City of Folly Beach

May 7, 2024

Charleston, South Carolina

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