

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

514 East Arctic, LLC and June R. Todd,

Appellants,

v.

The City of Folly Beach,

Respondent.

FINAL ORDER

This matter comes before me pursuant to § 110.16 of the Folly Beach Code of Ordinances by Appellants 514 East Arctic, LLC and June R. Todd (“Todd”) appealing the December 6, 2022, decision of the License Official of the City of Folly Beach (“City”) to deny their application for a short term rental (“STR”) license for their property located at 514¹ East Arctic Avenue because it was precluded by the moratorium imposed by Ordinance 32-22,² which

¹ The business license application denial letter (City Ex. 1) identifies the street number for the property as 513 rather than 514, but the parties agree this is a typo and has no substantive bearing on Appellants’ understanding that their STR license for the Property had been denied.

² Ordinance 32-22 states in pertinent part:

1. The City of Folly Beach imposes a moratorium, to be effective immediately upon ratification of this Ordinance, on the issuance of new business licenses for short term rentals within the City:
 - a. Subject to Section (b) hereof, no application shall be approved for a business license to for [sic] 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 licenses for properties that were legally licensed as of October 18th, 2022.
 - ii. New licenses 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 a 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.

barred the issuance of new business licenses for short term rentals within the City as of October 18, 2022.³

Appellants served the City with notice of their appeal of the Business License Official's denial on December 17, 2022. (App. Ex. 3.) By consent and agreement of the parties, the ten business day hearing period set forth in § 110.16(A) was extended to accommodate the schedules of counsel and the parties. The parties appeared before me at a pre-hearing conference held on January 5, 2023, at which Todd appeared *pro se* and the City was represented by City Attorney, Joseph C. Wilson, IV, Esquire. At the conference, Todd expressed a desire to retain counsel and, by agreement, the hearing was continued. Thereafter, Spencer Wetmore, Esquire advised that she had been retained by Appellant.

The appeal hearing was held on February 6, 2023, and counsel for both parties were present. Appellants presented testimony by Todd. The City presented testimony by City Business License Official Stacey Ritchie ("Ritchie"). Each party was given the opportunity to cross-examine the witnesses.

Appellants entered into evidence Appellants Exhibits 1-3, without objection by the City. The City entered into evidence City Exhibits 1-7, without objection by Appellants.

FINDINGS OF FACT

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

³ The moratorium in Ordinance 32-22, which passed on October 18, 2022, and had an expiration date of January 11, 2023, 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. A special election was held on February 7, 2023, in which a majority of the registered voters of Folly Beach voting in the election voted in favor of the cap.

1. Pursuant to § 117.02 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.” 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. STR registration renewals must “be completed prior to June 1 of each year.” § 117.02(B)(1).
2. Ordinance 32-22 was enacted on October 18, 2022, following the City’s receipt of a citizen petition to limit the number of STRs to 800, and upon the acknowledgement in the ordinance that the City had issued 1,112 STRs for the 2022 business license year as of that date.
3. Ordinance 32-22 states that “the City desires to limit further increase in the number of short term rental licenses until the question posed by the petition is settle [sic] by vote of Council or general referendum.”
4. In furtherance of that stated desire, Ordinance 32-22 prohibits the “issuance of new business licenses for short term rentals within the City” for residential dwellings taxed at a 6% property tax rate, but contains exceptions for “[r]enewals of short term rental licenses for properties that were legally licensed as of October 18th, 2022;” transfers of ownership for currently licensed properties; new applications that were filed prior to ratification of the Ordinance; and new licenses “for properties in Downtown Commercial district for which Final Approval has been granted by the Design Review Board prior to” ratification.
5. Appellant 514 East Arctic, LLC has owned 514 East Arctic Ave. in Folly Beach (“Property”) since 1998.

