

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

C.A. No. 2016-CP-08-01261
Appellate Case No. 2017-000796

RECEIVED

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SC Court of Appeals

Benjamin Reyna, d/b/a, El Alamo Restaurant,..... Appellant,

v.

The Town of Hanahan.....Respondent.

MOTION TO DISMISS

Pursuant to Rule 203(b), SCACR, the City of Hanahan (the City”), improperly identified in the caption as the Town of Hanahan, hereby moves that this appeal be dismissed for lack of jurisdiction because the appeal is untimely. Appellant failed to serve the Notice of Appeal within thirty days after receipt of written notice of entry of the order denying Appellant’s Motion to Reconsider as required by Rule 203(b)(1), SCACR.

BACKGROUND

This appeal arises from an appeal to the Circuit Court from Hanahan City Council’s decision to revoke Appellant’s business license. The City held a revocation hearing on May 26, 2016. On June 3, 2016, Appellant filed an appeal with the Berkeley County Circuit Court. On August 30, 2016, the parties consented to have the matter heard by the Master in Equity for Berkeley County. On November 28, 2016, the Circuit

Court emailed all counsel at their email addresses registered with the Attorney Information System (“AIS”) and attached a signed and clocked Order Affirming the Decision of City Council.¹ **Exh. A.**

On December 5, 2016, after receiving the Order Affirming the Decision of City Council by email, Appellant timely filed a Motion for Reconsideration. On January 18, 2017, the Master emailed counsel at their AIS emails and stated, “I deny the requested relief . . . I request that Mr. McQuillin draft a short Order to that effect, forward via email with a copy to all counsel.” **Exh. B.** The next day, on January 19, 2017, Respondent’s counsel emailed the Master a proposed Order and copied Appellant’s counsel. **Exh. C.** On January 27, 2017, the Circuit Court emailed all counsel at their AIS email addresses (the same email addresses used in Exhibits A, B and C) using the Attorney Information System and attached a signed and clocked Order Denying Appellant’s Motion to Reconsider (“Order”). **Exh. D.**²

On March 14, 2017, **forty-six days** after receipt of written notice of entry of the Order, Appellant served a Notice of Appeal.

ARGUMENT

Rule 203(b), SCACR requires that a party serve a notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment. Failure to do

¹ Attorneys practicing in South Carolina have been required since November 18, 2011, to keep a valid e-mail address on file with the AIS. *Order RE: Attorney Information System Amendments and Requirements*, 396 S.C. 242, 721 S.E.2d 411 (2011). Appellant counsel’s AIS email is tgoldstein@cobblaw.net. Throughout this case, Appellant’s counsel has used his AIS email to communicate with the undersigned and the Court.

² In addition to emailing a clocked copy of the Order Denying Appellant’s Motion to Reconsider to counsel at their AIS emails, the Clerk of Court also uploaded a clocked copy of the Order to the Berkeley County Online Public Index, which allows counsel to view filings online.

so divests this Court of subject matter jurisdiction and requires dismissal of the appeal. *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999) (citing *First Carolina Nat'l Bank v. A & S Enterprises, Inc.*, 272 S.C. 339, 251 S.E.2d 762 (1979); *Burnett v. South Carolina State Highway Dep't*, 252 S.C. 568, 167 S.E.2d 571 (1969)).

Recently, this Court held that that “an e-mail from the office of the master-in-equity with the order on appeal as an attachment constitutes written notice of entry of the order under Rule 203(b)(1) of the South Carolina Rules of Appellate Procedure.” *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 413 S.C. 642, 643, 776 S.E.2d 575, 576 (Ct. App. 2015). In *Fallon Properties*, the appellant served the Notice of Appeal thirty-one days after the appellants received an e-mail from the office of the master with the order on appeal as an attachment, but only twenty-eight days after they received the printed copy of the order. *Id.* at 643, 776 S.E.2d at 576. The respondent moved to dismiss the appeal as untimely. *Id.* This Court granted the motion and dismissed the appeal. *Id.* This appeal must be dismissed for the same reason because Appellant did not serve his Notice of Appeal until forty-six days after receipt of the email attaching the Order.³

“The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has

³ Appellant will likely argue that the deadline to serve the Notice of Appeal should be ignored by this Court because Appellant’s counsel contacted Respondent’s counsel to check on the status of the Order on February 13, 2017 – after receiving the court’s email containing the Order – and did not receive a response until March 1, 2017. This argument is unavailing given the clear holding in *Fallon Properties*. The court sent the Order to counsel via email on January 27, and the Clerk’s office scanned and uploaded the Order to Berkeley County’s Online Public Index the same day, providing ready access to the Order at any time.

no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)); *see also Canal*, 338 S.C. at 5, 524 S.E.2d at 418 (providing that the failure of a party to serve the notice of appeal within thirty days after receiving written notice of the entry of the order divests this court of jurisdiction and requires the dismissal of the appeal)). Based on the above, this Court “lacks appellate jurisdiction” and “is required to dismiss the appeal.” *Fallon Properties*, 413 S.C. at 646–47, 776 S.E.2d at 577–78.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



