

Chancery Court for the First Judicial District
at Unicoi County, Tennessee

Shawn Miller (d/b/a NAC Re-
alty),

Petitioner,

v.

Town of Unicoi, and Dwight
Harrell, as Building Official for
the Town of Unicoi,
Respondents.

Case No. 8461

Rule 58 Order

Cause No. 8461
Chancery Court Unicoi County
Filed at 8:44 o'clock A M
the 25 day of April 2024
Teresa W. Simerly, C & M T.S.

Ruling of Chancellor Rambo:

This cause came to be heard for trial on the 15th day of March 2024, before the Honorable John C. Rambo, Chancellor, upon the *Petition for Writ of Mandamus and Declaratory Judgment* filed by Petitioner, the appearance of the parties in open Court with their counsel, the testimony of witnesses, and the entire record in the case. Petitioner was present and was represented by Attorney Rebecca J. Ketchie. Defendant Town of Unicoi was present and was represented by Attorney Samuel K. McPeak. From the testimony provided and exhibits introduced, the Court issues the following findings of fact and conclusions of law:

Findings of Fact

1. The Petitioner owns a building located at 185 Golf Course Road in the Town of Unicoi ("Hotel Property"). Prior to the incorporation of the Town of Unicoi, Tennessee, an operational hotel existed on the property. The Town of Unicoi was chartered on or about February 1, 1994, and the Hotel Property is within the corporate boundary. The Town of Unicoi adopted its zoning ordinance on December 18, 1995. The zoning map designated the Hotel Property as R-1 (Low Density) Residential zone land. A hotel or motel is not a permitted use in the R-1 residential zone. The zoning ordinance for the Town of Unicoi does not define "hotel" or "motel."
2. Of significance to this case, Jai Jalaram Krupa Tennessee, Inc. purchased the Hotel Property by warranty deed dated March 1, 2004. Jai Jalaram Krupa Tennessee, Inc. is a corporation owned by Rahit and Parul Majethia. Rahit Majethia ("Previous Owner") managed the hotel with the help of family and some independent contractors. The hotel had been operated as a Family Inns of America and Rahit Majethia changed the name of the hotel to Budget Inn.
3. Jai Jalaram Krupa Tennessee, Inc. sold the Hotel Property to Petitioner.
4. Previous Owner paid the hotel tax on the property until all operations ceased at the Hotel Property site in 2020.
5. At the time of the hotel inspection in December 2016, the Hotel Property was still offering nightly rentals. However, the nature of the business was now emphasizing longer-term rentals. By January 2018 there were only two to three rooms

for nightly rentals made available in the entire facility. There are sixty-nine rooms at the Hotel Property, the majority of which were offered for long-term rentals. By January 31, 2018, overnight rentals had ended and rooms were made available only for weekly and monthly rentals.

6. In August of 2019, weekly rentals had stopped and only long-term, extended stay customers were at the Hotel Property. During the critical period of 2018-2019, there were no written leases, no security deposits, and no tenant background checks. In 2019, no room service was offered, although room service had been previously provided by Mr. Majethia's family members.
7. The Criminal Court caused the hotel to close for business on January 7, 2020, on the finding of a public nuisance.
8. Weekly and monthly rentals started in approximately 2010.
9. The longest guest has stayed for more than five years, and that guest and others paid on a month-to-month basis. Some residents would receive mail through the office.
10. Nightly rentals ended on January 1, 2018.
11. Petitioner purchased the land from Jai Jalaram Krupa Tennessee, Inc., which was controlled by Rahit Majethia, on June 15, 2022.

Conclusions of Law

The determinative question before this Court is whether the use of the Hotel Property is a legal nonconforming use that persisted the enactment of the Town of Unicoi's zoning ordinance, or whether the use is abated.

Tennessee Code Annotated section 13-7-208(b)(1) specifies in relevant part:

In the event that a zoning change occurs in any land area where such land area was not previously covered by any zoning restrictions of any governmental agency of this state or its political subdivisions, or where such land area is covered by zoning restrictions of a governmental agency of this state or its political subdivisions, and such zoning restrictions differ from zoning restrictions imposed after the zoning change, then any industrial, commercial or business establishment in operation, permitted to operate under zoning regulations or exceptions thereto prior to the zoning change shall be allowed to continue in operation and be permitted; provided, that no change in the use of the land is undertaken by such industry or business.

Tennessee Code Annotated section 13-7-208(g) provides:

[Subsection (b)(1)] shall not apply if an industrial, commercial, or other business establishment ceases to operate for a period of thirty (30) continuous months and the industrial, commercial, or other business use of the property did not conform with the land use classification as denoted in the existing zoning regulations for the zoning district in which it is located. Anytime after the thirty-month

cessation, any use proposed to be established on the site, including any existing or proposed on-site sign, must conform to the provisions of the existing zoning regulations. For the purposes of this subsection (g), the thirty-month period of continuous ceased operation shall be tolled by: (1) The period in which an industrial, commercial, or other business establishment is party to any action in a court of competent jurisdiction regarding the use of the property until such time that a final settlement, order, decree, or judgment has been rendered . . . or (4) The reactivation of the nonconforming use any time prior to the end of the thirty-month period; provided, however, that the restrictions of this subsection . . . shall only apply if the property owner intentionally and voluntarily abandons the nonconforming use of the property. In any contested matter on the use of such property, the government has the burden of proving an overt act of abandonment in such matter."