6. Appellant Todd has been an active participant in the Folly Beach community. (App. Ex. 1.)
7. The City issued Appellants a license for rentals of the Property from the years 1999 until 2021. (App. Ex. 3.)
8. Until October of 2022, Appellants used Fred Holland Realty as the rental management company for the Property and relied on the company to renew the business license and STR permit on the Property each year. (App. Ex. 1 & 3.)
9. Neither Fred Holland Realty nor Appellants renewed Appellants' business license and STR permit for the Property for 2022 prior to October 18, 2022. (City Ex. 2.)
10. Despite not having a STR license for the Property for 2022, Appellant continued to offer the Property as a rental through October of 2022, and paid the Accommodations taxes associated those rentals. (App. Ex. 2.)
11. In late October of 2022, Todd noticed that the STR license hanging in the Property had an expiration date of December 31, 2021.
12. The City provided no evidence whether a business license renewal notice was issued to Appellants or Appellants' property management company in April of 2022 or at any time for the 2022 renewal, but the print out of the County's business license portal lists the address for payments for the Property as Todd's Folly Beach post office box. (City Ex. 6.)
13. On October 25, 2022, Carol Rourk of Fred Holland Realty sent an email to Ritchie advising that the company believed Appellants had intended to undertake the task of obtaining the STR license for 2022 rather than the company and asking what the company should do in regard to renewing the license. (City. Ex. 2.)

14. Prior to 2022, the City's business license renewals were due in late December, but the South Carolina Business License Tax Standardization Act became effective on January 1, 2022, making the business license renewal process uniform for all counties and municipalities and setting "a twelve-month period beginning May first and ending April thirtieth" for all business licenses. S.C. Code Ann. § 6-1-400(B)(1).
15. A business license renewal notice "to all businesses located or doing business in the . . . City of Folly Beach" was published in The Post and Courier on April 24, 27, and 29, 2022, stating that "business license renewal applications were mailed early April 2022" and advising that owners had until May 2, 2022 to submit payment without penalty. (City Ex. 7.) The notice further stated that "[f]ailure to receive a renewal application does not relieve you of the responsibility of paying the license fee." Id.
16. The County's business license portal was not operational in early May of 2022, and as a result renewals were not due until May 31, 2022, and no late fees were charged until June 30, 2022.
17. It is uncontested that Appellants (or anyone acting on their behalf) did not timely submit payment for the renewal of the business license for the Property by May 31, 2022.
18. Appellants submitted a Business License Application on November 2, 2022. (City Ex. 4.)
19. Appellants submitted a City of Folly Beach Rental Registration Form on November 1, 2022. (City Ex. 3.)
20. Ritchie denied the application for a STR license for the Property on December 6, 2022. (City Ex. 1.)
21. Appellants do not challenge the validity of Ordinance 32-22.

22. Appellants' failure to timely renew the Property's STR business license for 2022 the Property was inadvertent.
23. Based on the plain and ordinary meaning of the words in Ordinance 32-22, the City's intent to exclude from renewal of STR licenses those businesses which did not have a valid, existing STR license as of October 18, 2022, is clear and unambiguous.
24. The Property was not legally licensed by the City as a STR as of October 18, 2022.
25. The Property does not meet any of the exceptions to the moratorium in Ordinance 32-22(b).

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. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995)). 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 words are unambiguous, the court should apply their literal meaning. Id. at 498, 640 S.E.2d at 459.

In addition, “the [ordinance] must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.” S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Similarly, the ordinance should be read “in a manner consonant and in harmony with its purpose.” CFRE, LLC v. Greenville Cty. 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 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)).

A business license fee is a tax on the privilege of doing business within a county or municipality, the imposition of which has been upheld as a constitutional exercise of municipal powers. 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).

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 power to issue a license also involves the power to refuse to grant a license in accordance with the controlling ordinance. *See* Wall v. South Carolina Alcoholic Beverage Control Com'n, 269 S.C. 13, 15, 235 S.E.2d 806, 807 (1977).

