

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale Van Slambrook, Special Circuit Court Judge

Case No. 2016-CP-08-01261

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SC Court of Appeals

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

v.

The Town of Hanahan Respondent

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. SHOULD THIS COURT AFFIRM THIS MATTER BECAUSE THE APPELLANT BENJAMIN REYNA FAILED TO PRESENT PROPERLY ANY PRESERVED ISSUES FOR REVIEW?
2. DID THE CIRCUIT COURT CORRECTLY REFER THIS MATTER TO THE SPECIAL CIRCUIT COURT JUDGE ON ITS OWN MOTION AND WITH THE CONSENT OF THE PARTIES AFTER REYNA MOVED TO RECUSE THE ORIGINALLY ASSIGNED JUDGE?
3. DID THE CIRCUIT COURT CORRECTLY FIND THAT DUE PROCESS WAS MET BECAUSE REYNA WAS PROVIDED WITH NOTICE AND AN OPPORTUNITY TO BE HEARD AND THE EVIDENCE PRESENTED TO CITY COUNCIL SUPPORTED CITY COUNCIL'S REVOCATION OF REYNA'S BUSINESS LICENSE?

STATEMENT OF THE CASE AND FACTS

This appeal concerns the revocation of Business License Number 9692 (“license” or “business license”) issued by the City of Hanahan (“City”). The license was issued to Benjamin Reyna for a business known as El Alamo. (Pl. Ex. 1, R. at ____). Reyna describes El Alamo as a “Late Hour, Adult Night Club.” (Appellant’s Memorandum of Law at 2, ¶ 2; R. at ____). Due to citizen complaints and frequent criminal activity associated with El Alamo, the City’s business license official notified Reyna that the matter of a possible revocation of the license would be brought before City Council. (5/26/16 Tr. at 5:17-23:18, Pl. Ex. 1, R. at ____).

The hearing was originally scheduled for April 18, 2016. (*Id.*). Reyna’s counsel asked that the hearing be rescheduled, and the City and Reyna agreed on a new date, May 26, 2016. (5/26/16 Tr. at 6:5-20, R. at ____). After finding an agreeable date, the City served Reyna’s counsel on April 25, 2016 with a “Citation/Notice of Suspension and Hearing for Revocation of Business License” (“Citation/Notice”), which provided additional information beyond that contained in the original notice. (Pl. Exh. 1, R. at ____).

Prior to the hearing, Reyna requested that the City provide a Spanish interpreter. (5/26/16 Tr. at 6:21-25, R. at ____). The City granted that request. (*Id.*). On April 15, 2016, Reyna sent Freedom of Information Act (“FOIA”) requests to the City and its various divisions to which the City responded in an expedited manner prior to the hearing. (5/26/16 Tr. at 7:1-12, R. at ____; 5/26/16 Tr., Def. Exh. 1 at 1-4, R. at ____).

At the hearing, Reyna again sought to postpone the hearing by a month raising due process concerns based on the timing of the FOIA response. (5/26/16 Tr. at 16:14-18, R. at ____). In addition to his request for more time, Reyna also argued that it was improper for the hearing on the El Alamo license to be heard with another business, Latino Mix. (5/26/16 Tr. at 9:15-16:18,

R. at ____). After considering arguments on these points, City Council voted to proceed as scheduled. (5/26/16 Tr. at 28:1-30:1, R. at ____).

At the hearing, the City and Reyna were each given ninety minutes to call and examine witnesses and present arguments and evidence. (5/26/16 Tr. at 8:4-8, R. at ____). The City provided Reyna with additional time to present. (5/26/16 Tr. at 155:10-11, R. at ____). The parties submitted to City Council previously exchanged exhibits including incident reports. Reyna did not elect to call any witnesses and did not personally appear at the hearing. The City called the following witnesses: (1) Police Chief Dennis Turner; (2) Detective Cliff Driggers; (3) Chief Deputy Sherriff Mike Cochran, Berkeley County Sherriff's Office, formerly City Police Chief; (4) City Resident Ron Newman; (5) City Resident Chad Chinnors; (6) El Alamo patron Maria Carval; and (7) Business License Official Joy Krutek. The entire hearing, including City Council's ultimate decision to revoke the license, was transcribed by a court reporter. (Order at 6, R. at ____).

