

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ELEVENTH JUDICIAL CIRCUIT COURT

R. Knox McMahon, Judge

Trial Court Case No. 2012-CP-32-01294
Appellate Case No. 2013-000314

Scarlet Williams Appellant,

v.

Lexington County Board of Zoning Appeals Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

- I. DID THE CIRCUIT COURT JUDGE ERR IN FINDING THAT THE DECISION OF THE LEXINGTON COUNTY BOARD OF ZONING APPEALS DENYING A HOME OCCUPATION PERMIT FOR APPELLANT'S DOG GROOMING BUSINESS WAS CORRECT AS A MATTER OF LAW?**

STATEMENT OF THE CASE

The Appellant, Scarlet Williams, respectfully argues that circuit court, by the order signed January 11, 2013 and filed January 13, 2013, erred in affirming the decision of the Lexington County Board of Zoning Appeals, a decision that upheld the Zoning Administrator's decision that dog grooming activity was not allowed on the subject property. (R. p. 66).

The Appellant respectfully urges this Court to reverse the circuit court's January 11, 2013 order, and, by extension, the decision of the Lexington County Board of Zoning Appeals denying the Appellant a Home Occupation Permit for her dog grooming business. Should this Court decline to reverse the January 11, 2013 order, the Appellant respectfully urges this Court, in the alternative, to remand this matter back to the Lexington County Board of Zoning Appeals for a new hearing.

PROCEDURAL HISTORY

The Appellant is a dog groomer. She, her husband, and their two (2) children reside in the Richmond Farm subdivision in Lexington County. The Appellant originally converted the one-car garage space in her home to additional living space, including a shower and separate door entrance, to accommodate her handicapped mother-in-law who resided with the Appellant's family for about a year. When the Appellant's mother-in-law moved into an assisted living facility, the Appellant, who was employed at Petsmart as a dog groomer, began grooming dogs for friends and neighbors in the converted garage. The Appellant eventually left her job at Petsmart and effectively began a dog grooming business. This home-based business allowed her

to contribute to the family's income while still remaining in the home and caring for her school-aged children. (R. p. 52). In September 2011, Mr. Walt McPherson, Lexington County Community Development Zoning Administrator, received an anonymous letter stating that a dog grooming business was being run from the Appellant's property.¹

Mr. McPherson, in response to the anonymous letter, contacted the Appellant about "trying to get her into compliance with the Zoning Ordinance ... looked at issuing a zoning permit, maybe a home occupation zoning permit." (R. p. 44). Mr. McPherson stated that he could not issue her a regular zoning permit because of the street classification of "RL5" which was not zoned for businesses within the "Kennels, Catteries and Stables" classification. This classification, found at Chapter 1, Section 21.10 reads:

Kennels, Catteries, and Stables include any person, establishment, partnership, corporation, or other legal entity that owns, keeps, harbors, or is custodian of domestic animals and/or domestic fowl kept or used for stud for which a fee is charged and/or for breeding purposes for which a fee is charged for the offspring, or for the purpose of commercial boarding, grooming, sale, or training. Animal rescue and/or adoption facilities whether operated for profit or as nonprofit organization shall be included in this category. Activities under this category shall not include livestock and other farm animals used in customary and normal agricultural husbandry practices or fancier's kennel or cattery or an Animal Hospital maintained buy a licensed veterinarian. (R. p. 46).

Mr. McPherson then concluded that he could not offer the Appellant a home occupation permit because "a local governing and planning body cannot issue a permit that would conflict with private restrictions." Mr. McPherson opined that the private restrictions on the Richmond Farms subdivision would only permit him to issue a home occupation permit for an

¹ Mr. McPherson stated that a total of three (3) anonymous letters were received: one in 2010, one in September 2011 and one in November 2011. None of the three (3) letters were introduced as evidence at the initial hearing in this matter. Lexington County received no other complaints regarding the subject property.

administrative office only.² (R. p. 48). In response, the Appellant appeared before the Richmond Farms Homeowner Association Board, and she requested written confirmation from the Association Board that her home-based dog grooming business was not in violation of the covenants and restrictions of the community. After a closed executive board meeting, the Association Board found that the Appellant's dog grooming business did not violate the covenants and restrictions of the community. Mr. Ronny Appleton, Association President, president presented the Appellant with a letter stating the same.³ (R. p. 51).