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Attorney for Respondent

The City of Hanahan

April 6, 2017

Exhibit A

McQuillin, Mac

From: Courtmail08_DoNotReply@sccourts.org
Sent: Monday, November 28, 2016 11:24 AM
To: tgoldstein@cobblaw.net; McQuillin, Mac
Cc: devon.wilson@berkeleycountysc.gov
Subject: Reyna vs The Town of Hanahan 2016-CP-08-1261
Attachments: 2016CP0801261_ORDER_264837.PDF

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

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 AFFIRMING DECISION OF  
HANAHAN CITY COUNCIL**

FILED  
16 NOV 15 PM 3:04  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

**Date of Hearing:** August 30, 2016  
**Presiding Judge:** Dale E. Van Slambrook  
**Attorneys for Appellant:** Thomas R. Goldstein  
**Attorneys for Respondent:** Stafford J. McQuillin III  
**Court Reporter:** Karen V. Anderson

This matter came before the Court as an appeal from Hanahan City Council's decision to revoke Appellant's business license. The City of Hanahan's ("the City") revocation hearing was held on May 26, 2016. Appellant filed his appeal on June 3, 2016. On June 29, 2016, the Clerk for Hanahan City Council filed the Original Record<sup>1</sup> ("Record") from Hanahan City Council's hearing with the Berkeley County Clerk of Court. Appellant has made no objection to the record. This Court held a hearing on August 30, 2016, to hear appellate arguments. Notice of the hearing was duly given to all interested persons. For the reasons set forth below, the Court hereby affirms the decision of Hanahan City Council.

<sup>1</sup> The May 26, 2016 revocation hearing was recorded by a court reporter that was requested by Appellant. The Record includes transcribed testimony from the hearing as well as numerous exhibits. The City of Hanahan obtained the Original Record from counsel for Appellant prior to filing it with the Berkeley County Clerk of Court.

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### APPLICABLE 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.”).

### FINDINGS OF FACT

1. Appellant Benjamin Reyna held the business license (license No. 9692) for El Alamo (“the Night Club”). Appellant operates a “Late Hour, Adult Night Club,” which stays open several nights a week until 5:00 a.m.
2. Citizens, neighboring businesses and patrons of the Night Club complained to the City about frequent criminal activity associated with the Night Club.

3. Due to citizen complaints and frequent criminal activity associated with the Night Club, it was determined that Appellant's business license should be brought before Hanahan City Council to determine whether the license should be revoked.

4. On April 8, 2016, City officials delivered a revocation hearing notice to Appellant. The hearing was originally scheduled for April 30, 2016. However, on April 14, 2016, attorney Thomas Rode contacted the City and indicated that he represented Appellant and requested that the hearing be rescheduled due to scheduling conflicts.

5. Counsel for the City, Stafford J. McQuillin III, worked with Mr. Rode to find a suitable date for all parties and counsel involved in the matter.

6. After finding an agreeable date on April 25, 2016, the City served Appellant's counsel with a Citation/Notice of Suspension and Hearing for Revocation of Business License ("Citation/Notice"). The Citation/Notice was made part of the Record and is attached to this Order as **Exhibit A**.

7. The Citation/Notice is detailed and provided Appellant with actual notice of the revocation hearing sufficient to permit Appellant to attend the hearing and present his views. Despite the Citation/Notice, Appellant did not attend the hearing or call any witnesses; instead, Appellant sent only his lawyer and a court reporter. Specifically, the Citation/Notice provided Appellant's counsel with the following pertinent information regarding the hearing:

As you know, El Alamo and Latino Mix's business licenses are being presented for revocation before Hanahan City Council. **The revocation hearing for your client's licenses will be held on May 26, 2016 at 6:30 pm in Council Chambers at 1255 Yeamans Hall Road, Hanahan, South Carolina 29410.** The purpose of the hearing is to determine whether your client's business licenses should be revoked pursuant to Section 10-9 of the Code of Ordinances of City of Hanahan, which states:

**Sec. 10-9. - Council may revoke or refuse to issue license.**

(a) Council may, after citation to the proposed licensee and hearing thereon, refuse to issue a license or may revoke a license of any person whenever, in its judgment, the public welfare makes such action necessary.

(b) Decision of council shall be final unless appealed to a court of competent jurisdiction within ten days after the date of the council's decision.

(c) No license to carry on any business in violation of the city's zoning ordinance shall be issued to any person.

At the hearing, City Council will hear testimony and be presented with evidence to determine the following: (1) whether your clients' licenses were mistakenly or improperly issued or issued contrary to law; (2) whether your clients have breached any condition upon which the licenses were issued; (3) whether your clients obtained the licenses through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in their license applications; (4) whether your clients have been convicted of an offense under a law or ordinance regulating the businesses, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; and/or (5) whether your clients or its customers have engaged in unlawful activities or a nuisance related to the business. After examining each of the above issues, City Council will make a determination as to whether the public welfare makes revocation of the licenses necessary.

