

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 SAIGALA, LLC, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 TOWN OF SPRINGDALE, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

Case Number No. **2024CP3202538**

ORDER

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SAIGALA, LLC, )  
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 Plaintiff, )  
 )  
 -vs- )  
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 TOWN OF SPRINGDALE, a )  
 Municipal Subdivision of the State )  
 of South Carolina, )  
 )  
 Defendant. )

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Case Number No. **2024CP3202698**

Hearing: August 29, 2024 – Lexington Co. Judicial Ctr.  
 Attorneys for Plaintiff: Temus C. Miles, Jr.  
 Attorney for Defendant: Peter M. Balthazor  
 Court Reporter: Cathy J. Provost

These cases arise from the decision of the Town of Springdale (the “Town”) to revoke the business license of a motel known as the Airport Inn & Suites, operated by SAIGALA, LLC (the “Motel”). The Motel filed an appeal and subsequently a Complaint seeking declaratory judgment and injunctive relief based on the South Carolina Freedom of Information Act (“FOIA”)<sup>1</sup> and due process violations, and for an injunction restraining the Town from enforcing the revocation and any fines or fees associated

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<sup>1</sup> S.C. Code Ann. 30-4-10, et seq.

therewith.<sup>2</sup> The Motel seeks attorney's fees and costs under FOIA. The Town filed a motion for summary judgment including an assertion that the issues raised are now moot by subsequent formal adoption of rules and procedures by the Town that are in issue in these cases.<sup>3</sup> The rulings of this court are:

- (1) The motion for summary judgment is denied as there are genuine issues of material fact and the issue related to the adoption of rules of evidence and procedure does not make this dispute moot.
- (2) FOIA was not violated. The failure of Town Council to vote to adopt the rules of evidence and procedure prior to the hearing is a challenge to an ultra vires act. The rules were stated at the outset of a properly noticed and convened public meeting. The Motel is not entitled relief under FOIA or attorney's fees and costs under that Act.
- (3) While the Motel was afforded an extensive hearing, minimal due process rights require that the matter be heard again for three reasons: (a) the Town should have granted the request for a continuance due to the rules of evidence and procedures not being established prior to convening the hearing, even though the matter had been continued previously; (b) the Town Attorney does not meet the definition of a "designee" for the hearing under the Town's ordinance and could not set the rules and procedures; and, (c) the Motel's Attorney was entitled to finish cross-examination under the ordinance because

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<sup>2</sup> These cases were consolidated for all purposes by consent on July 3, 2024.

<sup>3</sup> The summary judgment motion is supported by affidavits. The last two sentences of Paragraph 24 of the affidavit of the Town Attorney were stricken as a result of plaintiff's counsel's objection to the entire paragraph and any legal conclusions asserted in it.

a large number of detailed documents were admitted into evidence, in bulk, over the Motel's objection.

In making these rulings, the court understands that the Mayor and Council showed remarkable patience in conducting a seven-hour hearing. The fact that the rules of evidence were relaxed can excuse the admission of documents that might otherwise be inadmissible, but does not change the ordinance's requirement that the respondent be given the right to cross-examination. This requirement must be viewed in light of the significant property rights affected by the license revocation, despite abundant evidence offered in support the decision to revoke.

### **BACKGROUND**

The Town through its Chief of Police sent a letter to the Motel in July of 2022 indicating that the Motel was not complying with the business license ordinance and that the license was at risk of being revoked. Essentially, the Town indicates that the Motel is a nuisance and drain on the Town's resources because it is a hub of illegal and dangerous activities, having far more calls for law enforcement assistance and arrests on a consistent basis over the years than similar motels.

On January 8, 2024, the Town Administrator notified the Motel that its business license had been revoked, and an administrative hearing was scheduled for February 27, 2024. That hearing was postponed while the parties attempted a resolution. The Motel proposed a list of corrective actions to be taken. The hearing was rescheduled for May 22, 2024, to be held before the Town Council.

The Town is organized under the Council form of government pursuant to S.C. Code Ann. § 5-11-10, et seq. Section 5-11-20 provides that there be a Mayor and Council, and § 5-11-30 reads:

SECTION 5-11-30. Legislative and administrative powers of municipality vested in municipal council.

