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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
B. Alex Hyman, Circuit Court Judge

Appellate Court Case No. 2024-000082
Circuit Court Case No. 2022-CP-02-01498

David W. Blake, Luis E. Rinaldini, Dudley Richard
Dewar, Jenne Stoker, Beatrice B. McGhee, Gail King,
Historic Aiken Foundation, Inc., Green Boundary
Foundation, and South Carolina Public Interest Foundation, ... Appellants,

v.

City of Aiken; Aiken Municipal Development Commission;
Aiken Design Review Board; Gary Smith, ... Defendants,

Of which City of Aiken; Aiken Municipal Development Commission;
and Aiken Design Review Board are Respondents.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP0201498

David W. Blake et al
PLAINTIFF(S)

City Of Aiken et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

On September 19, 2023, Defendant's motion for summary judgement came before the Court. After carefully considering the memoranda submitted by counsel, case law, and other relevant filings, the Court GRANTS Defendant's motion for summary judgement with respect to Plaintiffs' first and second causes of action--declaratory judgement and permanent injunction (as well as other equitable relief sought)--but the Court DENIES Defendant's motion for summary judgement with regard to Plaintiffs' third cause of action for violations of S.C. Freedom of Information Act.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/10/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Aiken Common Pleas

Case Caption: David W. Blake , plaintiff, et al VS City Of Aiken , defendant, et al

Case Number: 2022CP0201498

Type: Order/Electronic Form 4

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2023-11-10 09:19:57 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP0201498

David W. Blake et al
PLAINTIFF(S)

City Of Aiken et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
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- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

On November 22, 2023, Plaintiffs filed a motion to reconsider an order that this Court entered on November 13, 2023 in connection with Defendants' motion for summary judgement. After reviewing Plaintiff's motion to reconsider, as well as the filings associated with Defendants' original motion for summary judgement, the Court respectfully denies Plaintiffs' motion to reconsider.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/30/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Aiken Common Pleas

Case Caption: David W. Blake , plaintiff, et al VS City Of Aiken , defendant, et al

Case Number: 2022CP0201498

Type: Order/Electronic Form 4

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2023-12-30 08:14:02 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

CASE NO. 2022-CP-_____

David W. Blake, Luis E. Rinaldini,)
Dudley Richard Dewar, Jenne Stoker,)
Beatrice B. McGhee, Gail King,)
Historic Aiken Foundation, Inc.,)
Green Boundary Foundation, and)
South Carolina Public Interest Foundation,)

SUMMONS

Plaintiffs,

vs.

City of Aiken; Rick Osbon, in his)
capacity as Mayor; Rick Osbon,)
Kay Brohl, Gail Diggs, Ed Girardeau,)
Andrea Gregory, Lessie Price, and Ed Woltz,)
in their capacities as members of the Aiken)
City Council; Aiken Municipal Development)
Commission; Tim O'Briant, Keith Wood,)
Catina Broadwater, Marty Gillam,)
David Jameson, Stuart MacVean,)
Philip Merry, Chad Matthews,)
Douglas Slaughter, and Chris Verenes,)
in their capacities as members of the)
Aiken Municipal Development Commission;)
Aiken Design Review Board;)
McDonald Law, John McMichael,)
Katy Lipscomb, Ben Lott, Ahmad Mikell,)
Hannah Robbins, Josh Stewart, in their)
capacities as members of the Aiken Design)
Review Board; RPM Development Partners,)
LLC; Raines Company and its subsidiary or)
division Raines Development; Gary Smith;)
John or Jane Does 1-10,)

Defendants.

TO: THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon

the subscribers at their offices at 1629 Meeting Street, Suite A, Charleston, South Carolina, 29405, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for judgment by default for the relief demanded in the Complaint.

/s. W. Andrew Gowder, Jr. _____
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COUNSEL FOR PLAINTIFFS

July 5, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

CASE NO. 2022-CP-_____

David W. Blake, Luis E. Rinaldini,)
Dudley Richard Dewar, Jenne Stoker,)
Beatrice B. McGhee, Gail King,)
Historic Aiken Foundation, Inc.,)
Green Boundary Foundation, and)
South Carolina Public Interest Foundation,)

COMPLAINT

Plaintiffs,

(Declaratory Judgment)

vs.

Nonjury

City of Aiken; Rick Osbon, in his)
capacity as Mayor; Rick Osbon,)
Kay Brohl, Gail Diggs, Ed Girardeau,)
Andrea Gregory, Lessie Price, and Ed Woltz,)
in their capacities as members of the Aiken)
City Council; Aiken Municipal Development)
Commission; Tim O'Briant, Keith Wood,)
Catina Broadwater, Marty Gillam,)
David Jameson, Stuart MacVean,)
Philip Merry, Chad Matthews,)
Douglas Slaughter, and Chris Verenes,)
in their capacities as members of the)
Aiken Municipal Development Commission;)
Aiken Design Review Board;)
McDonald Law, John McMichael,)
Katy Lipscomb, Ben Lott, Ahmad Mikell,)
Hannah Robbins, Josh Stewart, in their)
capacities as members of the Aiken Design)
Review Board; RPM Development Partners,)
LLC; Raines Company and its subsidiary or)
division Raines Development; Gary Smith;)
John or Jane Does 1-10,)

Defendants.

Each of the above-named Plaintiffs brings the following actions seeking declaratory, injunctive, and legal relief. For their complaint, the Plaintiffs state as follows:

PRELIMINARY STATEMENT

1. This is a civil action for declaratory and injunctive relief brought for violations and threatened violations of, and to enforce the requirements of, several statutes and ordinances including the South Carolina Community Development Law, S.C. Code Ann. § 31-10-10 *et. seq.*; the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310 *et. seq.*; the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* (“FOIA”); the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; and the City of Aiken Code of Ordinances.

2. This action is brought by the Plaintiffs as individuals, or in their representative capacities, and as organizations on behalf of their members residing within the City of Aiken (“City” or “Aiken”), to (1) obtain a declaration from the Court that certain actions of the City and certain municipal bodies are ultra vires, null and void ab initio, and incapable of being implemented, in whole or in part; (2) obtain from the Court injunctions preventing the continued implementation of those ultra vires acts; and (3) otherwise remedy certain violations of various state and city protected regulatory and statutory rights afforded to each of the Plaintiffs in this action by statutes of the State of South Carolina; and by the ordinances, rules, regulations and customs of the City of Aiken, South Carolina, and its affiliate entities. This lawsuit is based in part on purported contractual agreements between and among the Defendants which are invalid and void ab initio.

3. The allegations against the Defendants, as further described herein, are made as to those Defendants in their official capacities. All actions by all Defendants at all times relevant were taken under color of state law.

4. This Court has jurisdiction over this subject matter and the parties to this action and venue is proper in this court. This Court possesses jurisdiction under the South Carolina Constitution Articles I, VIII and X, §§ 5 and 11; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; and the following decisions: *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

PARTIES

The Plaintiffs and Standing

5. David W. Blake (“Blake”) is a resident in and a taxpayer of the City of Aiken, South Carolina. Blake has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Blake that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of his property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with,

or comply with the requirements applicable to the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. Blake has paid and will continue to pay taxes that fund the City of Aiken, and brings this action individually on his behalf and on behalf of all others similarly situated.

6. Luis E. Rinaldini (“Rinaldini”) is a resident and a taxpayer of the City of Aiken. Rinaldini has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Rinaldini that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of his property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. Rinaldini has paid and will continue to pay taxes that fund the City of Aiken, and brings this action individually on his behalf and on behalf of all others similarly situated.

7. Dudley Richard Dewar (“Dewar”) is a resident and a taxpayer of the City of Aiken. Dewar has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Dewar that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of his property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other

impairments to the use and enjoyment of their property and of public property within the City. Dewar has paid and will continue to pay taxes that fund the City of Aiken, and brings this action individually on his behalf and on behalf of all others similarly situated.

8. Jenne Stoker (“Stoker”) is a resident and a taxpayer of the City of Aiken. Stoker has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Stoker that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of her property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. McGhee has paid and will continue to pay taxes that fund the City of Aiken, and brings this action individually on her behalf and on behalf of all others similarly situated.

9. Beatrice B. McGhee (“McGhee”) is a resident and a taxpayer of the City of Aiken. McGhee has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to McGhee that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of her property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City.

McGhee has paid and will continue to pay taxes that fund the City of Aiken, and brings this action individually on her behalf and on behalf of all others similarly situated.

10. Gail King (“King”) is a resident and a taxpayer of the City of Aiken. King has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to King that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of her property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. King has paid and will continue to pay taxes that fund the City of Aiken, and brings this action individually on her behalf and on behalf of all others similarly situated.

11. The Historic Aiken Foundation, Inc. (“HAF”) is a South Carolina nonprofit corporation incorporated in 1973 and is a 501(c)(3) federally tax-exempt organization. The purpose of the HAF is to encourage the protection, preservation, and appreciation of the architectural heritage of Aiken, South Carolina. In pursuit of this purpose, the HAF acts as an advocate for structures of historical and architectural significance, and for the integrity of neighborhoods and the aesthetic appeal of the city. The HAF is suing as a representative of its members who reside in and are citizens, qualified electors, and taxpayers in the City of Aiken, South Carolina. The HAF brings this action on behalf of its members and on behalf of all others similarly situated.

12. The Green Boundary Foundation (“GBF”) is a South Carolina nonprofit corporation formed in 1999 whose purpose is to preserve the historic facade and grounds of the Green Boundary in the City of Aiken as well as to promote the history of the City of Aiken and its significant architecture. The GBF is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in the City of Aiken, South Carolina. The GBF brings this action on behalf of its members and on behalf of all others similarly situated.

13. The South Carolina Public Interest Foundation (“SCPIF”) is a South Carolina nonprofit corporation dedicated to the public interest, including the upholding and proper application of the Constitution and other laws of the State of South Carolina. The SCPIF brings this action on behalf of its members and on behalf of all others similarly situated.

14. Plaintiffs have constitutional, statutory and public importance standing based on the provisions of the various statutes referenced, the Plaintiffs’ status as taxpayers and fee payers who have contributed to the funds at issue, and because of the great public importance of the issues that this civil action raises and that are capable of being repeated.

15. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this complaint, the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public. Each individual Plaintiff and the members of the organization Plaintiffs have suffered an invasion of a legally protected interest that is concrete and particularized, and actual and imminent. There is a causal connection between the injury and the

conduct complained of herein, and it is likely that the injury will be redressed by a favorable decision of this court.

16. Each of the above-described Plaintiffs alleging public importance standing has an overriding public purpose or concern as the basis for his, her or its suit on behalf of fellow citizens and taxpayers regarding the proper use and allocation of tax receipts, public properties and historic properties by the City and its civic bodies, named as Defendants in this action. These questions are of such substantial public importance as to warrant a resolution by the Court needed for future guidance, as the public interest involved is the prevention of the unlawful expenditure of money raised by taxation, the unlawful closure of public roads, the unlawful sale or conveyance of public properties and the unlawful demolition of historic properties within the City. Each individual Plaintiff has a real, material, and substantial interest in whether the City and its civic bodies followed the requirements and procedures set out in the state constitution, state enabling statutes and City ordinances, procedures, rules, guidelines, and customs specifically designed to ensure wise management of the public fisc.

17. Each organizational Plaintiff HAF, GBF and SCPIF has associational standing based on the individualized injuries that have been or will be suffered by its members as a result of the actions of the Defendants described in this Complaint. Members of these organizations would otherwise have standing to sue in their own right. The interests at stake in this case are germane to each organization's purpose. Neither the claims the organizations assert, nor the relief they request, requires the participation of the individual members of those organizations in this action.

18. Each of the Plaintiffs, whether alleging public importance standing, constitutional or statutory standing or the associational standing of the organization Plaintiffs, has suffered an

injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

**The Defendants, their Official Capacities, and
Color of State Law**

19. The City of Aiken (“City” or “Aiken”) is a South Carolina municipal corporation located in Aiken County, South Carolina.

20. Rick Osbon (“Osbon”) is the Mayor of the City of Aiken and is being sued only in his official capacities.

21. Kay Brohl (“Brohl”) is a member of the City Council of Aiken, and is being sued only in her official capacities.

22. Gail Diggs (“Diggs”) is a member of the City Council of Aiken, and is being sued only in her official capacities.

23. Ed Girardeau (“Girardeau”) is a member of the City Council of Aiken, and is being sued only in his official capacities.

24. Andrea Gregory (“Gregory”) is a member of the City Council of Aiken, and is being sued only in her official capacities.

25. Lessie Price (“Price”) is a member of the City Council of Aiken, and is being sued only in her official capacities.

26. Ed Woltz (“Woltz”) is a member of the City Council of Aiken, and is being sued only in his official capacities.

27. The Aiken Municipal Development Commission (“Commission” or “AMDC”) is a public body and a body corporate and politic purportedly created and organized by the City of Aiken pursuant to the South Carolina Community Development Act, S.C. Code Ann. § 31-10-10

et. seq. The members of the AMDC are appointed and removed by the City; serve on the AMDC as fiduciaries of the City of Aiken and its citizens; and are prohibited from conflicts of interest while serving and performing duties as a member of the AMDC.

28. Tim O'Briant (O'Briant") is the Executive Director of the AMDC, and is being sued only in his official capacities.

29. Keith Wood ("Wood") is a member of the AMDC; has served as Chairman of the AMDC during September, 2020, through the present; and is being sued only in his official capacities.

30. Catina Broadwater ("Broadwater") is a purported member of the AMDC, and is being sued only in her official capacities, if she is a member of AMDC.

31. Marty Gillam ("Gillam") is a member of the AMDC, and is being sued only in his official capacities.

32. David Jameson ("Jameson") is a member of the AMDC, is CEO of the Aiken Chamber of Commerce and is being sued only in his official capacities.

33. Stuart MacVean ("MacVean") is a purported member of the AMDC, and is being sued only in his official capacities, if he is a member of AMDC.

34. Philip Merry ("Merry") is a member of the AMDC, and is being sued only in his official capacities.

35. Chad Matthews ("Matthews") is a purported member of the AMDC, and is being sued only in his official capacities, if he is a member of AMDC.

36. Douglas Slaughter ("Slaughter") is a member of the AMDC, and is being sued only in his official capacities.

37. Chris Verenes (“Verenes”) is a member and Vice Chairman of the AMDC, is CEO of Security Federal bank and is being sued only in his official capacities.

38. The Aiken Design Review Board (“DRB”) is an organization created in 1990 by Section 7.1.7 of the City of Aiken Zoning Code, as provided in S.C. Code 1976, § 6-29-870 et seq. The members of the DRB are appointed and removed by the City; serve on the DRB as fiduciaries of the City of Aiken and its citizens; and are prohibited from conflicts of interest while serving and performing duties as a member of the DRB.

39. McDonald Law (“Law”) is a member of the DRB, and is being sued only in his official capacities. Law has served as Chairman of the DRB since before the year 2000 through the present.

40. John McMichael (“McMichael”) is a member of the DRB, and is being sued only in his official capacities. McMichael has served as Vice Chairman of the DRB from April, 2022, through the present.

41. Katy Lipscomb (“Lipscomb”) is a member of the DRB, and is being sued only in her official capacities.

42. Ben Lott (“Lott”) is a member of the DRB, and is being sued only in his official capacities.

43. Ahmad Mikell (“Mikell”) is a member of the DRB, and is being sued only in his official capacities.

44. Hannah Robbins (“Robbins”) is a member of the DRB, and is being sued only in her official capacities.

45. Josh Stewart (“Stewart”) is a member of the DRB, and is being sued only in his official capacities.

46. RPM Development Partners, LLC (“RPM”) is a limited liability company incorporated under the laws of the State of South Carolina and a “redeveloper” as defined in S.C. Code Ann. § 31-10-20(11). Upon information and belief, RPM’s main office and principal place of business is in Aiken, South Carolina, in Aiken County, South Carolina.

47. Raines Company (“Raines”) is a development. management and investment company established in 1988 under the laws of the State of South Carolina and a “redeveloper” as defined in S.C. Code Ann. § 31-10-20(11). Raines’ main office and principal place of business is Florence, South Carolina, in Florence County, South Carolina.

48. Gary Smith (“Smith”) served, at all times pertinent to this lawsuit, as the City of Aiken’s designated attorney and repeatedly advised the City, the AMDC and the DRB about redevelopment projects and matters that are subjects of this lawsuit and in which Ray Massey and Mary Guynn, Smith’s law partners, have and have had financial interests undisclosed to the public.

49. John or Jane Does #1-10 are individuals or entities with whom or which any of the Defendants have acted in violation of the law to plan, agree to or implement the redevelopment plans, projects, contracts and other ventures that are the subjects of this lawsuit, whose identities are unknown to the Plaintiffs.

STATUTORY AND REGULATORY FRAMEWORK

50. The creation, regulation, financing, and implementation of redevelopment by a municipal corporation of the State of South Carolina, including but not limited to the Defendant City of Aiken, is governed by the requirements of the United States and the South Carolina Constitutions; State of South Carolina statutes; and the rules, regulations, and customs of the municipality.

SOUTH CAROLINA STATUTES
COMMUNITY DEVELOPMENT LAW

51. S.C. Code Ann. § 31-10-20 states in part as follows:

“Definitions.

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(2) "Blighted area" means any improved or vacant area where if improved, industrial, commercial, and residential buildings or improvements, because of a combination of five or more of the following factors: age; dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light, or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; lack of community planning, are detrimental to the public safety, health, morals, or welfare or, if vacant, the sound growth is impaired by (a) a combination of two or more of the following factors: obsolete platting of the vacant land; diversity of ownership of such land; tax and special assessment delinquencies on such land; deterioration of structures or site improvements in neighboring areas adjacent to the vacant land; or (b) the area immediately prior to becoming vacant qualified as a blighted area.

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(4) "Commission" means a public body and a body corporate and politic created and organized in accordance with the provisions of this chapter.

(5) "Conservation area" means any improved area that is not yet a blighted area but, because of a combination of three or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light, or sanitary facilities; inadequate utilities; excessive land coverage; depreciation of physical maintenance; or lack of community planning, is detrimental to the public safety, health, morals, or welfare and may become a blighted area.

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(8) "Municipality" means any incorporated city or town or any county.

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(11) "Redeveloper" means any individual, partnership, or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of all or any part of a redevelopment area under the provisions of this chapter.

(12) "Redevelopment" means the acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this chapter with respect to the area for which such program is undertaken.

(13) "Redevelopment area" means any area that a commission may find to be a blighted area, a conservation area, or any combination thereof, so as to require redevelopment under the provisions of this chapter.

(14) "Redevelopment contract" means a contract between a commission and a redeveloper for redevelopment under the provisions of this chapter.

(15) "Redevelopment plan" means a plan for the redevelopment of a redevelopment area made by a commission in accordance with the provisions of this chapter.

(16) "Redevelopment project" means any work or undertaking:

(a) to acquire blighted or conservation areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;

(b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(c) to sell land in such areas for residential, recreational, commercial, industrial, or other use or for the public use to the highest bidder set out by the provisions of this chapter or to retain such land for public use, in accordance with the redevelopment plan;

(d) to carry out plans for a program of repair, rehabilitation, or reconditioning of buildings or other improvements in such areas, including the making of loans; and

(e) to engage in programs of assistance and financing, including the making of loans for rehabilitation, repair, construction, acquisition, or reconditioning of residential units in a redevelopment area.

The term "redevelopment project" may also include the **preparation of a redevelopment plan**, including the planning, survey and other work incident to a redevelopment project, and the **preparation of all plans and arrangements** for carrying out a redevelopment project." (Emphasis added.)

52. S.C. Code Ann. § 31-10-30 (a) states in part as follows:

"Each municipality is authorized to create . . . a redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance creating a commission to function within the territorial limits of the municipality or portion of the municipality" (Emphasis added.)

53. S.C. Code Ann. § 31-10-70 states in part as follows:

"No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, nor shall the member have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project"

54. S.C. Code Ann. § 31-10-90 states in part as follows:

"A commission shall constitute a **public body**, corporate and politic, exercising public and essential governmental powers . . . including . . .

(4) to prepare or cause to be prepared and recommend redevelopment plans to the governing body of its parent municipality and to undertake and carry out redevelopment projects within its area of operation;

(5) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project;

(6) within its area of operation, to purchase . . . any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear

or prepare for redevelopment any such property, and **with the approval of the governing body** of its parent municipality sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single redeveloper or in parts to several redevelopers; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the commission, with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property . . . **in accordance with the redevelopment plan** . . .; and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds and provide security for bonds; . . . and to enter into any contracts necessary to effectuate the purposes of this chapter;

(14) to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary of the commission shall be held to have been properly executed for and on its behalf;"

(Emphasis added.)

55. S.C. Code Ann. § 31-10-100 states in part as follows:

"Contents of redevelopment plan; **public hearing prior to adoption of plan**; approval by governing body or parent municipality; modification.

(a) A redemption plan must be **sufficiently complete** to **indicate its relationship to definite local objectives** such as appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area.

(b) A **commission shall not acquire real property for a development project unless the governing body of its parent municipality has approved the redevelopment plan as hereinafter prescribed.**

(c) The commission's redevelopment plan shall include, without being limited to, the following:

(1) the boundaries of the redevelopment area, with a map showing the existing uses of the real property therein;

(2) a land use plan of the redevelopment area showing proposed uses following redevelopment;

- (3) standards of population densities, land coverage, and building intensities in the proposed redevelopment;
- (4) a preliminary site plan of the redevelopment area;
- (5) a statement of the proposed changes, if any, in zoning ordinances or maps;
- (6) a statement of any proposed changes in street layouts or street levels;
- (7) a statement of the estimated cost and method of financing redevelopment under the redevelopment plan;
- (8) a statement of such continuing controls as may be deemed necessary to effectuate the purposes of this chapter; and
- (9) a statement of a feasible method proposed for the relocation of the families displaced.

(d) **The commission shall hold a public hearing prior to its final adoption of a redevelopment plan. Notice of such hearing shall be given fifteen days prior thereto in a newspaper of general circulation in the municipality.**

(e) The commission shall submit to the governing body the redevelopment plan. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall utilize the local private planning, financing, and financial services to the greatest extent possible and shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the community and its environs, that will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational, and community facilities, and other public requirements, the promotion of sound design and arrangements, the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, slums, or conditions of blight.

(f) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(g) Upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the redevelopment plan, in accordance with the provisions of this chapter.

(h) A redevelopment plan may be modified at any time by the commission; provided, that if modified after the sale of real property in the redevelopment area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the commission determines that the proposed modification will substantially change the redevelopment plan as previously approved by the governing body, the **modification must similarly be approved by the governing body as provided above.**” (Emphasis added.)

56. S.C. Code Ann. § 31-10-110 states in part as follows:

“Contracting by commission for certain services; **advertisement for bids from persons interested in purchasing or redeveloping property;** commission’s real estate transactions under redevelopment plan.

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(b) A commission may sell, exchange, or otherwise transfer real property or any interest therein in a redevelopment area to any . . . in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this chapter; provided, that such sale, exchange, or other transfer, and **any agreement relating thereto,** may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the municipality and after public notice and award as specified in subsection (c) of this section.

(c) The commission shall, by public notice, publish once a week for two consecutive weeks in a newspaper having general circulation in the municipality, invite proposals and shall **make available all pertinent information** to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof. . . . **After receipt of all proposals, the sale shall be made to the developer submitting the plan for use of the property that best effectuates the purposes of the redevelopment plan** set forth in subsection (e) of this section. All proposals may be rejected. All sales shall be subject to the approval of the governing body of the municipality. . . .

(d) In carrying out a redevelopment project, the commission may:

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(4) after a public hearing advertised in accordance with the provisions of subsection (d) of Section 31-10-100 and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. . . . All conveyances made under the authority of this subsection shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made;

(e) after receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a redeveloper may contain, without being limited to, any or all of the following provisions:

- (1) plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure, and general character of the proposed redevelopment;
- (2) a statement of the use intended for each part of the proposed redevelopment;
- (3) the amount, if known, of the consideration to be paid;
- (4) adequate safeguards for proper maintenance of all parts of the proposed redevelopment; and
- (5) such other continuing controls as may be deemed necessary to effectuate the purposes of this chapter.” (Emphasis added.)

57. S.C. Code Ann. § 31-10-160 states in part as follows:

“Availability of commission's books, records, bylaws, rules, and regulations for public inspection; annual report of commission's activities.

(a) The **books and records of a commission are at all times open and subject to inspection by the public.**

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, must be filed with the commission and be open for public inspection.

(c) At least **once each year a report of its activities for the preceding year** and such other reports as may be required by the municipality shall be made.” (Emphasis added.)

SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE PLANNING ENABLING ACT OF 1994

Local Planning Commission

58 S.C. Code Ann. § 6-29-310 states in part that a “local planning commission” means a municipal planning commission . . .”

59. S.C. Code Ann. § 6-29-340(B) states in part as follows:

“Functions, powers, and duties of local planning commissions.

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. . . [T]he local planning commission has the . . . duty to:

- (1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter;
- (2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:
 - (a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;
 - (b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;
 - (c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;
 - (d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;
 - (e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and
 - (f) policies or procedures to facilitate implementation of planning elements.” (Emphasis added.)

60. S.C. Code Ann. § 6-29-340(B) states in part as follows:

“Planning process; elements; comprehensive plan.

- (A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.
- (B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.
- (C) The basic planning process for all planning elements must include, but not be limited to:
- (1) inventory of existing conditions;
 - (2) a statement of needs and goals; and
 - (3) implementation strategies with time frames.
- (D) A local comprehensive plan must include, but not be limited to, the following planning elements:
- (1) a population element . . . ;
 - (2) an economic development element . . . ;
 - (3) a natural resources element . . . ;
 - (4) a cultural resources element . . . ;
 - (5) a community facilities element . . . ;
 - (6) a housing element . . . ;
 - (7) a land use element . . . ;
 - (8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;
 - (9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. . . .
- (E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in

time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years.” (Emphasis added.)

61. S.C. Code Ann. § 6-29-520 states in part as follows:

“ . . . [N]otice of meetings; recommendations by resolution; transmittal of recommended plan.

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(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan.” (Emphasis added.)

62. S.C. Code Ann. § 6-29-530 states in part as follows:

“Adoption of plan or elements; public hearing.

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction.” (Emphasis added.)

63. S.C. Code Ann. § 6-29-540 states in part as follows:

“Review of proposals following adoption of plan; projects in conflict with plan . . .

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.

In the event the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community at least thirty days prior to awarding a contract or beginning construction. . . .” (Emphasis added.)

64. S.C. Code Ann. § 6-29-720 states in part as follows:

“(A) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts . . . Within each district the governing body may regulate: . . .

(B) The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter.” (Emphasis added.)

65. S.C. Code Ann. § 6-29-760 states in part as follows:

“Procedure for enactment or amendment of zoning regulation or map; notice and rights of landowners

(A) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If

no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission." (Emphasis added.)

Aiken Design Review Board

66. S.C. Code Ann. § 6-29-870 states in part as follows:

"Board of architectural review; . . .

(A) A local government which enacts a zoning ordinance which makes specific provision for the preservation and protection of historic and

architecturally valuable districts and neighborhoods . . . by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board of architectural review . . .

(B) The board shall consist of not more than ten members . . . The governing authority . . . creating the board may remove any member of the board which it has appointed.

. . . .

(D) The board shall . . . adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter. . . . The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which immediately must be filed in the office of the board and must be a public record." (Emphasis added.)

67. S.C. Code Ann. § 6-29-880 states in part as follows:

"Powers of board of architectural review.

The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. Decisions of the zoning administrator or other appropriate administrative official in matters under the purview of the board of architectural review may be appealed to the board where there is an alleged error in any order, requirement, determination, or decision."

68. S.C. Code Ann. § 6-29-1120 states in part as follows:

"The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties, or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

(4) to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes; and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.”

69. S.C. Code Ann. § 6-29-1130 states in part as follows:

“Regulations.

(A) [T]he local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the harmonious development of the municipality and the county; for coordination of streets within subdivision and other types of land developments with other existing or planned streets or official map streets; In particular, the regulations shall prescribe that no land development plan . . . will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare.

(B) . . . The governing authority of the municipality [is] given the power to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county.” (Emphasis added.)

70. S.C. Code Ann. § 6-29-1150 states in part as follows:

“Submission of plan or plat to planning commission; record . . .

(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans . . . with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans

or plats and supporting documentation presented. The sixty-day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans . . . with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. . .” (Emphasis added.)

SOUTH CAROLINA ETHICS, GOVERNMENT ACCOUNTABILITY, AND CAMPAIGN REFORM

71. S.C. Code Ann. § 8-13-700 states in part as follows:

SECTION 8-13-700. Use of official position or office for financial gain; disclosure of potential conflict of interest.

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

(2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

(5) if he is a public member, he shall furnish a copy to the presiding officer of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

SOUTH CAROLINA FREEDOM OF INFORMATION ACT

72. S.C. Code Ann. § 30-4-20 states in part as follows:

“Definitions. (a) “Public body” means any . . . organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known . . .” (Emphasis added.)

73. S.C. Code Ann. § 30-4-20 states in part as follows: “Meetings of public bodies shall be open. Every meeting of all public bodies shall be open to the public . . .” (Emphasis added.)

74. S.C. Code Ann. § 30-4-55 states in part as follows:

“Disclosure of fiscal impact on public bodies offering economic incentives to business; cost-benefit analysis required.

A public body as defined by Section 30-4-20(a), or a person or entity employed by or authorized to act for or on behalf of a public body, that undertakes to attract business or industry to invest or locate in South Carolina by offering incentives that require the expenditure of public funds or the transfer of anything of value or that reduce the rate or alter the method

of taxation of the business or industry or that otherwise impact the offeror fiscally, must disclose, upon request, the fiscal impact of the offer on the public body and a governmental entity affected by the offer after:

- (a) the offered incentive or expenditure is accepted, and
- (b) the project has been publicly announced or any incentive agreement has been finalized, whichever occurs later.

The fiscal impact disclosure must include a cost-benefit analysis that compares the anticipated public cost of the commitments with the anticipated public benefits. . .” (Emphasis added.)

75. S.C. Code Ann. § 30-4-70 states in part as follows:

“Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly. (a) A public body may hold a meeting closed to the public for one or more of the following reasons:

.

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property

.

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, “specific purpose” means a **description of the matter to be discussed** . . . No action may be taken in executive session except to (a) adjourn or (b) return to public session. **The members of a public body may not commit the public body to a course of action by a polling of members in executive session.**

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.” (Emphasis added.)

76. S.C. Code Ann. § 30-4-80 states in part as follows:

“Notice of meetings of public bodies.

(a) All public bodies . . . must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. . . .

. . . .

(c) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(e) All public bodies shall **notify** persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings. (Emphasis added.)

77. S.C. Code Ann. § 30-4-90 states in part as follows:

“Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

- (1) The date, time and place of the meeting.
- (2) The members of the public body recorded as either present or absent.
- (3) The substance of all matters proposed, **discussed** or decided and, at the request of any member, a record, by an individual member, of any votes taken.
- (4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting . . .”

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction . . .” (Emphasis added.)

78. S.C. Code Ann. § 30-4-100 states in part as follows:

“Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.”

79. S.C. Code Ann. § 30-4-100 states in part as follows:

“Penalties.

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.”

AIKEN ZONING ORDINANCE

80. Section 2.6.1 of the City of Aiken Zoning Ordinance (“Zoning Ordinance”), which relates to the Historic Preservation Overlay District provides, in part “**It is essential that** the qualities, areas, sites, structures, and natural and man-made objects relating to the history of the City of Aiken, as well as that of Aiken County, the State of South Carolina, and the United States of America, **be preserved.**” (Emphasis added.)

81. Section 5.2.1 of the Zoning Ordinance provides that “Any property or structure listed on the Aiken Historic Register shall be subject to this Article” (i.e. subject to the Historic Preservation Overlay District).

82. Section 5.2.3(C) of the Zoning Ordinance requires that “Applications for a Certificate [of Appropriateness] **shall be accompanied by the following** unless waived by the Secretary or otherwise specified on the application form provided by the Board:

- a. Drawings, including plans and exterior elevations, drawn to scale, with sufficient detail to show the exterior architectural design of the structure.
- b. Specifications or other information describing proposed materials and textures; samples of materials may be required by the Board.
- c. Plot plan or site layout showing all existing structures and any improvements affecting appearances such as walls, walks, terraces, accessory buildings, signs, lights, plantings, and other elements.
- d. Photographs of the site location, showing contiguous properties and streetscapes.
- e. All other information requested by the Board.” (Emphasis added.)