At the hearing, the Police Chief presented incident reports arising from and connected to the operation El Alamo from 2014 to 2016. (5/26/16 Tr. at 30-87, Pl. Ex. 1; R. at ____). These incidents included, among other things: (1) physical altercations; (2) alcohol/intoxication arrests; (3) drug arrests; (3) arrest of an El Alamo for pointing and presenting fire arm on premises; (4) reports of employees assaulting patron; (5) and noise violations. (*Id.*). The Police Chief further testified:

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.

(5/26/16 Tr. at 30:20-31:15, R. at ____). He also testified that there had been continued need for police response at El Alamo after Reyna received notice that the City was considering revoking the license, including an assault on a police officer on May 22, 2016. (5/26/16 Tr. at 70:17-73:11, Pl. Ex. 1, R. at ____).

Detective Cliff Driggers provided City Council with statistical evidence comparing the need for police response from 2014 to May 2016 for all of the businesses within the City that allowed on-premises consumption of alcohol. (5/26/16 Tr. at 87-94, R. at ____). That evidence showed a dramatic difference in the need for police response between El Alamo and the other identified businesses. For example, El Alamo had forty-four arrests in that period and the other three establishments combined had two arrests. (5/26/16 Tr. at 93:20-21, R. at ____).

The next witness for the City was Ron Newman, a City resident who owns a business adjacent to El Alamo. (5/26/16 Tr. at 97-99, R. at ____). He 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.

(5/26/16 Tr. at 98:3-99:22, R. at ____).

The next witness, Chad Chinnners, a City resident who owns a business across the street from El Alamo, testified:

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.

(5/26/16 Tr. at 100:4-102:10, R. at ____).

Lastly, Maria Carval, an El Alamo patron, testified through an interpreter as follows:

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.

(5/26/16 Tr. at 102:17-105:10, R. at ____).

Following the presentation of the City's case, Reyna presented arguments and exhibits but no witnesses. (5/26/16 Tr. at 109-155, R. at ____). After both sides rested, City Council unanimously voted to revoke the business license of El Alamo pursuant to the following motion:

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.

(5/26/16 Tr. at 157:16-159:1, R. at ____).

Reyna appealed the decision of City Council to the circuit court on June 3, 2016 by filing a "Complaint; Appeal; Equal Protection," which included numerous causes of action. (Notice of Appeal, R. at ____). On June 29, 2016, the Clerk of City Council filed the Original Record. (Order at 1, R. at ____).

The circuit court held a hearing on the appeal on August 30, 2016. At that time, Reyna sought the recusal of Judge Deadra Jefferson, the judge originally scheduled to hear the appeal. (8/30/16 Tr. at 21-22, R. at ____). On Judge Jefferson's suggestion, the parties agreed to have Judge Dale Van Slambrook, the Master for Berkeley County, hear this appeal as a Special Circuit Judge. (*Id.*).

With respect to what Reyna argued in his original appeal, Reyna's counsel stated:

I filed an appeal. And I filed -- I filed six causes of action. The first is a statutory appeal, just alleging that the decision below is not supported by the evidence. The other five causes of action are procedural due process, substantive due process, violation of equal protection, tortious interference with prospective business relations, and I think I'm leaving one out.

The allegations are that the Town is discriminating against Mr. Reyna because he is a member of a minority identified class, i.e., Hispanic. Those are the allegations.

Mr. McQuillin has taken an exception to my combining the two into one complaint. And so one of the things before Your Honor today -- and I'm stealing his thunder a little bit -- is a 12(f) motion to strike. And what he says is, Goldstein, you have the right to appeal and you have the right to file your civil rights cases, but you don't have the right to combine them.