Your clients' business licenses are being considered for revocation because a preliminary determination has been made that (1) the businesses are in breach of the conditions upon which the business licenses were issued; (2) the operation of your clients' businesses constitutes a nuisance; (3) your clients have failed to comply with sections of the business license ordinance; and (4) your clients and its customers have engaged in unlawful activities related to the business. More specifically, El Alamo is operating under conditions that were not presented and approved under the preliminary zoning review on March 4, 2013. Additionally, Latino Mix's business operations are outside the scope of the approved business license because it subleased space to an additional business and is operating under conditions that were not presented at the preliminary zoning review on March 17, 2014. Finally, your clients' business operations constitute a nuisance. Specifically, the nuisance is due to numerous citations issued and repeated criminal activity associated with the businesses' operations, including but not limited to weapons incidents, possession and sale of narcotics, assault, physical domestic violence, theft, public intoxication, physical disturbances, verbal disturbances, and noise disturbances.

Due to the City's preliminary findings, your clients' licenses are being temporarily suspended until the revocation hearing is completed. No licenses will

be re-issued during the suspension period; however, your clients' may still conduct business during this probationary, suspension period.

If you have any questions or concerns with the information contained in this Citation and Notice, please direct all communications to Stafford J. McQuillin III, Esq., who has been retained by the City to assist with this matter.

8. Prior to City Council's Revocation Hearing on May 26, 2016, ("revocation hearing") counsel for Appellant requested that the City provide a Spanish interpreter for the revocation hearing. Per Appellant's request, the City, at a cost to taxpayers, provided a Spanish interpreter at the revocation hearing; however, the record reveals that neither Appellant (who was not present at the revocation hearing) nor his counsel utilized the interpreter's services.

9. In addition to Appellant's request to reschedule the hearing and request to provide a Spanish interpreter, Appellant also sent 22 voluminous Freedom of Information Act Requests to the City and its various divisions. Despite the overbroad and voluminous nature of the requests, the City coordinated with its various divisions, searched for, prepared and produced all approximately 542 pages of documents as well as 911 calls and dash cam video in an expedited manner to Appellant's counsel in advance of the hearing.

10. The City complied with Appellant's pre-hearing demands, and the hearing was held on May 26, 2016.

11. At the Revocation Hearing, Appellant's counsel made another request to delay and reschedule the duly noticed hearing citing the need for more time to prepare. Counsel for the City argued that Appellant was not entitled to an "elongated pseudo-criminal trial" and publically discussed a Fourth Circuit Court of Appeals decision discussing due process in the context of a business license, which held "due process does not require that in every instance of a deprivation of property . . . a full-blown evidentiary hearing." *Richardson v. Town of Eastover*, 922 F.2d 1152, 1160 (4th Cir. 1991). After hearing arguments from Appellant and

the City's counsel, City Council voted to proceed with the Revocation Hearing on the agreed upon, rescheduled date of May 26, 2016.

12. At the hearing, the City and Appellant were each provided with ninety minutes to call and cross-examine witnesses and present arguments and evidence to City Council. The City provided Appellant with additional time to present. (Record, p. 155, "I believe you gave us more time to present, and I appreciate that.") The entire hearing, including City Council's ultimate decision to revoke Appellant's license, was transcribed by a court reporter requested by Appellant. Appellant's counsel, Christopher Romeo, Esq., ordered and obtained an original and one copy of the hearing transcript following the hearing. A copy of Appellant's order and invoice from the court reporter is attached to this Order as **Exhibit B**.

13. The City and Appellant submitted various previously exchanged exhibits at the revocation hearing, which are included in the Record.

14. The City called the following witnesses in this order: (1) City of Hanahan Chief of Police, Dennis Turner; (2) Detective Cliff Driggers, Hanahan Police Department; (3) Chief Deputy Sherriff, Mike Cochran, Berkeley County Sherriff's Office, formerly Chief of Police for the City of Hanahan; (4) Hanahan Resident Ron Newman; (5) Hanahan Resident Chad Chinnors; (6) Maria Carval, patron Night Club; and (7) Hanahan Business License Official for the City of Hanahan, Joy Krutek.

15. The City of Hanahan Chief of Police Dennis Turner went through numerous incidents reports arising from and connected to the operation El Alamo from 2014 to 2016. These incidents included, *inter alia*: (1) numerous physical altercations; (2) numerous alcohol/intoxication arrests; (3) numerous drug arrests; (3) arrests of Night Club employee for pointing and presenting fire arm on premises; (4) reports of employee assaulting patron; (5) and

noise violations. All of the indent reports discussed by the Chief of Police were previously provided to Appellant's counsel in advance of the revocation hearing, submitted as exhibits, and made part of this Record.

16. The Chief of police, provided the following pertinent testimony:

Since 2014 the El Alamo had proved to be a nuisance because of the criminal activity arising from and associated with the business. It is clear that the business has knowingly promoted overconsumption of alcohol, intoxication, and other criminal activities on the premises.

