

STATE OF SOUTH CAROLINA)	IN THE ADMINISTRATIVE COURT
)	FOR THE CITY OF FOLLY BEACH
COUNTY OF CHARLESTON)	BUSINESS LICENSE APPEAL
)	
Clanton Properties, LLC and 514 Hudson)	
Partners, LLC,)	
)	
Appellants,)	FINAL ORDER
)	(In Re: 512 E. Hudson Ave. and
v.)	514 E. Hudson Ave.)
)	
The City of Folly Beach,)	
)	
Respondent.)	

This matter comes before me pursuant to § 110.16¹ of the Folly Beach Code of Ordinances (“Code”) to consider the appeal of Clanton Properties, LLC and 514 Hudson Partners, LLC (collectively “Appellants”) regarding the decision of the License Official of the City of Folly Beach (“City”) denying Appellants’ applications for Investment Short Term Rental (“ISTR”) business licenses for their properties located at 512 E. Hudson Ave. and 514 E. Hudson Ave. (“Properties”).

PROCEDURAL BACKGROUND

Appellants submitted complete applications for 2024 ISTR business licenses for the Properties on February 8, 2024. (*City Ex. 1 & 1A.*) The City’s License Official issued letters denying Appellants’ applications on March 8, 2024, on the basis that the number of licenses issued to ISTRs exceeds the cap established by § 117.02 of the Code. (*City Ex. 1 & 1A.*) Appellants’ representative Lake Howard (“Howard”) provided notice of their appeals of the License Official’s decisions via an email dated March 29, 2024. (*App. Ex. A.*)

The parties participated in a pre-hearing teleconference on April 4, 2024, in anticipation of the hearing being set for April 16, 2024. Upon request of the parties, the hearing date was later

¹ (*City Ex. 6.*)

moved to May 8, 2024. The parties were asked to exchange the names of all witnesses to be called and exhibits for the hearing by May 3, 2024. 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). (*City Ex. 6.*)

The parties appeared at the hearing before me on May 8, 2024, with City Attorney Joseph C. Wilson, IV, Esquire representing the City and Howard appearing *pro se* on behalf of Appellants. Appellants presented testimony by Howard. The City presented testimony by License Official Stacey Ritchie (“Ritchie”). Each party was given the opportunity to cross-examine the witnesses. Appellants entered into evidence *Appellants’ Exhibits A-G*, without objection by the City. The City entered into evidence *City Exhibits 1-12* (including *Ex. 1A*), without objection by Appellants. The parties were permitted to make opening statements and closing arguments setting forth their positions and responding to questions posed by the Hearing Officer.

ISSUES ON APPEAL

Appellants present the following grounds for appeal:

1. We submitted for [sic] building permits in June of 2022. At that time our Property Manager Luxury Simplified had a conversation with the Folly Beach licensing department and was told that a [Certificate of Occupancy (“CO”)] was required to apply for a Short Term Rental Business License. We did not pursue it any further after that conversation. Building permits were issued in July of 2022. Had we not received that information we would have applied for the rental licenses at that time.
2. In September of 2022 Ordinance 027-22 passed by Folly Beach council officially restricted the ability to apply for STR License [sic] prior to CO issuance. Therefore, we were provided inaccurate information in June when applying for building permits.
3. In October we submitted applications for STR license[s] in anticipation of the moratorium and the exceptions we felt we fit. We believed that we fit exception 1Ciii3, but we did not fit any of the exceptions in 1b.iv, because again, we were given inaccurate information in June of ’22. Given that we were unaware of the deadline imposed by the moratorium on October 18th of 2022, we missed the deadline, submitting on October 26th.

Appellants further assert based on their “reading of Ordinance 032-22 had we submitted our applications prior to October 18th (instead of October 26th) we would [have] be[en] eligible for the moratorium exceptions. On 10/26 Stacey [Ritchie] indicated that we could not submit an application prior to receiving a CO. However, the moratorium seems to contradict the ordinance 27-22 regarding exception 1Ciii 2 & 3, in that an application would be accepted prior to CO as long as CO was achieved within 12 months. We received CO in August of ’23. We never submitted an application due to the language in Ordinance 032-22 and previously received incorrect information in June ’22. We are requesting [to] be granted on [sic] the 7 day delay beyond the October 18th deadline given the information received in June.” (*App. Ex. A*)

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, 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)).