I'm conceding the point. So I'm agreeable to refiling the civil rights allegations, paying Berkeley County another \$150, getting a new case number, and refiling that complaint.

(8/30/16 Tr. at 24:6-25:1, R. at ____). Reyna confirmed this statement in his post-hearing memorandum. (Appellant's Memorandum of Law at 1, R. at ____)

On November 15, 2016, the circuit court issued a detailed written order affirming the decision of City Council. (Order, R. at ____). On December 2, 2016, Reyna filed a motion for reconsideration, arguing that the circuit court had applied the wrong standard of review and that the circuit judge had improperly imposed vicarious liability with respect to considering the acts of third parties in the revocation of the license. (Motion, R. at ____). On January 23, 2017, the circuit court issued an Order denying the motion. (Order, R. at ____). This appeal followed.

STANDARD OF REVIEW

“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.” *Singh v. City of Greenville*, 384 S.C. 365, 370, 681 S.E.2d 921, 922 (Ct. App. 2009) (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.” *Singh*, 384 S.C. at 370, 681 S.E.2d at 922 (Ct. App. 2009) (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.”). This Court will not disturb the factual findings of a city council, concurred in by a circuit judge, unless they are without evidentiary support or against the clear preponderance of the evidence. *Gay*, 364 S.C. at 254, 612 S.E.2d at 468.

ARGUMENTS

I. Reyna did not include a statement of issues on appeal in his Appellant's Brief. Therefore, he has not properly presented any arguments for this Court's review.

As an initial matter, Reyna's Appellant's Brief does not comply with Rule 208(b)(1)(B), SCACR because it does not contain a statement of issues on appeal. As set forth in Rule 208, "[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal." "In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal." *Langehans v. Smith*, 347 S.C. 348, 352, 554 S.E.2d 681, 683 (Ct. App. 2001). Here, Reyna has not presented any issues for the Court's review. Therefore, the Court should decline to reach the merits of any argument presented by Reyna and should affirm this matter in its entirety. *See Walde v. Ass'n Ins. Co.*, 401 S.C. 431, 435 n. 1, 737 S.E.2d 631, 633 n. 1 (Ct. App. 2012) (declining to address merits of argument not included as an issue on appeal).

II. Reyna's Appellant's Brief includes matters that were neither raised to nor ruled on by City Council or the circuit court.

It is unclear what Reyna has raised in his brief in light of his failure to include a statement of issues on appeal. He raised very few objections or arguments at the revocation hearing before City Council. The first was to moving forward with the hearing on two due process grounds: (1) that the hearing on the El Alamo license was heard with another business, Latino Mix, and (2) that Reyna did not have adequate time to prepare based on the timing of the City's FOIA production relative to the start of the hearing.¹ (5/26/16 Tr. at 9:15-16:18, R. at ____).

¹ The license for Latino Mix was not revoked (5/26/16 Tr. at 159:2-160:13, R. at ____), and this objection is not an issue on appeal as far as the City can ascertain.

The issues raised on appeal must be the same as the issues raised below. Where the argument on appeal differs from the grounds for a party's trial objection, the issue is not preserved. *Hanahan v. Simpson*, 326 S.C. 140, 155, 485 S.E.2d 903, 911 (1997) (superseded by statute on other grounds) (citing *Rosamond Enterprises, Inc. v. McGranahan*, 278 S.C. 512, 299 S.E.2d 337 (1983)) (appellant may not argue a different ground on appeal than he argued in his objection at trial); *State v. Ward*, 374 S.C. 606, 615–16, 649 S.E.2d 145, 150 (Ct. App. 2007). As such, any additional or different argument now presented by Reyna should not be considered by this Court.

