

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

Owalla, LLC,)
)
Appellant,)

v.)

The City of Folly Beach,)

Respondent.)

FINAL ORDER
(In re 2393 Folly Rd., Unit 2J)

This matter comes before me pursuant to § 110.16 of the Folly Beach Code of Ordinances by Appellant Owalla, LLC, proceeding *pro se* via principals Meghan O’Hara (“O’Hara”) and Katie Coley Wall (“Wall”), appealing the decision of the License Official of the City of Folly Beach (“City”) denying Appellant’s application to renew the Investment Short Term Rental (“ISTR”) business license for the property located at 2393 Folly Rd., Unit 2J (“Property”).

The City’s License Official issued her letter of denial on November 17, 2023. (*City Ex. 1.*) Due to an error by the United States Postal Service, the certified letter was improperly returned as undeliverable although it was sent to the correct address. O’Hara acknowledged receipt of the courtesy copy sent to Appellant via email on November 20, 2023, however. O’Hara emailed the City with notice of this appeal of the License Official’s denial on December 19, 2023, indicating that Appellant was appealing the denial on the grounds that Appellant had mistakenly failed to renew the license in 2020, but once the error was discovered in December of 2022, Appellant self-reported the discrepancy. With the consent of the parties and to accommodate the schedules of all involved, the appeal hearing was scheduled for more than 30 days after receipt of the notice of appeal, pursuant to § 110.16(C).

The parties participated in a pre-hearing conference held via teleconference on January 5, 2024, at which Appellant appeared *pro se* via O'Hara and Wall and the City was represented by City Attorney, Joseph C. Wilson, IV, Esquire. Appellant was advised of its right to have counsel present at the hearing and acknowledged that it would waive that right. The parties exchanged exhibits on or before January 29, 2024, pursuant to the applicable Amended Order in this matter.

The parties and counsel appeared at the hearing on February 1, 2024. Appellant presented testimony by O'Hara and Wall. The City presented testimony by License Official Stacey Ritchie ("Ritchie"). Each party was given the opportunity to cross-examine the witnesses. Appellant entered into evidence *Appellants Exhibits A-E*, without objection by the City. The City entered into evidence *City Exhibits 1-5 and 11-15*, without objection by Appellant.

FINDINGS

Having carefully considered all evidence and arguments presented, taking into account the credibility of the witnesses and the accuracy of the evidence, and having reviewed all of the parties' submissions, I make the following findings by a preponderance of the evidence:

1. Pursuant to § 117.03 of the Folly Beach Code of Ordinances, "[a]ny owner wishing to operate a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state taxes." (*City Ex. 11*.) Business licenses and rental registration permits "must be obtained and renewed annually by the submittal" of the appropriate forms and paying the required fees. Id.
2. Prior to 2022, the City's business license renewals were due on December 31st, but the South Carolina Business License Tax Standardization Act ("Standardization Act") became

effective on January 1, 2022, making the business license renewal process uniform for all counties and municipalities. (*City Ex. 13.*)

3. Pursuant to the Standardization Act, business licenses are issued for “a twelve-month period beginning May first and ending April thirtieth. Each business license issued must expire April thirtieth The business license must be renewed before May first of the year in which it expires.” S.C. Code Ann. § 6-1-400(B)(1). (*City Ex. 13.*)
4. Following the City’s receipt of a citizen petition to limit the number of ISTRs to 800 (*City Ex. 15*), and upon the acknowledgement that the City had issued more than 800 ISTRs for the 2022 business license year as of that date, the City enacted Ordinance 32-22 that contained a moratorium on the issuance of new ISTRs within the City for residential dwellings taxed at a 6% property tax rate, with exceptions for the renewals of ISTR licenses for properties “that were legally licensed as of October 18th, 2022.”
5. The moratorium in Ordinance 32-22 had an expiration date of January 11, 2023. The moratorium was extended by Ordinance 34-22, which passed on December 13, 2022, and extended the expiration date to April 15, 2023, or five business days after any special election called to adopt the petition for a cap on short term rentals.
6. 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.
7. Accordingly, Chapter 117 of the Folly Beach Code of Ordinances was amended to set a cap of ISTRs at 800 and include an exception, which states: “Any existing [ISTR] business license issued prior to February 7, 2023 which remains in good standing may continue to be renewed annually, even if the number of [ISTR] business licenses exceeds the cap.” This language was codified in § 117.02(C)(2). (*City Ex. 11.*)