These statutes permit a business that preexisted a zoning change to continue in operation unless the business voluntarily ceased, by overt action, to operate for a period of thirty continuous months. They further provide that a business that is a party to an action in a court of competent jurisdiction regarding the use of the property is tolled until a final ruling has been rendered.

The term "hotel" is defined in different ways by Tennessee statutes. The Tennessee Department of Health regulations define "hotel" as an establishment offering accommodations by the day. According to those regulations, "hotel" means "any building or establishment kept, used, maintained, or advertised to the public to be a place where sleeping accommodations are furnished for pay to transients or travelers whether or not meals are served

therein, regardless of what term the owner or operator uses to describe the establishment." Tenn. Comp. R. & Regs. 1200-23-04-.01(6). The term "furnished for pay to transients or travelers" is defined as "offering sleeping accommodations by the day." Tenn. Comp. R. & Regs. 1200-23-04-.01(5).

Tennessee's privilege and excise taxation statutes provide an alternative definition. For purposes of the Tennessee hotel/motel tax, "hotel" is defined as:

any structure or space, or any portion thereof, that is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes privately, publicly, or government-owned hotels, inns, tourist camps, tourist courts, tourist cabins, motels, short-term rental units, primitive and recreational vehicle campsites and campgrounds, or any place in which rooms, lodgings, or accommodations are furnished to transients for consideration.

Tenn. Code Ann. § 67-14-1401(2). The term "transient" is defined in that section as "any person who exercises occupancy or is entitled to occupancy of any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days." *Id.* § 1401(12). Thus, the tax statute would classify as a "hotel" a business that offers rooms to customers for periods longer than day-to-day, but still less than thirty continuous days.

In this case, A portion of the hotel remained in use as a hotel within thirty months of the injunction that prevented the occupation of the property for any hotel or long-term stay purposes.

However, a majority of the hotel property was not used as a hotel in the thirty continuous months prior to the injunction.

The 30-month period during which the use of the Hotel Property would have to have been abandoned to lose its legal, nonconforming status was tolled on January 7, 2020. This is the date the Unicoi County Criminal Court issued its temporary injunction/restraining order. This temporary injunction remains in place. Therefore, the 30-month period dates back to July 7, 2017, and the use of the Hotel Property as a nonconforming hotel had to be in such continuous use as of July 7, 2017.

Although the use of the Hotel Property as a hotel had diminished during its operation by the Previous Owner, the Hotel Property was still operating as a hotel as of July 7, 2017. For example, in 2017 and 2018 the Previous Owner paid the required hotel tax related to the renting of rooms at the Hotel Property. The property was still receiving state hotel inspections as of December 17, 2017. And daily customers were offered room service, maid service, and linens.

At the time of the hotel inspection in December 2016, the Hotel Property was primarily focused on offering longer-term rentals, but nightly rentals were still offered. By January 2018 there were only two to three rooms for nightly rentals made available in the entire facility. There are sixty-nine rooms at the Hotel Property, the majority of which were offered for long-term stays.

By January 31, 2018, overnight rentals had ended and rooms were made available only for weekly and monthly rentals. But prior to January 31, 2018, overnight accommodations were offered and utilized for transient travelers. Although the traditional hotel functions were less emphasized and less successful than

long-term stays, the property still operated to offer nightly and weekly stays.

As to evidence that an apartment complex instead of a hotel was operated at the Hotel Property by the Previous Owner, there were no leases that committed a person or persons to stay at the Hotel Property for a negotiated term. The hotel operator did not require security deposits and conducted no tenant background checks.

For these reasons, the Hotel Property functioned as a hotel during the 30 months prior to the Court order that ceased all business activity at the Hotel Property site. Thus, the Petitioner is allowed to continue to operate the Hotel Property site as a hotel pursuant to the protections of Tennessee Code Annotated section 13-7-208(b)(1) as a nonconforming use under the Town of Unicoi zoning code or regulations.

Writ of Mandamus

The Petition also seeks a writ of mandamus requiring Respondent to issue a building permit to Petitioner. The writ of mandamus is a remedy available only in extraordinary circumstances. *Tennessee Cmty. Organizations v. Tennessee Dep't of Fin. & Admin.*, No. M200802154COAR3CV, 2009 WL 2393109, at *5 (Tenn. Ct. App. Aug. 3, 2009); *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 570 (Tenn. Ct. App. 1994); *Peerless Constr. Co. v. Bass*, 158 Tenn. 518, 522, 14 S.W.2d 732, 733 (1929). Mandamus may only lie in cases where there is a "ministerial act," that is, an act for which the law defines the duties to be performed with such certainty as to leave nothing to the actor's discretion. *Tusant v. City of Memphis*, 56 S.W.3d 10, 18 (Tenn. Ct. App. 2001) (citing *Lamb v. State*, 207 Tenn. 159, 338 S.W.2d 584, 586 (1960)).