The license holder for El Alamo, Mr. Reyna, is well aware of the criminal activity associated with the business. In the past numerous officers have discussed the criminal activity with him. I have -- Officer Reyes -- I will put point out Officer Reyes is fluent -- or Detective Reyes now is fluent in Spanish and also Sergeant Lanphear among others.

Mr. Reyna has also witnessed several of the arrests that have taken place at this location. However, the criminal activity has not stopped. For these reasons I have great concern for the safety of not only the residents who live near the establishment but also the safety of the patrons who visit the establishment.

(Record, pp. 30-32)

17. The Chief of Police also discussed an incident that occurred on May 22, 2016, which occurred after Appellant received the Citation/Notice and during the probationary license suspension period discussed in the Notice/Citation. On May 22, 2016, at approximately 6 a.m., an intoxicated patron of Night Club assaulted a Hanahan Police Officer. After the arrest, the individual signed a statement indicating that he "went to El Alamo at 2:30 a.m. in the morning, left the El Alamo at 5:00 a.m. . . . [w]hile at El Alamo - I drank Model and Corona beers."

(Record, p. 73) The May 22, 2016 Incident Report and Statement are part of the Record.

18. Detective Cliff Driggers with the Hanahan Police Department provided City Council with statistical data that compared events and incidents from 2014 to May of 2016 for the Night Club and other establishments within the City that allow for on-premises consumption

of alcohol. In addition to the Night Club, the City has three other establishments that allow for on-premises consumption of alcoholic beverages (LG's, Buccas, and Hanahan's). Detective Driggers indicated that the Night Club had a total of forty-four arrests from 2014 to May of 2016 and that the other three establishments combined had a total of only two arrests. The following is a summary of the comparative data presented by Detective Driggers to City Council:

| Incident       | Alamo | Hanahan's | LG's | Bucca's |
|----------------|-------|-----------|------|---------|
| Disturbance    | 30    | 1         | 10   | 4       |
| Assaults       | 7     | 0         | 0    | 1       |
| Narcotics      | 10    | 0         | 0    | 0       |
| Weapons        | 2     | 0         | 0    | 0       |
| Disorderly     | 21    | 1         | 1    | 2       |
| Resisting      | 5     | 0         | 0    | 0       |
| ABC            | 2     | 0         | 0    | 0       |
| Minors/Fake ID | 6     | 0         | 0    | 0       |
| Agg. Assaults  | 1     | 0         | 0    | 0       |
| Prop. Crimes   | 9     | 0         | 3    | 0       |
| Reports        | 49    | 0         | 12   | 2       |

(Record, pp. 92-93)

19. Ron Newman, a resident of Hanahan that owns a business and property adjacent to the Night Club, provided the following testimony:

I'm adjacent to the property that we're talking about over there. I have a mobile home park. I have a lot of children that live there and I'm personally proud of it, but I'm not proud of my tenants being disturbed. I don't like them cutting through, tearing the fence down, and walking through and urinating and throwing beer bottles as they leave the property and go through the fence. I don't like that.

But the noise -- I don't know how many complaints I've had about the noise and the fighting. I am fearful, ladies and gentlemen. I am fearful for my residents.

I think everybody ought to have a chance to run a good business, but I don't think there's anything good about this except somebody making money. I can stand here and talk about this all day long and y'all can talk about it all day long but when it gets down to it I'm being abused. Other Citizens are being abused.

I ask you gentleman and lady -- ladies, I ask y'all to do something about this. We can't have some of our Citizens be killed. Although they live over there in the trailer park they don't want to be killed, you know. They want to have restful sleep. Whenever this starts disrupting my customers and I start losing business because of that then something's got to change. It's like the possum and the raccoon up there fighting in the tree. You've got to shoot up there amongst them because one of them needs some relief. I'm the one that needs the relief just like all the Citizens in Hanahan.

(Record, pp. 98-99)

20. Chad Channers, a resident of Hanahan who owns a business across the street from the Night Club, provided the following testimony:

Now, as a business owner I own Blackwood True Value. I'm a partner. The most direct contact I've had with it is they -- a customer of [the Night Club] ran into the sign and caused about \$12,000 in damage. It wasn't a big concern of mine. I mean, it happened. There's property damage, but it could have been anyone.

It could have been that someone got killed in that incident. My warehouse manager witnessed the incident. It happened about 5:00 a.m. on a Sunday morning. I got a call at about 5:30 and he directly witnessed them coming out of that parking lot.

(Record, pp. 100-101)

21. The next witness was Maria Carval, who testified that she was attacked with a pistol while a patron at the Night Club. Ms. Carval (through a Spanish interpreter) provided the following pertinent testimony:

Interpreter Aldrich: Her name is Maria Carval and she's was one of the victims in this incident where she was at the bar and a man attacked her with a pistol, threatened her with a pistol.

She asked for help and nobody [from the Night Club] wanted to call the police or tell her anything. So she said, you know, how is it possible that you're not going to call the police or I'm not going to get any help on this. She said she was a nervous wreck. She is now receiving help from a psychiatrist and counselors because she's just not well after that incident. So she is getting help at West Ashley from the mental health department. She is also going to MUSC. So she gets therapy every Monday from 9:00 to 11:00.