All legislative and administrative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council. Each member of council, including the mayor, shall have one vote. [Emphasis added]

Chapter 11 of the Town's ordinances deals with Business License Regulations. It provides for an appeal to the Town Council or its designee upon revocation of a business license. Section 16(B) reads, in applicable part:

At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. . . . The rules of evidence and procedure prescribed by Council or its designee shall govern the hearing. Following the hearing, the Council by majority vote of its members present, or the designee of Council if the hearing is held by the designee, shall render a written decision based on findings of fact and conclusions on application of the standards herein. [Emphasis added]

In advance of the hearing, beginning in March, Counsel for the Motel repeatedly requested to know what rules of evidence and procedure would be utilized. Twenty-nine hours before the start of the hearing, the Town Attorney sent an email giving that information. Then, at the outset of the hearing, the Mayor read into the record in an open forum those same rules of evidence and procedure. A continuance was requested, which in the totality of circumstances should be read to include providing additional time to consider the rules of evidence and procedure. The Motel's attorney objected to the denial of a continuance and preserved the issues related to the rules of evidence and procedure.

There was much discussion about this subject, and the only reasonable reading of the record is that the Mayor and Council would proceed in the manner previously indicated.

The rules of evidence and procedure were stated on Page 7, line 23 through page 8, line 17 of the transcript.

MAYOR RICARD: Very good. Additional procedures for the hearing include the following. **The parties have the right to cross-examine any witnesses presented by the other side.** The mayor and any council members also have the right to ask questions of the parties and witnesses. The rules of evidence will not be applied strictly except as matters of privilege, such as attorney -- attorney -- attorney-climate -- - client privilege, but will be considered as a guide towards the full and fair development of the facts with the purpose of presenting relevant information. The mayor, as the presiding officer and with the assistance of legal counsel, will rule on any objections to testimony, procedures, or evidence. The Town Council will consider the evidence presented and give it weight and effect it determines appropriate. Witness should be sworn to tell the truth before beginning of the testimony. The town clerk will administer the oath. [Emphasis added]

During the hearing, a large number of documents were admitted into evidence in bulk, over objection by Motel's Counsel. The materials had been supplied to Motel's Counsel prior to the hearing. Many of them were from other agencies who had no one present as fact witnesses or records custodians. The Chief of Police testified about how he extrapolated comparisons to activities at other motels from those materials supporting the Town's contention that the Motel poses a much greater nuisance and a substantially increased drain on law enforcement resources than the other motels in the area. The comparisons had not been updated since the first scheduled hearing. Motel's Counsel pursued whether the corrective actions proposed had been implemented by his client in the interim so as to reduce the negative impact related to the Motel. Motel's Counsel was allowed to cross-examine the Chief of Police for hours, but was stopped from finishing what the attorney considered as a full examination after going through roughly half of the

documents the Town introduced. [Transcript, pg. 212-213] In broad general terms, the Motel was attempting to elicit that some of the reports were for matters that happened by happenstance in the vicinity of the Motel property, which is immediately adjacent to Interstate 26, another major thoroughfare, and other businesses. The Motel elicited information that some data related to traffic offenders who just happened to be stopped by an officer near the Motel, and that some of the incidents where officers responded were determined to be unfounded.

One of the three owners of the Motel, Dharmen Chau, testified in opposition to revocation of the license. He testified that he has little to do with the operations of the Motel, but he did offer evidence, including responses to questions from Council members, particularly concerning the implementation of the proposed corrective actions. Another owner normally stays in India. The owner with the most knowledge about operation of the Motel is Chetan Raj, who got called away to Canada the afternoon of the hearing due to a medical emergency with his father. The court is unaware the unavailability of Mr. Raj being part of the basis for the request for continuance.

A motion was made, seconded, and adopted to uphold the revocation of the business license. The hearing lasted seven hours, from 5:00 p.m. until midnight.

### **DISCUSSION**

**FREEDOM OF INFORMATION ACT**: There is no dispute that the hearing and voting were conducted openly and after proper notice to the public. There is no challenge to the content of the proposed rules of evidence and procedure. The Motel argues that FOIA was violated because a central purpose of that Act is to require public votes, and none was taken to adopt the rules of evidence and procedure prior to the hearing. The

Town asserts that the central purpose of the Act is to provide for government action to be done in an open forum. The court agrees that there is no section of the FOIA requiring a separate vote to adopt the rules of evidence and procedure to be utilized in the hearing, so long as those were announced at the outset of the hearing in an open session. The remedy for late disclosure of that information would be to seek a continuance.