Mr. McPherson then considered issuing a Home Occupation Zoning Permit to the Appellant. According to Mr. McPherson, a "Home Occupation Zoning Permit is commonly issued to citizens operating an activity from their residence provided the guidelines of the Home Occupation are met." (R. p. 45). The home occupation guidelines, located at Chapter 1, Section 21.22 of the Lexington County Zoning Ordinance, state the following:

A home occupation shall not include the manufacture or repair of transportation related equipment or *animal impoundment activities (kennel)* and shall be subject to the performance standards contained in this Ordinance as applicable. [emphasis supplied]. (R. p. 45).

Mr. McPherson determined that, because the Home Occupation statute specifically prohibited a kennel and the ordinance located at Chapter 1, Section 21.10 included the word

² At the February 21, 2012 appeal hearing before the Lexington County Zoning Board of Appeals, Mr. McPherson read the following paragraph into the record for Richmond Farms:

SECTION 1: RESIDENTIAL USE OF PROPERTY. All lots shall be used for single-family, residential purposes only, and no business or business activity shall be carried on or upon any Lot at any time, except with the written approval of the Architectural Control Committee: provided, however, that nothing herein shall prevent Declarant or any builder of homes in Richmond Farms approved by Declarant from using any lot owned by Declarant or such builder of homes for the purpose of carrying on business related to the development, improvement and sale of property in Richmond Farms; and provided, further that, to the extent allowed by applicable zoning laws, private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwelling. (R. p. 44).

³ This letter was presented to the Lexington County Board of Zoning Appeals at the February 21, 2012 hearing in this matter and read into the record verbatim.

“grooming” under the description of principal activities of kennels, catteries and stables, the county would deny the Appellant a Home Occupation Permit. The Appellant appealed this decision to the Lexington County Board of Zoning Appeals. (R. p. 43). The Lexington County Board of Zoning Appeals affirmed this decision following an appeal hearing on February 21, 2012. (R. pp. 2-4). The decision of the Lexington County Board of Zoning Appeals was affirmed by an order from the circuit court dated January 11, 2013 and filed January 13, 2013.

STANDARD OF REVIEW

In *Wyndham Enterprises, LLC v. City of North Augusta*, 401 S.C. 144, 147 – 48, 735 S.E.2d 59, 661 (Ct. App. 2012), this Court articulated the following applicable standard of review for the instant matter:

On appeal, the findings of fact by the Board shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence. S.C. Code Ann. § 6–29–840(A) (Supp. 2011). **“In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the Board is correct as a matter of law.”** *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct.App.2004). Furthermore, “[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Restaurant Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 422, 446 (1999). **“However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.”** *Id.* [emphasis supplied].

ARGUMENTS

I. THE CIRCUIT COURT ERRED BY AFFIRMING THE LEXINGTON COUNTY BOARD OF ZONING’S DECISION, BECAUSE THE BOARD ABUSED ITS DISCRETION BY ADOPTING THE ZONING ADMINISTRATOR’S ERRONEOUS INTERPRETATION OF THE APPLICABLE ZONING ORDINANCES.

It is undisputed that the Appellant could not and would not be granted a regular zoning permit to operate her dog grooming business on 120 Wigmore Lane, Lexington South Carolina.

The subdivision road classification of “RL5” prohibits the issuance of zoning permits for business activities contained in the Section 21.10, entitled “ Kennels, Catteries and Stables,” of the Lexington County Zoning Ordinance. This section clearly contains the word “grooming” as a description of principal activities. However, the Lexington County Zoning Ordinance also contains provisions for the granting of a Home Occupation Permit.

The ordinance which addresses home occupation permits is found within Section 21.22 of the Zoning Ordinance, which is entitled “Home Occupations.” This provision allows for the grant of a home occupation permit for a home-based business so long as certain guidelines are met. The home occupation cannot occupy more than 25 percent of total floor area of the home, and it cannot occupy more than 750 square feet of floor area. These space requirements prevent a residential dwelling from being transformed in its entirety into a business, and they likewise prevent the residential portion of the home from becoming ancillary to the business. Thus, this section of the ordinance effectively recognizes the need and the right of Lexington County residents to operate a home-based business.