(Record, pp. 102-103)

22. Appellant's counsel presented arguments before City Council, including arguments that a limited number of incident reports were unrelated to El Alamo. Appellant was not present, and did not call any witnesses at the hearing.

23. After both sides presented at the hearing, City Council unanimously voted to revoke the business license of El Alamo. Specifically, Councilman Dan Owens made the following motion, which was unanimously approved, 6-0, by City Council:

After careful consideration of all of the facts presented by both sides at this hearing – and thank you both – I move that we revoke the license of El Alamo/Benjamin Reyna (license No. 9692) pursuant to Hanahan City Ordinance Section 10-9. The public welfare makes this revocation necessary due to the fact that the operation of El Alamo's business creates a nuisance attributable to the frequent and persistent suspected criminal activity associated with the operation of the business including repeated acts of unlawful possession or sale of controlled substances, multiple intoxication and alcohol incidents, and continuous breach of the peace.

(Record, pp. 157-158)

24. City Council's ruling was transcribed by the court reporter requested by Appellant, as was the rest of the hearing.

### CONCLUSIONS OF LAW

#### **I. The City provided Appellant with sufficient notice and an opportunity to be heard.**

Appellant was afforded due process, including notice and an opportunity to be heard. In *Richardson v. Town of Eastover*, 922 F.2d 1152, 1160 (4th Cir. 1991), the Fourth Circuit

discussed due process requirements in the context of a municipality's revocation of a business license. In *Richardson*, the Town of Eastover refused to renew Mr. Richardson's business license. "The ordinance, on which the council relied in refusing to renew Richardson's license, provides that the license may be withheld when an occupation would be detrimental to the 'security, welfare, convenience, health, peace, or good government of the town.' *Richardson v. Town of Eastover*, 922 F.2d 1152, 1157-58 (4th Cir. 1991). "The concededly broad ordinance grants Eastover significant discretion in determining whether to withhold or not to renew licenses." *Id.* In discussing due process, the Court held:

Due process, at a minimum, requires that a person be given notice of impending action and afforded a hearing. The nature of the notice and the quality of the hearing are determined by the competing interests involved. Thus, when the property interest that is subject to the deprivation is of minor value, fairness requires a less formal hearing.

*Richardson v. Town of Eastover*, 922 F.2d 1152, 1159 (4th Cir. 1991) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 865 (1950); *Goss v. Lopez*, 419 U.S. 565, 579, 95 S.Ct. 729, 738, 42 L.Ed.2d 725 (1975)). When applying the due process requirements in the context of revoking a business license, the Court held:

Here, the value of any property interest that a licensee receives from Eastover is diminished by the broad right given by South Carolina to the Town of Eastover to regulate licenses under S.C. Code Ann. § 5-7-30 (Law. Co-op. 1989 Supp.), and the broad discretion reserved by the Town of Eastover in its ordinances to revoke or refuse licenses. The ordinance of Eastover provides that a business license may be revoked or refused if operation of the business would be detrimental to the "security, welfare, convenience, health, peace, or good government of the town." A license that is issued subject to conditions which permit its revocation on such a broad range of contingencies as is contained in the Eastover ordinance is less valuable than one that is subject to revocation only on a stringent showing of cause.

The minimal value, therefore, of the property interest that Richardson held in the license from Eastover is a factor to be considered in determining the quality of notice and the formality of any hearing that is required by due process.

*Id.* at 1159–60.

The City's ordinance at issue in this appeal is undistinguishable from the ordinance involved in Town of Eastover appeal. Specifically, the City's ordinance regulating business licenses states, "[c]ouncil may, after citation<sup>2</sup> to the proposed licensee and hearing thereon, refuse to issue a license or may revoke a license of any person whenever, in its judgment, the public welfare makes such action necessary." The ordinance of Eastover provides that a business license may be revoked or refused if operation of the business would be detrimental to the "security, welfare, convenience, health, peace, or good government of the town." Thus, applying the law of *Richardson* to this appeal, this Court concludes that Appellant's property interest holds "minimal value" when determining the quality of notice and the formality of any hearing that is required by due process.

**A. The City's Notice/Citation fulfilled the requirements of due process.**

In *Richardson*, the Fourth Circuit held that "informal" notice was sufficient in the context of a business license. Specifically, the mayor of Eastover orally advised Richardson prior to the meeting that the town council intended to discuss the issue of closing the nightclubs on Main Street. *Id.* at 1160. Although the mayor did not invite Richardson to the meeting on his own initiative, he did so when Richardson called the mayor after the renewal of his license had been refused. *Id.* Pursuant to this "informal notice of the meeting," Richardson appeared at the meeting. *Id.* During the period thereafter and before the vote by the town council, Richardson was "informally notified" of two more meetings during which he had the opportunity to present his views on the issue,<sup>3</sup> and he did so. *Id.* Finally, about a month before Richardson was required to close the Apollo Club, he received written notice. *Id.* The Fourth Circuit held, "[s]ince

Richardson received actual notice, he can claim no prejudice or even unfairness for its having been informal.” *Id.*

Here, the City’s Citation/Notice was written and formal. The Citation/Notice was detailed and provided Appellant with actual notice of the revocation hearing sufficient to permit Appellant and his counsel to attend the hearing and present Appellant’s views. Indeed, Appellant’s counsel attended the hearing and presented arguments on his client’s behalf. When considering the “minimal value” of property interest involved and the formal, written and detailed Notice/Citation, this Court concludes that the City’s Notice/Citation fulfilled the requirements of due process.