DISCUSSION

Appellants do not have a right to a STR license; 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, 229, 314 S.E.2d 339, 807 (1984.) Here, Appellants do not challenge the validity of Ordinance 32-22 or the moratorium it imposes; they do not claim that the ordinance was vague or ambiguous; nor do they assert that the Business License Official's interpretation or application of Ordinance 32-22 was improper. Appellants also concede that the Property does not meet any of the exceptions in Ordinance 32-22, as written. Rather, they seek to avoid the effect of their inadvertent failure to timely renew the 2022 STR business license by having that mistake excused and ask that they be afforded the opportunity to correct what they characterizes as a "clerical error." (App. Ex. 3.) Appellants' counsel further argued that there was confusion regarding the license renewal process in general.

I do not find any legal basis for applying the concepts of unilateral or mutual mistake as an excuse for failure to comply with a valid ordinance, however. Rather, those concepts apply to the rescission of a contract or other instrument. *See, e.g.*, Truck South, Inc. v. Patel, 339 S.C. 40, 49–50, 528 S.E.2d 424, 429–30 (2000). Even if they were applicable, Appellants have not

provided evidence that their mistake in failing to timely renew the STR license was based on a mutual misunderstanding between them and the City or that there was any malfeasance on behalf of the City that induced the error. *See King v. Oxford*, 282 S.C. 307, 313, 318 S.E.2d 125, 128 (Ct.App.1984) (finding contracts may be rescinded based upon mutual mistake where the mistake is in reference to facts upon which the contract is based, or where there is an “omission or insertion of some material element affecting the subject matter or the terms and stipulations of the contract, inconsistent with the true agreement of the parties” and, as a result, the parties have done what neither intended); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 101-02, 399 S.E.2d 22, 23 (Ct.App.1990)(finding that to rescind a contract based on unilateral mistake, the error must have been “induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, without negligence on the part of the party claiming rescission, or when the mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement”).

Similarly, the concept of excusable neglect is not applicable to the failure comply with an ordinance. Rather, excusable neglect is found in Rule 60(b)(1), SCRCP, which allows a party to seek relief from a final judgment or order on the grounds of “mistake, inadvertence, surprise, or excusable neglect.” *See, e.g., Paul Davis Sys., Inc. v. Deepwater of Hilton Head, LLC*, 362 S.C. 220, 225, 607 S.E.2d 358, 360 (Ct. App. 2004). There is no judgment at issue here.

The court is also not in a position to grant Appellants 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

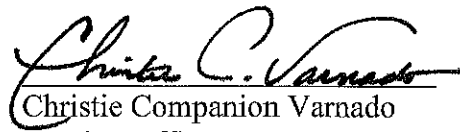
face of an unambiguously worded statute.” Id. (quoting Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Com’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)). Further, equity does not provide relief from the consequences of a mistake of law absent undue influence or fraud. Smothers v. U.S. Fid. and Guar. Co., 322 S.C. 207, 210, 470 S.E.2d 858, 860 (Ct. App. 1996) (citing 27 Am.Jur.2d *Equity* § 41).

While the court is not without sympathy for Appellants’ situation, nonetheless, “citizens are presumed to know the law and are charged with exercising ‘reasonable care to protect [their] interest[s].’” Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (quoting Smothers, 322 S.C. at 210–11, 470 S.E.2d at 860. Here, pursuant to § 117.01, Appellants had a duty to ensure that they had both an up-to-date business license and a STR registration in order to offer the Property for rent to paying customers. While there was some delay and perhaps confusion due to the County’s portal not being fully operational initially, the issue was resolved for several months prior to Appellants’ attempt to renew the licenses. It is indeed unfortunate that Appellants’ realization that the property management company had not renewed the licenses happened shortly after the City’s passage of the moratorium, but it is not a basis to avoid the impact of the ordinance.

CONCLUSION

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

IT IS SO ORDERED.


Christie Companion Varnado
Hearing Officer
City of Folly Beach

February 24, 2023

Charleston, South Carolina