This section also lists eight (8) items that might ordinarily be found in business settings, but which would not be permitted as part of a home occupation unless an appropriate variance is granted. Those items, such as signage and additional employees, are all inapplicable to the Appellant’s situation. In fact, Mr. McPherson mentioned those items as “just more or less than an FYI” and that “she could probably meet those.” (R. p. 47).

Mr. McPherson denied the Appellant a home occupations permit based upon his interpretation of the phrase “animal impoundment activities (kennel)” in Section 21.22 of the Zoning Ordinance. He stated as follows:

But in taking into consideration how the verbiage of the definition of kennel speaks about grooming and also the verbiage of the home

occupation – and even though it mentions animal impoundment, it referenced kennel – I interpret that this type of activity could not be permitted as a home occupation. (R. p. 47).

Mr. McPherson phrased his interpretation even more succinctly within the evidentiary packet presented to the Board of Zoning Appeals:

It is my interpretation that since the definition of Kennels, Catteries, and Stables includes grooming and the guidelines of the Home Occupation includes animal impoundment activities (kennel), dog grooming service may not be permitted under the Home Occupation Zoning Permit. (R. p. 30).

If the matter before this Court was strictly a fact-based interpretation of the Zoning Ordinance, the applicable standard of review would require “great deference” to the findings of fact below. However, in the instant matter, the issue at hand deals with the interpretation of the ordinance itself and the construction of the ordinance. Mr. McPherson’s interpretation was adopted by the Board of Zoning Appeals and, for that matter, the circuit court. Under Mr. McPherson’s interpretation, Section 21.22, entitled “Home Occupations,” must be read in conjunction with Section 21.10, entitled “Kennels, Catteries, and Stables,” which includes the word “grooming” as a principal activity. Under this reasoning, the activity of grooming would preclude granting a home occupation permit, because the operation of a “kennel” is specifically prohibited. The Board of Zoning Appeals’ denial of a Home Occupation permit to the Appellant based upon Mr. McPherson’s original interpretation constitutes an abuse of discretion, and, therefore, a matter of law subject to this Court’s review.

“Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, ‘a broader and more independent review is permitted when the issue concerns the construction of an ordinance.’” *Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) (internal citation

omitted) (quoting *Sea Island Scenic Parkway Coalition v. Beaufort County Bd. of Adjustments & Appeals*, 316 S.C. 231, 235, 449 S.E.2d 254, 256 (Ct. App. 1994)). Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact. *Eagle Container Co., LLC, v. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892 (2008). The adoption of a zoning ordinance is a legislative function. *City of Myrtle Beach v. Juel P. Corp.*, 337 S.C. 157, 522 S.E.2d 153 (Ct.App.1999). “The determination of legislative intent is a matter of law.” *Somers*, 319 S.C. at 65, 459 S.E.2d at 843. “We proceed from the familiar premise that in the area of statutory construction, our role is limited to determining legislative intent and effectuating that intent.” *Eagle Container Co., LLC*, 379 S.C. at 570, 666 S.E.2d at 895.

The issue under consideration in the instant case is the correct interpretation of the legislative intent associated the Home Occupation section of the Lexington County Zoning Ordinance. An analysis of legislative intent begins and ends with the statute or ordinance in question. The Lexington County Zoning Ordinance is a 116-page document that contains twelve (12) articles. Article I is entitled “General Provisions,” and it contains two (2) chapters, an introductory chapter and second chapter, entitled “Construction of Language and Definitions.” Article I, Chapter 2, Section 12.00(a), which is entitled “Rules for Construction of Language,” states a series of general rules concerning statutory construction, the first of which is as follows: “the particular shall control the general.” Section 12.10 is entitled “Definitions,” and its preamble reads as follows:

Except when definitions are specifically included in the text, words in the text of this Ordinance shall be interpreted in accordance with the provisions set forth in this section. Where words have not been defined, the standard dictionary definition shall prevail. In cases of conflicting definitions, the Zoning Administrator shall be required to define any word or interpret any definition.

This preamble is followed by a long list of defined terms. The word “kennel” does not appear among the defined terms in Section 12.10.