**B. The City’s hearing fulfilled the requirements of due process.**

“On the issue of a hearing, due process does not require that in every instance of a deprivation of property, however insignificant, a full-blown evidentiary hearing must be conducted before an impartial tribunal.” *Id.* “A hearing need only be provided ‘at a meaningful time and in a meaningful manner’ in the context of all the circumstances.” *Id.* (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, (1965)). The *Mathews* case explains that three factors should be considered in determining the nature and timing of a hearing.

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Mathews v. Eldridge*, 424 U.S.319, 335 (1976).

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<sup>2</sup> The City provided Appellant with the required citation on April 25, 2016, when it served the “Citation/Notice of Suspension and Hearing for Revocation of Business License” on Appellant’s Counsel. (Exh. A)

After considering the *Mathews* factors and applying the factors in the context of a business license revocation, the Fourth Circuit held, "Richardson may have had a property interest at stake, *i.e.*, his business license, but the risk that the procedures used could result in an erroneous deprivation of his interest was minimal." *Richardson* at 1160. "Moreover, the probable value of a more formal hearing cannot be supported." *Id.* at 1161. The Fourth Circuit held the following under the third factor of the *Mathews*:

The circumstances relevant to the third *Mathews* factor—the government's interest and the additional burdens that a more formal process would entail—also weigh against Richardson. The government of Eastover had a legitimate interest in "cleaning up" Main Street. It was properly reacting to complaints of shootings, drug use, fights, and noise. Moreover, Eastover is a small town, and its ability to provide formal hearings is limited. The town council meets only once a month, in the evening, and the council members have other full-time professions.

*Id.*

When applying *Richardson* and the *Mathews* factors to the case at bar, this Court concludes that that the City's hearing fulfilled the requirements of due process in light of the Appellant's "minimal" property interest. Indeed, Appellant was provided with a formal hearing that lasted more than three hours. The City also provided Appellant's counsel with more time to present arguments. (Record, p. 155, "I believe you gave us more time to present, and I appreciate that"). At the hearing, Appellant's counsel was also provided the opportunity to present evidence and call and cross-examine witnesses. In this appeal, Appellant's counsel does not complain about the hearing itself; rather, Appellant complains that the city did not issue a "written order" to review for error. Because the entire hearing was transcribed and provided to Appellant's counsel, this Court concludes that Appellant's argument is immaterial and

disingenuous.<sup>3</sup> Based on the foregoing, this Court concludes that the City complied with due process, and provided Appellant with sufficient notice and an opportunity to be heard.

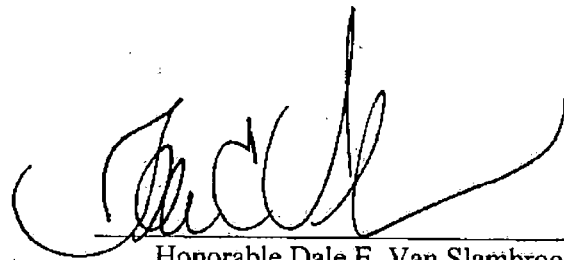
**II. The Record contains ample evidence supporting City Council's decision to revoke the business license of Appellant.**

In addition to the City fulfilling the requirements of due process, the record is replete with evidence and testimony supporting the City's decision to revoke Appellant's business license. Citizens, neighboring businesses and a patron of the Night Club all complained to the City at the revocation hearing about the criminal activity associated with the Night Club. The Hanahan Police department also went through voluminous incident reports connected to the operations of the Night Club and provided comparative statistical data relating to events and incidents from 2014 to May of 2016 for the Night Club and other establishments within the City that allow for on-premises consumption of alcohol. Based on the evidence and testimony in the Record, this Court concludes that the decision of City Council was sound, reasonable, and supported by abundant evidence and testimony.

For the reasons set forth above, the Court hereby affirms the decision of Hanahan City Council.

**AND IT IS SO ORDERED.**

November 15 2016

  
Honorable Dale E. Van Slambrook  
Berkeley County Master-in-Equity  
SPECIAL CIRCUIT COURT JUDGE

<sup>3</sup> Appellant also cites to *City of Columbia v. Abbott*, 269 S.C. 504, 507, 238 S.E.2d 177, 179 (1977) and argues that the City was required to issue a written order. *Abbott* is distinguishable because the City of Columbia's ordinance expressly required a written order. Specifically, the City of Columbia ordinance stated, "City Council . . . shall issue a written finding of fact and an order to carry out its finding." The City of Hanahan Ordinance has no such requirement.

