

COPY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K & S Foundation, LLC, d/b/a Elite,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

ORDER DENYING PLAINTIFFS
MOTION TO RECONSIDER

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JANIE HUGHES-WARD
CLERK OF COURT
HORRY COUNTY

Plaintiff has moved to have the Court reconsider the original order issued in the above captioned lawsuit and to make individual findings of fact and conclusions of law on subjects as requested in Plaintiff's Motion to Reconsider. Plaintiff's motion mischaracterizes the nature of the appellate proceeding that was before this Court. Appeals to Circuit Court from City Council are not actions tried upon the facts without a jury or with an advisory jury. *Rule 52, SCRCP*. The standard of review does not require a *de novo* review of the record on appeal. An appeal from a city council decision is a request for a review of city council's decision to determine whether that decision is unreasonable, arbitrary or capricious. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App., 2005).

Requests for findings are not necessary for purposes of review. The findings of city council in its order, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact and conclusions of law appear therein. *Rule 52, SCRCP*.

After reviewing the record on appeal and considering standard of review for such appeals, I find that the decision of the Myrtle Beach City Council should be affirmed on the

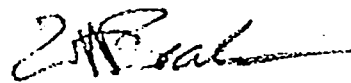
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grounds that there is evidence in the record to support City Councils' decision. In addition, I find that the individual findings of fact and the conclusions of law contained City Council's order are not arbitrary or capricious and the order supports the revocation of Plaintiff's business license.

Where the city council of a municipality has acted after considering all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App.,2005); *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963). A decision of City Council will not be disturbed if there is evidence in the record to support its decision. *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (Ct.App.1994). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952).

NOW THEREFORE, IT IS HEREBY ORDERED, Plaintiffs' Motion to reconsider is hereby denied and the Order of the City Council of the City of Myrtle Beach is hereby affirmed.

AND IT IS SO ORDERED.



The Hon. William H. Seals, Jr.
Presiding Judge, Fifteenth Judicial Circuit

November 5, 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K & S Foundation, LLC, d/b/a Elite,

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City of Myrtle Beach,

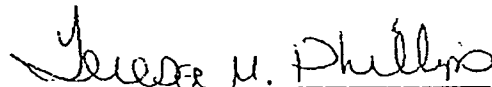
Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

CERTIFICATE OF SERVICE

I, Teresa M. Phillips, Legal Assistant for Battle Law Firm, LLC hereby certify that I have this November 8, 2013 have served a copy of *an Order Denying Plaintiff's Motion to Reconsider* upon counsel of record in this action, by depositing the same in the United States mail, first-class postage pre-paid, to the following address(es):

Howell V. Bellamy, III
Bellamy Law Firm
PO Box 357
Myrtle Beach, SC 29578



Teresa M. Phillips, Legal Assistant
to Michael W. Battle
BATTLE LAW FIRM, LLC
1200 Main Street
PO Box 530
Conway, SC 29528

November 8, 2013