83. Section 5.2.3(J) of the Zoning Ordinance pertains to Review Standards for the Historic Preservation Overlay District and states in subsection (1):

“General. In reviewing applications, the Board and the Planning Director shall consider the standards stated in this Chapter for the purpose of determining whether alterations, construction, demolitions, or relocations are in harmony with the prevailing historical, architectural, archeological, or aesthetic character of the Historic District, a structure in a Historic District, or an Historic Site, or a structure included in an Historic Site. (Ord. 04142003A).”

84. Section 5.2.3(J) of the Zoning Ordinance states, in part, in subsection (3): “Demolition. In reviewing an application for demolition, the Board and the Planning Director shall consider the historical, archeological, and aesthetic character of the structure (or portion thereof) proposed for demolition.”

85. Section 5.2.3(J) of the Zoning Ordinance states further in subsection (3): “They shall also consider: (1) the structural integrity (i.e., condition) of the structure and (2) the integrity of materials, location, and design of the structure.”

86. Section 5.2.3(J) of the Zoning Ordinance states, further in subsection (3):

“No application for demolition shall be approved solely on the basis of a structure's deteriorated condition where the Board determines that the applicant is primarily responsible for the deteriorated condition. Finally, the Board shall consider the extent to which demolition would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property affected or upon the surrounding properties, or upon the district in which the structure is located. No application for demolition of a Landmark shall be approved.”

87. Section 5.2.4 of the Zoning Ordinance pertains to Demolition or Relocation and states, in part, in subsection (A)(2):

“The Board may delay the granting of the Certificate for a period of up to 60 days from the time of the filing of the application. The Board may extend this postponement for another 180 days after a public hearing and finding by the Board that the structure or landmark is of historical, architectural, or archeological importance to the public or City of Aiken.”

88. Section 5.2.4 of the Zoning Ordinance states further in subsection (A)(2): “Within any period of postponement, the Board shall endeavor to ascertain **what may be done to preserve the structure or landmark**. Such steps shall **include, but are not limited to, consultation with civic groups, interested citizens, public interest groups, and public boards and agencies.**” (Emphasis added.)

89. Section 5.2.4 of the Zoning Ordinance states in subsection (A)(3):

“After the postponement period has ended and the Board has been **unable to determine a reasonable alternative to demolition** or relocation, the Certificate shall be granted after a public hearing, with the notice required by 5.2.3.D being given. However, if the Board finds that the structure contributes to the character of the Historic District or that the landmark is of historical, archeological, or architectural significance or that, for any other reason, **preservation in the public**

interest is warranted, the application shall be denied. In the event of such denial, the owner may apply for an exception under 5.1.3.” (Emphasis added).

90. Section 5.2.4(B) of the Zoning Ordinance states, in part, in subsection (1):

“Prevention of Demolition by Neglect of Exterior. No owner or person with an interest in real property which is designated an Historic Site (Ord. 04142003A) in any part of the City or any property in an Historic District, whether that property is occupied or not, shall permit the structure or property to fall into a serious state of disrepair or to remain in a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property, or, if the structure or property is in an Historic District, upon the district.”

Section 5.2.4(B)(2) imposes a similar duty to prevent demolition by neglect of the interior of a Historic Site.

GENERAL FACTUAL ALLEGATIONS

Redevelopment Plans for Redevelopment Projects in Redevelopment Area of AMDC

91. The Hotel Aiken dominates the northern half of the block in downtown Aiken bounded by Laurens Street, Richland Avenue, Newberry Street and Park Avenue (the “Pascal Block”). The Pascal Block is the most prominent block in the City and the Hotel Aiken is the most prominent structure on that block.

92. In December, 2017, Neel Shah (“Shah”), then the owner of the Hotel Aiken, publicly announced the renovation of the Aiken Hotel with the addition of a new three-story wing at its eastern end. To help finance that renovation with tax credits, Shah arranged for the Hotel Aiken to be listed, on March 26, 2018, as a “Contributing Structure” in a Historic Site on the Aiken Historic Register.

93. The Pascal Block is in, and subject to the requirements of, the Old Aiken Overlay District, as defined in the Zoning Ordinance. Section 5.2.1 of the Zoning Ordinance provides that

“[a]ny property or structure listed on the Aiken Historic Register shall be subject to this Article” (i.e., subject to the Historic Preservation Overlay District). Because the Hotel Aiken is listed in the Aiken Historic Register as a Contributing Structure on a Historic Site, the Hotel Aiken is subject to the requirements of the Historic Preservation Overlay District as well as the requirements of the Old Aiken Overlay District.

94. The Aiken City Council (“Council”) created the Aiken Municipal Development Commission (“AMDC”) in August 2019, pursuant to S.C. Code Section 31-10-10 *et seq.* AMDC held its first meeting in May, 2020. The AMDC is allowed to pursue “redevelopment” and “redevelopment projects” only within “blighted” or “conservation” “redevelopment areas” and in accordance with “redevelopment plans” and “redevelopment contracts,” all as defined in S.C. Code Section 31-10-20.

95. The AMDC purported to create two different Redevelopment Plans pursuant to S.C. Code Section 31-10-100 *et seq.*, but in each case failed to do so correctly as required by law. Those purported redevelopment plans were Redevelopment Plan One for Downtown Aiken (“Plan One”) and the AECOM Strategic Economic Development Action Plan (“AECOM Plan”).

96. Plan One is not a valid Redevelopment Plan because, *inter alia*, the AMDC did not hold a public hearing regarding Plan One, as required. The AECOM Plan is a generic economic development master plan and is not a valid redevelopment plan because it does not meet, and was not designed or intended to meet, the requirements of Section 31-10-10 *et seq.* Among other things, the AECOM Plan does not contain the words “blight” or “conservation area” and was commissioned by and prepared for the City and not by or for AMDC. In addition, AMDC did not hold a valid public hearing on the AECOM Plan, as required. AMDC has made confusing references to the Plan One and AECOM Plan in connection with Project Pascalis, saying

sometimes Project Pascalis was part of Plan One and at other times it was part of the AECOM Plan. The only mention in the AMDC minutes authorizing Project Pascalis as a "Redevelopment Project" pursuant to S.C. Code Section 31-10-10 *et seq.* appears in a resolution dated November 8, 2021 that says Project Pascalis is being pursued within the "Redevelopment Area" of Plan One.

97. In July 2020, the AMDC adopted Plan One which describes ideas for possible redevelopment projects to redevelop the most northern portions of the Pascalis Block and the block immediately to its east. Plan One included nine specific lots (five on the Pascalis Block and four on the adjacent lot). Plan One provided in part for renovation of the existing Hotel Aiken and that there "are no changes proposed in street layout or level of service." Plan One was approved by Aiken City Council in August, 2020. Neither the City nor the AMDC has ever officially voted to designate, or referred to, a specific project as a "redevelopment project" pursuant to S.C. Code Section 31-10-20(16), in accordance with Plan One, the AECOM Plan or any other plan. In time, the City undertook redevelopment of the lots adjacent to the Pascalis Block, and AMDC's role was reduced to redeveloping the five lots on the Pascalis Block. There is nothing in any minutes of the AMDC showing a vote to authorize anything as a "redevelopment project" pursuant to S.C. Code Section 31-10-20(16)," let alone "in accordance with Plan One" or "in accordance with the AECOM Plan." On November 9, 2020, the AMDC voted to approve resolutions that state that the "Commission has determined to undertake a redevelopment project within the Redevelopment Area, known at this time as Project Pascalis ("Project Pascalis")," but these resolutions do not designate Project Pascalis as a redevelopment project pursuant to S.C. Code Section 31-10-20(16) or in accordance with Plan One, or any other redevelopment plan.

98. The City of Aiken hired AECOM, a private consulting company, to create the AECOM Strategic Economic Development Action Plan, a strategic economic development plan

for the entire City of Aiken. On February 2, 2021, the AMDC voted to adopt this plan created by AECOM for the City, as a new “redevelopment plan” for the AMDC as provided by S.C. Code Section 31-10-100 (“AECOM Plan”).

99. As described in the minutes of the February 16, 2021, AMDC meeting, AMDC Executive Director Tim O’Briant explained in that meeting that the AMDC purposefully adopted this broad and general AECOM Plan as an AMDC redevelopment plan as a way to avoid the time, expense and limitations of “very specific redevelopment plans” such as those required by S.C. Code Section 31-10-10 *et seq.* and thereby to allow the AMDC to work in any area in the City and on virtually any project, even if not located in a “Blighted” or “Conservation” area. However, the AECOM Plan was and is not a valid “redevelopment plan” as defined by and in accordance with applicable statutes, including S.C. Code Sections 31-10-20(15) and 31-10-100, because, *inter alia*, it was prepared by and for the City, not by the AMDC; was not created following the process defined by statute for a redevelopment commission to create a redevelopment plan, including but not limited to failing to have the content required by S.C. Code Section 31-10-100(c) and failing to have a public hearing before adoption of the redevelopment plan as required by S.C. Code Section 31-10-100(d); makes no reference to “blight,” is not restricted to and was not based on “Blighted Areas” or “Conservation Areas;” and mostly pertains to issues not related to blight, conservation or redevelopment. Nevertheless, on March 22, 2021, the City Council approved the AECOM Plan as a redevelopment plan for the AMDC pursuant to S.C. Code Section 31-10-100, even though it was and is not a valid redevelopment plan pursuant to S.C. Code Sections 31-10-20(15) and 31-10-100.

100. Plan One has not been properly adopted by the AMDC as a redevelopment plan as defined in S.C. Code Sections 31-10-20(15) and 31-10-100 because AMDC did not conduct a

public hearing about the adoption of Plan One as a redevelopment plan. The AECOM Plan has not been properly adopted by the AMDC as a redevelopment plan as is defined in S.C. Code Sections 31-10-20(15) and 31-10-100 because the AMDC, the City and AECOM, did not follow the specific process required to be followed by S.C. Code Section 31-10-10 *et seq.* to create the AECOM Plan as a redevelopment plan for the AMDC. Neither Plan One nor the AECOM Plan is a valid redevelopment plan for the AMDC and the AMDC does not have, and never has had, a valid redevelopment plan for redevelopment as defined and required by S.C. Code Section 31-10-10 *et seq.*

101. Pursuant to S.C. Code Section 31-10-10 *et seq.*, the AMDC is only allowed to pursue “redevelopment projects” in “blighted” or “conservation” areas in accordance with a properly approved “redevelopment plan” for a “redevelopment area.” Contrary to law, the AMDC is pursuing “redevelopment projects” in areas of the City of Aiken that are not in accordance with a valid “redevelopment plan,” are not in “blighted” or “conservation” areas or in a “redevelopment area,” as provided in S.C. Code Section 31-10-10 *et seq.*

102. As reported on Wednesday March 17, 2021, in a story published by the Aiken Standard newspaper, the AMDC announced the existence of Project Pascalis and that for Project Pascalis the AMDC had “identified and recruited a well-capitalized and successful real estate investor” interested in partnering and exploring “one or more potential commercial development projects.” The properties or projects under the Project Pascalis umbrella were not immediately clear. Project Pascalis has changed significantly over time. At all times since its inception, Project Pascalis has been inconsistent with, and has borne no resemblance to any project described in, Plan One or the AECOM Plan. Nothing in the minutes of the AMDC in this time period or since shows that the AMDC voted to (a) authorize Project Pascalis or designate Project Pascalis as a

redevelopment project pursuant to S.C. Code Section 31-10-20(16) or in accordance with Plan One, or the AECOM Plan or any other redevelopment plan. Furthermore, Plan One and the AECOM Plan are not valid redevelopment plans, and the AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* Consequently, even if Project Pascalis bore a resemblance to Plan One or the AECOM Plan, which it does not, the AMDC was still not authorized to pursue Project Pascalis.

103. The Aiken Standard story dated March 17, 2021 also said that the AMDC had authorized its entering into a cost-sharing agreement with a private party now known to be WTC Investments, LLC (“WTC”), an Aiken development company, for architectural and engineering studies regarding Project Pascalis. At no time was WTC selected by AMDC or the City by using a Request for Proposal or a competitive bid or selection process, as required by law, including S.C. Code Section 31-10-110(c).

104. Project Pascalis violates, is inconsistent with and bears no resemblance to Plan One, the AECOM Plan or any redevelopment plan of the AMDC. Project Pascalis violated and is inconsistent with Plan One in several respects, including but not limited to each of the following:

- A. In Chapter 1 of Plan One, the plan boundaries include the Pascalis Block and the block just to the east. The Pascalis Project is only on the Pascalis block. The boundaries are also defined as nine specific lots, five on the Pascalis Block and four on the block just to the east. Only five of the ten lots in the current Pascalis Project are named in Plan One, and they are all in the northernmost section of the Pascalis Block, close to Richland Avenue, whereas the current Project Pascalis encompasses three quarters of the Pascalis block.
- B. In Chapter 3 of Plan One, the proposed land use is a “*renovated hotel*” and mixed-use commercial. The parking garage is 180 spaces and is on the other, non-Pascalis block. The current Project Pascalis contemplated demolition of the Hotel from the outset (as we show later), adds a convention center, 100 apartments and a 400-car garage, all on the Pascalis Block, but none of these features are shown in Plan One.
- C. In Chapter 6 of Plan One, the last sentence reads: “*There are no changes proposed in street layout or level of service.*” However, the current Project Pascalis shuts down part of Newberry Street and puts buildings on .27 acres of it.

- D. Chapter 7 of Plan One estimates the total cost at \$16.5-\$20.5 million. The current Project Pascalis is estimated to cost over \$100 million.
- E. Chapter 8 of Plan One requires compliance with the Old Aiken Design Guidelines. The current Project Pascalis does not comply with those guidelines.

105. In furtherance of Project Pascalis, WTC entered into purchase and sale agreements (described as options in AMDC minutes) (a) on March 2, 2021, to acquire from Shah six lots, including the Hotel Aiken, in the northern part of the Pascalis Block and (b) on April 15, 2021, to acquire from Myrtle Anderson a seventh lot on Newberry Street (collectively the “Pascalis Properties”). In addition, between March and June, 2021, Ray Massey (“Massey”), an Aiken attorney and investor, or investors led by Massey, acquired four lots along Newberry Street in the Pascalis Block under the name Aiken Alley Holdings, LLC.

106. When Massey acquired four lots along Newberry Street in the Pascalis Block under the name Aiken Alley Holdings, LLC, Massey was the attorney for WTC and the law partner of Gary Smith (“Smith”), the designated City attorney. At all times pertinent to this lawsuit, Massey and Smith have been partners in the same law firm, and Smith has been counsel to the City and to the AMDC regarding Project Pascalis. In response to a FOIA request, in May 2022, the AMDC claimed that Smith had recused himself from representing the AMDC regarding Project Pascalis in October 2021, but AMDC was unable to produce written evidence of such a recusal. If Smith indeed did recuse himself in October, 2021, the recusal was not in writing and did not explain the reason for the recusal in writing and nothing about the recusal was noted in the minutes of the City Council or the AMDC, all in violation of S.C. Code Section 8-13-700 (A) and (B). Nevertheless, Smith continued to participate in discussions of, and to advise the City, AMDC and the public about matters related to Project Pascalis, at least until the March 28, 2022, Council meeting and possibly up to April 20, 2022, in violation of S.C. Code Sections 8-13-700 (A) and (B). The first public announcement of Gary Smith’s recusal was made at the second of two information meetings

about Project Pascalis, both held on April 20, 2022. No information about Smith's recusal has been noted in any minutes or other public record of the AMDC or the City, as required by S.C. Code Sections 8-13-700(B).

107. In May, 2021, WTC abandoned Project Pascalis, which surprised the City. At that time, the City did not have immediate access to the funds required to assume the WTC options, as was its right. To assist the AMDC in furtherance of Project Pascalis, the Aiken Chamber of Commerce ("ACOC") assumed the WTC options on or about June 3, 2021, for payments totaling \$135,000 by the ACOC to Shah and Anderson (\$100,000 to Shah and \$35,000 to Anderson). By doing that, the ACOC held the options on behalf of the AMDC until the AMDC exercised them in November, 2021, and reimbursed the ACOC for the \$135,000 option price. AMDC eventually exercised these options to acquire the seven lots referenced above, in violation of law because the purchase was not pursuant to a valid redevelopment plan or redevelopment project. Two of the lots were not named in Plan One and the AECOM Plan makes no mention of the lots at all. Neither Plan One nor the AECOM Plan are valid redevelopment plans and the AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* At no time was ACOC selected by AMDC or the City by using a Request for Proposal or a competitive bid or selection process, as required by S.C. Code Section 31-10-110(c).

108 The AMDC has not done any due diligence about environmental and other matters, financial analysis of potential investments required, follow-on expenses or the potential return on its investment regarding Project Pascalis. That is fiscally irresponsible and violates even the most basic purchasing procedures and requirements.

Request for Proposals

109. The AMDC created a one-and-one-quarter-page document dated May 19, 2021, called “Project Pascalis Background and Preliminary Details” together with an aerial view plan of the lots and a seven-page presentation labeled “Conceptual Plans – May 3, 2021 Revision” (“Project Pascalis documents”). That background document claims AMDC “holds contracts to purchase” the Pascalis Properties; refers to a planned encroachment into Newberry Street (and both plans show it), but is silent regarding any demolition associated with Project Pascalis. The Conceptual Plans show a four-story Hotel Aiken, which proves AMDC intended then to demolish the existing three-story Hotel Aiken and the three adjacent shops on Laurens Street from the outset.

110. AMDC never publicized these Project Pascalis documents as an RFP or a solicitation, so many developers were not aware of the documents or, if aware, may have felt they would not be welcomed, especially since the news and rumor mill had reported the City and the AMDC already were working with WTC, and AMDC had not made public WTC’s withdrawal. Moreover, AMDC and City officials stated at various times that that they did not favor developers who were only interested in portions of the project. On information and belief, a number of developers felt, at the time, that it was either futile to participate or that they had been discouraged from participating, in part because it was known AMDC had already chosen a developer (WTC) and had not made public WTC’s withdrawal as the chosen developer. On information and belief, AMDC did not encourage the participation of preservation developers because it intended to demolish the Hotel Aiken from the outset.

111. The Project Pascalis documents referenced above first appeared publicly, together with a minimalist scoring grid, on the AMDC website under the heading “Pascalis Proposal Solicitation and RFP Scoring” in March, 2022, almost a year after their creation on May 19, 2021. This appearance on the AMDC website was an attempt to falsely create an *ex post facto* Request

for Proposal (“RFP”) for selecting the developer for Project Pascalis, after the developer already had been selected by the AMDC.

112. These Project Pascalis documents referenced above were not sufficient to constitute an RFP pursuant to S.C. Code Ann. § 31-10-110(c), which requires that the RFP “shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof.” *Id.* (Emphasis added.) The information provided by AMDC in May, 2021, was so limited that no developer could make a reasonable proposal without seeking extensive further information from, and engaging in lengthy discussions with, AMDC. For example, there was no information as to the condition of the structures, environmental assessments, restrictions due to historic structures and the Old Aiken Overlay District. There were no directions with regard to preservation alternatives versus new building. There was no information about the value of the assets in question or the financial and other terms of the proposed sale and other agreements. There was no precise information on which lots were in question or potential changes in the lots. There was no information on the construction requirements or amenities expected of the developer and only minimal information on the responsibilities of the developer versus the AMDC. There was also no information as to the selection process and criteria. Moreover, even if the materials had been adequate, they do not reflect whether the project is authorized pursuant to Plan One or to the AECOM Plan.

113. No RFP was publicized, as required by S.C. Code Section 31-10-110(c), by the AMDC or the City in May, 2021, or at any time before the AMDC selected RPM Development Partners, LLC as the developer for Project Pascalis on December 3, 2021, as described below. There is no record of any publication of an RFP in the Aiken Standard or any other newspaper, or a public announcement of an RFP, or a public hearing on or any mention of an RFP in any minutes

of the AMDC or the City Council, and the AMDC never voted to approve an RFP or an RFP process, before the AMDC selected RPM as the developer for the Pascalis Project. Repeated FOIA requests to AMDC have confirmed that there was no RFP before the AMDC selected RPM as the developer for Project Pascalis.

114. On June 8, 2021, AMDC authorized the Chairman of its Executive Committee, Keith Wood, to enter into negotiations with a developer regarding to Project Pascalis. The name of the developer was not revealed and there was no mention of why or how the developer was chosen in the AMDC minutes or in any other public record. There is no public record of when, how or by whom the AMDC Executive Committee was created, who is on it or what it does or is authorized to do.

115. On August 9, 2021, Aiken City Council approved raising \$10 million for AMDC to acquire properties for Project Pascalis. On September 22, 2021, AMDC members toured Florence, SC, as guests of the Raines Company and saw the renovation of the Florence Hotel by the Raines Company. The first public mention of the Raines Company by the AMDC or the City was in the AMDC's minutes dated September 22, 2021.

116. On October 6, 2021, the City issued \$9.6 million in bonds to finance the purchase of the Pascalis Properties by AMDC. At the time, the AMDC had never had, and the City Council and the AMDC knew, or should have known, that the AMDC had never had, a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* and therefore was not authorized to purchase the properties contemplated to be purchased with these bonds issued by the City on October 6, 2021.

117. On October 27, 2021, RPM Development Partners, LLC, was formed, with Ray Massey as agent. As described by Tim O'Briant in the City Council meeting of March 28, 2022,

RPM is owned one-third each by Raines Development, a subsidiary or division of the Raines Company of Florence, SC (collectively “Raines”); Lat Purser & Associates of Charlotte, NC; and Ray Massey.

118. During November 9-10, 2021, the AMDC acquired the Pascalis Properties to implement Project Pascalis. The AMDC resolution authorizing this purchase states that AMDC has adopted Plan One as a “Redevelopment Plan” for a “Redevelopment Area” “consisting of the area of the City bounded by Laurens Street, Chesterfield Street, Richland Avenue, and Park Avenue” in accordance with S.C. Code Section 31-10-10 *et seq.* and “determined to undertake a redevelopment project within the Redevelopment Area, known at this time as Project Pascalis.” The acquisition of the Pascalis Properties violated S.C. Code Ann. § 31-10-100(b) because (a) Project Pascalis at the time bore no resemblance to Plan One and Plan One does not include two of the acquired lots on Newberry Street (121-21-08-004 and 121-21-08-009), (b) the AECOM Plan does not contain any reference to or description of Project Pascalis or any similar redevelopment project, (c) neither Plan One nor the AECOM Plan are valid redevelopment plans and (d) the AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* Furthermore, the AMDC made false claims in its resolutions because it knew that Project Pascalis bore no resemblance to Plan One, including for the reasons stated above, and was not a valid Redevelopment Project pursuant to Plan One or any other redevelopment plan.

119. The AMDC did not get appraisals of the properties it acquired on November 10, 2021, or do due diligence on environmental and other matters, financial analysis of potential investments required, follow-on expenses or the potential return on its investments regarding the properties it acquired on November 10, 2021.

120. On November 23, 2021, AMDC Chairman Wood stated, as described in the minutes of an AMDC board meeting held that day:

We have had many discussions with developers. One has come to fruition where there is consideration of a Purchase and Sale agreement for the Commission to consider for Project Pascalis. The Executive Committee as well as staff have recently had two meetings to discuss the Purchase and Sale agreement. He said the Executive Committee did meet with Gary Pope, Attorney, and others, and the developer about a week ago. A proposed developer has provided some information for the Commission to consider. The Executive Committee did have a lot of questions that the proposed developer is considering. He said it is felt that we are at the point where the whole Commission needs to look at the agreement, ask questions of staff, and discuss the agreement in detail. This needs to happen for the Executive Committee to go back and have further discussions with the proposed developer. With that in mind, he said he would like for the Commission to consider going into executive session to discuss a proposed Purchase and Sale Agreement in connection with Project Pascalis. (Emphasis added.)

Afterwards, the AMDC went into executive session to review a draft purchase and sale agreement with a prospective developer, who we now know but the public did not then know was RPM.

121. On November 30, 2021, the AMDC approved a resolution authorizing the AMDC to enter into a Purchase and Sale Agreement with a potential developer for Project Pascalis. On December 3, 2021, AMDC announced it had selected RPM as the developer for Project Pascalis and that the AMDC was moving forward toward signing a Master Development Agreement with RPM. From the inception of Project Pascalis in March, 2021, until December 3, 2021, AMDC never voted to approve or to issue or to publicize an RFP and never issued or publicized an RFP as required by S.C. Code Section 31-10-110(c) to select a developer for Project Pascalis. AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10, *et seq.*, let alone one that describes or includes Project Pascalis. For this reason and because AMDC never conducted a valid RFP, RPM was improperly and unlawfully selected as the developer for Project Pascalis by AMDC on December 3, 2021, and RPM has never been properly and lawfully selected as a developer for Project Pascalis.

122. On December 13 and 20, 2021, which is after AMDC had announced on December 3, 2021, that it had selected RPM as the developer, AMDC advertised an RFP for developers and listed Plan One as the document for developers to respond to, when AMDC was not, and knew it was not, pursuing any project in accordance with Plan One. The advertisement stated that responses had to be received by the AMDC by December 22, 2021. On May 18, 2022, the AMDC disclosed, in response to repeated FOIA requests, the existence of an affidavit of publication dated December 20, 2021, that stated that the advertisements of an RFP for developers had been published on December 13 and 20, 2021. Thus, on December 3, 2021, the AMDC announced it had selected RPM as the developer for the Pascalis Project without having issued an RFP as required by S.C. Code Section 31-10-110(c) but on December 13 and 20, 2021, advertised a purported RFP soliciting developers, when AMDC had already selected a developer. This purported RFP is a second *ex post facto* effort to appear to have complied with the RFP requirements in Section 31-10-110(c). Furthermore, the advertisement published on December 13 and 20, 2021 contained false and misleading information because it referenced Plan One but the projects described in Plan One bear no relation to Project Pascalis. Project Pascalis was the project AMDC was actually pursuing at the time the advertisement was published. The December 13 and 20 dates of publication, so close to the holidays, and the extraordinarily short response time (two days) make it clear AMDC expected few people to see the advertisements and wanted no responsible party to respond to them. The affidavit contains only a copy of the advertisements. AMDC failed to produce any supporting documentation that would constitute an actual RFP, despite repeated FOIA requests seeking those documents.

123. On information and belief, no materials were sent to potential developers in connection with the December 13 and 20, 2021, RFP advertisements, and no developers, including

RPM, responded to the advertisements. The advertisements themselves were not sufficient to constitute an RFP pursuant to S.C. Code Section 31-10-110(c), which requires that the RFP “shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof.” *Id.* The information provided in the December 13 and 20, 2021, advertisements and in Plan One, which was referenced in the advertisements, was so limited, and contradicted the May 2021 documents sent to developers, that no developer could make a reasonable proposal without extensive further discussions with and substantial additional information from AMDC. No information was provided by the AMDC as to the condition of the structures, environmental assessments, restrictions due to historic structures and the Old Aiken Overlay District, etc. No directions with regard to preservation alternatives vs new construction were provided. No information about the value of the assets in question or the financial and other terms of the proposed sale and other agreements was provided. No precise information on which lots were in question or potential changes in the lots was provided. No information about the construction requirements or amenities expected of the developer was provided. No information as to selection process and criteria was provided. Moreover, even if the solicitation materials had been adequate, AMDC was not pursuing any project that was consistent with and in accordance with Plan One or the AECOM Plan.

124. An agenda item for the January 24, 2022, City Council meeting was to approve a fully drafted ordinance for first reading authorizing the sale of two lots owned by the City to CTR, LLC, an entity represented and/or controlled by Ray Massey (the “CTR Sale”). One lot is in the Pascalis Block and is a part, fronting on Newberry Street on the south side of The Alley, of Lot 121-21-06-001 (the Old Municipal Building Lot that is now part of Project Pascalis), and the other is Lot 121-21-02-010, the parking lot directly across Richland Avenue from the Hotel Aiken. The

price was established at \$750,000 for the 0.2-acre lot that fronted on Newberry Street and \$50,000 for the 0.3-acre parking lot on Richland Avenue, even though there were no restrictions disclosed on the future use of the parking lot. The price was a discounted price that represented a \$185,000 loss to the City based on its purchase price 13 years earlier in 2008. The background memorandum from Stuart Bedenbaugh as City Manager points out the negative of the City having carried these lots with no income for 13 years and makes no mention of the rapid increases in real estate values during that time and the dramatic increase in the value of real estate that is in and around the Pascalis Block in the last two years. On information and belief, the City never got an appraisal or a third-party estimate of the value of these lots or put these lots up for auction to the highest bidder. According to AMDC, Ray Massey is also a one-third owner of RPM. The CTR Sale was initiated well before December 21, 2021, and was only known to the Plaintiffs because it was briefly on the agenda for the City Council's January 24, 2022, meeting, but was quickly taken off the agenda and "postponed until a later date." The CTR Sale was documented in a fully negotiated Purchase and Sale agreement dated December 21, 2021, initialed on every page by, and signed by, Ray Massey and ready for City signatures. The Ordinance had signature blocks for Rick Osbon as Mayor, Gary Smith as City attorney, and Sara Ridout as City Clerk. The CTR Sale documents do not explain how the CTR Sale fits or does not fit with Project Pascalis or why the City was pursuing the sale or why it chose to sell the lots to CTR, LLC and not to RPM. The CTR sale adds one more unexplained twist to the story of Project Pascalis and makes it even more difficult for the public and the DRB to follow what Project Pascalis actually is or is not. The CTR sale also highlights the conflicts, or potential conflicts, of interest that can result from the tangled web of relationships between representatives of the City, the DRB and AMDC, on the one hand, and participants in

RPM and property owners, or prospective property owners in and near the Pascalis Block, on the other hand.

125 The content and components of Project Pascalis changed so frequently that any AMDC solicitation that might have existed was quickly no longer applicable as an RFP, even if it had been applicable and sufficient some time earlier. The purported RFPs created by AMDC in December, 2021, and March of 2022 were not applicable or valid from the start. AMDC never intended to conduct an RFP process. Instead, AMDC chose the developer for Project Pascalis by having secret bilateral discussions with confidentially selected parties rather than providing a proper “level playing field” where all parties had the same information, the same opportunity and clear selection criteria at the same time. AMDC conducted a process of its own design with no defined criteria so that it controlled and manipulated the process and used its own preferences to select a developer that it favored. This process is further tainted by the fact that the developer AMDC chose is the law partner of the City Attorney advising the AMDC and the City about the RFP and the project for which the developer was chosen.

126. Key decisions about the subjects of this lawsuit were made by the AMDC using as support the votes of three individuals (Catina Broadwater, Stuart MacVean and Chad Matthews) who were serving as commissioners of the AMDC illegally because they were not residents of the City of Aiken as required by the City of Aiken Code of Ordinances (“City Ordinance”) Section 11.2. On information and belief, those three commissioners continue to serve as members of the AMDC, even after members of the public complained, in early June, 2022, that they were serving as AMDC commissioners illegally because they were not residents of the City as required by the City Ordinance Section 11.2. Any decisions made by the AMDC which relied on the vote of one or more of these commissioners for a majority vote or on their presence for a quorum, are invalid

because their presence and their vote were in violation of City Ordinance Section 11.2. Moreover, decisions and actions at meetings of the AMDC were not valid where made at a meeting that did not have a quorum because of the invalidity of the membership of these three individuals on the AMDC, and/or because two members of the AMDC recused themselves from voting on a decision involving Project Pascalis.