# Exhibit B

## McQuillin, Mac

---

**From:** Dale Van Slambrook <dale.vanslambrook@berkeleycountysc.gov>  
**Sent:** Wednesday, January 18, 2017 10:45 AM  
**To:** McQuillin, Mac  
**Cc:** tgoldstein@cobblaw.net; Gulick, Kathy  
**Subject:** RE: Reyna v. Town of Hanahan 2016-CP-08-01261

I received and reviewed the Motion to Reconsider and Memorandum in Opposition. I deny the requested relief. Further, I would request that Mr. McQuillin draft a short Order to that effect, forward via Email with copy to all counsel. Thank you.

**From:** McQuillin, Mac [<mailto:mmcquillin@hsblawfirm.com>]  
**Sent:** Friday, December 9, 2016 1:23 PM  
**To:** Dale Van Slambrook <dale.vanslambrook@berkeleycountysc.gov>  
**Cc:** [tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net); Gulick, Kathy <[kgulick@hsblawfirm.com](mailto:kgulick@hsblawfirm.com)>  
**Subject:** RE: Reyna v. Town of Hanahan 2016-CP-08-01261

Judge Van Slambrook:

As you will recall, I represent the City of Hanahan in the above referenced matter. We received opposing counsel's Motion to Reconsider the order affirming the decision of Hanahan City Counsel. We plan on drafting and filing a brief Memorandum in Opposition early next week.

-Mac

**Haynsworth  
Sinkler Boyd, PA**

ATTORNEYS AND COUNSELORS AT LAW

Stafford J. ("Mac") McQuillin III | Attorney | Haynsworth Sinkler Boyd, P.A.

134 Meeting Street, 3rd Floor (29401) | Post Office Box 340 (29402) | Charleston, South Carolina  
Phone: 843.722.3366 | Fax: 843.722.2266 | Direct: 843.724.1120 | Mobile: 843.709.1041

[website](#) | [bio](#) | [vCard](#) | [map](#) | [email](#)

---

**From:** Dale Van Slambrook [<mailto:dale.vanslambrook@berkeleycountysc.gov>]  
**Sent:** Thursday, October 13, 2016 1:11 PM  
**To:** McQuillin, Mac; [tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net)  
**Subject:** Reyna v. Town of Hanahan 2016-CP-08-01261

Mr. McQuillin, Please prepare a Proposed Order denying the Appeal filed by Mr. Reyna. Please address the propriety of the appeal and ruling thereon in the absence of a written Order of Revocation of the business license. Include an explanation of the appropriate burden of proof and that the decision was supported by the evidence presented. Please forward to me by email. If any questions please let me know and we can set up a conference call or hearing to discuss.

Dale E. Van Slambrook  
Master-in-Equity Berkeley County  
PO Box 1163  
Moncks Corner, South Carolina 29461

(843)719-4437

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# Exhibit C

## McQuillin, Mac

---

**From:** McQuillin, Mac  
**Sent:** Thursday, January 19, 2017 6:16 PM  
**To:** 'Dale Van Slambrook'  
**Cc:** tgoldstein@cobblaw.net; Gulick, Kathy  
**Subject:** RE: Reyna v. Town of Hanahan 2016-CP-08-01261  
**Attachments:** DM 4819867-v1 Order Denying Motion to Reconsider .DOC

Judge Van Slambrook:

Per your request, attached please find a proposed Order denying Appellant's Motion to Reconsider.

Respectfully,

-Mac

**Haynsworth  
Sinkler Boyd, PA.**

ATTORNEYS AND COUNSELORS AT LAW

Stafford J. ("Mac") McQuillin III | Attorney | Haynsworth Sinkler Boyd, P.A.

134 Meeting Street, 3rd Floor (29401) | Post Office Box 340 (29402) | Charleston, South Carolina  
Phone: 843.722.3366 | Fax: 843.722.2266 | Direct: 843.724.1120 | Mobile: 843.709.1041

[website](#) | [bio](#) | [vCard](#) | [map](#) | [email](#)

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**From:** Dale Van Slambrook [<mailto:dale.vanslambrook@berkeleycountysc.gov>]  
**Sent:** Wednesday, January 18, 2017 10:45 AM  
**To:** McQuillin, Mac  
**Cc:** tgoldstein@cobblaw.net; Gulick, Kathy  
**Subject:** RE: Reyna v. Town of Hanahan 2016-CP-08-01261

I received and reviewed the Motion to Reconsider and Memorandum in Opposition. I deny the requested relief. Further, I would request that Mr. McQuillin draft a short Order to that effect, forward via Email with copy to all counsel. Thank you.

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**Sent:** Friday, December 9, 2016 1:23 PM  
**To:** Dale Van Slambrook <[dale.vanslambrook@berkeleycountysc.gov](mailto:dale.vanslambrook@berkeleycountysc.gov)>  
**Cc:** [tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net); Gulick, Kathy <[kgulick@hsblawfirm.com](mailto:kgulick@hsblawfirm.com)>  
**Subject:** RE: Reyna v. Town of Hanahan 2016-CP-08-01261

Judge Van Slambrook:

As you will recall, I represent the City of Hanahan in the above referenced matter. We received opposing counsel's Motion to Reconsider the order affirming the decision of Hanahan City Counsel. We plan on drafting and filing a brief Memorandum in Opposition early next week.