As quoted above, Reyna conceded that the appeal before the circuit court was “just alleging that the decision below is not supported by the evidence,” and he acknowledged that all of the other claims were separate causes of action. (8/30/16 Tr. at 24:6-25:1, R. at ____; *see also* Appellant's Memorandum of Law at 1, R. at ____). As to the process followed by the City, Reyna did not challenge the format or the hearing itself before the circuit court, but rather raised another argument: that the city did not issue a citation or a “written order” to review for error. (Appellant's Memorandum of Law; R. at ____). He has not raised these arguments here and instead challenges the hearing itself and the evidence presented. He has never made a formal argument relating to substantive due process prior to this appeal, nor has there been any previous ruling relating to substantive due process. There was no mention of an improper executive session at any time before either City Council or the circuit court. Therefore, these arguments were not raised to and ruled on by either City Council or the circuit court and are not preserved for this Court's review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998).

Moreover, Reyna did not make any contemporaneous objections to the evidence as it was presented to City Council, much less specific hearsay or Rule 803, SCRE objections. Therefore, he has not preserved any arguments with respect to the consideration of that evidence. To preserve

an issue for review, a party must make a contemporaneous objection to the evidence in question. *State v. Wannamaker*, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001). An objection to testimony “cannot be raised for the first time on review, nor can it be heard on appeal when it is not properly raised by an exception.” *Rosamond Enterprises, Inc.*, 278 S.C. at 513, 299 S.E.2d at 338.

III. Judge Van Slambrook heard this matter as a Special Circuit Judge with the consent of all parties; therefore, there is not a jurisdictional issue.

Judge Van Slambrook heard this appeal as a Special Circuit Judge with the consent of all parties after Reyna sought the recusal of Judge Jefferson, the judge originally scheduled to hear it. (8/30/16 Tr. at 21-22, R. at ____). After hearing argument on the recusal request, Judge Jefferson proposed that Judge Van Slambrook hear the matter and asked “Are there any exceptions from the appellant?” (*Id.*). To which the response was “None, Your Honor.” (*Id.*). The City also consented. (*Id.*). By way of this exchange, the circuit court raised the issue on its own motion and the parties consented. Therefore, the requirements for a reference under Rule 53(b), SCRPC were met. Accordingly, Reyna has not presented a jurisdictional issue for this Court’s review.

IV. Reyna was given notice and an opportunity to be heard at all levels of this action and the evidence supports City Council’s decision; therefore, there has been neither a procedural nor a substantive due process violation.

Again, it is difficult to discern the arguments raised by Reyna because he did not include a statement of issues on appeal and because he did not raise the same arguments to City Council or to the circuit court. Assuming there is something for this Court to address on the merits, the analysis must start with what was and was not at issue before City Council and the circuit court. This appeal relates solely to the revocation of Reyna’s business license for El Alamo. It does not relate to any other ordinances, FOIA, or anything else.

The standards that apply to due process arguments in South Carolina are well established.

Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due

Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; *Stono River Env'tl. Protection Ass'n v. S.C. Dep't of Health and Env'tl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. *First Fed. Sav. Loan Ass'n of Waltherboro v. Bd. of Bank Control*, 263 S.C. 59, 65, 207 S.E.2d 801, 804 (1974) (quoting *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 894, 81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961)). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. *S.C. Dep't of Soc. Servs. v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002).

Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171–72, 656 S.E.2d 346, 350 (2008). “In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law.” *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004).

A. Reyna received notice and had an opportunity to be heard.

As referenced in the April 18, 2016 letter notifying Reyna of the possible revocation, the license was revoked under the following ordinance:

When the license inspector determines that:

- (1) A license has been mistakenly or improperly issued or issued contrary to law;
- (2) A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this article;
- (3) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application;
- (4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
- (5) A licensee has engaged in an unlawful activity or nuisance related to the business

The license inspector shall give written notice to the licensee or the person in control of the business within the City by personal service or registered mail that the license is being

presented before the Hanahan City Council for the purpose of determining whether the license should be revoked.

(Pl. Ex. 1, R. at ____). The letter further apprised Reyna as follows:

Your business is in breach of conditions upon which the business license was issued; you have failed to comply with sections of the business license ordinance and the licensee has engaged in an unlawful activity or nuisance related to the business. EL ALAMO, is in violation of the City of Hanahan Code of Ordinances. Additionally, operation of the business constitutes a nuisance. More specifically, the nuisance is due to repeated criminal activity involving and the business type currently operating was not submitted and presented initially for zoning approval. The repeated criminal activity includes, but is not limited to, assault, physical domestic violence, possession of narcotics, sale of narcotics, harassment, theft, weapons incidents, verbal disturbance, and physical disturbance.