Webster’s Dictionary defines “kennel” as “a shelter for a dog or cat; an establishment for the breeding or boarding of dogs or cats.” Merriam-Webster (2012), <http://www.Merriam-Webster.com>. The Cambridge Dictionary defines “kennel” as “a place where animals are bred and trained and where people pay to leave their dogs to be taken care of while they are away.” Cambridge University Press (2012), <http://www.dictionary.cambridge.org/us>. The American Heritage Dictionary defines “kennel” as “a shelter for a dog; an establishment where dogs are bred, trained, or boarded.” American Heritage Dictionary (2012), <http://www.ahdictionary.com>. None of the standard dictionary definitions of the word “kennel” include dog grooming.

The Appellant, as the parties agree, does not operate a “kennel.” In fact, Mr. McPherson stated that “[the Appellants’ business is] not a kennel based on the verbiage of our definition and based on what the intent of the home occupation.” (R. pp. 57-58).

Under the concepts of ordinance construction which appear in the preamble of Section 12.10, any effort to define the term “kennel” to encompass dog grooming activities is flatly erroneous. As the standard dictionary definitions of the term “kennel” did not include dog grooming, the Appellant respectfully submits that, under the preamble to Section 12.10 as well as the generally accepted rules associated with statutory construction, any further effort to interpret the applicable ordinance should have ended. “If a statute’s language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” *Eagle Container Co.*, 379 S.C. at 570 – 71, 666 S.E.2d at 896 (quoting *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994)).

Mr. McPherson, however, moved beyond the dictionary definitions of “kennel.” In his attempt to define “kennel” and ascertain the intent of the ordinance, Mr. McPherson delved further into the ordinance, looking into Article 2, which is entitled “Application Regulations.” In so doing, he found the term “kennel” located in Article 2, Chapter 1 within the “Schedule of Permitted Uses.” Section 21.00, the first section of Article 2, Chapter 1, is entitled “General Classification Rules” and states:

The purpose of this chapter is to classify all uses into a number of specially defined activities on the basis of common functional characteristics and similar compatibility with other uses. This classification system provides a basis for the regulation of these activities and their assignment to districts later in this chapter.

It is clear from this paragraph that the remainder of Article 2, Chapter 1 establishes a method to classify activities. Nothing in the entirety of Article 2, Chapter 1 purports to contain definitions of activities. Instead, the provisions of Article 2, Chapter 1 provide a methodology by which to group activities for regulatory purposes.

Section 21.10, entitled “Description of Principal Activities,” begins the classification scheme, and the following classification appears in this section:

Kennels, Catteries, and Stables include any person, establishment, partnership, corporation, or other legal entity that owns, keeps, harbors, or is custodian of domestic animals, and/or domestic fowl kept or used for stud for which a fee is charged and for breeding purposes for which a fee is charged for the offspring, or for the purpose of commercial boarding, grooming, sale, or training.

Mr. McPherson continued concluded that the classification of “kennels,” when read in conjunction with the subsequent section on home occupations, prohibited a home-based dog grooming business, because the operation of a “kennel” is specifically prohibited by Section 21.22. The Appellant respectfully asserts this analysis is flawed. The proper interpretation of the ordinance does not require Sections 21.10 and 21.22 to be read together, because the ordinary

meaning of “kennel” does not include dog grooming. Thus, a dog grooming business is not prohibited by Section 21.22.

The preamble to Section 12.10 requires that undefined terms be afforded their standard dictionary meaning. Likewise the appellate courts of our state have clearly held that words be afforded their plain meaning in instances involving statutory construction. “One of the primary rules in the construction of a statute is that the words used therein should be taken in their ordinary and popular signification, unless there is something in the statute requiring a different interpretation. This is really nothing more than a rule of common sense, for it must be supposed that the legislature, in enacting a statute, intended that the words used therein should be One of the understood in the sense in which they are ordinarily and popularly understood by the people, for whose guidance and government the law was enacted, unless there is something in the statute showing that the words in question were used in some other sense.” *Stevenson v. Board of Adjustment of City of Charleston*, 230 S.C. 440, 452, 96 S.E.2d 456, 462 (1957) (quoting *Wragge v. South Carolina & G. Railroad Co.*, 47 S.C. 105, 25 S.E. 76, 83, 33 L.R.A. 191). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *Eagle Container Co.*, 379 S.C. at 570, 666 S.E.2d at 895 (quoting *McClanahan v. Richland County Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)).