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. In June of 2022, Appellants submitted building permit applications to construct residential units on the Properties with the intention of using the dwellings as short term rentals. (*App. Ex. A.*)
2. Given the discussions in the community concerning potential increased regulations on short term rentals, Howard consulted with property manager Alison Benson Woodberry (“Woodberry”) of Luxury Simplified Retreats about applying for short term rental permits while the units were still under construction to avoid being “locked out” by any changes to the Code. (*App. Ex. B.*)
3. Woodberry advised Howard she had “confirmed with the city that you can’t apply for the business license or STR permit until you have the CO in hand, unfortunately.” (*Id.*)
4. On July 12, 2022, following an appeal by another property owner concerning the City’s policy of rejecting short term rental business license applications for properties without a CO, I ruled that based on the wording of the applicable Code provisions at the time, the City could not properly deny a business license application for a short term rental property due to the lack of a CO on the dwelling unit, 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. 11.*) 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.*)
5. 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. (*City Ex. 11.*)

6. Appellants were issued building permits for new dwelling units on the Properties on August 1, 2022. (*App. Ex. C.*)
7. The CO for 512 E. Hudson Ave was issued on August 21, 2023. (*City Ex. 1.*)
8. The CO for 514 E. Hudson Ave was issued on August 25, 2023. (*City Ex. 1A.*)
9. Although the HSI ruling was a matter of public record, the City did not advise Appellants of that opportunity between July 12 and September 13, 2022, and Appellants did not submit applications for short term rental business licenses or permits for the Properties during the window.
10. 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): “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. 12.*)
11. I find that even if Appellants had notice of the HSI ruling, its application in their situation would have been futile, however, since even if they had applied and received short term rental business licenses for the yet-to-be constructed dwellings on the Properties during the window, they would not have been able to renew the business licenses in 2023 because the COs were not issued by the May 1, 2023 deadline.²
12. 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. 8.*) The Petition included new definitions to be added to Chapter 117, differentiating between an Investment Short Term Rental (“ISTR”) for properties at

² Pursuant to S.C. Code § 6-1-400, business licenses are issued for a twelve-month period beginning May first and ending April thirtieth: “The business license must be renewed before May first of the year in which it expires.” (*City Ex. 7.*)

the 6% tax rate and an Owner-Occupied Short Term Rental (“OSTR”) for properties with a 4% tax rate. (*Id.*)

13. 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 and its desire “to limit further increase in the number of short term rental licenses until the question posed by the petition” was settled, the City enacted Ordinance 32-22, which contained a moratorium on the issuance of new short term rental business licenses within the City. (*App. Ex. E.*)

14. Section 1 of Ordinance 32-22 establishes the terms and conditions for the moratorium, as follows:

- a. Subject to Section (b) hereof, no application shall be approved for a business license for any residential dwelling taxed at a 6% property tax rate.
- b. Subject to the limitations set forth in Section (c) excepted from the provisions of Section 1(a) are each of the following:
 - i. Renewals of short term rental license for properties that were legally licensed as of October 18th, 2022.
 - ii. New license resulting from the transfer of ownership of properties that were legally licensed as short term rentals as of October 18th, 2022.
 - iii. New licenses for properties in Downtown Commercial district for which Final Approval has been granted by the Design Review Board prior to the ratification of this ordinance.
 - iv. New licenses for short term rental for which an application has been filed with the City of Folly Beach prior to ratification of this Ordinance and that has been deemed sufficient for approval.
- c. In order to be expected [sic] from this moratorium, all exceptions listed in Section (b) must comply with the following requirements:
 - i. Applications must be submitted in a timely manner. With regards to licenses falling under Subsection (b)(iii), applications must be submitted within thirty days of ratification of the Ordinance; and
 - ii. Applications must be deemed sufficient for approval by City staff; and
 - iii. Applications must be for a license to rent:

1. An existing residential unit that is currently available to rent or will be within thirty days of ratification of this Ordinance; or
2. A planned residential unit for which an applications for a building permit, sufficient for approval by City staff, has been submitted within thirty days of ratification of this Ordinance and which shall be available to rent within twelve months of the ratification of this Ordinance.
3. A residential unit for which a building permit has been issued within thirty days of ratification of this Ordinance and for which a certificate of occupancy shall be issued and the unit made available to rent within twelve months of the ratification of this Ordinance.

(App. Ex. E.)

15. On October 25, 2022, Howard submitted short term rental business license applications for the two dwelling units under construction at the Properties even though they did not yet have COs. *(App. Ex. F.)*

16. In the cover email attaching the applications, Howard explained that the construction will be completed on the houses in the spring and he anticipated needing short term rental permits starting May 1, 2023, and noted that he was submitting the applications at that time “in the hopes that they will be excepted from the proposed moratorium given that our permits to build were issued prior to the moratorium.” *(App. Ex. F.)* He further explained that if the City rejected their applications, “the financial viability of these 2 projects changes substantially and our plans to proceed with construction may be altogether altered.” *(Id.)*

17. On October 26, 2022, Ritchie communicated to Howard her determination that there was a pause on all new applications under the current moratorium unless they fell under one of the exceptions and further noting that Appellants could not apply for a license or rental registration permit until a CO has been issued. *(App. Ex. G.)*