South Carolina's FOIA has a stated purpose that "public business be performed in an open and public manner." [S.C. Code Ann. §30-4-15] Section 30-4-60 requires meetings to be open to the public. Section 30-4-80 requires notice of what is to be discussed or conducted in the meeting. All of those things were met by the Town.

FOIA requires that certain things are public information. Section 30-4-50(4) provides that, "those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body"<sup>4</sup> are public information. The court does not find this to be dispositive and does not believe that it has been asserted to be. Even if a person is entitled to know what policy or interpretation the Town was applying to the ordinance and/or hearing in question, a failure to conduct a formal vote is not a FOIA violation. Respectfully, recognizing the expertise and experience of learned counsel for the Motel in issues involving municipal government, the court believes that the challenge to the lack of a formal vote is more of an ultra vires claim than one under FOIA. The appeal and lawsuit seem to be premised on the assertion that the Town acted beyond its authority by conducting a hearing that it had no power to have because it had failed to meet the ordinance's requirement to establish the rules of evidence and procedure for the hearing.

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<sup>4</sup> Section 30-4-50(2) "administrative staff manuals and instructions to staff that affect a member of the public" is not applicable to the challenge based on failure to adopt rules of evidence and procedure for an administrative hearing.

The court finds and concludes that the Town did not violate FOIA in this instance. The rules were read in open session with a quorum of Council present, proper notice of the purpose of the meeting was provided, there was discussion about a need for a separate vote for adoption of the rules, and the proceeding went forward with an apparent and obvious understanding that those rules of evidence and procedure would be used. The Motel is not entitled to attorney's fees and costs under FOIA.

Since the hearing was held, the Town has formally adopted rules of evidence and procedure to be used in business license revocation cases. The Town argues that this renders the dispute moot. The court disagrees. Action taken after the May 22 hearing does not apply to consideration of the issues presently before the court. The new rules and procedures will apply to the reconvened hearing,

**DUE PROCESS**: The question then turns to due process.

The court has considered the possible effect that an ultra vires act by the Town Council would have on the due process rights of the Motel. The hearing was conducted in substantial compliance with the rules of evidence and procedure, with the exception of the violation of the Motel's due process rights discussed below.

If the court considers that the relaxation of the rules of evidence allowed the introduction in bulk of a huge number of documents without a proper foundation, the ordinance and the rules of the hearing still granted the Motel the right to meaningful cross-examination. It is abundantly clear that the Mayor and Council allowed an extended amount of time to Motel's Counsel to conduct cross-examination of the Chief of Police. Time is not the sole measure, however.

When concerns arose about the length of the hearing, Counsel for the Motel stated:

MR. MILES: Hey, and just so everybody has a full and proper understanding, I'd like to note this along with what I just discussed about the incident reports: When we first came in, I made an offer to your counsel to only introduce the summaries and we would limit our discussion to that, and he insisted on introducing the incident reports. And since they are in evidence, I have no choice but to review them. But I did make the offer to limit it solely to the summaries. In good faith, I made that offer, but it was elected to introduce the incident reports, and now as a result we have to discuss it; is that -- is that correct? [Transcript, Pg. 202, Ln. 20 – Pg. 203, Ln. 9]

The transcript reflects that the Motel had only gone through roughly one-half of the documents placed into evidence by the Town. The validity and applicability of the information in those documents were foundational elements of the Town's position concerning the Motel being a nuisance and drain upon the Town's resources. When challenged about the length of time that the cross-examination was taking, the Motel's attorney made it clear, not only in the quotation cited above, that the necessity for taking so long was created by the entry of the bulk exhibit, over his objection, and the rejection of his offer to try to shorten that part of the proceeding. It is certainly understandable that an official in an administrative hearing might feel that the hours allowed for the cross-examination were more than sufficient to make the points being raised by the Motel. The difficulty is that the choice of where to cease the right to cross-examination was arbitrary and left the Motel with an incomplete presentation. While this may be technical, it is nonetheless the court's determination that a new hearing must be permitted.

THEREFORE, IT IS ORDERED that the Motel is entitled to a new hearing, the Town's motion for summary judgment is denied, and that a FOIA violation has not been established.

AND IT IS SO ORDERED.

[Electronic signature follows on separate page.]



Lexington Common Pleas

**Case Caption:** Saigala Llc VS Town Of Springdale

**Case Number:** 2024CP3202538

**Type:** Order/Relief

Circuit Judge (Code #2050)

s/ William P. Keesley