127. Members of the AMDC have acquired one or more interests, direct or indirect, in (1) Project Pascalis and other redevelopment projects and in property included or planned to be included in the AMDC's redevelopment area and (2) in one or more contracts or proposed contracts for materials or services to be furnished or used by the AMDC or with a developer or a prospective redeveloper relating, directly or indirectly, to an AMDC redevelopment project, in violation of S.C. Code Ann. § 31-10-70. For example, Chris Verenes is CEO of Security Federal Bank, which owns branches all over Aiken and one directly across from the Hotel Aiken and has loans and other arrangements with numerous owners of property in the Pascalis Bock and the blocks immediately around it. In addition, David Jameson is CEO of the Aiken Chamber of Commerce ("ACOC"), which paid \$135,000 to assume the WTC lot options and held them for AMDC, for which the AMDC paid the ACOC \$135,000. No AMDC commissioner has (a) resigned, as required by S.C. Code Section 31-10-70 or (b) recused himself properly and disclosed and described his conflicts in writing and recorded them in the AMDC minutes as required by S.C. Code Sections 8-13-700(A) and (B). As result, the information about the five appointments and individuals referred to above contained in the agendas and minutes for numerous meetings of the AMDC are incomplete and inaccurate, and in each case represent a violation of the FOIA.

128. The minutes of the City Council in and around September, 2020, show that the mayor suggested and the Council agreed to delegate to the AMDC the drafting of its own bylaws,

knowing that Tim O'Briant, the City's Director of Economic Development, would draft the bylaws for the AMDC, which he did. In this manner, the City Council gave up its right to approve the bylaws of the AMDC. In December, 2020, the AMDC adopted self-serving bylaws but did not include a copy of these bylaws in the agenda or the minutes of any AMDC meeting or publish these bylaws on any website of the AMDC or the City. Among other things, the AMDC bylaws provide that any money generated by the AMDC from its projects from the sales of real estate can only be used for AMDC projects and would not be returned to the City. The AMDC bylaws also provide that new commissioners can only be selected by commissioners then in office, in violation of City Ordinance Section 11.2 and S.C. Code Section 31-10-40, and that commissioners need not be residents of the City if they have a business interest in the City, in violation of City Ordinance Section 11.2. The bylaws also provide that each commissioner has a four-year term of office, but S.C. Code Section 31-10-50 mandates that only two-year terms are allowed. The bylaws also provide that the Chairman of the AMDC can create any committee he or she likes, and name commissioners of his or her choosing to such committees without the approval of other commissioners, thus avoiding public disclosure in the AMDC minutes of the existence and composition of any AMDC committees. As a result of all this, (a) the AMDC bylaws are not valid or lawful and the bylaws have not been properly enacted, (b) one or more Commissioners of the AMDC have not been properly appointed, (c) the Executive Director and the Executive Committee of the AMDC have acted and are acting without proper authorization, and (d) the information about the commissioners, the Executive Director, the Executive Committee and any matters regarding or dependent on or governed by the bylaws of the AMDC contained in the agendas and minutes for numerous meetings of the AMDC are incomplete and inaccurate, and in numerous instances represent a violation of the FOIA.

Design Review Board

129. The DRB is a quasi-judicial entity under South Carolina law. In pursuing its mandates, the DRB is required (a) to develop a comprehensive, sufficient and balanced record and (b) to follow established, sufficient and balanced procedures so as to arrive, to the best of its ability, at informed, fair and balanced decisions on the matters that are under its jurisdiction.

130. Pursuant to the Aiken Zoning Ordinance, the DRB reviews applications for a Certificate of Appropriateness (“COA”) for construction, alteration or demolition of structures in the Old Aiken Overlay District and the Historic Preservation Overlay District, and is required to follow guidelines approved by the City for such districts. The guidelines required for the Historic Preservation Overlay District are the Historic Design Review Manual and United States Secretary of the Interior's Standards for Rehabilitation (“DOI Standards”). The guidelines required for the Old Aiken Overlay District are the Old Aiken Design Guidelines. Section 5.1.2 of the Zoning Ordinance provides that “[w]henver there is conflict between the regulations of the remainder of this Ordinance and this Chapter, the more restrictive shall apply.”

131. The DRB first reviews applications for a COA in a “Work Session” that is open to the public, but generally does not ask for public comment at these meetings. The DRB officially reviews, discusses, deliberates and acts on applications for a COA at a “Regular Meeting” that is set for each month or at a “Special Meeting” called when needed (each a “Meeting”). The DRB provides agendas for Work Sessions and Meetings and the agendas regularly contain the applications, with voluminous supporting materials supporting each application to aid the DRB in its deliberations about the applications.

132. The DRB violated its duties as a quasi-judicial entity regarding the Pascalis Project. At all times during its review of a demolition request regarding the Pascalis Project, members of

the DRB, and its chairman in particular, made unfounded and unsupported statements in favor of demolition and expedited procedures to further their already predetermined agenda of approving demolition and allowed the developer to speak for far more time, while improperly restricting the public to three minutes per person when the DRB bylaws provide for five minutes per person for public comments. The DRB acted prior to receiving a COA application and then accepted a fatally flawed application (a) despite the fact that it was presented seven days before the relevant DRB meeting, when the Zoning ordinance requires an application to be submitted 14 days before such meeting and (b) without making any effort to examine its completeness and accuracy or to scrutinize or question it, let alone correct it. The minutes of some DRB meetings incorrectly refer to RPM as the applicant when RPM had not made an application. In its review, the DRB relied entirely on incomplete and misleading information provided solely by the developer and neither sought nor received any independent, expert or unbiased advice or analysis of the subject structures or the proposed project and did not seek, receive, develop, examine or pursue preservation alternatives and cost estimates despite requirements in the Zoning Ordinance to do so. Furthermore, the DRB violated provisions of the Zoning Ordinance and devised procedures not contemplated by the Zoning Ordinance, violated S.C. Code Section 30-4-10, and went against (a) its own preservation mandate, described as “essential” in the Zoning Ordinance, (b) all the applicable preservation requirements adopted by the City, and (c) all the prevailing Strategic, Master, Economic Development and Comprehensive Plans (and many earlier plans) adopted by the City.

133. The DRB hastily approved, in its first Meeting on Project Pascalis, with less than six minutes of deliberation, a fatally flawed and incomplete application for demolition by using an unprecedented and unauthorized form of “conditional” COA that is not allowed by the Zoning

Ordinance and is contrary to expressed provisions of the Zoning Ordinance Section 5.2.4(A)(3), which states that “the **application shall be denied**” (emphasis added). In approving the COA on March 1, 2022, the DRB ignored questions as to (a) the applicability of certain provisions of the Zoning Ordinance and certain guidelines and procedures and (b) pleas by its own members and by members of the public to slow the DRB process down and provide and review more complete information about RPM’s demolition application.

134. On November 4, 2021, the DRB held a Work Session, where AMDC and the City gave DRB a briefing on the plans for the purchase of the Pascalis Properties for the Pascalis Project and the subsequent fast track on which they wanted to get those plans approved. In that briefing, the AMDC said “the development team is close to identifying a developer, but does not have a contract in place yet,” and that things would move quickly after that, with construction expected to begin in approximately six months.

135. The first DRB meeting that reviewed the new Pascalis Project was a Work Session on January 4, 2022. At that meeting Ray Massey introduced the RPM team, there was a general discussion of Project Pascalis with little detail, and no plans or other supporting materials were provided or included in the agenda or the minutes of the Work Session. The discussion of Project Pascalis at this DRB meeting was not included in the agenda for the meeting. The agenda referred only to “Economic Development Update” and “Pre-Application Conferences.” The agenda made no reference to Project Pascalis, RPM or AMDC. Based on this agenda, the public had no way of knowing that Project Pascalis would be discussed. Minutes of the meeting made no mention of Project Pascalis, RPM or AMDC. These omissions in the agenda and the minutes of the January 4, 2022, DRB Work Session are in violation of the Freedom of Information Act and its open

meetings provisions. There was no public comment at that Work Session and Project Pascalis was not discussed at the subsequent Regular Meeting of the DRB that same day.

136. On February 1, 2022, the DRB toured the site of the Hotel Aiken and reviewed various aspects of the Pascalis Project in another Work Session, at which there was no discussion of the historic and preservation value of, preservation alternatives for, or cost estimates for preservation of, the Hotel Aiken. There was no public comment at that Work Session and the DRB did not hold a Regular Meeting after this Work Session on this date. The discussion of Project Pascalis at this DRB meeting was not included in the agenda for the meeting. The agenda referred only to “Review of site visit for 235 Richland Avenue West and Neighboring Parcels” and “Pre-Application Reviews.” The agenda made no reference to Project Pascalis, RPM or AMDC. Based on this agenda, the public would have no way of knowing that Project Pascalis would be discussed. Minutes of the meeting made no mention of Project Pascalis, RPM or AMDC. These omissions in the agenda and the minutes of the February 1, 2022, DRB Work Session are in violation of the Freedom of Information Act.

137. On February 17, 2022, RPM presented the Taylor and Viola engineering report on the condition of the Hotel Aiken at a Work Session of the DRB. The Taylor and Viola report was prepared for RPM and concludes that “Much of the building can be preserved if desired, but it should be expected that preservation measures would be extensive in nature.” Raines gave a PowerPoint presentation that described the RPM team, explained some history of its development experience and provided a simplified site plan for Project Pascalis. Raines indicated that it wished to demolish the Hotel Aiken because that would allow RPM to build what it wanted and because renovation would be too costly, but gave no financial or other analysis to support that statement. No member of the DRB reminded the public that the Taylor and Viola report was prepared for

RPM, not for the DRB. No member of the DRB asked for any information or financial analysis on the potential cost of preservation versus demolition and new construction. DRB Chairman McDonald Law made several unsubstantiated statements, including that (a) the brick walls of the Hotel were unlikely to survive an earthquake, (b) a separate sprinkler system would be required between the floor and the existing ceilings, and (c) it would be necessary to “completely rebuild the building in order for it to be renovated.” Chairman Law cited no studies that supported these conclusions and had no personal expertise that allowed him to reach these conclusions without expert analysis and advice. There was no discussion of preservation values, preservation alternatives or preservation cost estimates. At the end of the meeting, Chairman McDonald Law urged RPM to submit an application for a COA for demolition of the Hotel Aiken as soon as practical. There was no public comment at the Work Session and no Regular Meeting was held afterwards. The discussion of Project Pascalis at this DRB meeting was not clearly described in the agenda for this meeting. The agenda refers only to “Downtown Development Update with Raines Development and partners. The update will include a review of the structural assessment report for Hotel Aiken.” The agenda made no reference to demolition, Project Pascalis, RPM or AMDC. Based on this agenda, the public would easily be confused as to whether Project Pascalis would be discussed and who the other names mentioned were, who the Hotel Aiken structural assessment was prepared for, etc. It should be noted that up to that time very little information on and no plans of Project Pascalis had been made public. Minutes of the meeting misleadingly referred to RPM as “applicants” when RPM had made no application, and yet made no reference to Project Pascalis, RPM or AMDC. These omissions and obfuscations in the agenda and the minutes of the February 17, 2021 DRB Work Session are in violation of the Freedom of

Information Act. There was no public comment at the Work Session and no Special Meeting was held afterward that day.

138. On February 21, 2022, RPM applied for a COA and the DRB staff forwarded it to the DRB on February 23, 2022. The application covers both the Hotel Aiken on lot 121-21-09-002 and the three adjacent shops on Laurens Street on lot 121-21-09-001, and consists of a map of the lots; some photos; the simplified site plan from the February 17, 2022, presentation; a section view of Newberry Street that is deceptive since it does not point out the dramatic change proposed; and the Taylor and Viola report. The application provides no information on the historic values or considerations of the Hotel Aiken and no information at all on the three structures on lot 121-21-09-001, even though that lot number is clearly indicated on the application and the staff report references “demolition of former Hotel Aiken and associated shops and structures.” (Emphasis added.) The application did not provide and the DRB did not consider information on the whole Project Pascalis, for which permission to demolish these structures was requested. On information and belief, the DRB had never approved a portion of a major project without seeing and reviewing extensive information on the whole project, but did just that regarding the application to demolish the Hotel Aiken and adjoining structures.

139. The three pre-1900 shops on lot 121-21-09-001 are listed as “Contributing Structures,” by the South Carolina State Historic Preservation Office (“SHPO,”) and in the Historic Resources Survey done by the City of Aiken in 2010 and are all occupied and in sound physical condition. The Hotel Aiken on lot 121-21-09-002 is listed in the Aiken Historic Register as a “Contributing Structure” on a Historic Site. Section 5.2.1 of the Zoning Ordinance provides that “Any property or structure listed on the Aiken Historic Register shall be subject to this Article,” which is the Historic Preservation Overlay District. Therefore, the Hotel Aiken is subject to the

requirements of the Historic Preservation Overlay District. Demolition of any of these structures, as requested in the application, would violate numerous provisions of the Zoning Ordinance.

140. The DRB violated the Zoning Ordinance by accepting and considering a limited and incomplete application from RPM despite the fact that the application was for demolition of the most prominent building on the most prominent block of the City and three other structures that are among the oldest in the City. The Hotel Aiken is listed on the Aiken Historic Register as a Contributing Structure in a Historic Site and the three other structures are listed as Contributing Structures by SHPO and in the Aiken Historic Resources Survey of 2010. Section 5.2.3(C) of the Zoning Ordinance requires significant additional material to be included in an application for a COA in the Historic Preservation Overlay District than was included in the RPM application. The overall mandates in Sections 2.6, 5.2 and 5.3 of the Zoning Ordinance for the review of applications for Certificates of Appropriateness require the DRB to evaluate numerous subjects and extensive materials in order to comply with the review standards in Section 5.2.3(J) and 5.3.2(M), to develop preservation alternatives pursuant to Section 5.2.4(A)(2) and to make determinations of demolition by neglect pursuant to Section 5.2.4. No materials that would be responsive to those subjects was included in the RPM application or requested by the DRB. Furthermore, the demolition of the Hotel Aiken is part of a much larger project designated by the AMDC as Project Pascalis. Without explanation, deliberation or a procedural vote, the DRB accepted an application for only a small portion of Project Pascalis and requested no information on the overall project that would enable them to consider the demolition portion in the context of the whole. Even if they had requested such material, AMDC and RPM had acknowledged that many aspects of Project Pascalis had not been decided yet, so the DRB knew at the time it accepted the February 21, 2022 RPM application that many of the materials it should have required to be

included in the application did not yet exist. In accepting the RPM February 21, 2022 application, the DRB violated Section 6.1.3(E) of the Zoning Ordinance which states that a complete application is required.

141. On information and belief, all the Strategic Plans, Master Plans, Economic Development Plans and Comprehensive Plans adopted by the City in the last ten years (and many earlier plans) contain statements that highlight the importance of, recommend that the City promote, and urge the City to maintain and preserve, the historical structures in the City, the unique 1835 historic downtown street grid of the City and its resulting parkways.

142. Sections 2.6, 5.2 and 5.3 of the Zoning Ordinance require that the DRB evaluate not just the demolition impact, but also the cumulative impact of the project as a whole. DRB accepted a limited and incomplete application by RPM that had no information on one of the lots cited in the application and lacked any information at all on the project as a whole, which includes eight other adjacent or nearby lots on the same block and encroaches on a prominent and historically significant street in Aiken's historic downtown street grid to erect structures on it. Sections 2.6, 5.2 and 5.3 of the Zoning Ordinance also require that the DRB evaluate not just the demolition impact but also the attributes and design of the structures that are proposed to replace the demolished structures. The DRB accepted a limited and incomplete application that had minimal information on the replacement structure and no relevant information on any of the other structures in Project Pascalis other than a rudimentary partial, and now superseded, site plan.

143. Section 5.2.3(C) of the Zoning Ordinance specifically requires that the application "shall be accompanied by the following unless waived by the Secretary or otherwise specified on the application form provided by the Board.

- a. Drawings, including plans and exterior elevations, drawn to scale, with sufficient detail to show the exterior architectural design of the structure.

- b. Specifications or other information describing proposed materials and textures; samples of materials may be required by the Board.
- c. Plot plan or site layout showing all existing structures and any improvements affecting appearances such as walls, walks, terraces, accessory buildings, signs, lights, plantings, and other elements.
- d. Photographs of the site location, showing contiguous properties and streetscapes.
- e. All other information requested by the Board.

None of these items was included in complete form in the February 21, 2022 RPM application or requested by the DRB or provided to the DRB.

144. When questioned by a DRB member during the March 1, 2022 Work Session about this lack of information, a DRB staff person “informed the Board that the Old Aiken Design Guidelines only require a plan to be presented.” She then read a short portion of page 42 of the Old Aiken Overlay Design Guidelines. However, the full text of page 42 states “3.1.11 DEMOLITIONS & RELOCATIONS Demolition **of existing buildings is strongly discouraged. Consequently, the Design Review Board will use its authority to delay demolition of historic structures whenever possible to investigate means to save the building.** However, it is recognized that, in some cases, older structures may deteriorate to the point that rehabilitation is technically infeasible. In such cases, **it is the responsibility of the property owner to demonstrate that rehabilitation is not appropriate AND demonstrate a clear plan for the re-use of the site and any related new construction after demolition.** Guidelines: If an existing building's condition is deteriorated such that rehabilitation and use of the building is judged to not be feasible, a request for demolition may be considered by the Review Board. **It is the responsibility of the property owner to demonstrate that rehabilitation is not feasible.** If public safety is threatened, interim steps may be taken to close and stabilize the structure. Any requests for relocations to or from the Overlay District shall be reviewed by the Review Board. **Any application for a demolition shall include plans for the re-development of the site after**

demolition.” A caption for a photograph on page 42 states further: “Occasionally, demolition is the only course of action that remains for a property. **A plan for the site’s re-use is a critical component in the evaluation for a request for demolition.**” (Emphasis added.). Furthermore, pursuant to Section 5.1.2 of the Zoning Ordinance, the most restrictive requirements of (a) page 42 or page 63 of the Old Aiken Design Guidelines or (b) the requirements applicable to Historic Preservation Overlay District or (c) Zoning Ordinance Section 5.2.3(C) apply.

145. DRB did not comply with the City of Aiken Zoning Ordinance in reviewing the limited and incomplete application from RPM despite the fact that the application was for demolition of the most prominent building on the most prominent block of the City and three other structures that are among the oldest in the City. The Hotel Aiken is listed on the Aiken Historic Register as a Contributing Structure in a Historic Site and the three other structures are as listed as Contributing Structures in the Historic Resources Survey of 2010 and by the SHPO.

146. Section 2.6.1 of the Zoning Ordinance provides, in part, “**It is essential that** the qualities, areas, sites, structures, and natural and man-made objects relating to the history of the City of Aiken, as well as that of Aiken County, the State of South Carolina, and the United States of America, **be preserved**” (Emphasis added.).

147. Zoning Ordinance Section 5.2.3(J) Review Standards states in subsection (1): “General. In reviewing applications, the Board and the Planning Director shall consider the standards stated in this Chapter for the purpose of determining whether alterations, construction, demolitions, or relocations are in harmony with the prevailing historical, architectural, archeological, or aesthetic character of the Historic District, a structure in a Historic District, or an Historic Site, or a structure included in an Historic Site. (Ord. 04142003A).” DRB did not address these considerations during its March 1, 2022 review of the RPM February 21, 2022 application.

148. Zoning Ordinance Section 5.2.3(J)(2) addresses Construction and Alteration, implying a duty to review these matters if the project involves Construction and Alteration as well as demolition, which is the case here. DRB did not address these considerations during its March 1, 2022 review of the RPM February 21, 2022 application.

149. Zoning Ordinance Section 5.2.3(J) Review Standards states, in part, in subsection (3): “Demolition. In reviewing an application for demolition, the Board and the Planning Director shall consider the historical, archeological, and aesthetic character of the structure (or portion thereof) proposed for demolition.” DRB did not address these considerations during its March 1, 2022 review of the RPM February 21, 2022 application.

150. Zoning Ordinance Section 5.2.3(J) Review Standards states, further in subsection (3): “They shall also consider: (1) the structural integrity (i.e., condition) of the structure and (2) the integrity of materials, location, and design of the structure. During their review DRB accepted at face value the developer’s engineering report and made no independent inquiry into the above considerations. DRB could have availed itself of materials from the earlier Shah renovation project and other studies related to the Aiken Hotel. In August 2020, the DRB and the City concluded that the Aiken Hotel was not in a condition that represented demolition by neglect. The DRB did not raise this issue in their March 1, 2022 review of the RPM February 21, 2022 application or present any information from these earlier studies to the members of the DRB or the public. In addition, the DRB did not get or provide advice from any preservation expert (or anyone else) as to the condition of the building or the difficulty of preserving it, in direct violation of Section 5.2.4(A)(2), which states “Within any period of postponement, the Board **shall endeavor to ascertain what may be done to preserve the structure or landmark.**” (Emphasis added.)

151. Zoning Ordinance Section 5.2.3(J) Review Standards states, further in subsection (3): “No application for demolition shall be approved solely on the basis of a structure's deteriorated condition where the Board determines that the applicant is primarily responsible for the deteriorated condition. Finally, the Board shall consider the extent to which demolition would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property affected or upon the surrounding properties, or upon the district in which the structure is located. No application for demolition of a Landmark shall be approved.” DRB did not make any determination or otherwise address these considerations during its March 1, 2022 review of the RPM February 21, 2022 application.

152. Zoning Ordinance Section 5.2.4 Demolition or Relocation states, in part, in subsection (A)(2): “The Board may delay the granting of the Certificate for a period of up to 60 days from the time of the filing of the application. The Board may extend this postponement for another 180 days after a public hearing and finding by the Board that the structure or landmark is of historical, architectural, or archeological importance to the public or City of Aiken.” Page 42 and 63 of the Old Aiken Design Guidelines both state that “Demolition of existing buildings is strongly discouraged. Consequently, the Design Review Board **will use its authority to delay demolition of historic structures** whenever possible to investigate means to save the building.” (Emphasis added.) DRB took only one day and spent less than an hour in its March 1, 2022, review of the RPM February 21, 2022, application.

153. Zoning Ordinance Section 5.2.4 Demolition or Relocation states, further in subsection (A)(2): “Within any period of postponement, the Board **shall endeavor to ascertain what may be done to preserve the structure or landmark**. Such steps shall include, but are not limited to, consultation with civic groups, interested citizens, public interest groups, and public

boards and agencies.” (Emphasis added.) DRB did not do any of this in its March 1, 2022 review of the RPM February 21, 2022 application.

154. Section 5.2.4(A)(3) of the Zoning Ordinance provides, in part “if the Board finds that the structure contributes to the character of the Historic District or that the landmark is of historical, archeological, or architectural significance or that, for any other reason, preservation in the public interest is warranted, **the application shall be denied.**” *Id.* (Emphasis added.) The four structures that are the subject of the March 1, 2022 COA approval are designated as contributing structures pursuant to the Zoning Ordinance and the Hotel Aiken is listed in the Aiken Historic Register as a Contributing Structure in a Historic Site. Therefore, the application for demolition was required to be denied. This requirement is clear and the DRB ignored it. The process is also clear in that the Zoning Ordinance, as intended, protects designated and undesignated contributing structures and requires the owner to prove economic hardship pursuant to Section 5.1.3 to obtain a Certificate of Appropriateness for demolition of such structures. Furthermore, the Old Aiken Design Guidelines specifically require the owner to demonstrate that rehabilitation is not feasible. Moreover, the Hotel owner’s own engineering report concluded that “Much of the building can be preserved if desired.” Even though the Hotel owner had clearly not demonstrated that rehabilitation is not feasible and the Zoning Ordinance required the DRB to deny the application, the DRB willfully and knowingly went ahead on March 1, 2022, and approved the RPM February 21, 2022 application for demolition of the historic Hotel Aiken and three other historic structures it had not even considered and on which it had no information.

155. Zoning Ordinance Section 5.2.4(B) Demolition by Neglect states, in part, in subsection (1): “Prevention of Demolition by Neglect of Exterior. No owner or person with an interest in real property which is designated an Historic Site (Ord. 04142003A) in any part of the

City or any property in an Historic District, whether that property is occupied or not, shall permit the structure or property to fall into a serious state of disrepair or to remain in a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property, or, if the structure or property is in an Historic District, upon the district.” Zoning Ordinance Section 5.2.4(B)(2) imposes a similar duty to prevent demolition by neglect of the interior of any structure in a Historic Site. DRB did not address these considerations during its March 1, 2022 review of the RPM February 21, 2022 application for a COA for demolition, despite earlier concerns expressed by the City and by the DRB itself regarding demolition by neglect in and around August 2020. Furthermore, since (a) in 2020 both the City and the DRB determined that the Hotel Aiken was not yet suffering demolition by neglect and the then owner was in the process of renovating and preserving that structure, and (b) the current owner was applying in 2021 for a COA for demolition, the DRB had a prima facie duty to investigate what changed, whether demolition by neglect had occurred, who is responsible and, at the very least, determine whether it could or should grant the demolition requested by the current owner without further investigation. The DRB did none of these things in its March 1, 2022 review of the RPM February 21, 2022 application.

156. In and around August, 2020, the DRB was involved in an investigation into whether the then owner of the Hotel Aiken was culpable of seeking or causing demolition of the Hotel Aiken by neglect. As stated in the minutes of the AMDC November 17, 2020, meeting, both the DRB and a City building inspector had by then determined that the structure was still sound and there were not sufficient grounds to bring an action for demolition by neglect. However, on March 1, 2022, the developer claimed the Hotel Aiken was too far gone to make renovation practical and

should be demolished instead, and the DRB agreed without questioning them. Despite this obvious juxtaposition of a structure that was declared sound in November, 2020, and required demolition 14 months later, the DRB never raised the issue and never examined the question of demolition by neglect, in its March 1, 2022 review of the RPM February 21, 2022, application, in a clear violation of Sections 5.2.4(A)(2) and 5.2.4(B) of the Zoning Ordinance.

157. Nowhere in the Zoning Ordinance or in any applicable rule is the DRB given the authority to grant a Certificate of Appropriateness without having seen the final plans for the structure that will replace the demolished structure. Such a process makes no sense, as it would be equivalent to finding a defendant guilty or innocent contingent on seeing the evidence. The DRB invented this conditional option on its own volition and without valid authorization.

158. DRB simultaneously and inadvertently approved the demolition of the three structures on lot 121-21-09-001 without any information, review, discussion, consideration, public input, expert advice, etc., and did not even know it was approving their demolition when it approved the demolition of the Hotel Aiken.

159. DRB made decisions to alter its usual procedures by treating RPM differently than other applicants, including by its decision to grant a conditional COA subject to seeing final plans. In doing so, DRB members, notably the Chairman, met with City officials, members of the AMDC and the RPM team and other members of the DRB before and outside the regular, noticed and agendaed public meetings of the DRB to make these decisions. At the DRB's March 1, 2022, Work Session, "Chairman Law explained that the DRB is working with the Raines Group in phases to prevent work delays." Minutes, DRB Work Session, March 1, 2022. Thus, as the DRB Chairman acknowledged, the DRB unlawfully made these decisions outside the regular, noticed and agendaed public meetings of the DRB, for which there are no minutes or record of notice,

discussion or deliberation of these decisions as required for a public meeting. By engaging in this behavior, DRB committed numerous violations of the South Carolina Freedom of Information Act and of the laws regulating the DRB.

160. The DRB historically has been and is a stickler for seeing the whole project and having complete applications before giving an approval. The DRB regularly requests extensive information and brings applicants back for multiple reviews to get every detail right on the most insignificant project, before its grants an approval for anything. In contrast, regarding this RPM application the DRB bent over backwards to grant a demolition approval on what is one of the most complex and largest projects in Aiken history, with no information, no details, and missing plans that did not even exist yet, all assuming some future process would make the demolition right. The Zoning Ordinance and pages 42 and 63 of the Old Aiken Design Guidelines (42 is for all structures and 63 is for historic structures, but both pages are identical) make it super-clear that DRB has to look at (a) the project as a whole and (b) the replacement use and the replacement plans **before** they approve a demolition. There is also nothing that says the DRB can approve parts of projects piecemeal, as it did with the RPM application. The whole DRB approval regime is set up to require the applicant to submit extensive information on all aspects of a project and not to approve any parts of the project until DRB has reviewed all the parts. RPM (a) failed to submit its application form and all required submittals at least fourteen days before the DRB meeting at which they are to be considered, in violation of Zoning Ordinance Section 6.1.3(D), and (b) failed to submit an application that is complete, in violation of Zoning Ordinance Section 6.1.3(E), but the DRB accepted it anyway.

161. On February 23, 2022, a mere two days after RPM's application for a COA was received by the DRB, the DRB staff issued a sham report that is barely a page long and makes no

mention of completeness of the application or the appropriateness of the materials submitted. Accompanying materials for the report include only the application, some photos and a lot map. The DRB staff report contained no information on preservation issues or alternatives, even though the structures to be demolished are among the most prominent structures on the most prominent block in the City and were protected contributing structures. The staff report erroneously says the application can be evaluated using the Old Aiken Design Guidelines because the Pascalis Block is within the Old Aiken Overlay District. However, the application must also be evaluated using the requirements of the Historic Preservation Overlay District, which include the Historic Design Review Manual and the DOI Guidelines, since the application includes the Hotel Aiken, which is listed in the Aiken Historic Register. If there are any conflicts in the guidelines, the more restrictive must be applied. Nothing was mentioned about the structures on lot 121-21-09-001 in the staff report or in any meetings of the DRB leading up to and including approval by the DRB of the demolition COA on March 1, 2022.

162. On March 1, 2022, in a DRB Work Session, RPM presented a first glimpse at the elevations for the new proposed hotel to replace the Hotel Aiken. At the subsequent Regular Meeting of the DRB the same day, RPM gave a general presentation of the project, limited to the previously presented site plans. RPM and the AMDC commented that all the plans presented were preliminary, fluid and subject to significant changes. The public was allowed to comment and some spoke for demolition and some against. One member of the public pointed out that the Zoning Ordinance allowed the DRB to delay acting on the application for 60 days (plus up to an additional 180 days if needed) and beseeched the DRB to take its time and follow the ordinances of the City of Aiken. Another member of the public asked about a cost estimate for preserving the Hotel Aiken, and was told that no such estimate had been prepared. Another member of the public

asked about preservation alternatives and it became clear none had been developed or considered. A member of the DRB asked Chairman Wood of the AMDC if there was a plan approved by the City Council that showed that the proposed Pascalis Project was the most appropriate for the location and if the AMDC's redevelopment plan was Plan One. Chairman Wood replied that the AMDC was not following Plan One and was following the AECOM Plan instead. During the meeting, Chairman Law vigorously supported haste and demolition; made unfounded, unsupported and unsupportable comments about the condition of the Hotel Aiken; and erroneously limited public comments to three minutes per person. Chairman Law even asserted that speedy approval was needed to accommodate the developer, who had not been properly selected. Two DRB members asked questions about the appropriateness of proceeding with such limited information, but those questions were ignored. After public comment, the DRB took less than six minutes to vote to grant a COA to allow demolition of the Hotel Aiken subject to approving the final plans and elevations, which they had not seen, with only DRB member Lucy Knowles dissenting. The DRB never discussed the architectural significance of any of the structures, did not consider the structures on lot 121-21-09-001 at all, and did not consider or apply the requirements of the Historic Preservation Overlay District or the Old Aiken Overlay District. There was no substantive discussion of preservation issues, preservation alternatives, cost estimates for preservation or the clear evidence of a potential case of demolition by neglect.

163. On March 1, 2022, the DRB ignored (a) its duties as a quasi-judicial entity, (b) all the above-referenced Sections of the Zoning Ordinance, (c) all the above-referenced Sections of the S.C. Code of Laws, (d) all the above-referenced guideline documents, and (e) all the above-referenced plans adopted by the City to approve a fatally flawed and incomplete application by granting the unprecedented and unauthorized form of "conditional" COA for demolition of a

Contributing Structure in a Historic Site and three other Contributing structures based on very limited and biased information, in one meeting, with less than half an hour of total consideration and less than six minutes of deliberation. The structures approved for demolition are among the most prominent structures on the most prominent block in the City.

164. On March 11, 2022, Craig Bennett, a renowned expert in seismic masonry retrofit, historic preservation and National Historic Landmarks (including, in particular, in preservation of brick buildings) and former head of the Charleston Board of Architectural Review, was retained by Preservation South Carolina, a prominent preservation group. On behalf of Preservation South Carolina, Bennett inspected the Hotel Aiken that day and afterwards declared it can be renovated rather than demolished. Bennett noted the building has strong foundations and the later portion of the Hotel has a concrete and steel fireproof floor structure. On March 14, 2022, Bennet delivered a letter to the City of Aiken saying in part: “we found no major structural issues that would prevent its reuse” and “the building appears to qualify for the historic provisions of the International Existing Building Code.”