For an act to be enforced by a writ of mandamus, the act must be purely "ministerial." *Peerless Construction Co. v. Bass*, 158 Tenn. 518, 520, 14 S.W.2d 732 (1929). If the right to have the act performed is doubtful, the right must be first established in some other form of action. Mandamus is a summary remedy, extraordinary in its nature, and to be applied only when a right has been clearly established. *Peerless*, 14 S.W.2d at 733. The writ of mandamus will not lie to control official judgment or discretion, but it is the proper remedy where the proven facts show a clear and specific legal right to be enforced, or a duty which ought to be and can be performed. *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221 (Tenn.1988), citing *State ex rel. Ragsdale v. Sandefur*, 215 Tenn. 690, 696, 389 S.W.2d 266, 269 (1965).

Hackett v. Smith County, 807 S.W.2d 695, 698 (Tenn. Ct. App. 1990). Further, the writ of mandamus is not appropriate where a right is doubtful. *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221 (Tenn. 1988).

Even where a right is established, courts may not substitute their own discretion for that properly exercised by the relevant authoritative body.

Generally, where a public official has any discretion concerning the doing of an act, the issuance of a mandamus is not available. *Davis v. Fentress County Bd. Of Educ.*, 218 Tenn. 280, 402 S.W.2d 873 (1966). Where the exercise of judgment or discretion is required, he may be compelled by the issuance of a mandamus to perform the duty, however his judgment regarding the details in the performance of

the duty are to be left unfettered. *Blair v. State ex rel. Watts*, 555 S.W.2d 709 (Tenn.1977). Where an official has the duty to do an act only after making determinations, evaluations or judgments, a writ [sic] of mandamus will not lie to do the act in any particular way. *Seagle-Paddock Pools of Memphis, Inc. v. Benson*, 503 S.W.2d 93 (Tenn.1973). A court will not substitute its judgment for that of an official vested with discretion unless the official has clearly acted arbitrarily and without regard to his duty in the exercise of that discretion. See *State v. Mayor & Aldermen*, 184 Tenn. 1, 195 S.W.2d 11, 13 (1946). A court will not, by mandamus, disturb the decision and action of boards and officers vested in discretionary powers, "except where they act in an arbitrary and oppressive manner [citation omitted], or act beyond their jurisdiction [citation omitted], or where they refuse to assume a jurisdiction which the law devolves upon them [citation omitted]." *Peerless Const. Co. v. Bass*, 158 Tenn. 518, 14 S.W.2d 732 (Tenn.1929).

Tusant, 56 S.W.3d at 18–19.

Petitioner's request for a writ of mandamus is denied because there is no completed building permit application. The Town of Unicoi required architectural plans for the work required, yet Petitioner never submitted plans. The testimony of Dwight Harrell as corroborated by Exhibit 6 was persuasive that Petitioner's building permit application of November 18, 2022, was incomplete and insufficient for the Town of Unicoi to issue a building permit. Further, the building permit application was vague as to Petitioner's plans, and failed to provide required construction documents prepared by a registered design professional. As a

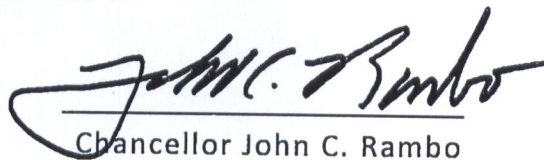
result of these deficiencies, the Town of Unicoi was unable to grant or deny the requested building permit. For the same reasons, Petitioner is not entitled to damages for due process violations, as the Town of Unicoi did not violate Petitioner's due process rights.

As to the request for declaratory judgment, the Court finds that the Hotel Property is a legal nonconforming use that persisted the enactment of the Town of Unicoi's zoning ordinance and is not abated pursuant to Tennessee Code annotated section 13-7-208.

Based on the foregoing, it is therefore Ordered, Adjudged, and Decreed by the Court:

1. Petitioner's request for a writ of mandamus is denied.
2. The Hotel Property is a legal nonconforming use that persisted the enactment of the Town of Unicoi's zoning ordinance and has not abated pursuant to Tennessee Code annotated section 13-7-208.
3. Petitioner's request for damages resulting from an alleged violation of due process is denied.
4. The costs of this cause are taxed to Respondent for which execution may issue. No attorneys fees are awarded.
5. Clerk and Master, enter this Order, and mail a copy to the attorneys of record.

So Ordered, this 25th day of April 2024.


Chancellor John C. Rambo

Certificate of Service

I hereby certify that on this 25th day of April, 2024, I have caused a copy of this foregoing Order to be served upon all counsel of record and self-represented parties, if any, by placing a copy of the foregoing Order in the United States Mail with postage prepaid to the following addresses:

Rebecca Ketchie, Esq.
2021 Meadowview Ln Ste 200
Kingsport, TN 37660

Samuel McPeak, Esq.
515 E Unaka Ave
Johnson City, TN 37601

Teresa Simerly, Clerk and Master

Teresa Simerly / by: Kayla Selford, D.C.
By: Deputy Clerk and Master