(*Id.*). The City provided further explanation of the grounds for seeking revocation in the Citation/Notice. (Pl. Ex. 1, R. at ____). In addition, the City responded to Reyna's FOIA request within the time allowed by FOIA and prior to the hearing. (5/26/16 Tr. at 7:1-12, R. at ____). After working with counsel to set a date, a hearing was held and Reyna was given the opportunity to present witnesses and to ask questions of the City's witness. (5/26/16 Tr. at 6:5-20, R. at ____); (5/26/16 Tr. at 8:4-8, R. at ____). Council made its decision after hearing all of the evidence and arguments. (5/26/16 Tr. at 157:16-159:1, R. at ____). As noted above, Reyna did not object to the City's evidence.

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. There, the town 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.'" *Id.* at 1157-58 (4th Cir. 1991). "The concededly

broad ordinance grants Eastover significant discretion in determining whether to withhold or not to renew licenses.” *Id.* at 1157–58. In discussing due process, the Court explained:

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.

Id. at 1159 (citation omitted). When applying the due process requirements in the context of revoking a business license, the Fourth Circuit 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 and the circuit court relied on *Richardson* because the facts and the underlying ordinance are similar to those at issue here. (*See* Ex. 1, R. at ____). Moreover, the rule in *Richardson* is consistent with that set forth by the South Carolina Supreme Court in *Kurschner* as quoted above.

The process affirmed in *Richardson* was less than that afforded here. There, the mayor told Richardson prior to the meeting that the town council intended to discuss the issue of closing the nightclubs on Main Street. *Id.* at 1160. The mayor only invited Richardson to the meeting after Richardson called to complain that his business license had not been renewed. *Id.* Pursuant to this “informal notice of the meeting,” Richardson appeared at the meeting. *Id.* 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, and he did so. *Id.* Finally, about a month before Richardson was required to close his business, 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 issued a two detailed, written notices advising Reyna that the City was considering revoking his license, providing the ordinance under which the revocation was being considered, and advising him of the ways in which the license official believed the business was in violation of the ordinance. (Ex. 1, R. at ____). Reyna responded to the notice and sought documents under FOIA. The hearing was rescheduled to accommodate Reyna, and an interpreter was provided at Reyna’s request. Reyna’s counsel was present at the hearing and had the opportunity to present and question witnesses.

“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 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). Given all of the above, the circuit court correctly found that procedural due process was met in this case.

B. The ruling of City Council is supported by the evidence and did not arbitrarily or capriciously deprive Reyna of any rights.

In addition to the City fulfilling the requirements of procedural due process, the evidence supports City Council’s decision to revoke Reyna’s business license as set forth in the circuit court’s order. (Order, R. at ____). As discussed in detail above, the City’s Police Department, citizens, neighboring businesses, and an El Alamo patron all presented evidence to City Council

about the criminal activity associated with the business. Given this evidence, Judge Van Slambrook upheld City Council's revocation of the business license. (Order, R. at ____). As such, this decision must be affirmed under the standard of review. *See Gay v. City of Beaufort*, 364 S.C. 252, 254, 612 S.E.2d 467, 468 (Ct. App. 2005).² Moreover, this evidence shows that Reyna was not arbitrarily or capriciously denied anything and that there was not a substantive due process violation. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004).