165. On March 28, 2022, the City Council held a first reading of an ordinance to convey a portion of Newberry Street to RPM for Project Pascalis. When opened up for public comment, various persons spoke for and against the ordinance. Dione Carroll spoke about a letter she had submitted pointing out that there were so many unanswered questions that it was imprudent and improper for the Council to vote on the proposed ordinance without providing citizens and themselves with adequate information and answers. Numerous persons pointed out that the inconsistencies and lack of financial analysis or details of the overall project made it premature and improper to vote to convey a portion of a prominent street to a private developer for no stated consideration. Moreover, the City cannot convey this portion of Newberry Street to RPM because

it has not complied with federal and state requirements that are applicable because Richland Avenue is US Route 1 and the South Carolina Department of Transportation owns Newberry Street at both ends of the Pascalis Block.

166. As previously noted, (1) Project Pascalis is not a redevelopment plan validly created pursuant to S.C. Code Section 31-10-10 *et seq.*, and, therefore, the AMDC was not authorized to pursue Project Pascalis, to participate in any conveyance of Newberry Street or to authorize RPM to receive such conveyance, and (2) RPM had not properly been selected as a developer pursuant to S.C. Code Section 31-10-110(c) and therefore had no standing to receive or to make any applications or representations regarding such conveyance. As a result, the City and the AMDC took the first step to authorize, despite repeated requests not to do so, conveying a valuable public asset for no consideration to an improperly selected private developer in furtherance of an unauthorized project which was being unlawfully pursued by the City and its AMDC agency without a validly authorized redevelopment plan.

167. On April 19, 2022, at a regular DRB Meeting, Luis Rinaldini and David Blake objected that the DRB was not applying its criteria correctly or consistently, as it was giving other applications greater scrutiny than it had given to RPM when approving its COA on March 1, 2022. Attorney Dione Carroll spoke about a letter dated April 19, 2022, she had submitted the same day pointing out that DRB had failed to follow proper procedures and was continuing to do so. A motion to add the subject of improving DRB procedures to the agenda of the next Meeting of the DRB was introduced by Member Knowles and seconded by Member Lipscomb and failed by a vote of 3-2. Member Knowles reminded the DRB that she had asked for a legal opinion on a number of aspects of the DRB procedures related to the March 1, 2022, approval of the COA for demolition of the Hotel Aiken and the three adjacent shop structures. To date the DRB has not

responded to Member Knowles' request for this legal opinion or to any of the concerns about procedures or the requests to review procedures that were raised in this meeting.

168. On April 20, 2022, the City hosted two meetings for RPM to present more details about their development projects for Project Pascalis. The program was the same for both meetings held at 11:30 am and 5:30 pm. These meetings were advertised as "public input" meetings and the public was invited to speak. The developers were awarded about an hour of time to make their presentation and members of the public were granted three minutes each.

169. On April 25, 2022, the City Council voted to appoint Laura Blessing Thomas ("LBT") to the DRB, replacing Lucy Knowles. Section 7.1.7(C) of the Zoning Ordinance provides, in part, that "The members of the Board shall be appointed by City Council which shall allow the public an adequate and reasonable opportunity to comment on all such appointments." (Emphasis added.) No such comment by any member of the public was allowed regarding appointing LBT to replace Lucy Knowles at the April 25, 2022 Council meeting. Section 7.1.7(D) of the Zoning Ordinance sets forth qualification requirements for members of the DRB and of the DRB as a whole. No information was given on LBT's qualifications or the balance of qualifications on the DRB resulting from the appointment of LBT to replace Lucy Knowles on the DRB. On April 29, 2022, Dione Carroll gave a letter dated April 29, 2022, to the Council objecting to (a) Knowles' dismissal, saying it was retaliatory for Knowles having voted against the RPM COA on March 1, 2022, and intended to intimidate other members of the DRB and (b) LBT's appointment, saying it was void and invalid on the grounds that the Council had failed to follow required procedures and, therefore, Knowles was still the designated member of the DRB, as provided by Section 7.1.7(E)(2) of the Zoning Ordinance.

170. In dismissing Lucy Knowles from the DRB, in April, 2022, the City engaged in unlawful retaliatory behavior to punish Knowles for voting against granting the RPM COA for demolition on March 1, 2022. What is more, the dismissal has a clear intimidating effect on other members of the DRB, who would naturally feel that if they voted against the City's wishes in the future, they too would be dismissed.

171. In appointing LBT to the DRB to replace Knowles, the City Council abdicated its duties to examine her qualifications and the overall resulting qualifications of the DRB, as required by Section 7.1.7(D) of the Zoning Ordinance. There is no record of the City Council making any determination about qualifications, either for LBT or the DRB as a whole.

172. As a result, LBT was not properly appointed to the DRB and Knowles was still on the DRB when it held its Regular Meeting on May 3, 2022. Per Zoning Ordinance Section 7.1.7(E)(2), DRB members are seated until they are replaced. Therefore, the May 3, 2022 DRB meeting was improperly called, as Knowles had been given improper notice of her dismissal, was still a member of the DRB and was not invited to attend. At that meeting, LBT was absent also and the DRB made no disclosure of LBT's purported appointment or Knowles' purported dismissal, in violation of the Freedom of Information Act.

173. At the May 3, 2022, regular DRB Meeting, Plaintiff Luis Rinaldini objected to the fact that the DRB had not disclosed the dismissal of Lucy Knowles and the purported appointment of LBT as her replacement. As a result of this nondisclosure, neither the applicants nor the public knew whether LBT or Knowles was the proper member of the Board and whether the DRB meeting was validly constituted, as Knowles had not been invited to attend the meeting and neither Knowles nor LBT attended the meeting.

174. Despite these issues, which even rudimentary inspection would have uncovered, Jim Holly, acting as attorney for the DRB, berated Luis Rinaldini when he brought up this Knowles/LBT matter, assured the public that LBT had been properly appointed and the meeting had been properly called and invited Rinaldini to consult his own counsel if he disagreed. It subsequently was learned that LBT was not qualified to be a member of the DRB because she is not a resident of the City of Aiken, in violation of Section 7.1.7(D) of the Zoning Ordinance.

175. Subsequently it emerged that three members of the DRB, including LBT, were not qualified to sit, as they were not residents of the City. Two other, long sitting members (Velice Cummings, Ricky Brown) of the DRB also did not live in the City and therefore were not qualified to sit on and were not valid members of the DRB. These missteps further illustrate the pattern of negligence, incompetence, illegality and wrongdoing that characterized and characterizes the DRB and its procedures.

176. When key decisions were being made about the redevelopment project(s) that are the subject of this lawsuit, two members (Velice Cummings, Ricky Brown) of the DRB were not valid members of the DRB because they were not residents of the City of Aiken as required by Zoning Ordinance Section 7.1.7(B). The City claims the three illegally appointed purported members (Cummings, Brown, and Thomas) resigned from the DRB in June 2022, but that statement is inaccurate. These three purported members were never lawfully appointed and therefore were never members of the DRB and therefore could not resign. The situation was only corrected due to members of the public complaining that these people were serving illegally because they were not residents of the City as required by Zoning Ordinance Section 7.1.7(B). Any decisions made by the DRB with the presence of one or more of these purported members for the purposes of a quorum or the votes of one or more of these purported members causing a

majority vote when in violation of Zoning Ordinance Section 7.1.7(B) are invalid. The information provided by the City about these three appointments and individuals contained in the agendas and minutes for numerous meetings of the Council and the DRB are incomplete and inaccurate, and in each case the City's inadequate response represents a violation of FOIA.

177. On May 9, 2022, the City Council held the second reading of the ordinance to convey a portion of Newberry Street to RPM. When opened up for public comment, various persons spoke for and against the ordinance. Dione Carroll spoke about the concerns expressed in a new letter from her that the City Council was abdicating its responsibilities and acting improperly by granting approvals before having all the facts, and that if AMDC reached agreement with RPM, the conveyance would not come back to Council for approval. Luis Rinaldini spoke about the lack of transparency (including not disclosing the facts that RPM was improperly selected and AMDC was not authorized to pursue Project Pascalis), the failure to follow proper procedures, and the fiscal irresponsibility of having no appraisal or analysis of the value conveyed or received, the poor governance resulting from the preceding shortcomings as well as the terrible precedent set by transferring to a private developer a section of a prominent public street for no known consideration, to accommodate a project that is not properly authorized and does not fit on the lots held by a developer who was not properly selected and who had no development agreement known to the public. Several members of the public commented that they would like to receive ownership of half the street in front of their lots for no known consideration, as the City was proposing to do and doing with RPM. The Council voted to approve the ordinance by a vote of six to one, with Council member Woltz voting no. By approving the second reading, City had now fully authorized, despite repeated objections, conveying a valuable public asset for no consideration to

an improperly selected private developer in furtherance of an unauthorized project which was being unlawfully pursued by the City and its own AMDC agency.

178. The City knew, or should have known, at the time that AMDC was not authorized to pursue Project Pascalis and that RPM had not been chosen pursuant to a valid RFP. AMDC is an agency of the City and the AMDC and the City both shared two common attorneys in this matter. Stuart Bedenbaugh, the City Manager is a City employee and an ex-officio member of the AMDC. Tim O'Briant, the City's Director of Development, is a City employee and the Executive Director of the AMDC. Dr. Thomas Hallman is a City Employee and the Program Manager of the AMDC. The City knows everything the AMDC knows about Project Pascalis and vice versa. AMDC recognized, in its minutes of June 16, 2020, and elsewhere, that Plan One had a limited scope and City officials participated in that meeting. AMDC tried to expand its authority by improperly characterizing the AECOM plan as a valid redevelopment plan in accordance with S.C. Code Section 31-10-10 *et seq.* even though it was not, and the City participated in that process. Subsequently, AMDC confusingly and improperly alternatively referred to Plan One or the AECOM Plan, or both, as the redevelopment plan it was following. On or around December 13, 2021, the City's and AMDC's attorney filed the false *ex post facto* RFP advertisement and may have created it. In March of 2022, the AMDC posted documents on its website purporting to have been an RFP when it knew it had not conducted an RFP pursuant to S.C. Code Section 31-10-110(c). These clumsy attempts at obfuscating which plan AMDC was following and the creation of documents purporting to be an RFP that never existed show that the City and the AMDC were aware they had a problem with their invalid authorizations and procedures. In public comments by the plaintiffs and other members of the public, the City was warned repeatedly, and in writing, of irregularities and shortcomings, including the AMDC's lack of authorization and the improper

selection of RPM as the developer. Thus, on May 9, 2022, the City, AMDC and the attorneys for the City and AMDC were aware of irregularities and shortcomings regarding AMDC's authorization and RPM's selection as a developer. Rather than take a step back, examine the procedures and correct any irregularities and shortcomings, the City, AMDC and their attorneys went forward and knowingly authorized the conveyance of a valuable and important public asset for no consideration to an improperly selected private developer in furtherance of an unauthorized project which was being unlawfully pursued by the City and its own AMDC agency.

179. Neither the City nor AMDC got appraisals of the properties in question regarding the conveyance of a portion of Newberry Street or did any financial analysis on the potential investment required, the follow-on expenses or the potential return on the value of the property transferred to the developer. This is fiscally irresponsible and violates even the most basic purchasing procedures and requirements.

180. DRB and the AMDC should have known that, as a Municipal Development Commission, AMDC was required to follow a Redevelopment Plan, and that the developer for any AMDC project had to be chosen by a public RFP, in all cases pursuant to S.C. Code Section 31-10-10 *et. seq.* If the DRB did not know this in advance, the City and the AMDC had the duty to ensure the DRB knew it as part of any application before the DRB for Project Pascalis. This duty is heightened because the City and AMDC had their own doubts about these matters at the time, as evidenced by their confusing conflicting references to the AECOM Plan as well as Plan One and their clumsy attempts to falsely create a purported RFP after the fact. AMDC's resolutions authorizing the November 10, 2021, purchase of the lots under review by the DRB state that AMDC was pursuing Plan One and that Project Pascalis was part of Plan One. Minimal due diligence by the DRB would have revealed that Project Pascalis bore no resemblance to Plan

One and that there had not been any visible or valid RFP process for choosing RPM as the developer. At the very least, DRB should have questioned under what authority AMDC was allowing RPM to apply for a COA. The DRB did no investigation and did not question any aspect of the AMDC's or RPM's authority or qualifications in connection with the February 21, 2022, RPM application for a COA.

D. Freedom of Information Act Violations

181. Due to the lack of transparency and clarity of the disclosures related to Project Pascalis, numerous public meetings of the City Council, the DRB and the AMDC have been held where the public had or was given incomplete, inaccurate or misleading information. As a result, the public record with regard to Project Pascalis is incomplete, inaccurate or misleading in numerous places and instances. Every public meeting related to Project Pascalis and every occasion where the public was asked to comment on Project Pascalis was tainted by this incomplete, inaccurate or misleading information, because members of the public could not reach informed opinions or make informed comments based on such information.

182. The City Council has not properly disclosed the conflicts of interest of Gary Smith and Mayor Osbon regarding Project Pascalis, and these conflicts have not been recorded and described in the minutes of Council meetings, as required by S.C. Code Section 8-13-700(B). The Council has also not disclosed the status of the CRT Sale, which is a material fact when evaluating Project Pascalis. As a result, the public record regarding Project Pascalis was incomplete, and members of the public were not properly informed when, for example, defendants commented on the potential transfer of a valuable portion of Newberry Street in the March 28, 2022, and May 9, 2022, Council meetings.

183. The agendas of the DRB meetings on Project Pascalis are confusing and misleading. In the agendas for the January 4, February 1, and February 17, 2022, DRB Work Sessions, for example, (a) the labels used for Project Pascalis are different from meeting to meeting and do not mention Project Pascalis, RPM or AMDC, (b) Project Pascalis was not included in the items labeled Pre-Application Conferences or Pre-Application Reviews, and RPM was referred to as “applicant” in minutes of these meetings, when, in all cases, no application had yet been received, (c) the DRB reviewed the merits of Project Pascalis when Section 6.1.2 of the Zoning Ordinance states, in part, that pre-application conferences serve to “discuss procedures, standards, or regulations required by this Ordinance,” and (d) the items related to Project Pascalis were always under New Business, even after the first meeting, when in fact they were Old Business. As a result, these agendas did not give adequate notice of the purpose and content of these meetings and the public could not reasonably determine that Project Pascalis would be discussed and what aspect of Project Pascalis would be discussed at these meetings.

184. In a break with all prior procedures and custom for projects of similar importance, the DRB approved the application for a COA to demolish four prominent historic structures in one quick Meeting on March 1, 2022. Because the Zoning Code imposes extensive duties on the DRB when dealing with demolition of historic structures, the public could not have reasonably expected such a quick approval, particularly when the Zoning Ordinance requires that such an application “shall be denied.” The agenda for the March 1, 2022, DRB Meeting does not disclose that the DRB would or could grant an approval at the first Meeting on such an important project. The agenda description for this meeting was not sufficient, and there was no disclosure of the intended change in procedures in the minutes of any prior DRB meeting. As a result, the public had no way to know or to expect that such an approval would or could occur on March 1, 2022. In addition,

the application materials included in the agenda were seriously deficient and contained no information on three of the four structures that were approved for demolition on March 1, 2022. As a result, the public record was incomplete and members of the public had not been properly informed when the DRB voted to demolish the four structures on March 1, 2022, in violation of the requirements of FOIA, as well as numerous violations of the Zoning Ordinance.

185. AMDC knew it had not followed the requirements of S.C. Code Section 31-10-10 *et seq.* from the inception of Project Pascalis. It knew it had not held a public hearing for either Plan One or the AECOM plan, as required by S.C. Code Section 31-10-100(d) and that the AECOM plan did not meet the requirements of S.C. Code Section 31-10-100(c). AMDC also knew Project Pascalis bore no resemblance to Plan One and therefore was not a redevelopment project in accordance with Plan One. Despite this, AMDC made misleading disclosures in its resolutions to acquire the Pascalis Properties and in its confusing statements that it was pursuing Project Pascalis at times in accordance with Plan One and at other times in accordance with the AECOM Plan. As a result, the AMDC's public record with regard to Project Pascalis was and is incomplete and members of the public had not been properly informed at any of the public meetings of the AMDC

186. From its inception in May, 2020 to date, the AMDC somehow determined:

- To collaborate with the City to include a portion of Newberry Street in Project Pascalis.
- The features to be included in Project Pascalis.
- To pursue Project Pascalis, as configured in March, 2021.
- To solicit approximately eight developers for Project Pascalis in May 2021.
- The content of materials to be distributed to such developers in and around May 2021.
- A process for evaluating and selecting a developer for Project Pascalis.
- To select WTC Investments, LLC, as a developer for Project Pascalis and enter into option agreements with WTC in March, 2021.

- To select ACOC as a developer for Project Pascalis and enter into undisclosed option and reimbursement arrangements with ACOC in and around May, 2021.
- To select RPM as a developer for Project Pascalis and enter into an undisclosed cost sharing arrangement with RPM, in and around November, 2021.
- To collaborate with the City to arrange for the conveyance of a portion of Newberry Street to RPM.
- To change Project Pascalis to include two additional lots on Newberry Street as part of the conveyance of a portion of Newberry Street to RPM.
- To collaborate with the City and DRB to arrive at a process to approve an unprecedented form of COA for RPM, including granting separate approvals for segments of Project Pascalis and accelerated approval of demolition of the Hotel Aiken and the three adjacent shop structures.
- To collaborate with the City to include the Old Municipal Building in Project Pascalis.
- To further change Project Pascalis to reduce its intrusion into Newberry Street.

The AMDC never voted on any of these and other actions that it took and none of these actions are recorded in the minutes of meetings of AMDC in that time period. Therefore, AMDC took action on these matters outside its public meetings in violation of the Freedom of Information Act, including but not limited to S.C. Code Section 30-4-60, which provides in part: "No action may be taken in executive session except to (a) adjourn or (b) return to public session," and (b) failed to keep accurate minutes of its meetings in violation of S.C. Code Section 30-4-90(a). Each of these instances is one or more violations of the FOIA.

Ethics Law Violations

187. When taking actions regarding Project Pascalis, the City, the AMDC and some of its officials and employees did not observe the ethics requirements regarding conflicts of interest stated in the Ethics, Government Accountability, and Campaign Reform Act, Section 8-13-100 et seq., in particular Section 8-13-700(A) and (B), and in the ethical rules for attorneys, as follows:

- A. Gary Smith, the City Attorney, participated in numerous meetings dealing with, and gave advice and numerous opinions regarding, matters related to Project Pascalis and

- matters related thereto after his law partner, Ray Massey, became and was an interested party in or before March 2021 by acquiring interests in Pascalis Project property and by representing WTC and RPM, and even though Mary Guynn, his law partner, owns a building on the Pascalis block and may represent other owners, investors and/or tenants in the Pascalis block; and
- B. Mayor Rick Osbon participated in numerous meetings dealing with, and voted and gave advice and numerous opinions regarding, matters related to Project Pascalis, Project Renaissance and similar projects from and after the time he was elected Mayor, when he knew these projects would likely benefit him personally by causing harm to or the closing of Warneke Cleaners. Mayor Osbon is the owner of Osbon Cleaners in downtown Aiken. Warneke Cleaners is Mayor Osbon's nearest and only competitor in the Aiken downtown area and is located on lot 121-21-08-009 of Project Pascalis, which is to be demolished.
- C. Chris Verenes, David Jameson and possibly other members of the AMDC participated in discussions about and helped make decisions about Project Pascalis and other AMDC business, and failed to disclose in the minutes of an AMDC meeting specifically why they recused themselves from one vote of the AMDC as required by S.C. Code Section 8-13-700(B).

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)**

188. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

189. S.C. Code Ann. § 15-53-30 provides that any person whose rights, status or other legal relations are affected by a contract, statute, or ordinance may have determined any question regarding construction or validity and obtain a declaration of rights, status, or other legal relations.

190. Plaintiffs seek a declaratory judgment pursuant to S.C. Code Ann. § 15-53-30 and Rule 57, SCRPC, for the purposes of resolving one or more actual cases and controversies between and among the parties to this case.

191. These issues are ripe for this Court's determination because, among other things, Defendants have taken the actions described herein which violate numerous provisions of the statutes as set forth below.

192. The Defendants are all parties in interest, concerning the declaratory relief being sought, because they acted or failed to act according to law as described herein.

Community Development Law

(S.C. Code Ann. Sec. 31-10-10, et. seq.)

193. Plaintiffs seek an Order declaring that the following actions by the Defendants, particularly the AMDC, violate provisions of the Community Development Law in numerous respects, including but not limited to each of the following:

- A. Adopting, approving and implementing redevelopment plans improperly for multiple reasons, including but not limited to without a required public hearing, without complying with statutory criteria and including in a redevelopment area locations and property that are not blighted or in a conservation area;
- B. Adopting, approving and implementing redevelopment projects, including but not limited to Project Pascalis, improper for multiple reasons, including but not limited to not being pursuant to and consistent with a properly created redevelopment plan and not being located completely in areas that are blighted or a conservation area;
- C. Selecting improperly RPM and/or others as one or more redevelopers for one or more redevelopment projects, including the Pascalis Project, improperly for

multiple reasons, including but not limited to by failing to publish a proper Request for Proposal to select the redeveloper and to provide all pertinent information about the redevelopment projects for prospective redevelopers to consider, as required by S.C. Code § 31-10-110(c);

- D. Authorizing the AMDC to enter and entering into a Purchase and Sale Agreement with a potential developer for Project Pascalis without a properly authorized redevelopment plan and a proper process for selecting the developer;
- E. Approving raising and raising approximately \$10 million of bonds for AMDC to acquire properties for Project Pascalis when Project Pascalis has not been properly created and no redevelopment plan and no redeveloper had been properly created or selected regarding Project Pascalis;
- F, Approving the purchase of and purchasing for \$9.5 million and additional expenses, seven real estate lots on or around November 10, 2021 without a properly authorized redevelopment plan;
- G. Claiming in the resolutions to approve the purchase of real estate on or about November 10, 2021, that Project Pascalis was part of Plan One while knowing full well Project Pascalis bore no resemblance to Plan One.
- H. Incurring additional expenses, including cost-sharing development expenses, in connection with Project Pascalis and other projects without a properly authorized redevelopment plan and a properly selected developer.
- I. Publishing a false, misleading, improper, and *ex post facto* Request for Proposal advertisement for developers for Plan One when AMDC was pursuing Project Pascalis, not Plan One, and Project Pascalis bore no resemblance to Plan One; and

when the advertisement was published long after the redeveloper for Project Pascalis already had been selected.

- J. Moving forward toward signing a Master Development Agreement with RPM when RPM has not been validly selected as a redeveloper;
- K. Having the AMDC pursue redevelopment projects at locations that are not blighted or in a conservation area;
- L. Entering into contracts and spending money with redevelopers and others secretly and in pursuit of purported redevelopment projects and redevelopments plans that are improper and invalid;
- M. Causing and allowing the AMDC to purchase or acquire the Pascalis Properties to implement Project Pascalis, in violation of, *inter alia*, S.C. Code Ann. § 31-10-100(b);
- N. Conveying or authorizing the conveyance of part or all of Newberry Street and of other properties to RPM; and
- O. Allowing five individuals to serve on and participate in making key decisions for the AMDC when they did not qualify to do so because either (a) they were not residents of the City of Aiken, or (b) they had financial interests that prohibited them from being commissioners of the AMDC pursuant to S.C. Code Ann. § 31-10-70.

**South Carolina Local Government Comprehensive Planning Enabling Act of 1994
(S.C. Code Ann. Sec. 6-29-740 et. al.)**

194. Plaintiffs seek an Order declaring that the actions by the Defendants referenced herein violate provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.

Town of Aiken's Ordinance, Regulations and Customs

195. Plaintiffs seek an Order declaring that the actions by the Defendants, especially the DRB, referenced herein violate ordinances, rules, regulations, and customs of the City of Aiken, including but not limited to by doing each of the following:

- A. Approving a fatally flawed and incomplete application for demolition of the Hotel Aiken and three adjacent Contributing Structures;
- B. Granting the unprecedented and unauthorized form of a “conditional” COA;
- C. Failing to request and evaluate significant material as specifically required by Zoning Ordinance Section 5.2.3(C);
- D. Failing to evaluate and to comply with the overall mandates in Zoning Ordinance Sections 2.6, 5.2 and 5.3;
- E. Failing to comply with the review standards in Zoning Ordinance Section 5.2.3(J);
- F. Failing to develop preservation alternatives and to make determinations of demolition by neglect pursuant to Zoning Ordinance Section 5.2.4;
- G. Failing to evaluate (1) the demolition impact and attributes and design of the structures proposed to replace the demolished structure and (2) the cumulative impact of the Pascalis Project as a whole, as required by Zoning Ordinance Sections 2.6, 5.2 and 5.3;
- H. Failure to require compliance with the applicable guidelines and requirements of the Historic Preservation Overlay District and the Old Aiken Overlay District;
- I. Failure to preserve the qualities, areas, sites, structures, and natural and man-made objects relating to the history of the City of Aiken, as well as that of Aiken County,

the State of South Carolina, and the United States of America, as required by Zoning Ordinance Section 2.6.1;

- J. Failing to properly consider specified standards for the purpose of determining whether proposed alterations, construction, demolitions, or relocations are in harmony with the prevailing historical, architectural, archeological, or aesthetic character of the Historic District, a structure in a Historic District, or an Historic Site, or a structure included in an Historic Site, as required by Aiken Ord. 04142003A) and Zoning Ordinance Section 5.2.3(J);
- K. Failing to properly address Construction and Alteration as stated in Zoning Ordinance Section 5.2.3(J)(2);
- L. Failing to properly address or consider Zoning Ordinance Section 5.2.3(J)'s requirement that "In reviewing an application for demolition, the Board and the Planning Director shall consider the historical, archeological, and aesthetic character of the structure (or portion thereof) proposed for demolition;"
- M. Failing to properly address or consider, as required by Zoning Ordinance Section 5.2.3(J), "(1) the structural integrity (i.e., condition) of the structure and (2) the integrity of materials, location, and design of the structure.
- N. Failing to properly address or consider the following required by Zoning Ordinance Section 5.2.3(J): "No application for demolition shall be approved solely on the basis of a structure's deteriorated condition where the Board determines that the applicant is primarily responsible for the deteriorated condition. Finally, the Board shall consider the extent to which demolition would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property affected

or upon the surrounding properties, or upon the district in which the structure is located. No application for demolition of a Landmark shall be approved;”

- O. Failing to comply with Zoning Ordinance Section 5.2.4’s requirement that “Within any period of postponement, the Board shall endeavor to ascertain what may be done to preserve the structure or landmark. Such steps shall include, but are not limited to, consultation with civic groups, interested citizens, public interest groups, and public boards and agencies” (Emphasis added.);
- P. Failing to properly consider, as required by Zoning Ordinance Section 5.2.4(A)(3), whether the structures sought to be demolished contribute to the character of the Aiken Historic District or that the landmark is of historical, archeological, or architectural significance or that, for any other reason, preservation in the public interest is warranted.
- Q. Allowing individuals to serve on the DRB and the AMDC who were not qualified to serve in those positions because they were not residents of the City of Aiken;
- R. Dismissing DRB member Lucy Knowles from the DRB in retaliation for voting against demolition of the Hotel Aiken and related structures; and
- S. Replacing DRB member Lucy Knowles on the DRB with Laura Blessing Thomas who was not qualified to serve on the DRB because she was not a resident of the City of Aiken, in violation of Zoning Ordinance Section 7.1.7(D).

**Ethics, Government Accountability, and Campaign Reform Act,
Section 8-13-100 *et seq.***

196. Plaintiffs seek an Order declaring that the actions by the Defendants referenced herein violate provisions of the Ethics, Government Accountability, and Campaign Reform Act, Section 8-13-100 *et seq.*

197. By his actions referenced herein Defendant Gary Smith violated, and continues to violate, attorney ethical rules and provisions of the Ethics Act, in particular Section 8-13-700(A) and (B), by participating in numerous meetings dealing with, and giving advice and numerous opinions to Defendants regarding, Project Pascalis and matters related thereto after his law partners, Ray Massey and Mary Guynn and possibly other affiliates, became and were financially interested parties in or before March 2021 by, *inter alia*, acquiring interests in Project Pascalis property or properties or businesses near Project Pascalis and by, in the case of Massey, owning an interest in and/or representing WTC, CRT, LLC and RPM.

198. By his actions referenced herein Defendant Mayor Rick Osborn violated, and continues to violate, provisions of the Ethics, Government Accountability, and Campaign Reform Act, Section 8-13-100 *et seq.*, in particular Section 8-13-700(A) and (B), by participating in numerous meetings dealing with, and voting and giving advice and numerous opinions regarding, matters related to Project Pascalis, Project Renaissance and similar projects from and after the time he was elected Mayor, when he knew these projects would likely benefit him personally by causing harm to or the closing of Warneke Cleaners, Mayor Osborn's nearest and only business competitor.

199. By their actions referenced herein Defendants Chris Verenes and David Jameson and possibly other AMDC Commissioners, violated, and continue to violate, provisions of the Ethics, Government Accountability, and Campaign Reform Act, Section 8-13-100 *et seq.*, in particular Section 8-13-700(A) and (B), by participating in numerous meetings dealing with, and voting and giving advice and numerous opinions regarding, matters related to Project Pascalis, and similar projects and matters considered by the AMDC from and after the time they were appointed commissioners of AMDC, when they knew these projects or matters would likely

benefit them personally due to the financial interests they or their affiliates may have held, directly or indirectly, including financial in any redevelopment project or in any property included or planned to be included in any redevelopment area, any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project, all of which are conflicts, or potential conflicts of interest and are prohibited by S.C. Code Section 30-10-70.

FOR A SECOND CAUSE OF ACTION
(Permanent Injunction and Other Equitable/Injunctive Relief)

200. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated herein.

201. Based on the aforementioned declarations, Plaintiffs respectfully seek a Permanent Injunction enjoining, restraining, and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

- A. Implementing in any way, including paying, directly or indirectly, any money regarding, Project Pascalis until and unless Project Pascalis becomes a valid redevelopment project pursuant to a valid redevelopment plan.
- B. Violating the South Carolina Community Development Law.
- C. Violating the South Carolina Government Comprehensive Planning Enabling Act of 1994.
- D. Violating the South Carolina Freedom of Information Act.
- E. Violating the Ethics, Government Accountability, and Campaign Reform Act, Section 8-13-100 *et seq.*
- F. Violating zoning, procurement and other ordinances, rules, regulations, and customs of the City of Aiken applicable to development; and

G. Any and all other such acts as this Court deems appropriate for injunctive relief.

FOR A THIRD CAUSE OF ACTION
(Violation of the S.C. Freedom of Information Act)

202. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

203. By their actions referenced herein the Defendants have violated, and continue to violate, sometimes willfully and knowingly, provisions of S.C. Code Ann. § 30-4-10 et seq., in numerous respects, including but not limited to the following:

- A. Giving no notice or inadequate notice of meetings of public bodies;
- B. Excessive and unjustified use of executive sessions;
- C. Failing to provide minutes of meetings within a reasonable time;
- D. Failing without justification to produce documents for inspection and copies of documents;
- E. Denying public access to meetings, meeting minutes and meeting agendas;
- F. Failing to respond within 15 working days, or at all, to FOIA requests; and
- G. Failing to create and keep documents and records, including agendas for, and minutes of, meetings and resolutions, which are accurate, complete, and not misleading.

204. The Plaintiffs are entitled to declaratory and injunctive relief pursuant to S.C. Code Ann. § 30-4-100 (A) declaring that such conduct by the Defendants as stated violated the Freedom of Information Act and enjoining any such further conduct. Further under S.C. Code Ann. § 30-4-100 (B), Plaintiffs are entitled to an award of attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION
(Attorneys' Fees Pursuant to the State Action Statute)

205. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated

herein.

206. Plaintiffs in this case are contesting multiple instances of wrongdoing by the Defendant local governmental entities.

207. Should this Court grant all, or some, of the declaratory and other relief requested herein, Plaintiffs respectfully request this Court deem Plaintiffs the “prevailing party” and award attorneys’ fees and costs under S.C. Code Ann. § 15-77-300.

