

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

APPEAL FROM HANAHAN CITY COUNCIL
IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2016-CP-08-1261

BENJAMIN REYNA, d/b/a)
EL ALAMO RESTAURANT,)

Appellant,)

vs.)

THE TOWN OF HANAHAN,)

Respondent.)

ORDER DENYING APPELLANT'S
MOTION TO RECONSIDER

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SC Court of Appeals

CLERK OF COURT
BERKELEY COUNTY, S.C.

JAN 23 2017

This matter came before the Court on Appellant's Motion to Reconsider ("Motion"). Specifically, Appellant moved for the Court to reconsider its Order Affirming the Decision of Hanahan City Council. For the reasons stated herein, Appellant's Motion is denied.

1. The Court noted Appellant's absence from the hearing to demonstrate that the City complied with Appellant's requests, despite the fact that some of Appellant's demands on the City proved to be needless.

This Court's Order affirming the decision of Hanahan City Council ("Order") finds that Appellant was not present at the hearing. (Order, Findings of Fact, ¶¶ 7-8 and 22) However, contrary to Appellant's arguments, this Court did not use Appellant's absence from the revocation hearing as a supporting ground for affirming the decision of Hanahan City Council. Indeed, the decision of Hanahan City Council was affirmed because "the decision of City Council was sound, reasonable, and supported by abundant evidence and testimony." (Order, p. 15)

This Court noted Appellant's absence from the hearing to demonstrate that the City complied with Appellant's requests, despite the fact that some of Appellant's demands on the City proved to be needless. For example, prior to City Council's Revocation Hearing on May 26,

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2016, ("revocation hearing") counsel for Appellant requested that the City provide a Spanish interpreter for the revocation hearing. Per Appellant's request, the City provided a Spanish interpreter at the revocation hearing; however, neither Appellant (who was not present at the revocation hearing) nor his counsel utilized the interpreter's services. Thus, this Court did not use Appellant's absence from the revocation hearing as a supporting ground for affirming the decision of Hanahan City Council; instead, the Court discussed Appellant's absence in its factual findings to demonstrate that the City complied with Appellant's requests, despite the fact that some of Appellant's demands on the City proved to be unnecessary.

2. The Court applied the appropriate standard and reached the correct conclusion based on the evidence and testimony contained in the underlying record.

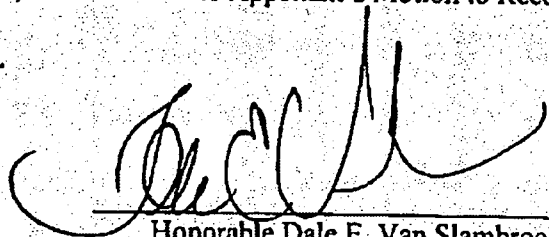
This Court's Order and underlying record contains ample evidence that since 2014 Appellant's night club had proved to be a nuisance because of the unlawful activity arising from and associated with the business. Appellant's Motion claims that "[w]ith one exception, all of the evidence consisted of testimony of bad acts of unknown persons who the speaker assumes were patrons of appellant" and that "the evidence of bad conduct surrounding appellant's operation involves third parties." However, Appellant's arguments are not supported by the underlying record. For example, the Court's Order notes incidents from the record involving Appellant and his employees, including "reports of employee assaulting patron" and "arrest of Night Club employee for pointing and presenting fire arm on premises." (Order, Findings of Fact, ¶15) Additionally, MariaCarval, a victim in an incident where she was attacked by another patron with a pistol while at Appellant's night club, provided testimony at the revocation hearing regarding the attack and Appellant's refusal to provide any assistance. (Order, Findings of Fact, ¶ 21). Based on the evidence contained in the voluminous record, the Court did not err in

affirming the decision of Hanahan City Council. The Court carefully examined the record and applied the appropriate standard. "When 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." *Amrik*, 384 S.C. at 590, 681 S.E.2d at 299 (quoting *Gay v. City of Beaufort*, 364 S.C. 252, 254, 612 S.E.2d 467, 468 (Ct. App. 2005)). "[I]n reviewing the discretionary decision of a legislative body, our courts have been hesitant to substitute their judgment for that of elected representatives." *Amrik Singh & SBPS, Inc. v. City of Greenville*, 384 S.C. 365, 370, 681 S.E.2d 921, 922 (citing *McSherry v. Spartanburg C'ty Council*, 371 S.C. 586, 590, 641 S.E.2d 431, 434 (2007)). See also, *City of Greenville v. Bozeman*, 254 S.C. 306, 315, 175 S.E.2d 211, 215 (1970) ("the Courts will not interfere with the exercise of discretionary powers by a municipal body except in cases of fraud or clear abuse of power"); *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963) (affirming a municipality's decisions so long as calibrated for public good, morals, and general welfare of municipality and citizens); *Sloan v. Greenville Cty*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) ("Discretionary decisions of a legislative body should not be upset on appeal unless they are arbitrary, unreasonable, in obvious abuse of discretion or in excess of lawfully delegated power.").

For the reasons set forth above, the Court denies Appellant's Motion to Reconsider.

AND IT IS SO ORDERED.

January 20, 2017



Honorable Dale E. Van Slambrook
Berkeley County Master-in-Equity