Reyna spends a great deal of time addressing discrimination cases.³ However, those arguments do not appear to relate to the hearing at issue here, which was a business license revocation. As discussed in *Richardson*, South Carolina municipalities have broad discretion with respect to business licenses. *See* S.C. Code Ann. § 5-7-30 (discussing powers of municipalities). Moreover, the case primarily relied on by Reyna, *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 596 S.E.2d 917 (2004), did not find a due process violation. There, the court found:

A municipal corporation has the power to regulate any trade, occupation or business, the unrestrained pursuit of which might affect injuriously the public health, morals, safety or comfort; and in the exercise of the power particular occupations may be ... required to be conducted within designated limits[.] We agree with the trial court's ruling that the ordinance is a limited measure designed to curb the deleterious effects of the appellants' operation of their establishments during the early morning hours. The ordinance is designed to maintain peace, quietude, safety, order, and quality of life in Charleston, while still allowing appellants to operate their businesses twenty hours a day. We hold the trial court correctly found that the

² This evidence distinguishes this case from the zoning cases cited by Reyna in his brief, *Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 516 S.E.2d 439 (1999) and *Wyndham Enterprises, LLC v. City of N. Augusta*, 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012). In those cases, the zoning board decisions were overturned because they were determined to be unsupported by evidence and therefore arbitrary.

³ In his Appellant's Brief, Reyna repeatedly quotes an out of context statement by a council member relating to Reyna and the Immigration and Customs Enforcement Office ("ICE"). The statement is found on page 139 of the May 26, 2016 transcript. This statement, however, follows testimony from the Police Chief, to which there was no objection, relating to Reyna's history with ICE. (5/26/16 Tr. at 75:3-76:18, R. at ____). Thus, the comment did not stem from any general bias, but rather, was based on the previously presented evidence in the record.

ordinance bears a reasonable relationship to City's legitimate interest in preserving the health, morals, safety, and comfort of Charleston.

Id. at 98, 596 S.E.2d at 924 (citation and quotation omitted). Although the City is unclear on what this has to do with the City Council's hearing of this matter, there is no question but that the underlying ordinance fits within the framework set forth in *Denene*. Similarly, there has been no argument that City Council wrote into the ordinance additional criteria "restricting property rights to a greater degree than intended by the legislative body." Therefore, Reyna's cited case of *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 10, 776 S.E.2d 753, 758 (Ct. App. 2015) is also inapplicable.

City Council's decision was well supported by the evidence and was neither arbitrary nor capricious. For that reason, there has not been a violation of Reyna's substantive due process rights and the circuit court correctly affirmed City Council's determination in this case.

CONCLUSION

Reyna has presented a jumble of thoughts for this Court's review. The arguments are not articulated in a statement of issues, nor are the arguments preserved. Moreover, a review of the record shows that Reyna was given notice and an opportunity to be heard and that City Council's determination was supported by the evidence. Therefore, Reyna has not shown any deprivation of his substantive or procedural due process rights. For all of these reasons, this Court should affirm the ruling of the circuit court.

Respectfully submitted,

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Dated: September 14, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC Court of Appeals

Dale Van Slambrook, Special Circuit Court Judge

Case No. 2016-CP-08-01261

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

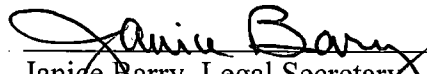
v.

The Town of Hanahan Respondent

PROOF OF SERVICE

I certify that I have served the Respondent, *The Town of Hanahan's Initial Brief and Designation of Matter to be Included in the Record on Appeal* on all attorneys of record by depositing a copy of it in the United States Mail, postage prepaid, on September 14, 2018, addressed to

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September 14, 2018

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

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SEP 17 2018

SC Court of Appeals

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

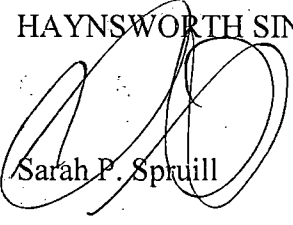
Dear Ms. Kitchings:

Enclosed herewith for filing is an original and one (1) copy of the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal regarding the above-referenced case together with a Proof of Service. Please file the originals and return a clocked copy to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

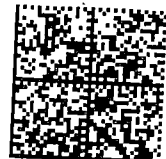
Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.


Sarah P. Spruill

SPS/jmb
Enclosures

cc: Thomas R. Goldstein
Mac McQuillin (via email only)



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