8. Upon renewal of a business license, the City issues a hard copy of the license which includes the owner's name and address and the license's expiration date.
9. O'Hara and Wall have strong emotional connections with Folly Beach. O'Hara has been visiting Folly Beach since 2008 and purchased property on the island in 2011. Wall participated in O'Hara's wedding on the island in 2009. O'Hara's parents purchased the Property in September of 2013, and O'Hara and Wall assisted with remodeling the unit. O'Hara and Wall formed Owalla, LLC and purchased the Property in April of 2017, which they have used as a rental property and for their personal use since that time.
10. Appellant had a 2019 ISTR business license for the Property, which expired on December 31, 2019. (*City Ex. 5.*)
11. Due to miscommunications with their property manager and changes in mailing addresses, Appellant mistakenly failed to renew the ISTR business license for the Property in 2020, 2021, and 2022.
12. Appellant first realized the ISTR business license for the Property had lapsed in December of 2022. O'Hara reached out to Ritchie via email on December 22, 2022, after the moratorium in Ordinance 32-22 was already in place, to inquire how she could get the license "caught up" and renewed. (*App. Ex. A.*)
13. Via email response, Ritchie informed O'Hara that there was no record of the Property having an active ISTR business license since 2019, and the City was not processing any ISTR renewals for delinquent properties or new applications at that time due to the moratorium. (*App. Ex. A.*)
14. Appellant submitted an application for an ISTR business license for the Property on March 3, 2023, and the Rental Registration Form on April 28, 2023. (*City Ex. 4.*) The registration

form was missing some information, which Appellant supplied over the following months.*(Id.)*

15. Ritchie, as the City's License Official, formally denied Appellant's renewal application on November 17, 2023. *(City Ex. 1.)*
16. Based on the plain and ordinary meaning of the words in Ordinance 32-22, the City's intent to exclude from renewal of ISTR licenses those businesses which did not have a valid, existing ISTR license as of October 18, 2022, is clear and unambiguous.
17. Due to Appellant's failure to timely renew the business license after it expired on December 31, 2019, the Property was not legally licensed by the City as an ISTR on October 18, 2022.
18. Appellant's failure to timely renew the business license was not intentional and Appellant self-reported the discrepancy.
19. Appellant could have renewed its delinquent ISTR business license up to October 18, 2022, with payment of late fees, until the moratorium went into place. Thereafter, Ritchie was unable to accept delinquent renewals or issue new licenses for ISTRs due the moratorium and the cap.
20. 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.
21. Based on the plain and ordinary meaning of the words in §117.02(C)(2), since the cap had been exceeded, in order for an ISTR business license to be renewed in 2023, the ISTR business license must have been in place and remained in good standing since February 7, 2023.

22. Appellant did not have an ISTR business license in good standing for the Property on February 7, 2023, and, therefore, did not satisfy the requirements to be grandfathered in under the Ordinance.

23. Accordingly, Ritchie properly denied Appellant's ISTR business renewal application.

LEGAL STANDARDS

I have applied the following legal standards in evaluating the evidence and arguments. A municipal business license ordinance should be interpreted based on the general rules of statutory construction. Olds v. City of Goose Creek, 424 S.C. 240, 246, 818 S.E.2d 5, 9 (2018). Similarly, § 10.02 of the City's Ordinances instructs "[u]nless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law."

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the [enacting body]." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used." City of Myrtle Beach v. Juel P. Corp., 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001) (citing Charleston County Parks and Rec. Com'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995)). In addition, "the [ordinance] must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Similarly, the ordinance should be read "in a manner consonant and in harmony with its purpose." CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citing State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010)).

The terms in the ordinance should be given their “plain and ordinary meaning without resort to subtle or forced construction to limit or expand the [ordinance’s] operation.” Sloan, 371 S.C. at 499, 640 S.E.2d at 459. Where the words in an ordinance are unambiguous, the court should apply their literal meaning. Id. at 498, 640 S.E.2d at 459. Under the plain meaning rule, a court may not employ the rules of statutory interpretation where an ordinance is plain and unambiguous and conveys a clear and definite meaning. In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998). If an ordinance is ambiguous, however, the courts must construe its terms by following the “settled rules of construction.” Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001).

“The construction of a[n ordinance] by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” Brown v. S.C. Dep’t of Health & Env’t Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting Denton v. S.C. Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)). On the other hand, a business license fee is a tax on the privilege of doing business within a county or municipality. Town of Hilton Head Island v. Kigre, Inc., 408 S.C. 647, 648, 760 S.E.2d 103, 103 (2014); City of Columbia v. Niagara Fire Ins. Co., 249 S.C. 388, 391, 154 S.E.2d 674, 675 (1967). “It is a well-established principle of law that tax statutes cannot be extended by implication beyond the clear import of the language used, and in case of doubt, such doubt must be resolved against the government, and in favor of the taxpayer.” Hadden v. S.C. Tax Com’n, 183 S.C. 38, 190 S.E. 249, 251 (1937); Triplett v. City of Chester, 209 S.C. 455, 40 S.E.2d 684 (1946).