RELIEF REQUEST

WHEREFORE, Plaintiffs prays for this Honorable Court to grant the declaratory, injunctive, and other relief requested herein; grant attorneys’ fees and costs pursuant to S.C. Code Ann. § 15-77-300 and S.C. Code Ann. § 30-4-100 (B); and grant such other, further, or different relief as may be deemed just and proper.

Respectfully submitted,

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COUNSEL FOR PLAINTIFFS

July 5, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

CASE NO. 2023-CP-02-01489

David W. Blake, Luis E. Rinaldini,
Dudley Richard Dewar, Jenne Stoker,
Beatrice B. McGhee, Gail King,
Historic Aiken Foundation, Inc.,
Green Boundary Foundation, and
South Carolina Public Interest Foundation,

FIRST AMENDED COMPLAINT

Plaintiffs,

(Declaratory Judgment)

vs.

Nonjury

City of Aiken; Aiken Municipal
Development Commission; Aiken Design
Review Board; Gary Smith;

Defendants.

Each of the above-named Plaintiffs brings the following actions seeking declaratory, injunctive, and legal relief. For their complaint, the Plaintiffs state as follows:

PRELIMINARY STATEMENT

1. This is a civil action for declaratory and injunctive relief brought for violations and threatened violations of, and to enforce the requirements of, several statutes and ordinances including the South Carolina Community Development Law, S.C. Code Ann. § 31-10-10 *et. seq.*; the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310 *et. seq.*; the South Carolina Freedom of Information Act,

S.C. Code Ann. § 30-4-10 *et seq.* (“FOIA”); the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; and the City of Aiken Code of Ordinances.

2. This action is brought by the Plaintiffs as individuals, or in their representative capacities, and as organizations on behalf of their members residing within the City of Aiken (“City” or “Aiken”), to (1) obtain a declaration from the Court that certain actions of the City and certain municipal bodies are ultra vires, null and void ab initio, and incapable of being implemented, in whole or in part; (2) obtain from the Court injunctions preventing the continued implementation of those ultra vires acts; and (3) otherwise remedy certain violations of various state and city protected regulatory and statutory rights afforded to each of the Plaintiffs in this action by statutes of the State of South Carolina; and by the ordinances, rules, regulations and customs of the City of Aiken, South Carolina, and its affiliate entities. This lawsuit is based in part on purported contractual agreements between and among the Defendants which are invalid and void ab initio.
3. This Court has jurisdiction over this subject matter and the parties to this action and venue is proper in this court. This Court possesses jurisdiction under the South Carolina Constitution Articles I, VIII and X, §§ 5 and 11; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; and the following decisions: *American Petroleum Institute v. S.C. Dep’t of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C.

431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

PARTIES

The Plaintiffs and Standing

4. David W. Blake (“Blake”) is a resident in and a taxpayer of the City of Aiken, South Carolina. Blake has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Blake that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of his property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. Blake has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on his behalf and on behalf of all others similarly situated.
5. Luis E. Rinaldini (“Rinaldini”) is a resident and a taxpayer of the City of Aiken. Rinaldini has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Rinaldini that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in

value of his property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. Rinaldini has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on his behalf and on behalf of all others similarly situated.

6. Dudley Richard Dewar (“Dewar”) is a resident and a taxpayer of the City of Aiken. Dewar has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Dewar that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of his property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. Dewar has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on his behalf and on behalf of all others similarly situated.
7. Jenne Stoker (“Stoker”) is a resident and a taxpayer of the City of Aiken. Stoker has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Stoker that have been caused and that will continue to be caused by the actions of the

Defendants described herein, including but not limited to the reduction in value of her property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. McGhee has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on her behalf and on behalf of all others similarly situated.

8. Beatrice B. McGhee (“McGhee”) is a resident and a taxpayer of the City of Aiken. McGhee has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to McGhee that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of her property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. McGhee has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on her behalf and on behalf of all others similarly situated.
9. Gail King (“King”) is a resident and a taxpayer of the City of Aiken. King has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to King

that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of her property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. King has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on her behalf and on behalf of all others similarly situated.

10. The Historic Aiken Foundation, Inc. (“HAF”) is a South Carolina nonprofit corporation incorporated in 1973 and is a 501(c)(3) federally tax-exempt organization. The purpose of the HAF is to encourage the protection, preservation, and appreciation of the architectural heritage of Aiken, South Carolina. In pursuit of this purpose, the HAF acts as an advocate for structures of historical and architectural significance, and for the integrity of neighborhoods and the aesthetic appeal of the city. The HAF is suing as a representative of its members who reside in and are citizens, qualified electors, and taxpayers in the City of Aiken, South Carolina. The HAF brings this action on behalf of its members and on behalf of all others similarly situated.

11. The Green Boundary Foundation (“GBF”) is a South Carolina nonprofit corporation formed in 1999 whose purpose is to preserve the historic facade and grounds of the Green Boundary in the City of Aiken as well as to promote the history of the City of Aiken and its significant architecture. The GBF is suing as a representative of its members who reside

in and are citizens, qualified electors and taxpayers in the City of Aiken, South Carolina. The GBF brings this action on behalf of its members and on behalf of all others similarly situated.

12. The South Carolina Public Interest Foundation (“SCPIF”) is a South Carolina nonprofit corporation dedicated to the public interest, including the upholding and proper application of the Constitution and other laws of the State of South Carolina. The SCPIF brings this action on behalf of its members and on behalf of all others similarly situated.
13. Plaintiffs have constitutional, statutory and public importance standing based on the provisions of the various statutes referenced, the Plaintiffs’ status as taxpayers and fee payers who have contributed to the funds at issue, and because of the great public importance of the issues that this civil action raises and that are capable of being repeated.
14. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this complaint, the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public. Each individual Plaintiff and the members of the organization Plaintiffs have suffered an invasion of a legally protected interest that is concrete and particularized, and actual and imminent. There is a causal connection between the injury and the conduct complained of herein, and it is likely that the injury will be redressed by a favorable decision of this court.
15. Each of the above-described Plaintiffs alleging public importance standing has an overriding public purpose or concern as the basis for his, her or its suit on behalf of fellow

citizens and taxpayers regarding the proper use and allocation of tax receipts, public properties and historic properties by the City and its civic bodies, named as Defendants in this action. These questions are of such substantial public importance as to warrant a resolution by the Court needed for future guidance, as the public interest involved is the prevention of the unlawful expenditure of money raised by taxation, the unlawful closure of public roads, the unlawful sale or conveyance of public properties and the unlawful demolition of historic properties within the City. Each individual Plaintiff has a real, material, and substantial interest in whether the City and its civic bodies followed the requirements and procedures set out in the state constitution, state enabling statutes and City ordinances, procedures, rules, guidelines, and customs specifically designed to ensure wise management of the public fisc.

16. Each organizational Plaintiff HAF, GBF and SCPIF has associational standing based on the individualized injuries that have been or will be suffered by its members as a result of the actions of the Defendants described in this Complaint. Members of these organizations would otherwise have standing to sue in their own right. The interests at stake in this case are germane to each organization's purpose. Neither the claims the organizations assert, nor the relief they request, requires the participation of the individual members of those organizations in this action.
17. Each of the Plaintiffs, whether alleging public importance standing, constitutional or statutory standing or the associational standing of the organization Plaintiffs, has suffered an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

The Defendants, their Official Capacities, and

Color of State Law

18. The City of Aiken (“City” or “Aiken”) is a South Carolina municipal corporation located in Aiken County, South Carolina. The Aiken Municipal Development Commission (“Commission” or “AMDC”) is a public body and a body corporate and politic purportedly created and organized by the City of Aiken pursuant to the South Carolina Community Development Act, S.C. Code Ann. § 31-10-10 *et. seq.* The members of the AMDC are appointed and removed by the City; serve on the AMDC as fiduciaries of the City of Aiken and its citizens; and are prohibited from conflicts of interest while serving and performing duties as a member of the AMDC.
19. The Aiken Design Review Board (“DRB”) is an organization created in 1990 by Section 7.1.7 of the City of Aiken Zoning Code, as provided in S.C. Code 1976, § 6-29-870 *et seq.* The members of the DRB are appointed and removed by the City; serve on the DRB as fiduciaries of the City of Aiken and its citizens; and are prohibited from conflicts of interest while serving and performing duties as a member of the DRB.
20. Gary Smith (“Smith”) served, at all times pertinent to this lawsuit, as the City of Aiken’s designated attorney and repeatedly advised the City, the AMDC and the DRB about redevelopment projects and matters that are subjects of this lawsuit and in which Ray Massey and Mary Guynn, Smith’s law partners, have and have had financial interests undisclosed to the public.

STATUTORY AND REGULATORY FRAMEWORK

21. The creation, regulation, financing, and implementation of redevelopment by a municipal corporation of the State of South Carolina, including but not limited to the Defendant City of Aiken, is governed by the requirements of the United States and the South Carolina

Constitutions; State of South Carolina statutes; and the rules, regulations, and customs of the municipality.

SOUTH CAROLINA STATUTES
COMMUNITY DEVELOPMENT LAW

22. S.C. Code Ann. § 31-10-20 states in part as follows:

“Definitions.

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(2) "Blighted area" means any improved or vacant area where if improved, industrial, commercial, and residential buildings or improvements, because of a combination of five or more of the following factors: age; dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light, or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; lack of community planning, are detrimental to the public safety, health, morals, or welfare or, if vacant, the sound growth is impaired by (a) a combination of two or more of the following factors: obsolete platting of the vacant land; diversity of ownership of such land; tax and special assessment delinquencies on such land; deterioration of structures or site improvements in neighboring areas adjacent to the vacant land; or (b) the area immediately prior to becoming vacant qualified as a blighted area.

(4) "Commission" means a public body and a body corporate and politic created and organized in accordance with the provisions of this chapter.

(5) "Conservation area" means any improved area that is not yet a blighted area but, because of a combination of three or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light, or sanitary facilities; inadequate utilities; excessive land coverage; depreciation of physical maintenance; or lack of community planning, is detrimental to the public safety, health, morals, or welfare and may become a blighted area.

(8) "Municipality" means any incorporated city or town or any county.

(11) "Redeveloper" means any individual, partnership, or public or private corporation that shall enter or **propose** to enter into a contract with a commission for the redevelopment of all or any part of a redevelopment area under the provisions of this chapter.

(12) "Redevelopment" means the acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this chapter with respect to the area for which such program is undertaken.

(13) "Redevelopment area" means any area that a commission may find to be a blighted area, a conservation area, or any combination thereof, so as to require redevelopment under the provisions of this chapter.

(14) "Redevelopment contract" means a contract between a commission and a redeveloper for redevelopment under the provisions of this chapter.

(15) "Redevelopment plan" means a plan for the redevelopment of a redevelopment area made by a commission in accordance with the provisions of this chapter.

(16) "Redevelopment project" means any work or undertaking:

(a) to acquire blighted or conservation areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;

(b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(c) to sell land in such areas for residential, recreational, commercial, industrial, or other use or for the public use to the highest bidder set out by the provisions of this chapter or to retain such land for public use, in accordance with the redevelopment plan;

(d) to carry out plans for a program of repair, rehabilitation, or reconditioning of buildings or other improvements in such areas, including the making of loans; and

(e) to engage in programs of assistance and financing, including the making of loans for rehabilitation, repair, construction, acquisition, or reconditioning of residential units in a redevelopment area.

The term "redevelopment project" may also include the **preparation of a redevelopment plan**, including the planning, survey and other work incident to a redevelopment project, and the **preparation of all plans and arrangements** for carrying out a redevelopment project.” (Emphasis added.)

23. S.C. Code Ann. § 31-10-30 (a) states in part as follows:

“Each municipality is authorized to create . . . a redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance creating a commission to function within the territorial limits of the municipality or portion of the municipality . . .” (Emphasis added.)

24. S.C. Code Ann. § 31-10-70 states in part as follows:

“No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, nor shall the member have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project . . .”

25. S.C. Code Ann. § 31-10-90 states in part as follows:

“A commission shall constitute a **public body**, corporate and politic, exercising public and essential governmental powers . . . including . . .

(4) to prepare or cause to be prepared and recommend redevelopment plans to the governing body of its parent municipality and to undertake and carry out redevelopment projects within its area of operation;

(5) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project;

(6) within its area of operation, to purchase . . . any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property, and **with the approval of the governing body** of its parent municipality sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single redeveloper or in parts to several redevelopers; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the commission, with redevelopers of property containing covenants, restrictions, and conditions

regarding the use of such property . . . **in accordance with the redevelopment plan** . . .; and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds and provide security for bonds; . . . and to enter into any contracts necessary to effectuate the purposes of this chapter;

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(14) to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary of the commission shall be held to have been properly executed for and on its behalf;”

(Emphasis added.)

26. S.C. Code Ann. § 31-10-100 states in part as follows:

“Contents of redevelopment plan; **public hearing prior to adoption of plan**; approval by governing body or parent municipality; modification.

(a) A redemption plan must be **sufficiently complete** to **indicate its relationship to definite local objectives** such as appropriate land uses, improved traffic, public transportation, public utilities, recreational and

community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area.

(b) **A commission shall not acquire real property for a development project unless the governing body of its parent municipality has approved the redevelopment plan as hereinafter prescribed.**

(c) The commission's redevelopment plan shall include, without being limited to, the following:

(1) the boundaries of the redevelopment area, with a map showing the existing uses of the real property therein;

(2) a land use plan of the redevelopment area showing proposed uses following redevelopment;

(3) standards of population densities, land coverage, and building intensities in the proposed redevelopment;

(4) a preliminary site plan of the redevelopment area;

(5) a statement of the proposed changes, if any, in zoning ordinances or maps;

(6) a statement of any proposed changes in street layouts or street levels;

(7) a statement of the estimated cost and method of financing redevelopment under the redevelopment plan;

(8) a statement of such continuing controls as may be deemed necessary to effectuate the purposes of this chapter; and

(9) a statement of a feasible method proposed for the relocation of the families displaced.

(d) **The commission shall hold a public hearing prior to its final adoption of a redevelopment plan. Notice of such hearing shall be given fifteen days prior thereto in a newspaper of general circulation in the municipality.**

(e) The commission shall submit to the governing body the redevelopment plan. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall utilize the local private planning, financing, and financial services to the greatest extent possible and shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the community and its environs, that will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and

other public utilities, schools, parks, recreational, and community facilities, and other public requirements, the promotion of sound design and arrangements, the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, slums, or conditions of blight.

(f) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(g) Upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the redevelopment plan, in accordance with the provisions of this chapter.

(h) A redevelopment plan may be modified at any time by the commission; provided, that if modified after the sale of real property in the redevelopment area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the commission determines that the proposed modification will substantially change the redevelopment plan as previously approved by the governing body, the modification must similarly be approved by the governing body as provided above.” (Emphasis added.)

27. S.C. Code Ann. § 31-10-110 states in part as follows:

“Contracting by commission for certain services; **advertisement for bids from persons interested in purchasing or redeveloping property;** commission’s real estate transactions under redevelopment plan.

. . . .

(b) A commission may sell, exchange, or otherwise transfer real property or any interest therein in a redevelopment area to any . . . in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this chapter; provided, that such sale, exchange, or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the municipality and after public notice and award as specified in subsection (c) of this section.

(c) The **commission shall, by public notice, publish once a week for two consecutive weeks in a newspaper** having general circulation in the municipality, **invite proposals** and shall **make available all pertinent information** to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof. . . . **After receipt of all proposals, the sale shall be made to the developer submitting the plan for use of the property that best effectuates the purposes of the**

redevelopment plan set forth in subsection (e) of this section. All proposals may be rejected. All sales shall be subject to the approval of the governing body of the municipality. . . .

(d) In carrying out a redevelopment project, the commission may:

. . . .

(4) after a public hearing advertised in accordance with the provisions of subsection (d) of Section 31-10-100 and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. . . . All conveyances made under the authority of this subsection shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made;

(e) after receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a

redeveloper may contain, without being limited to, any or all of the following provisions:

- (1) plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure, and general character of the proposed redevelopment;
- (2) a statement of the use intended for each part of the proposed redevelopment;
- (3) the amount, if known, of the consideration to be paid;
- (4) adequate safeguards for proper maintenance of all parts of the proposed redevelopment; and
- (5) such other continuing controls as may be deemed necessary to effectuate the purposes of this chapter.” (Emphasis added.)

28. S.C. Code Ann. § 31-10-160 states in part as follows:

“Availability of commission's books, records, bylaws, rules, and regulations for public inspection; annual report of commission's activities.

(a) The **books and records of a commission are at all times open and subject to inspection by the public.**

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, must be filed with the commission and be open for public inspection.

(c) At least once each year a report of its activities for the preceding year and such other reports as may be required by the municipality shall be made.” (Emphasis added.)

**SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE PLANNING
ENABLING ACT OF 1994**

Local Planning Commission

29. S.C. Code Ann. § 6-29-310 states in part that a “local planning commission” means a municipal planning commission . . .”

30. S.C. Code Ann. § 6-29-340(B) states in part as follows:

“Functions, powers, and duties of local planning commissions.

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. . . [T]he local planning commission has the . . . duty to:

(1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter;

(2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:

(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;

(b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;

(c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;

(d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;

(e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and

(f) policies or procedures to facilitate implementation of planning elements.” (Emphasis added.)

31. S.C. Code Ann. § 6-29-340(B) states in part as follows:

“Planning process; elements; comprehensive plan.

(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual

re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.

(B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(C) The basic planning process for all planning elements must include, but not be limited to:

- (1) inventory of existing conditions;
- (2) a statement of needs and goals; and
- (3) implementation strategies with time frames.

(D) A local comprehensive plan must include, but not be limited to, the following planning elements:

- (1) a population element . . .;
- (2) an economic development element . . .;
- (3) a natural resources element . . .;
- (4) a cultural resources element . . .;
- (5) a community facilities element . . .;
- (6) a housing element . . .;
- (7) a land use element . . .;

(8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;

(9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. . . .

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five

years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years.” (Emphasis added.)

32. S.C. Code Ann. § 6-29-520 states in part as follows:

“ . . . [N]otice of meetings; recommendations by resolution;
transmittal of recommended plan.

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(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan.”

(Emphasis added.)

33. S.C. Code Ann. § 6-29-530 states in part as follows:

“Adoption of plan or elements; public hearing.

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single

ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction.” (Emphasis added.)

34. S.C. Code Ann. § 6-29-540 states in part as follows:

“Review of proposals following adoption of plan; projects in conflict with plan . . .

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.

In the event the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community at least thirty days prior to awarding a contract or beginning construction. . . .” (Emphasis added.)

35. S.C. Code Ann. § 6-29-720 states in part as follows:

“(A) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts . . .
.. Within each district the governing body may regulate: . . .

(B) The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter.” (Emphasis added.)

36. S.C. Code Ann. § 6-29-760 states in part as follows:

“Procedure for enactment or amendment of zoning regulation or map;
notice and rights of landowners

(A) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the

prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission." (Emphasis added.)

Aiken Design Review Board

37. S.C. Code Ann. § 6-29-870 states in part as follows:

“Board of architectural review; . . .

(A) A local government which enacts a zoning ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods . . . by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board of architectural review . . .

(B) The board shall consist of not more than ten members . . . The governing authority . . . creating the board may remove any member of the board which it has appointed.

. . . .

(D) The board shall . . . adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter. . . . The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which immediately must be filed in the office of the board and must be a public record.” (Emphasis added.)

38. S.C. Code Ann. § 6-29-880 states in part as follows:

“Powers of board of architectural review.

The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. Decisions of the zoning administrator or other appropriate administrative official in matters under the purview of the board of architectural review may be appealed to the board where there is an alleged error in any order, requirement, determination, or decision.”

39. S.C. Code Ann. § 6-29-1120 states in part as follows:

“The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties, or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

(4) to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes; and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.”

40. S.C. Code Ann. § 6-29-1130 states in part as follows:

“Regulations.

(A) [T]he local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the harmonious development of the municipality and the county; for coordination of streets within subdivision and other types of land developments with other existing or planned streets or official map streets; In particular, the regulations shall prescribe that no land development plan . . . will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare.

(B) . . . The governing authority of the municipality [is] given the power to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county.” (Emphasis added.)

41. S.C. Code Ann. § 6-29-1150 states in part as follows:

“Submission of plan or plat to planning commission; record . . .

(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans . . . with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty-day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans . . . with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. . . .” (Emphasis added.)

SOUTH CAROLINA ETHICS, GOVERNMENT ACCOUNTABILITY, AND CAMPAIGN REFORM

42. S.C. Code Ann. § 8-13-700 states in part as follows:

SECTION 8-13-700. Use of official position or office for financial gain; disclosure of potential conflict of interest.

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member,

or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

(2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county,

municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

(5) if he is a public member, he shall furnish a copy to the presiding officer of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

SOUTH CAROLINA FREEDOM OF INFORMATION ACT

43. S.C. Code Ann. § 30-4-20 states in part as follows:

“Definitions. (a) "Public body" means any . . . organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known . . .” (Emphasis added.)

44. S.C. Code Ann. § 30-4-20 states in part as follows: “Meetings of public bodies shall be open. Every meeting of all public bodies shall be open to the public. . .” (Emphasis added.)

45. S.C. Code Ann. § 30-4-55 states in part as follows:

“Disclosure of fiscal impact on public bodies offering economic incentives to business; cost-benefit analysis required.

A public body as defined by Section 30-4-20(a), or a person or entity employed by or authorized to act for or on behalf of a public body, that undertakes to attract business or industry to invest or locate in South Carolina by offering incentives that require the expenditure of public funds or the transfer of anything of value or that reduce the rate or alter the method of taxation of the business or industry or that otherwise impact the offeror fiscally, must disclose, upon request, the fiscal impact of the offer on the public body and a governmental entity affected by the offer after:

- (a) the offered incentive or expenditure is accepted, and
- (b) the project has been publicly announced or any incentive agreement has been finalized, whichever occurs later.

The fiscal impact disclosure must include a cost-benefit analysis that compares the anticipated public cost of the commitments with the anticipated public benefits. . .” (Emphasis added.)

46. S.C. Code Ann. § 30-4-70 states in part as follows:

“Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly. (a) A public body may hold a meeting closed to the public for one or more of the following reasons:

.

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property . . .

.

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a **description of the matter to be discussed** . . . No action may be taken in executive session except to (a) adjourn or (b) return to public session. **The members of a public body may not commit the public body to a course of action by a polling of members in executive session.**

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act

upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.” (Emphasis added.)

47. S.C. Code Ann. § 30-4-80 states in part as follows:

“Notice of meetings of public bodies.

(a) All public bodies . . . must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. . . .

. . . .

(c) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(e) All public bodies shall **notify** persons or organizations, local news media, or such other news media as may request notification of the times,

dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings. (Emphasis added.)

48. S.C. Code Ann. § 30-4-90 states in part as follows:

“Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, **discussed** or decided and, at the request of any member, a record, by an individual member, of any votes taken.

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting . . .”

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction . . .” (Emphasis added.)

49. S.C. Code Ann. § 30-4-100 states in part as follows:

“Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.”

50. S.C. Code Ann. § 30-4-100 states in part as follows:

“Penalties.

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense

and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.”

AIKEN ZONING ORDINANCE

51. Section 2.6.1 of the City of Aiken Zoning Ordinance (“Zoning Ordinance”), which relates to the Historic Preservation Overlay District provides, in part “**It is essential that** the qualities, areas, sites, structures, and natural and man-made objects relating to the history of the City of Aiken, as well as that of Aiken County, the State of South Carolina, and the United States of America, **be preserved.**” (Emphasis added.)
52. Section 5.2.1 of the Zoning Ordinance provides that “Any property or structure listed on the Aiken Historic Register shall be subject to this Article” (i.e., subject to the Historic Preservation Overlay District).
53. Section 5.2.3(C) of the Zoning Ordinance requires that “Applications for a Certificate [of Appropriateness] **shall be accompanied by the following** unless waived by the Secretary or otherwise specified on the application form provided by the Board:
- a. Drawings, including plans and exterior elevations, drawn to scale, with sufficient detail to show the exterior architectural design of the structure.
 - b. Specifications or other information describing proposed materials and textures; samples of materials may be required by the Board.
 - c. Plot plan or site layout showing all existing structures and any improvements affecting appearances such as walls, walks, terraces, accessory buildings, signs, lights, plantings, and other elements.
 - d. Photographs of the site location, showing contiguous properties and streetscapes.
 - e. All other information requested by the Board.” (Emphasis added.)

54. Section 5.2.3(J) of the Zoning Ordinance pertains to Review Standards for the Historic Preservation Overlay District and states in subsection (1):

“General. In reviewing applications, the Board and the Planning Director shall consider the standards stated in this Chapter for the purpose of determining whether alterations, construction, demolitions, or relocations are in harmony with the prevailing historical, architectural, archeological, or aesthetic character of the Historic District, a structure in a Historic District, or an Historic Site, or a structure included in an Historic Site. (Ord. 04142003A).”

55. Section 5.2.3(J) of the Zoning Ordinance states, in part, in subsection (3): “Demolition. In reviewing an application for demolition, the Board and the Planning Director shall consider the historical, archeological, and aesthetic character of the structure (or portion thereof) proposed for demolition.”

56. Section 5.2.3(J) of the Zoning Ordinance states further in subsection (3): “They shall also consider: (1) the structural integrity (i.e., condition) of the structure and (2) the integrity of materials, location, and design of the structure.”

57. Section 5.2.3(J) of the Zoning Ordinance states, further in subsection (3):

“No application for demolition shall be approved solely on the basis of a structure's deteriorated condition where the Board determines that the applicant is primarily responsible for the deteriorated condition. Finally, the Board shall consider the

extent to which demolition would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property affected or upon the surrounding properties, or upon the district in which the structure is located. No application for demolition of a Landmark shall be approved.”

58. Section 5.2.4 of the Zoning Ordinance pertains to Demolition or Relocation and states, in part, in subsection (A)(2):

“The Board may delay the granting of the Certificate for a period of up to 60 days from the time of the filing of the application. The Board may extend this postponement for another 180 days after a public hearing and finding by the Board that the structure or landmark is of historical, architectural, or archeological importance to the public or City of Aiken.”

59. Section 5.2.4 of the Zoning Ordinance states further in subsection (A)(2): “Within any period of postponement, the Board shall endeavor to ascertain **what may be done to preserve the structure or landmark**. Such steps shall **include, but are not limited to, consultation with civic groups, interested citizens, public interest groups, and public boards and agencies.**” (Emphasis added.)

60. Section 5.2.4 of the Zoning Ordinance states in subsection (A)(3):

“After the postponement period has ended and the Board has been **unable to determine a reasonable alternative to demolition** or relocation, the Certificate

shall be granted after a public hearing, with the notice required by 5.2.3.D being given. However, if the Board finds that the structure contributes to the character of the Historic District or that the landmark is of historical, archeological, or architectural significance or that, for any other reason, **preservation in the public interest is warranted, the application shall be denied**. In the event of such denial, the owner may apply for an exception under 5.1.3.” (Emphasis added).

61. Section 5.2.4(B) of the Zoning Ordinance states, in part, in subsection (1):

“Prevention of Demolition by Neglect of Exterior. No owner or person with an interest in real property which is designated an Historic Site (Ord. 04142003A) in any part of the City or any property in an Historic District, whether that property is occupied or not, shall permit the structure or property to fall into a serious state of disrepair or to remain in a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property, or, if the structure or property is in an Historic District, upon the district.”

Section 5.2.4(B)(2) imposes a similar duty to prevent demolition by neglect of the interior of a Historic Site.

GENERAL FACTUAL ALLEGATIONS

Redevelopment Plans for Redevelopment

Projects in Redevelopment Area of AMDC

62. The Hotel Aiken dominates the northern half of the block in downtown Aiken bounded by Laurens Street, Richland Avenue, Newberry Street and Park Avenue (the “Pascal Block”). The Pascal Block is the most prominent block in the City and the Hotel Aiken is the most prominent structure on that block.
63. In December 2017, Neel Shah (“Shah”), then the owner of the Hotel Aiken, publicly announced the renovation of the Aiken Hotel with the addition of a new three-story wing at its eastern end. To help finance that renovation with tax credits, Shah arranged for the Hotel Aiken to be listed, on March 26, 2018, as a “Contributing Structure” in a Historic Site on the Aiken Historic Register.
64. The Pascal Block is in, and subject to the requirements of, the Old Aiken Overlay District, as defined in the Zoning Ordinance. Section 5.2.1 of the Zoning Ordinance provides that “[a]ny property or structure listed on the Aiken Historic Register shall be subject to this Article” (i.e., subject to the Historic Preservation Overlay District). Because the Hotel Aiken is listed in the Aiken Historic Register as a Contributing Structure on a Historic Site, the Hotel Aiken is subject to the requirements of the Historic Preservation Overlay District as well as the requirements of the Old Aiken Overlay District.
65. The Aiken City Council (“Council”) created the Aiken Municipal Development Commission (“AMDC”) in August 2019, pursuant to S.C. Code Section 31-10-10 *et seq.* AMDC held its first meeting in May 2020. The AMDC is allowed to pursue “redevelopment” and “redevelopment projects” only within “blighted” or “conservation” “redevelopment areas” and in accordance with “redevelopment plans” and “redevelopment contracts,” all as defined in S.C. Code Section 31-10-20.

66. The AMDC purported to create two different Redevelopment Plans pursuant to S.C. Code Section 31-10-100 *et seq.*, but in each case failed to do so correctly as required by law. Those purported redevelopment plans were Redevelopment Plan One for Downtown Aiken (“Plan One”) and the AECOM Strategic Economic Development Action Plan (“AECOM Plan”).
67. Plan One is not a valid Redevelopment Plan because, *inter alia*, the AMDC did not hold a public hearing regarding Plan One, as required. The AECOM Plan is a generic economic development master plan and is not a valid redevelopment plan because it does not meet, and was not designed or intended to meet, the requirements of Section 31-10-10 *et seq.* Among other things, the AECOM Plan does not contain the words “blight” or “conservation area” and was commissioned by and prepared for the City and not by or for AMDC. In addition, AMDC did not hold a valid public hearing on the AECOM Plan, as required. AMDC has made confusing references to the Plan One and AECOM Plan in connection with Project Pascalis, saying sometimes Project Pascalis was part of Plan One and at other times it was part of the AECOM Plan. The only mention in the AMDC minutes authorizing Project Pascalis as a “Redevelopment Project” pursuant to S.C. Code Section 31-10-10 *et seq.* appears in a resolution dated November 8, 2021, that says Project Pascalis is being pursued within the “Redevelopment Area” of Plan One.
68. In July 2020, the AMDC adopted Plan One which describes ideas for possible redevelopment projects to redevelop the most northern portions of the Pascalis Block and the block immediately to its east. Plan One included nine specific lots (five on the Pascalis Block and four on the adjacent lot). Plan One provided in part for renovation of the existing Hotel Aiken and that there “are no changes proposed in street layout or level of service.”

Plan One was approved by Aiken City Council in August 2020. Neither the City nor the AMDC has ever officially voted to designate, or referred to, a specific project as a “redevelopment project” pursuant to S.C. Code Section 31-10-20(16), in accordance with Plan One, the AECOM Plan or any other plan. In time, the City undertook redevelopment of the lots adjacent to the Pascalis Block, and AMDC’s role was reduced to redeveloping the five lots on the Pascalis Block. There is nothing in any minutes of the AMDC showing a vote to authorize anything as a “redevelopment project” pursuant to S.C. Code Section 31-10-20(16),” let alone “in accordance with Plan One” or “in accordance with the AECOM Plan.” On November 9, 2020, the AMDC voted to approve resolutions that state that the “Commission has determined to undertake a redevelopment project within the Redevelopment Area, known at this time as Project Pascalis (“Project Pascalis”),” but these resolutions do not designate Project Pascalis as a redevelopment project pursuant to S.C. Code Section 31-10-20(16) or in accordance with Plan One, or any other redevelopment plan.