18. Appellants did not appeal Ritchie's determination at that time.
19. On November 15, 2022, Ritchie further responded to Howard, reiterating her determination that a CO is required prior to licensing and explaining how the Properties did not qualify for any of the exemptions in the moratorium. (*App. Ex. G.*) Specifically, Ritchie stated that Section "1.a specifies that [the moratorium] only applies to 6% properties. [Section] 1.b lists the exemptions. (You do not qualify for any of these.) Section c refers to exemptions in b." (*Id.*)
20. Appellants did not appeal Ritchie's decision at that time.
21. In explaining her interpretation of the ordinance, Ritchie testified that once Applicants did not satisfy any of the 1(b) provisions, none of the 1(c) provisions applied. Specifically, 1(C)(iii) 2 & 3, which allowed properties without COs to be exempted from the moratorium if construction would be completed within 12 months, was limited to those properties in the "Downtown Commercial district for which Final Approval" by the Design Review Board had been granted prior to the ratification of the moratorium ordinance. The Downtown Commercial district properties were singled out due to concerns with their having acquired vested interests due to the approval by the Design Review Board.
22. I find Ritchie's interpretation of the Ordinance was correct. As Ritchie further testified, Appellants did not qualify for an exception to the moratorium under Section 1(b)(iv), because even if they had submitted their applications on October 18th rather than the 26th, the applications would not have been "deemed sufficient for approval" because they lacked

COs. Ritchie further testified that the requirements in 1(c) did not apply unless the applicant first met one of the exceptions under 1(b).³

23. 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. (*City Ex. 10.*)
24. 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 cast their ballots in favor of the cap.
25. Accordingly, Chapter 117 of the Code was amended to set a cap of ISTR business licenses at 800 in § 117.02(C) and included in subsection (2) 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.” (*City Ex. 5.*)
26. On February 8, 2023, Howard inquired about the cap waitlist and was informed the City was not accepting requests for the list at that time. (*City Ex. 4.*)
27. Appellants submitted new ISTR business license applications and rental registration forms for the Properties on March 12, 2023, although they still did not have COs. (*City Ex. 4.*)
28. On October 2, 2023, after the COs were in place for the units, Appellants submitted another set of ISTR business license applications and rental registration forms for the properties, which Ritchie found incomplete. (*City Ex. 1 & 1A.*)

³ While the Ordinance would be more easily read at first glance if the portion of 1(c)(i) referencing Subsection (b)(iii) had been moved to a separate line, nonetheless, when reading the Ordinance as a whole, the language is clear and unambiguous in its intent to limit the provisions in 1(c)(iii)(1-3) to only those properties in the Downtown Commercial district under Subsection (b)(iii).

29. Appellants submitted complete applications for the Properties on February 2, 2024, and Ritchie denied the applications on March 8, 2024, on the basis no new ISTR licenses were being issued due to the cap under §117.02(C)(1). (*City Ex. 1 & 1A.*) This appeal followed.

DISCUSSION

This appeal can be best summarized as Appellants requesting the Hearing Officer give them a 7 day grace period and accept their October 26, 2022 applications as having been filed prior to the adoption of the moratorium on October 18, 2022, because they contend they would have submitted their applications earlier had they not been given the erroneous information in June of 2022 that applications were not accepted prior to COs being in place. This grace period would only be effective, however, if Appellants' Properties had met the exceptions to the moratorium prior to October 18, 2022. As discussed above, because the Properties did not have COs in October of 2022, they would not have met any of the moratorium exceptions. Accordingly, their missing the October 18th deadline is immaterial and a grace period would not have helped them in 2022, nor does it help them now in 2024.

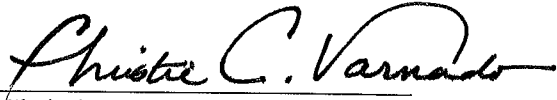
Moreover, an appeal in 2024 of a 2022 decision is untimely. Under § 110.16(A) as amended effective January 1, 2022, “any person aggrieved by a determination, denial, or suspension and proposed revocation of a business license by the license official may appeal the decision to the Council or its designee 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. 6.*) Appellants did not submit a notice of appeal within ten days (or at any time in the following weeks) after receipt of Ritchie’s October 26, 2022 email rejecting Appellants’ applications or the November 15, 2022 email further explaining the basis for her determination. When a party fails to timely appeal, the 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)). Accordingly, this Court lacks jurisdiction to further consider the merits of any issues that could have been appealed in 2022.

As for the License Official’s denial of Appellants’ February 8, 2024 ISTR business license applications, Appellants provide no basis under § 117.02 to reverse the decision. In her March 8, 2024 letter, the License Official explained she was denying Appellants’ ISTR business license applications for the Properties because the current number of ISTR rental licenses issued exceeds the allowable number under the cap pursuant to § 117.02. (*City Ex. 1 & 1A.*) Appellants did not challenge the License Official’s findings in this regard as part of their appeal. Based on a plain reading of the ordinance, which is clear and unambiguous, Appellants did not have existing ISTR business licenses in good standing prior to February 7, 2023, for either of the dwelling units on the Properties. (*City Ex. 16.*) Therefore, because Properties did not meet the exceptions to the cap when Appellants submitted their completed ISTR applications in 2024 after the COs were issued, the License Official properly followed § 117.02 in denying them.

CONCLUSION

Therefore, for the foregoing reasons, the appeal is DENIED
IT IS SO ORDERED.


Christie Companion Varnado
Hearing Officer
City of Folly Beach

June 10, 2024

Charleston, South Carolina