-Mac

**Haynsworth  
Sinkler Boyd, P.A.**

ATTORNEYS AND COUNSELORS AT LAW

**Stafford J. ("Mac") McQuillin III | Attorney | Haynsworth Sinkler Boyd, P.A.**

134 Meeting Street, 3rd Floor (29401) | Post Office Box 340 (29402) | Charleston, South Carolina  
Phone: 843.722.3366 | Fax: 843.722.2266 | Direct: 843.724.1120 | Mobile: 843.709.1041

[website](#) | [bio](#) | [vCard](#) | [map](#) | [email](#)

---

**From:** Dale Van Slambrook [<mailto:dale.vanslambrook@berkeleycountysc.gov>]  
**Sent:** Thursday, October 13, 2016 1:11 PM  
**To:** McQuillin, Mac; [tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net)  
**Subject:** Reyna v. Town of Hanahan 2016-CP-08-01261

Mr. McQuillin, Please prepare a Proposed Order denying the Appeal filed by Mr. Reyna. Please address the propriety of the appeal and ruling thereon in the absence of a written Order of Revocation of the business license. Include an explanation of the appropriate burden of proof and that the decision was supported by the evidence presented. Please forward to me by email. If any questions please let me know and we can set up a conference call or hearing to discuss.

Dale E. Van Slambrook  
Master-in-Equity Berkeley County  
PO Box 1163  
Moncks Corner, South Carolina 29461  
(843)719-4437

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# Exhibit D

**McQuillin, Mac**

---

**From:** Courtmail08\_DoNotReply@sccourts.org  
**Sent:** Friday, January 27, 2017 2:11 PM  
**To:** tgoldstein@cobblaw.net; McQuillin, Mac  
**Cc:** devon.wilson@berkeleycountysc.gov  
**Subject:** Reyna vs The Town of Hanahan 2016-CP-08-1261  
**Attachments:** 2016CP0801261\_ORDER\_273344.PDF

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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**

FILED
JAN 23 PM 4:25
CLERK OF COURT
BERKELEY COUNTY, S.C.

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,

M

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.

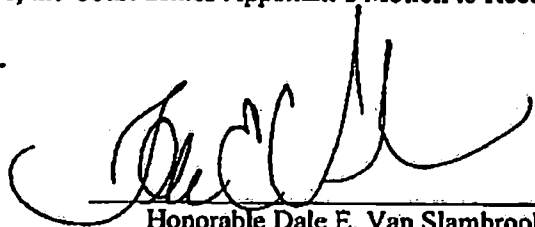
This Court's Order and underlying record contains ample evidence that since 2014 Appellant's night club had proved to be a nuisance because of the unlawful activity arising from and associated with the business. Appellant's Motion claims that "[w]ith one exception, all of the evidence consisted of testimony 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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

Case No. 2016-CP-08-01261
Appellate Case No. 2017-000796

RECEIVED

APR 07 2017

SC Court of Appeals

Benjamin Reyna, d/b/a, El Alamo Restaurant,..... Appellant,

v.

The Town of Hanahan.....Respondent.

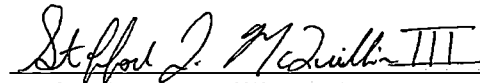
PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Dismiss on all attorneys of record by depositing a copy of it in the United States Mail, postage prepaid, on April 6, 2017, addressed to all attorneys as shown below:

Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
P.O. Box 71121
Charleston, SC 29415-1121

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Stafford J. McQuillin III (S.C. Bar 78203)
Post Office Box 340
Charleston, South Carolina 29402
Phone: (843) 724-1120
mmcquillin@hsblawfirm.com
Attorney for Respondent
The City of Hanahan

Haynsworth
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STAFFORD J. MCQUILLIN III
DIRECT DIAL NUMBER 843.724.1120
EMAIL mmcquillin@hsblawfirm.com

April 6, 2017

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Benjamin Reyna d/b/a El Alamo Restaurant v. The Town of Hanahan
Appellate Case No. 2017-000796

Dear Ms. Kitchings:

Enclosed herewith for filing, please find an original and seven copies of Respondent's Motion to Dismiss, along with a Proof of Service, in the above-referenced matter. Please return one copy of the file-stamped Motion to Dismiss and Proof of Service to me in the enclosed envelope.

Thank you for your attention to this matter.

Very truly yours,


Stafford J. McQuillin III

SJM/kmg
Enclosures
cc (w/encl.): Thomas R. Goldstein, Esq.

RECEIVED

APR 07 2017

SC Court of Appeals

Haynsworth
Sinkler Boyd, PA

ATTORNEYS AND COUNSELORS AT LAW

POST OFFICE BOX 340
CHARLESTON, SOUTH CAROLINA 29402-0340

13026-57
Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