69. The City of Aiken hired AECOM, a private consulting company, to create the AECOM Strategic Economic Development Action Plan, a strategic economic development plan for the entire City of Aiken. On February 2, 2021, the AMDC voted to adopt this plan created by AECOM for the City, as a new “redevelopment plan” for the AMDC as provided by S.C. Code Section 31-10-100 (“AECOM Plan”).
70. As described in the minutes of the February 16, 2021, AMDC meeting, AMDC Executive Director Tim O’Briant explained in that meeting that the AMDC purposefully adopted this broad and general AECOM Plan as an AMDC redevelopment plan as a way to avoid the time, expense and limitations of “very specific redevelopment plans” such as those

required by S.C. Code Section 31-10-10 *et seq.* and thereby to allow the AMDC to work in any area in the City and on virtually any project, even if not located in a “Blighted” or “Conservation” area. However, the AECOM Plan was and is not a valid “redevelopment plan” as defined by and in accordance with applicable statutes, including S.C. Code Sections 31-10-20(15) and 31-10-100, because, *inter alia*, it was prepared by and for the City, not by the AMDC; was not created following the process defined by statute for a redevelopment commission to create a redevelopment plan, including but not limited to failing to have the content required by S.C. Code Section 31-10-100(c) and failing to have a public hearing before adoption of the redevelopment plan as required by S.C. Code Section 31-10-100(d); makes no reference to “blight,” is not restricted to and was not based on “Blighted Areas” or “Conservation Areas;” and mostly pertains to issues not related to blight, conservation or redevelopment. Nevertheless, on March 22, 2021, the City Council approved the AECOM Plan as a redevelopment plan for the AMDC pursuant to S.C. Code Section 31-10-100, even though it was and is not a valid redevelopment plan pursuant to S.C. Code Sections 31-10-20(15) and 31-10-100.

71. Plan One has not been properly adopted by the AMDC as a redevelopment plan as defined in S.C. Code Sections 31-10-20(15) and 31-10-100 because AMDC did not conduct a public hearing about the adoption of Plan One as a redevelopment plan. The AECOM Plan has not been properly adopted by the AMDC as a redevelopment plan as is defined in S.C. Code Sections 31-10-20(15) and 31-10-100 because the AMDC, the City and AECOM, did not follow the specific process required to be followed by S.C. Code Section 31-10-10 *et seq.* to create the AECOM Plan as a redevelopment plan for the AMDC. Neither Plan One nor the AECOM Plan is a valid redevelopment plan for the AMDC and the AMDC

does not have, and never has had, a valid redevelopment plan for redevelopment as defined and required by S.C. Code Section 31-10-10 *et seq.*

72. Pursuant to S.C. Code Section 31-10-10 *et seq.*, the AMDC is only allowed to pursue “redevelopment projects” in “blighted” or “conservation” areas in accordance with a properly approved “redevelopment plan” for a “redevelopment area.” Contrary to law, the AMDC is pursuing “redevelopment projects” in areas of the City of Aiken that are not in accordance with a valid “redevelopment plan,” are not in “blighted” or “conservation” areas or in a “redevelopment area,” as provided in S.C. Code Section 31-10-10 *et seq.*
73. As reported on Wednesday March 17, 2021, in a story published by the Aiken Standard newspaper, the AMDC announced the existence of Project Pascalis and that for Project Pascalis the AMDC had “identified and recruited a well-capitalized and successful real estate investor” interested in partnering and exploring “one or more potential commercial development projects.” The properties or projects under the Project Pascalis umbrella were not immediately clear. Project Pascalis has changed significantly over time. At all times since its inception, Project Pascalis has been inconsistent with, and has borne no resemblance to any project described in, Plan One or the AECOM Plan. Nothing in the minutes of the AMDC in this time period or since shows that the AMDC voted to (a) authorize Project Pascalis or designate Project Pascalis as a redevelopment project pursuant to S.C. Code Section 31-10-20(16) or in accordance with Plan One, or the AECOM Plan or any other redevelopment plan. Furthermore, Plan One and the AECOM Plan are not valid redevelopment plans, and the AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* Consequently, even if Project Pascalis bore

a resemblance to Plan One or the AECOM Plan, which it does not, the AMDC was still not authorized to pursue Project Pascalis.

74. The Aiken Standard story dated March 17, 2021 also said that the AMDC had authorized its entering into a cost-sharing agreement with a private party now known to be WTC Investments, LLC (“WTC”), an Aiken development company, for architectural and engineering studies regarding Project Pascalis. At no time was WTC selected by AMDC or the City by using a Request for Proposal or a competitive bid or selection process, as required by law, including S.C. Code Section 31-10-110(c).

75. Project Pascalis violates, is inconsistent with and bears no resemblance to Plan One, the AECOM Plan or any redevelopment plan of the AMDC. Project Pascalis violated and is inconsistent with Plan One in several respects, including but not limited to each of the following:

- A. In Chapter 1 of Plan One, the plan boundaries include the Pascalis Block and the block just to the east. The Pascalis Project is only on the Pascalis block. The boundaries are also defined as nine specific lots, five on the Pascalis Block and four on the block just to the east. Only five of the ten lots in the current Pascalis Project are named in Plan One, and they are all in the northernmost section of the Pascalis Block, close to Richland Avenue, whereas the current Project Pascalis encompasses three quarters of the Pascalis block.
- B. In Chapter 3 of Plan One, the proposed land use is a “*renovated hotel*” and mixed-use commercial. The parking garage is 180 spaces and is on the other, non-Pascalis block. The current Project Pascalis contemplated demolition of the Hotel from the outset (as we

show later), adds a convention center, 100 apartments and a 400-car garage, all on the Pascalis Block, but none of these features are shown in Plan One.

- C. In Chapter 6 of Plan One, the last sentence reads: “*There are no changes proposed in street layout or level of service.*” However, the current Project Pascalis shuts down part of Newberry Street and puts buildings on .27 acres of it.
- D. Chapter 7 of Plan One estimates the total cost at \$16.5-\$20.5 million. The current Project Pascalis is estimated to cost over \$100 million.
- E. Chapter 8 of Plan One requires compliance with the Old Aiken Design Guidelines. The current Project Pascalis does not comply with those guidelines.

76. In furtherance of Project Pascalis, WTC entered into purchase and sale agreements (described as options in AMDC minutes) (a) on March 2, 2021, to acquire from Shah six lots, including the Hotel Aiken, in the northern part of the Pascalis Block and (b) on April 15, 2021, to acquire from Myrtle Anderson a seventh lot on Newberry Street (collectively the “Pascalis Properties”). In addition, between March and June 2021, Ray Massey (“Massey”), an Aiken attorney and investor, or investors led by Massey, acquired four lots along Newberry Street in the Pascalis Block under the name Aiken Alley Holdings, LLC.

77. When Massey acquired four lots along Newberry Street in the Pascalis Block under the name Aiken Alley Holdings, LLC, Massey was the attorney for WTC and the law partner of Gary Smith (“Smith”), the designated City attorney. At all times pertinent to this lawsuit, Massey and Smith have been partners in the same law firm, and Smith has been counsel to the City and to the AMDC regarding Project Pascalis. In response to a FOIA

request, in May 2022, the AMDC claimed that Smith had recused himself from representing the AMDC regarding Project Pascalis in October 2021, but AMDC was unable to produce written evidence of such a recusal. If Smith indeed did recuse himself in October 2021, the recusal was not in writing and did not explain the reason for the recusal in writing and nothing about the recusal was noted in the minutes of the City Council or the AMDC, all in violation of S.C. Code Section 8-13-700 (A) and (B). Nevertheless, Smith continued to participate in discussions of, and to advise the City, AMDC and the public about matters related to Project Pascalis, at least until the March 28, 2022, Council meeting and possibly up to April 20, 2022, in violation of S.C. Code Sections 8-13-700 (A) and (B). The first public announcement of Gary Smith's recusal was made at the second of two information meetings about Project Pascalis, both held on April 20, 2022. No information about Smith's recusal has been noted in any minutes or other public record of the AMDC or the City, as required by S.C. Code Sections 8-13-700(B).

78. In May 2021, WTC abandoned Project Pascalis, which surprised the City. At that time, the City did not have immediate access to the funds required to assume the WTC options, as was its right. To assist the AMDC in furtherance of Project Pascalis, the Aiken Chamber of Commerce ("ACOC") assumed the WTC options on or about June 3, 2021, for payments totaling \$135,000 by the ACOC to Shah and Anderson (\$100,000 to Shah and \$35,000 to Anderson). By doing that, the ACOC held the options on behalf of the AMDC until the AMDC exercised them in November 2021, and reimbursed the ACOC for the \$135,000 option price. AMDC eventually exercised these options to acquire the seven lots referenced above, in violation of law because the purchase was not pursuant to a valid redevelopment plan or redevelopment project. Two of the lots were not named in Plan One

and the AECOM Plan makes no mention of the lots at all. Neither Plan One nor the AECOM Plan are valid redevelopment plans and the AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* At no time was ACOC selected by AMDC or the City by using a Request for Proposal or a competitive bid or selection process, as required by S.C. Code Section 31-10-110(c).

79. The AMDC has not done any due diligence about environmental and other matters, financial analysis of potential investments required, follow-on expenses or the potential return on its investment regarding Project Pascalis. That is fiscally irresponsible and violates even the most basic purchasing procedures and requirements.

Request for Proposals

80. The AMDC created a one-and-one-quarter-page document dated May 19, 2021, called “Project Pascalis Background and Preliminary Details” together with an aerial view plan of the lots and a seven-page presentation labeled “Conceptual Plans – May 3, 2021, Revision” (“Project Pascalis documents”). That background document claims AMDC “holds contracts to purchase” the Pascalis Properties; refers to a planned encroachment into Newberry Street (and both plans show it) but is silent regarding any demolition associated with Project Pascalis. The Conceptual Plans show a four-story Hotel Aiken, which proves AMDC intended then to demolish the existing three-story Hotel Aiken and the three adjacent shops on Laurens Street from the outset.
81. AMDC never publicized these Project Pascalis documents as an RFP or a solicitation, so many developers were not aware of the documents or, if aware, may have felt they would

not be welcomed, especially since the news and rumor mill had reported the City and the AMDC already were working with WTC, and AMDC had not made public WTC's withdrawal. Moreover, AMDC and City officials stated at various times that that they did not favor developers who were only interested in portions of the project. On information and belief, a number of developers felt, at the time, that it was either futile to participate or that they had been discouraged from participating, in part because it was known AMDC had already chosen a developer (WTC) and had not made public WTC's withdrawal as the chosen developer. On information and belief, AMDC did not encourage the participation of preservation developers because it intended to demolish the Hotel Aiken from the outset.

82. The Project Pascalis documents referenced above first appeared publicly, together with a minimalist scoring grid, on the AMDC website under the heading "Pascalis Proposal Solicitation and RFP Scoring" in March 2022, almost a year after their creation on May 19, 2021. This appearance on the AMDC website was an attempt to falsely create an *ex post facto* Request for Proposal ("RFP") for selecting the developer for Project Pascalis, after the developer already had been selected by the AMDC.

83. These Project Pascalis documents referenced above were not sufficient to constitute an RFP pursuant to S.C. Code Ann. § 31-10-110(c), which requires that the RFP "shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof." *Id.* (Emphasis added.) The information provided by AMDC in May 2021, was so limited that no developer could make a reasonable proposal without seeking extensive further information from, and engaging in lengthy discussions with, AMDC. For example, there was no information as to the condition of the structures, environmental assessments, restrictions due to historic

structures and the Old Aiken Overlay District. There were no directions with regard to preservation alternatives versus new building. There was no information about the value of the assets in question or the financial and other terms of the proposed sale and other agreements. There was no precise information on which lots were in question or potential changes in the lots. There was no information on the construction requirements or amenities expected of the developer and only minimal information on the responsibilities of the developer versus the AMDC. There was also no information as to the selection process and criteria. Moreover, even if the materials had been adequate, they do not reflect whether the project is authorized pursuant to Plan One or to the AECOM Plan.

84. No RFP was publicized, as required by S.C. Code Section 31-10-110(c), by the AMDC or the City in May 2021, or at any time before the AMDC selected RPM Development Partners, LLC as the developer for Project Pascalis on December 3, 2021, as described below. There is no record of any publication of an RFP in the Aiken Standard or any other newspaper, or a public announcement of an RFP, or a public hearing on or any mention of an RFP in any minutes of the AMDC or the City Council, and the AMDC never voted to approve an RFP or an RFP process, before the AMDC selected RPM as the developer for the Pascalis Project. Repeated FOIA requests to AMDC have confirmed that there was no RFP before the AMDC selected RPM as the developer for Project Pascalis.
85. On June 8, 2021, AMDC authorized the Chairman of its Executive Committee, Keith Wood, to enter into negotiations with a developer regarding to Project Pascalis. The name of the developer was not revealed and there was no mention of why or how the developer was chosen in the AMDC minutes or in any other public record. There is no public record

of when, how or by whom the AMDC Executive Committee was created, who is on it or what it does or is authorized to do.

86. On August 9, 2021, Aiken City Council approved raising \$10 million for AMDC to acquire properties for Project Pascalis. On September 22, 2021, AMDC members toured Florence, SC, as guests of the Raines Company and saw the renovation of the Florence Hotel by the Raines Company. The first public mention of the Raines Company by the AMDC or the City was in the AMDC's minutes dated September 22, 2021.
87. On October 6, 2021, the City issued \$9.6 million in bonds to finance the purchase of the Pascalis Properties by AMDC. At the time, the AMDC had never had, and the City Council and the AMDC knew, or should have known, that the AMDC had never had, a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* and therefore was not authorized to purchase the properties contemplated to be purchased with these bonds issued by the City on October 6, 2021.
88. On October 27, 2021, RPM Development Partners, LLC, was formed, with Ray Massey as agent. As described by Tim O'Briant in the City Council meeting of March 28, 2022, RPM is owned one-third each by Raines Development, a subsidiary or division of the Raines Company of Florence, SC (collectively "Raines"); Lat Purser & Associates of Charlotte, NC; and Ray Massey.
89. During November 9-10, 2021, the AMDC acquired the Pascalis Properties to implement Project Pascalis. The AMDC resolution authorizing this purchase states that AMDC has adopted Plan One as a "Redevelopment Plan" for a "Redevelopment Area" "consisting of the area of the City bounded by Laurens Street, Chesterfield Street, Richland Avenue, and Park Avenue" in accordance with S.C. Code Section 31-10-10 *et seq.* and "determined to

undertake a redevelopment project within the Redevelopment Area, known at this time as Project Pascalis.”

90. The acquisition of the Pascalis Properties violated S.C. Code Ann. § 31-10-100(b) because
 - (a) Project Pascalis at the time bore no resemblance to Plan One and Plan One does not include two of the acquired lots on Newberry Street (121-21-08-004 and 121-21-08-009),
 - (b) the AECOM Plan does not contain any reference to or description of Project Pascalis or any similar redevelopment project,
 - (c) neither Plan One nor the AECOM Plan are valid redevelopment plans and
 - (d) the AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* Furthermore, the AMDC made false claims in its resolutions because it knew that Project Pascalis bore no resemblance to Plan One, including for the reasons stated above, and was not a valid Redevelopment Project pursuant to Plan One or any other redevelopment plan.
91. The AMDC did not get appraisals of the properties it acquired on November 10, 2021, or do due diligence on environmental and other matters, financial analysis of potential investments required, follow-on expenses or the potential return on its investments regarding the properties it acquired on November 10, 2021.
92. On November 23, 2021, AMDC Chairman Wood stated, as described in the minutes of an AMDC board meeting held that day:

We have had many discussions with developers. One has come to fruition where there is consideration of a Purchase and Sale agreement for the Commission to consider for Project Pascalis. The Executive Committee as well as staff have recently had two meetings to discuss the Purchase and Sale agreement. He said

the Executive Committee did meet with Gary Pope, Attorney, and others, and the developer about a week ago. A proposed developer has provided some information for the Commission to consider. The Executive Committee did have a lot of questions that the proposed developer is considering. He said it is felt that we are at the point where the whole Commission needs to look at the agreement, ask questions of staff, and discuss the agreement in detail. This needs to happen for the Executive Committee to go back and have further discussions with the proposed developer. With that in mind, he said he would like for the Commission to consider going into executive session to discuss a proposed Purchase and Sale Agreement in connection with Project Pascalis. (Emphasis added.)

Afterwards, the AMDC went into executive session to review a draft purchase and sale agreement with a prospective developer, who we now know but the public did not then know was RPM.

93. On November 30, 2021, the AMDC approved a resolution authorizing the AMDC to enter into a Purchase and Sale Agreement with a potential developer for Project Pascalis. On December 3, 2021, AMDC announced it had selected RPM as the developer for Project Pascalis and that the AMDC was moving forward toward signing a Master Development Agreement with RPM. From the inception of Project Pascalis in March 2021, until December 3, 2021, AMDC never voted to approve or to issue or to publicize an RFP and never issued or publicized an RFP as required by S.C. Code Section 31-10-110(c) to select

a developer for Project Pascalis. AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10, *et seq.*, let alone one that describes or includes Project Pascalis. For this reason and because AMDC never conducted a valid RFP, RPM was improperly and unlawfully selected as the developer for Project Pascalis by AMDC on December 3, 2021, and RPM has never been properly and lawfully selected as a developer for Project Pascalis.

94. On December 13 and 20, 2021, which is after AMDC had announced on December 3, 2021, that it had selected RPM as the developer, AMDC advertised an RFP for developers and listed Plan One as the document for developers to respond to, when AMDC was not, and knew it was not, pursuing any project in accordance with Plan One. The advertisement stated that responses had to be received by the AMDC by December 22, 2021. On May 18, 2022, the AMDC disclosed, in response to repeated FOIA requests, the existence of an affidavit of publication dated December 20, 2021, that stated that the advertisements of an RFP for developers had been published on December 13 and 20, 2021. Thus, on December 3, 2021, the AMDC announced it had selected RPM as the developer for the Pascalis Project without having issued an RFP as required by S.C. Code Section 31-10-110(c) but on December 13 and 20, 2021, advertised a purported RFP soliciting developers, when AMDC had already selected a developer. This purported RFP is a second *ex post facto* effort to appear to have complied with the RFP requirements in Section 31-10-110(c). Furthermore, the advertisement published on December 13 and 20, 2021 contained false and misleading information because it referenced Plan One, but the projects described in Plan One bear no relation to Project Pascalis. Project Pascalis was the project AMDC was actually pursuing at the time the advertisement was published. The December 13 and 20

dates of publication, so close to the holidays, and the extraordinarily short response time (two days) make it clear AMDC expected few people to see the advertisements and wanted no responsible party to respond to them. The affidavit contains only a copy of the advertisements. AMDC failed to produce any supporting documentation that would constitute an actual RFP, despite repeated FOIA requests seeking those documents.

95. On information and belief, no materials were sent to potential developers in connection with the December 13 and 20, 2021, RFP advertisements, and no developers, including RPM, responded to the advertisements. The advertisements themselves were not sufficient to constitute an RFP pursuant to S.C. Code Section 31-10-110(c), which requires that the RFP “shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof.” *Id.* The information provided in the December 13 and 20, 2021, advertisements and in Plan One, which was referenced in the advertisements, was so limited, and contradicted the May 2021 documents sent to developers, that no developer could make a reasonable proposal without extensive further discussions with and substantial additional information from AMDC. No information was provided by the AMDC as to the condition of the structures, environmental assessments, restrictions due to historic structures and the Old Aiken Overlay District, etc. No directions with regard to preservation alternatives vs new construction were provided. No information about the value of the assets in question or the financial and other terms of the proposed sale and other agreements was provided. No precise information on which lots were in question or potential changes in the lots was provided. No information about the construction requirements or amenities expected of the developer was provided. No information as to selection process and criteria was

provided. Moreover, even if the solicitation materials had been adequate, AMDC was not pursuing any project that was consistent with and in accordance with Plan One or the AECOM Plan.

96. An agenda item for the January 24, 2022, City Council meeting was to approve a fully drafted ordinance for first reading authorizing the sale of two lots owned by the City to CTR, LLC, an entity represented and/or controlled by Ray Massey (the “CTR Sale”). One lot is in the Pascalis Block and is a part, fronting on Newberry Street on the south side of The Alley, of Lot 121-21-06-001 (the Old Municipal Building Lot that is now part of Project Pascalis), and the other is Lot 121-21-02-010, the parking lot directly across Richland Avenue from the Hotel Aiken. The price was established at \$750,000 for the 0.2-acre lot that fronted on Newberry Street and \$50,000 for the 0.3-acre parking lot on Richland Avenue, even though there were no restrictions disclosed on the future use of the parking lot. The price was a discounted price that represented a \$185,000 loss to the City based on its purchase price 13 years earlier in 2008. The background memorandum from Stuart Bedenbaugh as City Manager points out the negative of the City having carried these lots with no income for 13 years and makes no mention of the rapid increases in real estate values during that time and the dramatic increase in the value of real estate that is in and around the Pascalis Block in the last two years. On information and belief, the City never got an appraisal or a third-party estimate of the value of these lots or put these lots up for auction to the highest bidder. According to AMDC, Ray Massey is also a one-third owner of RPM. The CTR Sale was initiated well before December 21, 2021, and was only known to the Plaintiffs because it was briefly on the agenda for the City Council’s January 24, 2022, meeting, but was quickly taken off the agenda and “postponed until a later date.”

The CTR Sale was documented in a fully negotiated Purchase and Sale agreement dated December 21, 2021, initialed on every page by, and signed by, Ray Massey and ready for City signatures. The Ordinance had signature blocks for Rick Osbon as Mayor, Gary Smith as City attorney, and Sara Ridout as City Clerk. The CTR Sale documents do not explain how the CTR Sale fits or does not fit with Project Pascalis or why the City was pursuing the sale or why it chose to sell the lots to CTR, LLC and not to RPM. The CTR sale adds one more unexplained twist to the story of Project Pascalis and makes it even more difficult for the public and the DRB to follow what Project Pascalis actually is or is not. The CTR sale also highlights the conflicts, or potential conflicts, of interest that can result from the tangled web of relationships between representatives of the City, the DRB and AMDC, on the one hand, and participants in RPM and property owners, or prospective property owners in and near the Pascalis Block, on the other hand.

97. The content and components of Project Pascalis changed so frequently that any AMDC solicitation that might have existed was quickly no longer applicable as an RFP, even if it had been applicable and sufficient some time earlier. The purported RFPs created by AMDC in December 2021, and March of 2022 were not applicable or valid from the start. AMDC never intended to conduct an RFP process. Instead, AMDC chose the developer for Project Pascalis by having secret bilateral discussions with confidentially selected parties rather than providing a proper “level playing field” where all parties had the same information, the same opportunity and clear selection criteria at the same time. AMDC conducted a process of its own design with no defined criteria so that it controlled and manipulated the process and used its own preferences to select a developer that it favored. This process is further tainted by the fact that the developer AMDC chose is the law partner

of the City Attorney advising the AMDC and the City about the RFP and the project for which the developer was chosen.

98. Key decisions about the subjects of this lawsuit were made by the AMDC using as support the votes of three individuals (Catina Broadwater, Stuart MacVean and Chad Matthews) who were serving as commissioners of the AMDC illegally because they were not residents of the City of Aiken as required by the City of Aiken Code of Ordinances (“City Ordinance”) Section 11.2. On information and belief, those three commissioners continue to serve as members of the AMDC, even after members of the public complained, in early June 2022, that they were serving as AMDC commissioners illegally because they were not residents of the City as required by the City Ordinance Section 11.2. Any decisions made by the AMDC which relied on the vote of one or more of these commissioners for a majority vote or on their presence for a quorum, are invalid because their presence and their vote were in violation of City Ordinance Section 11.2. Moreover, decisions and actions at meetings of the AMDC were not valid where made at a meeting that did not have a quorum because of the invalidity of the membership of these three individuals on the AMDC, and/or because two members of the AMDC recused themselves from voting on a decision involving Project Pascalis.

99. Members of the AMDC have acquired one or more interests, direct or indirect, in (1) Project Pascalis and other redevelopment projects and in property included or planned to be included in the AMDC’s redevelopment area and (2) in one or more contracts or proposed contracts for materials or services to be furnished or used by the AMDC or with a developer or a prospective redeveloper relating, directly or indirectly, to an AMDC redevelopment project, in violation of S.C. Code Ann. § 31-10-70. For example, David

Jameson is CEO of the Aiken Chamber of Commerce (“ACOC”), which paid \$135,000 to assume the WTC lot options and held them for AMDC, for which the AMDC paid the ACOC \$135,000. No AMDC commissioner has (a) resigned, as required by S.C. Code Section 31-10-70 or (b) recused himself properly and disclosed and described his conflicts in writing and recorded them in the AMDC minutes as required by S.C. Code Sections 8-13-700(A) and (B). As result, the information about the five appointments and individuals referred to above contained in the agendas and minutes for numerous meetings of the AMDC are incomplete and inaccurate, and in each case represent a violation of the FOIA.

100. The minutes of the City Council in and around September 2020, show that the mayor suggested, and the Council agreed to delegate to the AMDC the drafting of its own bylaws, knowing that Tim O’Briant, the City’s Director of Economic Development, would draft the bylaws for the AMDC, which he did. In this manner, the City Council gave up its right to approve the bylaws of the AMDC. In December 2020, the AMDC adopted self-serving bylaws but did not include a copy of these bylaws in the agenda or the minutes of any AMDC meeting or publish these bylaws on any website of the AMDC or the City. Among other things, the AMDC bylaws provide that any money generated by the AMDC from its projects from the sales of real estate can only be used for AMDC projects and would not be returned to the City. The AMDC bylaws also provide that new commissioners can only be selected by commissioners then in office, in violation of City Ordinance Section 11.2 and S.C. Code Section 31-10-40, and that commissioners need not be residents of the City if they have a business interest in the City, in violation of City Ordinance Section 11.2. The bylaws also provide that each commissioner has a four-year term of office, but S.C. Code Section 31-10-50 mandates that only two-year terms are

allowed. The bylaws also provide that the Chairman of the AMDC can create any committee he or she likes, and name commissioners of his or her choosing to such committees without the approval of other commissioners, thus avoiding public disclosure in the AMDC minutes of the existence and composition of any AMDC committees. As a result of all this, (a) the AMDC bylaws are not valid or lawful and the bylaws have not been properly enacted, (b) one or more Commissioners of the AMDC have not been properly appointed, (c) the Executive Director and the Executive Committee of the AMDC have acted and are acting without proper authorization, and (d) the information about the commissioners, the Executive Director, the Executive Committee and any matters regarding or dependent on or governed by the bylaws of the AMDC contained in the agendas and minutes for numerous meetings of the AMDC are incomplete and inaccurate, and in numerous instances represent a violation of the FOIA.

Design Review Board

101. The DRB is a quasi-judicial entity under South Carolina law. In pursuing its mandates, the DRB is required (a) to develop a comprehensive, sufficient and balanced record and (b) to follow established, sufficient and balanced procedures so as to arrive, to the best of its ability, at informed, fair and balanced decisions on the matters that are under its jurisdiction.
102. Pursuant to the Aiken Zoning Ordinance, the DRB reviews applications for a Certificate of Appropriateness (“COA”) for construction, alteration or demolition of structures in the Old Aiken Overlay District and the Historic Preservation Overlay District

and is required to follow guidelines approved by the City for such districts. The guidelines required for the Historic Preservation Overlay District are the Historic Design Review Manual and United States Secretary of the Interior's Standards for Rehabilitation ("DOI Standards"). The guidelines required for the Old Aiken Overlay District are the Old Aiken Design Guidelines. Section 5.1.2 of the Zoning Ordinance provides that "[w]hen there is conflict between the regulations of the remainder of this Ordinance and this Chapter, the more restrictive shall apply."

103. The DRB first reviews applications for a COA in a "Work Session" that is open to the public, but generally does not ask for public comment at these meetings. The DRB officially reviews, discusses, deliberates and acts on applications for a COA at a "Regular Meeting" that is set for each month or at a "Special Meeting" called when needed (each a "Meeting"). The DRB provides agendas for Work Sessions and Meetings and the agendas regularly contain the applications, with voluminous supporting materials supporting each application to aid the DRB in its deliberations about the applications.

104. The DRB violated its duties as a quasi-judicial entity regarding the Pascalis Project. At all times during its review of a demolition request regarding the Pascalis Project, members of the DRB, and its chairman in particular, made unfounded and unsupported statements in favor of demolition and expedited procedures to further their already predetermined agenda of approving demolition and allowed the developer to speak for far more time, while improperly restricting the public to three minutes per person when the DRB bylaws provide for five minutes per person for public comments. The DRB acted prior to receiving a COA application and then accepted a fatally flawed application (a) despite the fact that it was presented seven days before the relevant DRB meeting, when

the Zoning ordinance requires an application to be submitted 14 days before such meeting and (b) without making any effort to examine its completeness and accuracy or to scrutinize or question it, let alone correct it. The minutes of some DRB meetings incorrectly refer to RPM as the applicant when RPM had not made an application. In its review, the DRB relied entirely on incomplete and misleading information provided solely by the developer and neither sought nor received any independent, expert or unbiased advice or analysis of the subject structures or the proposed project and did not seek, receive, develop, examine or pursue preservation alternatives and cost estimates despite requirements in the Zoning Ordinance to do so. Furthermore, the DRB violated provisions of the Zoning Ordinance and devised procedures not contemplated by the Zoning Ordinance, violated S.C. Code Section 30-4-10, and went against (a) its own preservation mandate, described as “essential” in the Zoning Ordinance, (b) all the applicable preservation requirements adopted by the City, and (c) all the prevailing Strategic, Master, Economic Development and Comprehensive Plans (and many earlier plans) adopted by the City.

105. The DRB hastily approved, in its first Meeting on Project Pascalis, with less than six minutes of deliberation, a fatally flawed and incomplete application for demolition by using an unprecedented and unauthorized form of “conditional” COA that is not allowed by the Zoning Ordinance and is contrary to expressed provisions of the Zoning Ordinance Section 5.2.4(A)(3), which states that “the **application shall be denied**” (emphasis added). In approving the COA on March 1, 2022, the DRB ignored questions as to (a) the applicability of certain provisions of the Zoning Ordinance and certain guidelines and procedures and (b) pleas by its own members and by members of the public to slow the

DRB process down and provide and review more complete information about RPM's demolition application.

106. On November 4, 2021, the DRB held a Work Session, where AMDC and the City gave DRB a briefing on the plans for the purchase of the Pascalis Properties for the Pascalis Project and the subsequent fast track on which they wanted to get those plans approved. In that briefing, the AMDC said "the development team is close to identifying a developer, but does not have a contract in place yet," and that things would move quickly after that, with construction expected to begin in approximately six months.
107. The first DRB meeting that reviewed the new Pascalis Project was a Work Session on January 4, 2022. At that meeting Ray Massey introduced the RPM team, there was a general discussion of Project Pascalis with little detail, and no plans or other supporting materials were provided or included in the agenda or the minutes of the Work Session. The discussion of Project Pascalis at this DRB meeting was not included in the agenda for the meeting. The agenda referred only to "Economic Development Update" and "Pre-Application Conferences." The agenda made no reference to Project Pascalis, RPM or AMDC. Based on this agenda, the public had no way of knowing that Project Pascalis would be discussed. Minutes of the meeting made no mention of Project Pascalis, RPM or AMDC. These omissions in the agenda and the minutes of the January 4, 2022, DRB Work Session are in violation of the Freedom of Information Act and its open meetings provisions. There was no public comment at that Work Session and Project Pascalis was not discussed at the subsequent Regular Meeting of the DRB that same day.
108. On February 1, 2022, the DRB toured the site of the Hotel Aiken and reviewed various aspects of the Pascalis Project in another Work Session, at which there was no

discussion of the historic and preservation value of, preservation alternatives for, or cost estimates for preservation of, the Hotel Aiken. There was no public comment at that Work Session and the DRB did not hold a Regular Meeting after this Work Session on this date. The discussion of Project Pascalis at this DRB meeting was not included in the agenda for the meeting. The agenda referred only to “Review of site visit for 235 Richland Avenue West and Neighboring Parcels” and “Pre-Application Reviews.” The agenda made no reference to Project Pascalis, RPM or AMDC. Based on this agenda, the public would have no way of knowing that Project Pascalis would be discussed. Minutes of the meeting made no mention of Project Pascalis, RPM or AMDC. These omissions in the agenda and the minutes of the February 1, 2022, DRB Work Session are in violation of the Freedom of Information Act.