Clearly, an ordinary person does not define the term “kennel” to mean “dog grooming.” Likewise, the dictionary definition of “kennel” does not include “dog grooming.” Under the guidelines of construction set forth in the preamble to Section 12.10, there is no need to delve further into the ordinance for clarification of the term “kennel.”

If, however, the term “kennel” needs to be read in context with other language of the ordinance to ascertain its meaning and intent, then there is no reason to look to the classification scheme of Section 21.10. Instead, the words immediately preceding “kennel” in Section 21.22 are clearly more applicable. “Words in a statute must be construed in context,” and “the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.” *S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). “The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

The Zoning Ordinance at issue clearly seeks to prohibit a type of home occupation. The specific language from Section 21.22 prohibits the operation of a home business that involves “animal impoundment activities (kennel).” The Appellant’s dog grooming business clearly and indisputably does not engage in animal impoundment activities, and, therefore, it should not be considered a “kennel.” Looking to a separate section of the ordinance rather than within language of Section 21.22 itself is simply contrary to common sense. The term “kennel” appears in parentheses following the term “animal impoundment activities.” When read in context with the adjoining words “animal impoundment activities,” it is apparent that the intent of the ordinance is to prohibit a business that boards or shelters animals. The placement of the word “kennel” as a parenthetical attachment to the term “animal impoundment activities” aptly illustrates that the term “kennel” is a descriptive definition of a particular type of animal impoundment activity. Thus, it is abundantly clear that the intent of the ordinance is to prohibit the operation of an “animal impoundment activity” (a.k.a. “kennel”) as a home based business. This contextual reading is logical, harmonious and fulfills the general purpose Section 21.22.

In the instant case, the Zoning Ordinance itself requires that one look to the ordinary plain meaning of the word kennel and at most, to the standard dictionary definition of the word kennel. To construe the ordinance's construction in any other manner leads not only to the erroneous assertion that the intent of the home occupation section of the Lexington County Zoning Ordinance was to prohibit dog grooming, but also to a result that is incorrect as a matter of law.

Succinctly stated, the Appellant does not and has never operated a "kennel." Mr. McPherson's interpretation of the applicable zoning ordinances in a manner which yielded the conclusion that the Appellant operated some kind of "kennel" in the course of conducting her dog grooming business, therefore, constituted error. As such, the affirmation of the erroneous result of Mr. McPherson, the Board of Zoning Appeals, and the circuit court constituted a clear abuse of discretion.

CONCLUSION

For the foregoing reasons, the Appellant respectfully urges this Court to reverse the circuit court's decision which affirmed the denial of a home occupation zoning permit by the Lexington County Board of Zoning Appeals.

Alternatively, the Appellant respectfully urges this Court to remand this matter back to the Lexington County Board of Zoning Appeals for a new hearing.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ELEVENTH JUDICIAL CIRCUIT COURT

R. Knox McMahon, Judge

Trial Court Case No. 2012-CP-32-01294
Appellate Case No. 2013-000314

Scarlet Williams Appellant,

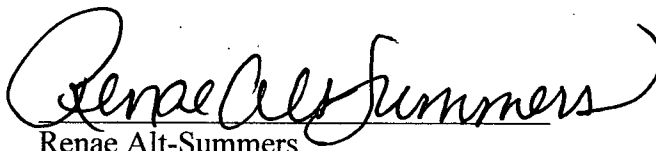
v.

Lexington County Board of Zoning Appeals Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Brief complies with Rule 211(b), SCACR.

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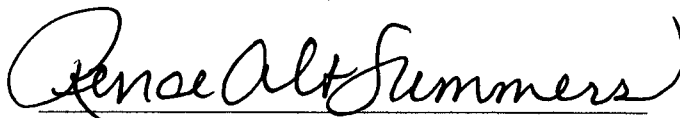
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Lexington County Board of Zoning Appeals Respondent.

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I certify that I have served a copy of **Appellant's Final Brief** on the above named Respondent by mailing a copy of it to the Respondent's counsel at the following address:

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