DISCUSSION

Appellant, via O’Hara and Wall, testified it mistakenly believed its property management company was taking care of keeping the ISTR business license current and a change in O’Hara’s

mailing address likely resulted in any late notices, or Notices of Assessment, being sent to an incorrect address. As a result, Appellant failed to renew the ISTR business license after it expired in 2019, although it continued to pay Accommodations taxes on rentals of the Property. Once a review of the business records for the Property revealed that the ISTR business license had lapsed, O'Hara reached out to the City License Official to attempt to rectify the discrepancy and obtain a current license in December of 2022, but was informed that the moratorium was already in place and renewals of delinquent licenses could not be processed pending the referendum. As a result of the referendum on February 7, 2023, in which the majority of the voters voted in favor of the cap, the City enacted § 117.02. At the time the referendum passed, the number of ISTRs issued by the City significantly exceeded the 800 cap.

Appellant submitted completed renewal paperwork for an ISTR business license in June of 2023, which was formally denied by the License Official on November 17, 2023, on the basis that the number of ISTR licenses issued currently exceeds the cap and Appellant did not meet the criteria required in the grandfather clause. Appellant timely filed this appeal, asserting the failure to renew the ISTR business license was a mistake that was immediately self-reported once it was discovered. O'Hara and Wall credibly testified that there has never been an infraction associated with their rental of the Property and that they immediately pulled the property from all short term rental marketing sites once they discovered the license had lapsed. They seek to have the delinquency excused and note they are not the type of conglomerate corporation they believe the referendum was intending to limit from the Folly Beach ISTR market.

As the undisputed facts demonstrate, Appellant's ISTR business license for the Property expired on December 31, 2019, and Appellant made no attempt to renew it until December of 2022, when the moratorium was already in place. It is further undisputed that the number of ISTR

business licenses in place exceed the cap of 800. Appellant's ISTR business license was neither "existing" nor "in good standing" on February 7, 2023, when the cap was instituted following the referendum. Based on the clear and unambiguous language in the applicable ordinances, the property did not satisfy the terms of the grandfather clause in § 117.02(C)(2). Accordingly, the Licensing Official correctly followed the law in denying Appellant's ISTR business license renewal application for the Property.

The court is not without sympathy for Appellant's position and acknowledges its principals' sincere efforts to operate as a desirable ISTR property owner. Nonetheless, "citizens are presumed to know the law and are charged with exercising 'reasonable care to protect [their] interest[s].'" Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (quoting Smother's v. U.S. Fidelity & Guar. Co., 322 S.C. 207, 210–11, 470 S.E.2d 858, 860 (Ct. App. 1996)). Here, pursuant to § 117.03, Appellant had a duty to ensure it maintained an up-to-date business license in order to offer the Property for rent to paying customers. The duty to timely renew a business license is not based on receipt of an individual notice or invoice. Rather, it is incumbent on all business owners to know and timely comply with the law. In addition, the expiration date is marked on the hard copy of the business license that is required to be posted in the rental unit.

While sympathetic to its plight, the Court is also not in a position to excuse Appellant's failure to comply with the law or otherwise grant equitable relief. "When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011)(citing Lochar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)). To the extent this court has the authority to fashion a remedy based in equity, those "powers must yield in the face of an

unambiguously worded statute.” Id. (quoting Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Com’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)). Further, equity does not provide relief from the consequences of a mistake of law absent undue influence or fraud. Smothers, 322 S.C. at 210, 470 S.E.2d at 860 (citing 27 Am.Jur.2d Equity § 41). Neither undue influence nor fraud are alleged here.


Similarly, while the Court does not question Appellant’s characterization of the failure to timely renew as an “oversight” or mistake, there is no any legal basis for applying the concepts of unilateral or mutual mistake as an excuse for failure to comply with a valid ordinance. Rather, those concepts apply to the rescission of a contract or other instrument. *See, e.g.,* Truck South, Inc. v. Patel, 339 S.C. 40, 49–50, 528 S.E.2d 424, 429–30 (2000).

Here, the ordinances are clear and unambiguous. Appellant did not have an existing ISTR business license in good standing after December 31, 2019, and, therefore, was barred by moratorium from renewals after October 18, 2022. Appellant did not attempt to renew the expired license until December of 2022, after the moratorium was already in place. When the referendum passed on February 7, 2023, the number of ISTR licenses issued by the City exceeded the cap of 800. As Appellant did not meet the exceptions to the cap when it submitted a renewal application in 2023, the City properly followed §117.02 in denying the renewal application.

CONCLUSION

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

IT IS SO ORDERED.


Christie Companion Varnado
Hearing Officer
City of Folly Beach

February 9, 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.