109. On February 17, 2022, RPM presented the Taylor and Viola engineering report on the condition of the Hotel Aiken at a Work Session of the DRB. The Taylor and Viola report was prepared for RPM and concludes that “Much of the building can be preserved if desired, but it should be expected that preservation measures would be extensive in nature.” Raines gave a PowerPoint presentation that described the RPM team, explained some history of its development experience and provided a simplified site plan for Project Pascalis. Raines indicated that it wished to demolish the Hotel Aiken because that would allow RPM to build what it wanted and because renovation would be too costly but gave no financial or other analysis to support that statement. No member of the DRB reminded the public that the Taylor and Viola report was prepared for RPM, not for the DRB. No member of the DRB asked for any information or financial analysis on the potential cost of preservation versus demolition and new construction. DRB Chairman McDonald Law

made several unsubstantiated statements, including that (a) the brick walls of the Hotel were unlikely to survive an earthquake, (b) a separate sprinkler system would be required between the floor and the existing ceilings, and (c) it would be necessary to “completely rebuild the building in order for it to be renovated.” Chairman Law cited no studies that supported these conclusions and had no personal expertise that allowed him to reach these conclusions without expert analysis and advice. There was no discussion of preservation values, preservation alternatives or preservation cost estimates. At the end of the meeting, Chairman McDonald Law urged RPM to apply for a COA for demolition of the Hotel Aiken as soon as practical. There was no public comment at the Work Session and no Regular Meeting was held afterwards. The discussion of Project Pascalis at this DRB meeting was not clearly described in the agenda for this meeting. The agenda refers only to “Downtown Development Update with Raines Development and partners. The update will include a review of the structural assessment report for Hotel Aiken.” The agenda made no reference to demolition, Project Pascalis, RPM or AMDC. Based on this agenda, the public would easily be confused as to whether Project Pascalis would be discussed and who the other names mentioned were, who the Hotel Aiken structural assessment was prepared for, etc. It should be noted that up to that time very little information on and no plans of Project Pascalis had been made public. Minutes of the meeting misleadingly referred to RPM as “applicants” when RPM had made no application, and yet made no reference to Project Pascalis, RPM or AMDC. These omissions and obfuscations in the agenda and the minutes of the February 17, 2021, DRB Work Session are in violation of the Freedom of Information Act. There was no public comment at the Work Session and no Special Meeting was held afterward that day.

110. On February 21, 2022, RPM applied for a COA and the DRB staff forwarded it to the DRB on February 23, 2022. The application covers both the Hotel Aiken on lot 121-21-09-002 and the three adjacent shops on Laurens Street on lot 121-21-09-001 and consists of a map of the lots; some photos; the simplified site plan from the February 17, 2022, presentation; a section view of Newberry Street that is deceptive since it does not point out the dramatic change proposed; and the Taylor and Viola report. The application provides no information on the historic values or considerations of the Hotel Aiken and no information at all on the three structures on lot 121-21-09-001, even though that lot number is clearly indicated on the application and the staff report references “demolition of former Hotel Aiken and associated shops and structures.” (Emphasis added.) The application did not provide and the DRB did not consider information on the whole Project Pascalis, for which permission to demolish these structures was requested. On information and belief, the DRB had never approved a portion of a major project without seeing and reviewing extensive information on the whole project but did just that regarding the application to demolish the Hotel Aiken and adjoining structures.

111. The three pre-1900 shops on lot 121-21-09-001 are listed as “Contributing Structures,” by the South Carolina State Historic Preservation Office (“SHPO,”) and in the Historic Resources Survey done by the City of Aiken in 2010 and are all occupied and in sound physical condition. The Hotel Aiken on lot 121-21-09-002 is listed in the Aiken Historic Register as a “Contributing Structure” on a Historic Site. Section 5.2.1 of the Zoning Ordinance provides that “Any property or structure listed on the Aiken Historic Register shall be subject to this Article,” which is the Historic Preservation Overlay District. Therefore, the Hotel Aiken is subject to the requirements of the Historic

Preservation Overlay District. Demolition of any of these structures, as requested in the application, would violate numerous provisions of the Zoning Ordinance.

112. The DRB violated the Zoning Ordinance by accepting and considering a limited and incomplete application from RPM despite the fact that the application was for demolition of the most prominent building on the most prominent block of the City and three other structures that are among the oldest in the City. The Hotel Aiken is listed on the Aiken Historic Register as a Contributing Structure in a Historic Site and the three other structures are listed as Contributing Structures by SHPO and in the Aiken Historic Resources Survey of 2010. Section 5.2.3(C) of the Zoning Ordinance requires significant additional material to be included in an application for a COA in the Historic Preservation Overlay District than was included in the RPM application. The overall mandates in Sections 2.6, 5.2 and 5.3 of the Zoning Ordinance for the review of applications for Certificates of Appropriateness require the DRB to evaluate numerous subjects and extensive materials in order to comply with the review standards in Section 5.2.3(J) and 5.3.2(M), to develop preservation alternatives pursuant to Section 5.2.4(A)(2) and to make determinations of demolition by neglect pursuant to Section 5.2.4. No materials that would be responsive to those subjects was included in the RPM application or requested by the DRB. Furthermore, the demolition of the Hotel Aiken is part of a much larger project designated by the AMDC as Project Pascalis. Without explanation, deliberation or a procedural vote, the DRB accepted an application for only a small portion of Project Pascalis and requested no information on the overall project that would enable them to consider the demolition portion in the context of the whole. Even if they had requested such material, AMDC and RPM had acknowledged that many aspects of Project Pascalis

had not been decided yet, so the DRB knew at the time it accepted the February 21, 2022, RPM application that many of the materials it should have required to be included in the application did not yet exist. In accepting the RPM February 21, 2022, application, the DRB violated Section 6.1.3(E) of the Zoning Ordinance which states that a complete application is required.

113. On information and belief, all the Strategic Plans, Master Plans, Economic Development Plans and Comprehensive Plans adopted by the City in the last ten years (and many earlier plans) contain statements that highlight the importance of, recommend that the City promote, and urge the City to maintain and preserve, the historical structures in the City, the unique 1835 historic downtown street grid of the City and its resulting parkways.

114. Sections 2.6, 5.2 and 5.3 of the Zoning Ordinance require that the DRB evaluate not just the demolition impact, but also the cumulative impact of the project as a whole. DRB accepted a limited and incomplete application by RPM that had no information on one of the lots cited in the application and lacked any information at all on the project as a whole, which includes eight other adjacent or nearby lots on the same block and encroaches on a prominent and historically significant street in Aiken's historic downtown street grid to erect structures on it. Sections 2.6, 5.2 and 5.3 of the Zoning Ordinance also require that the DRB evaluate not just the demolition impact but also the attributes and design of the structures that are proposed to replace the demolished structures. The DRB accepted a limited and incomplete application that had minimal information on the replacement structure and no relevant information on any of the other structures in Project Pascalis other than a rudimentary partial, and now superseded, site plan.

115. Section 5.2.3(C) of the Zoning Ordinance specifically requires that the application “shall be accompanied by the following unless waived by the Secretary or otherwise specified on the application form provided by the Board.

- a. Drawings, including plans and exterior elevations, drawn to scale, with sufficient detail to show the exterior architectural design of the structure.
- b. Specifications or other information describing proposed materials and textures; samples of materials may be required by the Board.
- c. Plot plan or site layout showing all existing structures and any improvements affecting appearances such as walls, walks, terraces, accessory buildings, signs, lights, plantings, and other elements.
- d. Photographs of the site location, showing contiguous properties and streetscapes.
- e. All other information requested by the Board.

None of these items was included in complete form in the February 21, 2022, RPM application or requested by the DRB or provided to the DRB.

116. When questioned by a DRB member during the March 1, 2022, Work Session about this lack of information, a DRB staff person “informed the Board that the Old Aiken Design Guidelines only require a plan to be presented.” She then read a short portion of page 42 of the Old Aiken Overlay Design Guidelines. However, the full text of page 42 states

“3.1.11 DEMOLITIONS & RELOCATIONS Demolition of existing buildings is strongly discouraged. Consequently, the Design Review Board will use its authority to delay demolition of historic structures whenever possible to investigate means to save the building. However, it is recognized that, in some cases, older structures may deteriorate to the point that rehabilitation is technically infeasible. In such cases, it is the responsibility of the property owner to demonstrate that rehabilitation is not appropriate AND demonstrate a clear plan for the re-use of the site and any related new construction after demolition. Guidelines: If an existing building's condition is deteriorated such that rehabilitation and use of the building is judged to not be feasible, a request for demolition may be considered by the Review Board. It is the responsibility of the property owner to demonstrate that rehabilitation is not feasible. If public safety is threatened, interim steps may be taken to close and stabilize the structure. Any requests for relocations to or from the Overlay District shall be reviewed by the Review Board. Any application for a demolition shall include plans for the re-development of the site after demolition.” A caption for a photograph on page 42 states further: “Occasionally, demolition is the only course of action that remains for a property. A plan for the site's re-use is a critical component in the evaluation for a request for demolition.” (Emphasis added.). Furthermore, pursuant to Section 5.1.2 of the Zoning Ordinance, the most restrictive requirements of (a) page 42 or page 63 of the Old Aiken Design Guidelines or (b) the requirements applicable to Historic Preservation Overlay District or (c) Zoning Ordinance Section 5.2.3(C) apply.

117. DRB did not comply with the City of Aiken Zoning Ordinance in reviewing the limited and incomplete application from RPM despite the fact that the application was for

demolition of the most prominent building on the most prominent block of the City and three other structures that are among the oldest in the City. The Hotel Aiken is listed on the Aiken Historic Register as a Contributing Structure in a Historic Site and the three other structures are as listed as Contributing Structures in the Historic Resources Survey of 2010 and by the SHPO.

118. Section 2.6.1 of the Zoning Ordinance provides, in part, “**It is essential that** the qualities, areas, sites, structures, and natural and man-made objects relating to the history of the City of Aiken, as well as that of Aiken County, the State of South Carolina, and the United States of America, **be preserved**” (Emphasis added.).
119. Zoning Ordinance Section 5.2.3(J) Review Standards states in subsection (1): “General. In reviewing applications, the Board and the Planning Director shall consider the standards stated in this Chapter for the purpose of determining whether alterations, construction, demolitions, or relocations are in harmony with the prevailing historical, architectural, archeological, or aesthetic character of the Historic District, a structure in a Historic District, or an Historic Site, or a structure included in an Historic Site. (Ord. 04142003A).” DRB did not address these considerations during its March 1, 2022, review of the RPM February 21, 2022, application.
120. Zoning Ordinance Section 5.2.3(J)(2) addresses Construction and Alteration, implying a duty to review these matters if the project involves Construction and Alteration as well as demolition, which is the case here. DRB did not address these considerations during its March 1, 2022, review of the RPM February 21, 2022, application.
121. Zoning Ordinance Section 5.2.3(J) Review Standards states, in part, in subsection (3): “Demolition. In reviewing an application for demolition, the Board and the Planning

Director shall consider the historical, archeological, and aesthetic character of the structure (or portion thereof) proposed for demolition.” DRB did not address these considerations during its March 1, 2022, review of the RPM February 21, 2022, application.

122. Zoning Ordinance Section 5.2.3(J) Review Standards states, further in subsection (3): “They shall also consider: (1) the structural integrity (i.e., condition) of the structure and (2) the integrity of materials, location, and design of the structure. During their review DRB accepted at face value the developer’s engineering report and made no independent inquiry into the above considerations. DRB could have availed itself of materials from the earlier Shah renovation project and other studies related to the Aiken Hotel. In August 2020, the DRB and the City concluded that the Aiken Hotel was not in a condition that represented demolition by neglect. The DRB did not raise this issue in their March 1, 2022, review of the RPM February 21, 2022, application or present any information from these earlier studies to the members of the DRB or the public. In addition, the DRB did not get or provide advice from any preservation expert (or anyone else) as to the condition of the building or the difficulty of preserving it, in direct violation of Section 5.2.4(A)(2), which states “Within any period of postponement, the Board **shall endeavor to ascertain what may be done to preserve the structure or landmark.**” (Emphasis added.)

123. Zoning Ordinance Section 5.2.3(J) Review Standards states, further in subsection (3): “No application for demolition shall be approved solely on the basis of a structure’s deteriorated condition where the Board determines that the applicant is primarily responsible for the deteriorated condition. Finally, the Board shall consider the extent to which demolition would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property affected or upon the surrounding properties, or

upon the district in which the structure is located. No application for demolition of a Landmark shall be approved.” DRB did not make any determination or otherwise address these considerations during its March 1, 2022, review of the RPM February 21, 2022, application.

124. Zoning Ordinance Section 5.2.4 Demolition or Relocation states, in part, in subsection (A)(2): “The Board may delay the granting of the Certificate for a period of up to 60 days from the time of the filing of the application. The Board may extend this postponement for another 180 days after a public hearing and finding by the Board that the structure or landmark is of historical, architectural, or archeological importance to the public or City of Aiken.” Page 42 and 63 of the Old Aiken Design Guidelines both state that “Demolition of existing buildings is strongly discouraged. Consequently, the Design Review Board **will use its authority to delay demolition of historic structures** whenever possible to investigate means to save the building.” (Emphasis added.) DRB took only one day and spent less than an hour in its March 1, 2022, review of the RPM February 21, 2022, application.

125. Zoning Ordinance Section 5.2.4 Demolition or Relocation states, further in subsection (A)(2): “Within any period of postponement, the Board **shall endeavor to ascertain what may be done to preserve the structure or landmark.** Such steps shall include, but are not limited to, consultation with civic groups, interested citizens, public interest groups, and public boards and agencies.” (Emphasis added.) DRB did not do any of this in its March 1, 2022, review of the RPM February 21, 2022, application.

126. Section 5.2.4(A)(3) of the Zoning Ordinance provides, in part “if the Board finds that the structure contributes to the character of the Historic District or that the landmark

is of historical, archeological, or architectural significance or that, for any other reason, preservation in the public interest is warranted, **the application shall be denied.**” *Id.* (Emphasis added.) The four structures that are the subject of the March 1, 2022, COA approval are designated as contributing structures pursuant to the Zoning Ordinance and the Hotel Aiken is listed in the Aiken Historic Register as a Contributing Structure in a Historic Site. Therefore, the application for demolition was required to be denied. This requirement is clear and the DRB ignored it. The process is also clear in that the Zoning Ordinance, as intended, protects designated and undesignated contributing structures and requires the owner to prove economic hardship pursuant to Section 5.1.3 to obtain a Certificate of Appropriateness for demolition of such structures. Furthermore, the Old Aiken Design Guidelines specifically require the owner to demonstrate that rehabilitation is not feasible. Moreover, the Hotel owner’s own engineering report concluded that “Much of the building can be preserved if desired.” Even though the Hotel owner had clearly not demonstrated that rehabilitation is not feasible, and the Zoning Ordinance required the DRB to deny the application, the DRB willfully and knowingly went ahead on March 1, 2022, and approved the RPM February 21, 2022, application for demolition of the historic Hotel Aiken and three other historic structures it had not even considered and on which it had no information.

127. Zoning Ordinance Section 5.2.4(B) Demolition by Neglect states, in part, in subsection (1): “Prevention of Demolition by Neglect of Exterior. No owner or person with an interest in real property which is designated an Historic Site (Ord. 04142003A) in any part of the City or any property in an Historic District, whether that property is occupied or not, shall permit the structure or property to fall into a serious state of disrepair

or to remain in a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property, or, if the structure or property is in an Historic District, upon the district.” Zoning Ordinance Section 5.2.4(B)(2) imposes a similar duty to prevent demolition by neglect of the interior of any structure in a Historic Site. DRB did not address these considerations during its March 1, 2022, review of the RPM February 21, 2022, application for a COA for demolition, despite earlier concerns expressed by the City and by the DRB itself regarding demolition by neglect in and around August 2020. Furthermore, since (a) in 2020 both the City and the DRB determined that the Hotel Aiken was not yet suffering demolition by neglect and the then owner was in the process of renovating and preserving that structure, and (b) the current owner was applying in 2021 for a COA for demolition, the DRB had a prima facie duty to investigate what changed, whether demolition by neglect had occurred, who is responsible and, at the very least, determine whether it could or should grant the demolition requested by the current owner without further investigation. The DRB did none of these things in its March 1, 2022, review of the RPM February 21, 2022, application.

128. In and around August 2020, the DRB was involved in an investigation into whether the then owner of the Hotel Aiken was culpable of seeking or causing demolition of the Hotel Aiken by neglect. As stated in the minutes of the AMDC November 17, 2020, meeting, both the DRB and a City building inspector had by then determined that the structure was still sound and there were not sufficient grounds to bring an action for demolition by neglect. However, on March 1, 2022, the developer claimed the Hotel Aiken was too far gone to make renovation practical and should be demolished instead, and the

DRB agreed without questioning them. Despite this obvious juxtaposition of a structure that was declared sound in November 2020, and required demolition 14 months later, the DRB never raised the issue and never examined the question of demolition by neglect, in its March 1, 2022, review of the RPM February 21, 2022, application, in a clear violation of Sections 5.2.4(A)(2) and 5.2.4(B) of the Zoning Ordinance.

129. Nowhere in the Zoning Ordinance or in any applicable rule is the DRB given the authority to grant a Certificate of Appropriateness without having seen the final plans for the structure that will replace the demolished structure. Such a process makes no sense, as it would be equivalent to finding a defendant guilty or innocent contingent on seeing the evidence. The DRB invented this conditional option on its own volition and without valid authorization.
130. DRB simultaneously and inadvertently approved the demolition of the three structures on lot 121-21-09-001 without any information, review, discussion, consideration, public input, expert advice, etc., and did not even know it was approving their demolition when it approved the demolition of the Hotel Aiken.
131. DRB made decisions to alter its usual procedures by treating RPM differently than other applicants, including by its decision to grant a conditional COA subject to seeing final plans. In doing so, DRB members, notably the Chairman, met with City officials, members of the AMDC and the RPM team and other members of the DRB before and outside the regular and noticed public meetings of the DRB with an agenda to make these decisions. At the DRB's March 1, 2022, Work Session, "Chairman Law explained that the DRB is working with the Raines Group in phases to prevent work delays." Minutes, DRB Work Session, March 1, 2022. Thus, as the DRB Chairman acknowledged, the DRB

unlawfully made these decisions outside the regular and noticed public meetings of the DRB with agenda, for which there are no minutes or record of notice, discussion or deliberation of these decisions as required for a public meeting. By engaging in this behavior, DRB committed numerous violations of the South Carolina Freedom of Information Act and of the laws regulating the DRB.

132. The DRB historically has been and is a stickler for seeing the whole project and having complete applications before giving an approval. The DRB regularly requests extensive information and brings applicants back for multiple reviews to get every detail right on the most insignificant project, before its grants an approval for anything. In contrast, regarding this RPM application the DRB bent over backwards to grant a demolition approval on what is one of the most complex and largest projects in Aiken history, with no information, no details, and missing plans that did not even exist yet, all assuming some future process would make the demolition right. The Zoning Ordinance and pages 42 and 63 of the Old Aiken Design Guidelines (42 is for all structures and 63 is for historic structures, but both pages are identical) make it super-clear that DRB has to look at (a) the project as a whole and (b) the replacement use, and the replacement plans **before** they approve a demolition. There is also nothing that says the DRB can approve parts of projects piecemeal, as it did with the RPM application. The whole DRB approval regime is set up to require the applicant to submit extensive information on all aspects of a project and not to approve any parts of the project until DRB has reviewed all the parts. RPM (a) failed to submit its application form and all required submittals at least fourteen days before the DRB meeting at which they are to be considered, in violation of Zoning

Ordinance Section 6.1.3(D), and (b) failed to submit an application that is complete, in violation of Zoning Ordinance Section 6.1.3(E), but the DRB accepted it anyway.

133. On February 23, 2022, a mere two days after RPM's application for a COA was received by the DRB, the DRB staff issued a sham report that is barely a page long and makes no mention of completeness of the application or the appropriateness of the materials submitted. Accompanying materials for the report include only the application, some photos and a lot map. The DRB staff report contained no information on preservation issues or alternatives, even though the structures to be demolished are among the most prominent structures on the most prominent block in the City and were protected contributing structures. The staff report erroneously says the application can be evaluated using the Old Aiken Design Guidelines because the Pascalis Block is within the Old Aiken Overlay District. However, the application must also be evaluated using the requirements of the Historic Preservation Overlay District, which include the Historic Design Review Manual and the DOI Guidelines, since the application includes the Hotel Aiken, which is listed in the Aiken Historic Register. If there are any conflicts in the guidelines, the more restrictive must be applied. Nothing was mentioned about the structures on lot 121-21-09-001 in the staff report or in any meetings of the DRB leading up to and including approval by the DRB of the demolition COA on March 1, 2022.

134. On March 1, 2022, in a DRB Work Session, RPM presented a first glimpse at the elevations for the new proposed hotel to replace the Hotel Aiken. At the subsequent Regular Meeting of the DRB the same day, RPM gave a general presentation of the project, limited to the previously presented site plans. RPM and the AMDC commented that all the plans presented were preliminary, fluid and subject to significant changes. The public was

allowed to comment, and some spoke for demolition and some against. One member of the public pointed out that the Zoning Ordinance allowed the DRB to delay acting on the application for 60 days (plus up to an additional 180 days if needed) and beseeched the DRB to take its time and follow the ordinances of the City of Aiken. Another member of the public asked about a cost estimate for preserving the Hotel Aiken and was told that no such estimate had been prepared. Another member of the public asked about preservation alternatives, and it became clear none had been developed or considered. A member of the DRB asked Chairman Wood of the AMDC if there was a plan approved by the City Council that showed that the proposed Pascalis Project was the most appropriate for the location and if the AMDC's redevelopment plan was Plan One. Chairman Wood replied that the AMDC was not following Plan One and was following the AECOM Plan instead. During the meeting, Chairman Law vigorously supported haste and demolition; made unfounded, unsupported and unsupportable comments about the condition of the Hotel Aiken; and erroneously limited public comments to three minutes per person. Chairman Law even asserted that speedy approval was needed to accommodate the developer, who had not been properly selected. Two DRB members asked questions about the appropriateness of proceeding with such limited information, but those questions were ignored. After public comment, the DRB took less than six minutes to vote to grant a COA to allow demolition of the Hotel Aiken subject to approving the final plans and elevations, which they had not seen, with only DRB member Lucy Knowles dissenting. The DRB never discussed the architectural significance of any of the structures, did not consider the structures on lot 121-21-09-001 at all, and did not consider or apply the requirements of the Historic Preservation Overlay District or the Old Aiken Overlay District. There was no substantive

discussion of preservation issues, preservation alternatives, cost estimates for preservation or the clear evidence of a potential case of demolition by neglect.

135. On March 1, 2022, the DRB ignored (a) its duties as a quasi-judicial entity, (b) all the above-referenced Sections of the Zoning Ordinance, (c) all the above-referenced Sections of the S.C. Code of Laws, (d) all the above-referenced guideline documents, and (e) all the above-referenced plans adopted by the City to approve a fatally flawed and incomplete application by granting the unprecedented and unauthorized form of “conditional” COA for demolition of a Contributing Structure in a Historic Site and three other Contributing structures based on very limited and biased information, in one meeting, with less than half an hour of total consideration and less than six minutes of deliberation. The structures approved for demolition are among the most prominent structures on the most prominent block in the City.

136. On March 11, 2022, Craig Bennett, a renowned expert in seismic masonry retrofit, historic preservation and National Historic Landmarks (including, in particular, in preservation of brick buildings) and former head of the Charleston Board of Architectural Review, was retained by Preservation South Carolina, a prominent preservation group. On behalf of Preservation South Carolina, Bennett inspected the Hotel Aiken that day and afterwards declared it can be renovated rather than demolished. Bennett noted the building has strong foundations and the later portion of the Hotel has a concrete and steel fireproof floor structure. On March 14, 2022, Bennet delivered a letter to the City of Aiken saying in part: “we found no major structural issues that would prevent its reuse” and “the building appears to qualify for the historic provisions of the International Existing Building Code.”

137. On March 28, 2022, the City Council held a first reading of an ordinance to convey a portion of Newberry Street to RPM for Project Pascalis. When opened up for public comment, various persons spoke for and against the ordinance. Dione Carroll spoke about a letter she had submitted pointing out that there were so many unanswered questions that it was imprudent and improper for the Council to vote on the proposed ordinance without providing citizens and themselves with adequate information and answers. Numerous persons pointed out that the inconsistencies and lack of financial analysis or details of the overall project made it premature and improper to vote to convey a portion of a prominent street to a private developer for no stated consideration. Moreover, the City cannot convey this portion of Newberry Street to RPM because it has not complied with federal and state requirements that are applicable because Richland Avenue is US Route 1, and the South Carolina Department of Transportation owns Newberry Street at both ends of the Pascalis Block.

138. As previously noted, (1) Project Pascalis is not a redevelopment plan validly created pursuant to S.C. Code Section 31-10-10 *et seq.*, and, therefore, the AMDC was not authorized to pursue Project Pascalis, to participate in any conveyance of Newberry Street or to authorize RPM to receive such conveyance, and (2) RPM had not properly been selected as a developer pursuant to S.C. Code Section 31-10-110(c) and therefore had no standing to receive or to make any applications or representations regarding such conveyance. As a result, the City and the AMDC took the first step to authorize, despite repeated requests not to do so, conveying a valuable public asset for no consideration to an improperly selected private developer in furtherance of an unauthorized project which was

being unlawfully pursued by the City and its AMDC agency without a validly authorized redevelopment plan.

139. On April 19, 2022, at a regular DRB Meeting, Luis Rinaldini and David Blake objected that the DRB was not applying its criteria correctly or consistently, as it was giving other applications greater scrutiny than it had given to RPM when approving its COA on March 1, 2022. Attorney Dione Carroll spoke about a letter dated April 19, 2022, she had submitted the same day pointing out that DRB had failed to follow proper procedures and was continuing to do so. A motion to add the subject of improving DRB procedures to the agenda of the next Meeting of the DRB was introduced by Member Knowles and seconded by Member Lipscomb and failed by a vote of 3-2. Member Knowles reminded the DRB that she had asked for a legal opinion on a number of aspects of the DRB procedures related to the March 1, 2022, approval of the COA for demolition of the Hotel Aiken and the three adjacent shop structures. To date the DRB has not responded to Member Knowles' request for this legal opinion or to any of the concerns about procedures or the requests to review procedures that were raised in this meeting.
140. On April 20, 2022, the City hosted two meetings for RPM to present more details about their development projects for Project Pascalis. The program was the same for both meetings held at 11:30 am and 5:30 pm. These meetings were advertised as "public input" meetings and the public was invited to speak. The developers were awarded about an hour of time to make their presentation and members of the public were granted three minutes each.
141. On April 25, 2022, the City Council voted to appoint Laura Blessing Thomas ("LBT") to the DRB, replacing Lucy Knowles. Section 7.1.7(C) of the Zoning Ordinance

provides, in part, that “The members of the Board shall be appointed by City Council which shall allow the public an adequate and reasonable opportunity to comment on all such appointments.” (Emphasis added.) No such comment by any member of the public was allowed regarding appointing LBT to replace Lucy Knowles at the April 25, 2022, Council meeting. Section 7.1.7(D) of the Zoning Ordinance sets forth qualification requirements for members of the DRB and of the DRB as a whole. No information was given on LBT’s qualifications or the balance of qualifications on the DRB resulting from the appointment of LBT to replace Lucy Knowles on the DRB. On April 29, 2022, Dione Carroll gave a letter dated April 29, 2022, to the Council objecting to (a) Knowles’ dismissal, saying it was retaliatory for Knowles having voted against the RPM COA on March 1, 2022, and intended to intimidate other members of the DRB and (b) LBT’s appointment, saying it was void and invalid on the grounds that the Council had failed to follow required procedures and, therefore, Knowles was still the designated member of the DRB, as provided by Section 7.1.7(E)(2) of the Zoning Ordinance.

142. In dismissing Lucy Knowles from the DRB, in April 2022, the City engaged in unlawful retaliatory behavior to punish Knowles for voting against granting the RPM COA for demolition on March 1, 2022. What is more, the dismissal has a clear intimidating effect on other members of the DRB, who would naturally feel that if they voted against the City’s wishes in the future, they too would be dismissed.

143. In appointing LBT to the DRB to replace Knowles, the City Council abdicated its duties to examine her qualifications and the overall resulting qualifications of the DRB, as required by Section 7.1.7(D) of the Zoning Ordinance. There is no record of the City

Council making any determination about qualifications, either for LBT or the DRB as a whole.

144. As a result, LBT was not properly appointed to the DRB and Knowles was still on the DRB when it held its Regular Meeting on May 3, 2022. Per Zoning Ordinance Section 7.1.7(E)(2), DRB members are seated until they are replaced. Therefore, the May 3, 2022, DRB meeting was improperly called, as Knowles had been given improper notice of her dismissal, was still a member of the DRB and was not invited to attend. At that meeting, LBT was absent also and the DRB made no disclosure of LBT's purported appointment or Knowles' purported dismissal, in violation of the Freedom of Information Act.

145. At the May 3, 2022, regular DRB Meeting, Plaintiff Luis Rinaldini objected to the fact that the DRB had not disclosed the dismissal of Lucy Knowles and the purported appointment of LBT as her replacement. As a result of this nondisclosure, neither the applicants nor the public knew whether LBT or Knowles was the proper member of the Board and whether the DRB meeting was validly constituted, as Knowles had not been invited to attend the meeting and neither Knowles nor LBT attended the meeting.

146. Despite these issues, which even rudimentary inspection would have uncovered, Jim Holly, acting as attorney for the DRB, berated Luis Rinaldini when he brought up this Knowles/LBT matter, assured the public that LBT had been properly appointed and the meeting had been properly called and invited Rinaldini to consult his own counsel if he disagreed. It subsequently was learned that LBT was not qualified to be a member of the DRB because she is not a resident of the City of Aiken, in violation of Section 7.1.7(D) of the Zoning Ordinance.

147. Subsequently it emerged that three members of the DRB, including LBT, were not qualified to sit, as they were not residents of the City. Two other, long sitting members (Velice Cummings, Ricky Brown) of the DRB also did not live in the City and therefore were not qualified to sit on and were not valid members of the DRB. These missteps further illustrate the pattern of negligence, incompetence, illegality and wrongdoing that characterized and characterizes the DRB and its procedures.

148. When key decisions were being made about the redevelopment project(s) that are the subject of this lawsuit, two members (Velice Cummings, Ricky Brown) of the DRB were not valid members of the DRB because they were not residents of the City of Aiken as required by Zoning Ordinance Section 7.1.7(B). The City claims the three illegally appointed purported members (Cummings, Brown, and Thomas) resigned from the DRB in June 2022, but that statement is inaccurate. These three purported members were never lawfully appointed and therefore were never members of the DRB and therefore could not resign. The situation was only corrected due to members of the public complaining that these people were serving illegally because they were not residents of the City as required by Zoning Ordinance Section 7.1.7(B). Any decisions made by the DRB with the presence of one or more of these purported members for the purposes of a quorum or the votes of one or more of these purported members causing a majority vote when in violation of Zoning Ordinance Section 7.1.7(B) are invalid. The information provided by the City about these three appointments and individuals contained in the agendas and minutes for numerous meetings of the Council and the DRB are incomplete and inaccurate, and in each case the City's inadequate response represents a violation of FOIA.

149. On May 9, 2022, the City Council held the second reading of the ordinance to convey a portion of Newberry Street to RPM. When opened up for public comment, various persons spoke for and against the ordinance. Dione Carroll spoke about the concerns expressed in a new letter from her that the City Council was abdicating its responsibilities and acting improperly by granting approvals before having all the facts, and that if AMDC reached agreement with RPM, the conveyance would not come back to Council for approval. Luis Rinaldini spoke about the lack of transparency (including not disclosing the facts that RPM was improperly selected and AMDC was not authorized to pursue Project Pascalis), the failure to follow proper procedures, and the fiscal irresponsibility of having no appraisal or analysis of the value conveyed or received, the poor governance resulting from the preceding shortcomings as well as the terrible precedent set by transferring to a private developer a section of a prominent public street for no known consideration, to accommodate a project that is not properly authorized and does not fit on the lots held by a developer who was not properly selected and who had no development agreement known to the public. Several members of the public commented that they would like to receive ownership of half the street in front of their lots for no known consideration, as the City was proposing to do and doing with RPM. The Council voted to approve the ordinance by a vote of six to one, with Council member Woltz voting no. By approving the second reading, City had now fully authorized, despite repeated objections, conveying a valuable public asset for no consideration to an improperly selected private developer in furtherance of an unauthorized project which was being unlawfully pursued by the City and its own AMDC agency.

150. The City knew, or should have known, at the time that AMDC was not authorized to pursue Project Pascalis and that RPM had not been chosen pursuant to a valid RFP. AMDC is an agency of the City and the AMDC and the City both shared two common attorneys in this matter. Stuart Bedenbaugh, the City Manager is a City employee and an ex-officio member of the AMDC. Tim O'Briant, the City's Director of Development, is a City employee and the Executive Director of the AMDC. Dr. Thomas Hallman is a City Employee and the Program Manager of the AMDC. The City knows everything the AMDC knows about Project Pascalis and vice versa. AMDC recognized, in its minutes of June 16, 2020, and elsewhere, that Plan One had a limited scope and City officials participated in that meeting. AMDC tried to expand its authority by improperly characterizing the AECOM plan as a valid redevelopment plan in accordance with S.C. Code Section 31-10-10 *et seq.* even though it was not, and the City participated in that process. Subsequently, AMDC confusingly and improperly alternatively referred to Plan One or the AECOM Plan, or both, as the redevelopment plan it was following. On or around December 13, 2021, the City's and AMDC's attorney filed the false *ex post facto* RFP advertisement and may have created it. In March of 2022, the AMDC posted documents on its website purporting to have been an RFP when it knew it had not conducted an RFP pursuant to S.C. Code Section 31-10-110(c). These clumsy attempts at obfuscating which plan AMDC was following and the creation of documents purporting to be an RFP that never existed show that the City and the AMDC were aware they had a problem with their invalid authorizations and procedures. In public comments by the plaintiffs and other members of the public, the City was warned repeatedly, and in writing, of irregularities and shortcomings, including the AMDC's lack of authorization and the

improper selection of RPM as the developer. Thus, on May 9, 2022, the City, AMDC and the attorneys for the City and AMDC were aware of irregularities and shortcomings regarding AMDC's authorization and RPM's selection as a developer. Rather than take a step back, examine the procedures and correct any irregularities and shortcomings, the City, AMDC and their attorneys went forward and knowingly authorized the conveyance of a valuable and important public asset for no consideration to an improperly selected private developer in furtherance of an unauthorized project which was being unlawfully pursued by the City and its own AMDC agency.

151. Neither the City nor AMDC got appraisals of the properties in question regarding the conveyance of a portion of Newberry Street or did any financial analysis on the potential investment required, the follow-on expenses or the potential return on the value of the property transferred to the developer. This is fiscally irresponsible and violates even the most basic purchasing procedures and requirements.

152. DRB and the AMDC should have known that, as a Municipal Development Commission, AMDC was required to follow a Redevelopment Plan, and that the developer for any AMDC project had to be chosen by a public RFP, in all cases pursuant to S.C. Code Section 31-10-10 *et. seq.* If the DRB did not know this in advance, the City and the AMDC had the duty to ensure the DRB knew it as part of any application before the DRB for Project Pascalis. This duty is heightened because the City and AMDC had their own doubts about these matters at the time, as evidenced by their confusing conflicting references to the AECOM Plan as well as Plan One and their clumsy attempts to falsely create a purported RFP after the fact. AMDC's resolutions authorizing the November 10, 2021, purchase of the lots under review by the DRB state that AMDC was pursuing Plan One

and that Project Pascalis was part of Plan One. Minimal due diligence by the DRB would have revealed that Project Pascalis bore no resemblance to Plan One and that there had not been any visible or valid RFP process for choosing RPM as the developer. At the very least, DRB should have questioned under what authority AMDC was allowing RPM to apply for a COA. The DRB did no investigation and did not question any aspect of the AMDC's or RPM's authority or qualifications in connection with the February 21, 2022, RPM application for a COA.

D. Freedom of Information Act Violations

153. Due to the lack of transparency and clarity of the disclosures related to Project Pascalis, numerous public meetings of the City Council, the DRB and the AMDC have been held where the public had or was given incomplete, inaccurate or misleading information. As a result, the public record with regard to Project Pascalis is incomplete, inaccurate or misleading in numerous places and instances. Every public meeting related to Project Pascalis and every occasion where the public was asked to comment on Project Pascalis was tainted by this incomplete, inaccurate or misleading information, because members of the public could not reach informed opinions or make informed comments based on such information.

154. The City Council has not properly disclosed the conflicts of interest of Gary Smith and Mayor Osbon regarding Project Pascalis, and these conflicts have not been recorded and described in the minutes of Council meetings, as required by S.C. Code Section 8-13-700(B). The Council has also not disclosed the status of the CRT Sale, which is a material

fact when evaluating Project Pascalis. As a result, the public record regarding Project Pascalis was incomplete, and members of the public were not properly informed when, for example, defendants commented on the potential transfer of a valuable portion of Newberry Street in the March 28, 2022, and May 9, 2022, Council meetings.

155. The agendas of the DRB meetings on Project Pascalis are confusing and misleading. In the agendas for the January 4, February 1, and February 17, 2022, DRB Work Sessions, for example, (a) the labels used for Project Pascalis are different from meeting to meeting and do not mention Project Pascalis, RPM or AMDC, (b) Project Pascalis was not included in the items labeled Pre-Application Conferences or Pre-Application Reviews, and RPM was referred to as “applicant” in minutes of these meetings, when, in all cases, no application had yet been received, (c) the DRB reviewed the merits of Project Pascalis when Section 6.1.2 of the Zoning Ordinance states, in part, that pre-application conferences serve to “discuss procedures, standards, or regulations required by this Ordinance,” and (d) the items related to Project Pascalis were always under New Business, even after the first meeting, when in fact they were Old Business. As a result, these agendas did not give adequate notice of the purpose and content of these meetings and the public could not reasonably determine that Project Pascalis would be discussed and what aspect of Project Pascalis would be discussed at these meetings.

156. In a break with all prior procedures and custom for projects of similar importance, the DRB approved the application for a COA to demolish four prominent historic structures in one quick Meeting on March 1, 2022. Because the Zoning Code imposes extensive duties on the DRB when dealing with demolition of historic structures, the public could not have reasonably expected such a quick approval, particularly when the Zoning

Ordinance requires that such an application “shall be denied.” The agenda for the March 1, 2022, DRB Meeting does not disclose that the DRB would or could grant an approval at the first Meeting on such an important project. The agenda description for this meeting was not sufficient, and there was no disclosure of the intended change in procedures in the minutes of any prior DRB meeting. As a result, the public had no way to know or to expect that such an approval would or could occur on March 1, 2022. In addition, the application materials included in the agenda were seriously deficient and contained no information on three of the four structures that were approved for demolition on March 1, 2022. As a result, the public record was incomplete and members of the public had not been properly informed when the DRB voted to demolish the four structures on March 1, 2022, in violation of the requirements of FOIA, as well as numerous violations of the Zoning Ordinance.

157. AMDC knew it had not followed the requirements of S.C. Code Section 31-10-10 *et seq.* from the inception of Project Pascalis. It knew it had not held a public hearing for either Plan One or the AECOM plan, as required by S.C. Code Section 31-10-100(d) and that the AECOM plan did not meet the requirements of S.C. Code Section 31-10-100(c). AMDC also knew Project Pascalis bore no resemblance to Plan One and therefore was not a redevelopment project in accordance with Plan One. Despite this, AMDC made misleading disclosures in its resolutions to acquire the Pascalis Properties and in its confusing statements that it was pursuing Project Pascalis at times in accordance with Plan One and at other times in accordance with the AECOM Plan. As a result, the AMDC’s public record with regard to Project Pascalis was and is incomplete and members of the public had not been properly informed at any of the public meetings of the AMDC.

158. From its inception in May 2020 to date, the AMDC somehow determined:

- To collaborate with the City to include a portion of Newberry Street in Project Pascalis.
- The features to be included in Project Pascalis.
- To pursue Project Pascalis, as configured in March 2021.
- To solicit approximately eight developers for Project Pascalis in May 2021.
- The content of materials to be distributed to such developers in and around May 2021.
- A process for evaluating and selecting a developer for Project Pascalis.
- To select WTC Investments, LLC, as a developer for Project Pascalis and enter into option agreements with WTC in March 2021.
- To select ACOC as a developer for Project Pascalis and enter into undisclosed option and reimbursement arrangements with ACOC in and around May 2021.
- To select RPM as a developer for Project Pascalis and enter into an undisclosed cost sharing arrangement with RPM, in and around November 2021.
- To collaborate with the City to arrange for the conveyance of a portion of Newberry Street to RPM.
- To change Project Pascalis to include two additional lots on Newberry Street as part of the conveyance of a portion of Newberry Street to RPM.
- To collaborate with the City and DRB to arrive at a process to approve an unprecedented form of COA for RPM, including granting separate

approvals for segments of Project Pascalis and accelerated approval of demolition of the Hotel Aiken and the three adjacent shop structures.

- To collaborate with the City to include the Old Municipal Building in Project Pascalis.
- To further change Project Pascalis to reduce its intrusion into Newberry Street.

The AMDC never voted on any of these and other actions that it took and none of these actions are recorded in the minutes of meetings of AMDC in that time period. Therefore, AMDC acted on these matters outside its public meetings in violation of the Freedom of Information Act, including but not limited to S.C. Code Section 30-4-60, which provides in part: "No action may be taken in executive session except to (a) adjourn or (b) return to public session," and (b) failed to keep accurate minutes of its meetings in violation of S.C. Code Section 30-4-90(a). Each of these instances is one or more violations of the FOIA.

Conflicts of Interest

159. Gary Smith, the City Attorney, participated in numerous meetings dealing with, and gave advice and numerous opinions regarding, matters related to Project Pascalis and matters related thereto after his law partner, Ray Massey, became and was an interested party in or before March 2021 by acquiring interests in Pascalis Project property and by representing WTC and RPM, and even though Mary Guynn, his law partner, owns a building on the Pascalis block and may represent other owners, investors and/or tenants in the Pascalis block; and

160. Mayor Rick Osbon participated in numerous meetings dealing with, and voted and gave advice and numerous opinions regarding, matters related to Project Pascalis, Project Renaissance and similar projects from and after the time he was elected Mayor, when he knew these projects would likely benefit him personally by causing harm to or the closing of Warneke Cleaners. Mayor Osbon is the owner of Osbon Cleaners in downtown Aiken. Warneke Cleaners is Mayor Osbon's nearest and only competitor in the Aiken downtown area and is located on lot 121-21-08-009 of Project Pascalis, which is to be demolished.

161. Members of the AMDC participated in discussions about and helped make decisions about Project Pascalis and other AMDC business and failed to disclose in the minutes of an AMDC meeting specifically why they recused themselves from one vote of the AMDC as required by S.C. Code Section 8-13-700(B).

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

162. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

163. S.C. Code Ann. § 15-53-30 provides that any person whose rights, status or other legal relations are affected by a contract, statute, or ordinance may have determined any question regarding construction or validity and obtain a declaration of rights, status, or other legal relations.

164. Plaintiffs seek a declaratory judgment pursuant to S.C. Code Ann. § 15-53-30 and Rule 57, SCRCPP, for the purposes of resolving one or more actual cases and controversies between and among the parties to this case.

165. These issues are ripe for this Court's determination because, among other things, Defendants have taken the actions described herein which violate numerous provisions of the statutes as set forth below.

166. The Defendants are all parties in interest, concerning the declaratory relief being sought, because they acted or failed to act according to law as described herein.

Community Development Law

(S.C. Code Ann. Sec. 31-10-10, et. seq.)

167. Plaintiffs seek an Order declaring that the following actions by the Defendants, particularly the AMDC, violate provisions of the Community Development Law in numerous respects, including but not limited to each of the following:

- a. Adopting, approving and implementing redevelopment plans improperly for multiple reasons, including but not limited to without a required public hearing, without complying with statutory criteria and including in a redevelopment area locations and property that are not blighted or in a conservation area.
- b. Adopting, approving and implementing redevelopment projects, including but not limited to Project Pascalis, improper for multiple reasons, including but not limited to not being pursuant to and consistent with a properly created redevelopment plan and not being located completely in areas that are blighted or a conservation area.
- c. Selecting improperly RPM and/or others as one or more redevelopers for one or more redevelopment projects, including the Pascalis Project, improperly for multiple reasons, including but not limited to by failing to publish a proper Request for Proposal to select the redeveloper and to provide all pertinent information about

the redevelopment projects for prospective redevelopers to consider, as required by S.C. Code § 31-10-110(c).

- d. Authorizing the AMDC to enter and entering into a Purchase and Sale Agreement with a potential developer for Project Pascalis without a properly authorized redevelopment plan and a proper process for selecting the developer.
- e. Approving raising and raising approximately \$10 million of bonds for AMDC to acquire properties for Project Pascalis when Project Pascalis has not been properly created and no redevelopment plan and no redeveloper had been properly created or selected regarding Project Pascalis.
- f. Approving the purchase of and purchasing for \$9.5 million and additional expenses, seven real estate lots on or around November 10, 2021, without a properly authorized redevelopment plan.
- g. Claiming in the resolutions to approve the purchase of real estate on or about November 10, 2021, that Project Pascalis was part of Plan One while knowing full well Project Pascalis bore no resemblance to Plan One.
- h. Incurring additional expenses, including cost-sharing development expenses, in connection with Project Pascalis and other projects without a properly authorized redevelopment plan and a properly selected developer.
- i. Publishing a false, misleading, improper, and *ex post facto* Request for Proposal advertisement for developers for Plan One when AMDC was pursuing Project Pascalis, not Plan One, and Project Pascalis bore no resemblance to Plan One; and when the advertisement was published long after the redeveloper for Project Pascalis already had been selected.

- j. Moving forward toward signing a Master Development Agreement with RPM when RPM has not been validly selected as a redeveloper.
- k. Having the AMDC pursue redevelopment projects at locations that are not blighted or in a conservation area.
- l. Entering into contracts and spending money with redevelopers and others secretly and in pursuit of purported redevelopment projects and redevelopments plans that are improper and invalid.
- m. Causing and allowing the AMDC to purchase or acquire the Pascalis Properties to implement Project Pascalis, in violation of, *inter alia*, S.C. Code Ann. § 31-10-100(b).
- n. Conveying or authorizing the conveyance of part or all of Newberry Street and of other properties to RPM; and
- o. Allowing five individuals to serve on and participate in making key decisions for the AMDC when they did not qualify to do so because either (a) they were not residents of the City of Aiken, or (b) they had financial interests that prohibited them from being commissioners of the AMDC pursuant to S.C. Code Ann. § 31-10-70.

South Carolina Local Government Comprehensive Planning Enabling Act of 1994

(S.C. Code Ann. Sec. 6-29-740 et. al.)

168. Plaintiffs seek an Order declaring that the actions by the Defendants referenced herein violate provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.

Town of Aiken's Ordinance, Regulations and Customs

169. Plaintiffs seek an Order declaring that the actions by the Defendants, especially the DRB, referenced herein violate ordinances, rules, regulations, and customs of the City of Aiken, including but not limited to by doing each of the following:
- a. Approving a fatally flawed and incomplete application for demolition of the Hotel Aiken and three adjacent Contributing Structures.
 - b. Granting the unprecedented and unauthorized form of a “conditional” COA.
 - c. Failing to request and evaluate significant material as specifically required by Zoning Ordinance Section 5.2.3(C).
 - d. Failing to evaluate and to comply with the overall mandates in Zoning Ordinance Sections 2.6, 5.2 and 5.3.
 - e. Failing to comply with the review standards in Zoning Ordinance Section 5.2.3(J).
 - f. Failing to develop preservation alternatives and to make determinations of demolition by neglect pursuant to Zoning Ordinance Section 5.2.4.
 - g. Failing to evaluate (1) the demolition impact and attributes and design of the structures proposed to replace the demolished structure and (2) the cumulative impact of the Pascalis Project as a whole, as required by Zoning Ordinance Sections 2.6, 5.2 and 5.3.
 - h. Failure to require compliance with the applicable guidelines and requirements of the Historic Preservation Overlay District and the Old Aiken Overlay District.
 - i. Failure to preserve the qualities, areas, sites, structures, and natural and man-made objects relating to the history of the City of Aiken, as well as that of Aiken County,

the State of South Carolina, and the United States of America, as required by Zoning Ordinance Section 2.6.1.

- j. Failing to properly consider specified standards for the purpose of determining whether proposed alterations, construction, demolitions, or relocations are in harmony with the prevailing historical, architectural, archeological, or aesthetic character of the Historic District, a structure in a Historic District, or an Historic Site, or a structure included in an Historic Site, as required by Aiken Ord. 04142003A) and Zoning Ordinance Section 5.2.3(J).
- k. Failing to properly address Construction and Alteration as stated in Zoning Ordinance Section 5.2.3(J)(2).
- l. Failing to properly address or consider Zoning Ordinance Section 5.2.3(J)'s requirement that "In reviewing an application for demolition, the Board and the Planning Director shall consider the historical, archeological, and aesthetic character of the structure (or portion thereof) proposed for demolition;"
- m. Failing to properly address or consider, as required by Zoning Ordinance Section 5.2.3(J), "(1) the structural integrity (i.e., condition) of the structure and (2) the integrity of materials, location, and design of the structure.
- n. Failing to properly address or consider the following required by Zoning Ordinance Section 5.2.3(J): "No application for demolition shall be approved solely on the basis of a structure's deteriorated condition where the Board determines that the applicant is primarily responsible for the deteriorated condition. Finally, the Board shall consider the extent to which demolition would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property affected

or upon the surrounding properties, or upon the district in which the structure is located. No application for demolition of a Landmark shall be approved;”

- o. Failing to comply with Zoning Ordinance Section 5.2.4’s requirement that “Within any period of postponement, the Board shall endeavor to ascertain what may be done to preserve the structure or landmark. Such steps shall include, but are not limited to, consultation with civic groups, interested citizens, public interest groups, and public boards and agencies” (Emphasis added.).
- p. Failing to properly consider, as required by Zoning Ordinance Section 5.2.4(A)(3), whether the structures sought to be demolished contribute to the character of the Aiken Historic District or that the landmark is of historical, archeological, or architectural significance or that, for any other reason, preservation in the public interest is warranted.
- q. Allowing individuals to serve on the DRB and the AMDC who were not qualified to serve in those positions because they were not residents of the City of Aiken.
- r. Dismissing DRB member Lucy Knowles from the DRB in retaliation for voting against demolition of the Hotel Aiken and related structures; and
- s. Replacing DRB member Lucy Knowles on the DRB with Laura Blessing Thomas who was not qualified to serve on the DRB because she was not a resident of the City of Aiken, in violation of Zoning Ordinance Section 7.1.7(D).

FOR A SECOND CAUSE OF ACTION

(Permanent Injunction and Other Equitable/Injunctive Relief)

170. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated

herein.

171. Based on the aforementioned declarations, Plaintiffs respectfully seek a Permanent Injunction enjoining, restraining, and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

- a. Implementing in any way, including paying, directly or indirectly, any money regarding, Project Pascalis until and unless Project Pascalis becomes a valid redevelopment project pursuant to a valid redevelopment plan.
- b. Violating the South Carolina Community Development Law.
- c. Violating the South Carolina Government Comprehensive Planning Enabling Act of 1994.
- d. Violating the South Carolina Freedom of Information Act.
- e. Violating zoning, procurement and other ordinances, rules, regulations, and customs of the City of Aiken applicable to development; and
- f. Any and all other such acts as this Court deems appropriate for injunctive relief.

FOR A THIRD CAUSE OF ACTION

(Violation of the S.C. Freedom of Information Act)

172. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

173. By their actions referenced herein the Defendants have violated, and continue to violate, sometimes willfully and knowingly, provisions of S.C. Code Ann. § 30-4-10 et seq., in numerous respects, including but not limited to the following:

- a. Giving no notice or inadequate notice of meetings of public bodies.

- b. Excessive and unjustified use of executive sessions.
 - c. Failing to provide minutes of meetings within a reasonable time.
 - d. Failing without justification to produce documents for inspection and copies of documents.
 - e. Denying public access to meetings, meeting minutes and meeting agendas.
 - f. Failing to respond within 15 working days, or at all, to FOIA requests; and
 - g. Failing to create and keep documents and records, including agendas for, and minutes of, meetings and resolutions, which are accurate, complete, and not misleading.
174. The Plaintiffs are entitled to declaratory and injunctive relief pursuant to S.C. Code Ann. § 30-4-100 (A) declaring that such conduct by the Defendants as stated violated the Freedom of Information Act and enjoining any such further conduct. Further under S.C. Code Ann. § 30-4-100 (B), Plaintiffs are entitled to an award of attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION

(Attorneys' Fees Pursuant to the State Action Statute)

175. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated herein.
176. Plaintiffs in this case are contesting multiple instances of wrongdoing by the Defendant local governmental entities.
177. Should this Court grant all, or some, of the declaratory and other relief requested

herein, Plaintiffs respectfully request this Court deem Plaintiffs the “prevailing party” and award attorneys’ fees and costs under S.C. Code Ann. § 15-77-300.

RELIEF REQUEST

WHEREFORE, Plaintiffs prays for this Honorable Court to grant the declaratory, injunctive, and other relief requested herein; grant attorneys’ fees and costs pursuant to S.C. Code Ann. § 15-77-300 and S.C. Code Ann. § 30-4-100 (B); and grant such other, further, or different relief as may be deemed just and proper.

Respectfully submitted,

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COUNSEL FOR PLAINTIFFS

February 17, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
	)	CASE NO. 2023-CP-02-01489
David W. Blake, Luis E. Rinaldini,	)	
Dudley Richard Dewar, Jenne Stoker,	)	
Beatrice B. McGhee, Gail King,	)	
Historic Aiken Foundation, Inc.,	)	
Preservation Foundation of Aiken, and	)	
South Carolina Public Interest Foundation,	)	SECOND AMENDED COMPLAINT
	)	
Plaintiffs,	)	(Declaratory Judgment)
	)	
vs.	)	<i>Nonjury</i>
	)	
City of Aiken; Aiken Municipal	)	
Development Commission; Aiken Design	)	
Review Board; Gary Smith;	)	
	)	
	)	
Defendants.	)	
	)	
	)	

Each of the above-named Plaintiffs brings the following actions seeking declaratory, injunctive, and legal relief. For their complaint, the Plaintiffs state as follows:

PRELIMINARY STATEMENT

1. This is a civil action for declaratory and injunctive relief brought for violations and threatened violations of, and to enforce the requirements of, several statutes and ordinances including the South Carolina Community Development Law, S.C. Code Ann. § 311010 *et. seq.*; the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 629310 *et. seq.*; the South Carolina Freedom of Information Act,

S.C. Code Ann. § 30-4-10 *et seq.* (“FOIA”); the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; and the City of Aiken Code of Ordinances.

2. This action is brought by the Plaintiffs as individuals, or in their representative capacities, and as organizations on behalf of their members residing within the City of Aiken (“City” or “Aiken”), to (1) obtain a declaration from the Court that certain actions of the City and certain municipal bodies are ultra vires, null and void ab initio, and incapable of being implemented, in whole or in part; (2) obtain from the Court injunctions preventing the continued implementation of those ultra vires acts; and (3) otherwise remedy certain violations of various state and city protected regulatory and statutory rights afforded to each of the Plaintiffs in this action by statutes of the State of South Carolina; and by the ordinances, rules, regulations and customs of the City of Aiken, South Carolina, and its affiliate entities. This lawsuit is based in part on purported contractual agreements between and among the Defendants which are invalid and void ab initio.
3. This Court has jurisdiction over this subject matter and the parties to this action and venue is proper in this court. This Court possesses jurisdiction under the South Carolina Constitution Articles I, VIII and X, §§ 5 and 11; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; and the following decisions: *American Petroleum Institute v. S.C. Dep’t of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C.

431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

PARTIES

The Plaintiffs and Standing

4. David W. Blake (“Blake”) is a resident in and a taxpayer of the City of Aiken, South Carolina. Blake has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Blake that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of his property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. Blake has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on his behalf and on behalf of all others similarly situated.
5. Luis E. Rinaldini (“Rinaldini”) is a resident and a taxpayer of the City of Aiken. Rinaldini has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Rinaldini that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in

value of his property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. Rinaldini has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on his behalf and on behalf of all others similarly situated.

6. Dudley Richard Dewar (“Dewar”) is a resident and a taxpayer of the City of Aiken. Dewar has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Dewar that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of his property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. Dewar has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on his behalf and on behalf of all others similarly situated.
7. Jenne Stoker (“Stoker”) is a resident and a taxpayer of the City of Aiken. Stoker has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Stoker that have been caused and that will continue to be caused by the actions of the

Defendants described herein, including but not limited to the reduction in value of her property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. McGhee has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on her behalf and on behalf of all others similarly situated.

8. Beatrice B. McGhee (“McGhee”) is a resident and a taxpayer of the City of Aiken. McGhee has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to McGhee that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of her property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. McGhee has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on her behalf and on behalf of all others similarly situated.
9. Gail King (“King”) is a resident and a taxpayer of the City of Aiken. King has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to King

that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of her property due to increased traffic and noise, the obstruction of views, the closure of public roads, the disruption of the unique historic Aiken downtown street grid, the demolition of historic structures, the construction of structures that are too tall or too large and do not harmonize with, or comply with the requirements applicable to, the zoning overlay district in which they are built and other impairments to the use and enjoyment of their property and of public property within the City. King has paid and will continue to pay taxes that fund the City of Aiken and brings this action individually on her behalf and on behalf of all others similarly situated.

10. The Historic Aiken Foundation, Inc. (“HAF”) is a South Carolina nonprofit corporation incorporated in 1973 and is a 501(c)(3) federally tax-exempt organization. The purpose of the HAF is to encourage the protection, preservation, and appreciation of the architectural heritage of Aiken, South Carolina. In pursuit of this purpose, the HAF acts as an advocate for structures of historical and architectural significance, and for the integrity of neighborhoods and the aesthetic appeal of the city. The HAF is suing as a representative of its members who reside in and are citizens, qualified electors, and taxpayers in the City of Aiken, South Carolina. The HAF brings this action on behalf of its members and on behalf of all others similarly situated.
11. On January 23, 2023, the Preservation Foundation of Aiken (“PFA”) became the new name of the former Green Boundary Foundation (GBF). PFA, as the successor to GBF, is a South Carolina nonprofit corporation formed in 1999 whose purpose is to preserve the historic facade and grounds of the Green Boundary in the City of Aiken as well as to

promote the history of the City of Aiken and its significant architecture. The PFA is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in the City of Aiken, South Carolina. The PFA brings this action on behalf of its members and on behalf of all others similarly situated.

12. The South Carolina Public Interest Foundation (“SCPIF”) is a South Carolina nonprofit corporation dedicated to the public interest, including the upholding and proper application of the Constitution and other laws of the State of South Carolina. The SCPIF brings this action on behalf of its members and on behalf of all others similarly situated.
13. Plaintiffs have constitutional, statutory, and public importance standing based on the provisions of the various statutes referenced, the Plaintiffs’ status as taxpayers and fee payers who have contributed to the funds at issue, and because of the great public importance of the issues that this civil action raises and that are capable of being repeated.
14. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this complaint, the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public. Each individual Plaintiff and the members of the organization Plaintiffs have suffered an invasion of a legally protected interest that is concrete and particularized, and actual and imminent. There is a causal connection between the injury and the conduct complained of herein, and it is likely that the injury will be redressed by a favorable decision of this court.

15. Each of the above-described Plaintiffs alleging public importance standing has an overriding public purpose or concern as the basis for his, her or its suit on behalf of fellow citizens and taxpayers regarding the proper use and allocation of tax receipts, public properties and historic properties by the City and its civic bodies, named as Defendants in this action. These questions are of such substantial public importance as to warrant a resolution by the Court needed for future guidance, as the public interest involved is the prevention of the unlawful expenditure of money raised by taxation, the unlawful closure of public roads, the unlawful sale or conveyance of public properties and the unlawful demolition of historic properties within the City. Each individual Plaintiff has a real, material, and substantial interest in whether the City and its civic bodies followed the requirements and procedures set out in the state constitution, state enabling statutes and City ordinances, procedures, rules, guidelines, and customs specifically designed to ensure wise management of the public fisc.
16. Each organizational Plaintiff HAF, PFA and SCPIF has associational standing based on the individualized injuries that have been or will be suffered by its members as a result of the actions of the Defendants described in this Complaint. Members of these organizations would otherwise have standing to sue in their own right. The interests at stake in this case are germane to each organization's purpose. Neither the claims the organizations assert, nor the relief they request, requires the participation of the individual members of those organizations in this action.
17. Each of the Plaintiffs, whether alleging public importance standing, constitutional or statutory standing or the associational standing of the organization Plaintiffs, has suffered

an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

The Defendants, their Official Capacities, and

Color of State Law

18. The City of Aiken (“City” or “Aiken”) is a South Carolina municipal corporation located in Aiken County, South Carolina.
19. The Aiken Municipal Development Commission (“Commission” or “AMDC”) is a public body and a body corporate and politic purportedly created and organized by the City of Aiken pursuant to the South Carolina Community Development Act, S.C. Code Ann. § 311010 *et. seq.* The members of the AMDC are appointed and removed by the City; serve on the AMDC as fiduciaries of the City of Aiken and its citizens; and are prohibited from conflicts of interest while serving and performing duties as a member of the AMDC.
20. The Aiken Design Review Board (“DRB”) is an organization created in 1990 by Section 7.1.7 of the City of Aiken Zoning Code, as provided in S.C. Code 1976, § 6-29-870 *et seq.* The members of the DRB are appointed and removed by the City; serve on the DRB as fiduciaries of the City of Aiken and its citizens; and are prohibited from conflicts of interest while serving and performing duties as a member of the DRB.
21. Gary Smith (“Smith”) served, at all times pertinent to this lawsuit, as the City of Aiken’s designated attorney and repeatedly advised the City, the AMDC and the DRB about redevelopment projects and matters that are subjects of this lawsuit and in which Ray Massey and Mary Guynn, Smith’s law partners, have and have had financial interests undisclosed to the public.

STATUTORY AND REGULATORY FRAMEWORK

22. The creation, regulation, financing, and implementation of redevelopment by a municipal corporation of the State of South Carolina, including but not limited to the Defendant City of Aiken, is governed by the requirements of the United States and the South Carolina Constitutions; State of South Carolina statutes; and the rules, regulations, and customs of the municipality.

SOUTH CAROLINA STATUTES

COMMUNITY DEVELOPMENT LAW

23. S.C. Code Ann. § 31-10-20 states in part as follows:

“Definitions.

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(2) "Blighted area" means any improved or vacant area where if improved, industrial, commercial, and residential buildings or improvements, because of a combination of five or more of the following factors: age; dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light, or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; lack of community planning, are detrimental to the public safety, health, morals, or welfare or, if vacant, the sound growth is impaired by (a) a combination of two or more of the following factors: obsolete platting of the vacant land; diversity of ownership of such land; tax and special assessment delinquencies on such land; deterioration of structures or site improvements

in neighboring areas adjacent to the vacant land; or (b) the area immediately prior to becoming vacant qualified as a blighted area.

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(4) "Commission" means a public body and a body corporate and politic created and organized in accordance with the provisions of this chapter.

(5) "Conservation area" means any improved area that is not yet a blighted area but, because of a combination of three or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light, or sanitary facilities; inadequate utilities; excessive land coverage; depreciation of physical maintenance; or lack of community planning, is detrimental to the public safety, health, morals, or welfare and may become a blighted area.

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(8) "Municipality" means any incorporated city or town or any county.

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(11) "Redeveloper" means any individual, partnership, or public or private corporation that shall enter or **propose** to enter into a contract with a commission for the redevelopment of all or any part of a redevelopment area under the provisions of this chapter.

(12) "Redevelopment" means the acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational,

commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this chapter with respect to the area for which such program is undertaken.

(13) "Redevelopment area" means any area that a commission may find to be a blighted area, a conservation area, or any combination thereof, so as to require redevelopment under the provisions of this chapter.

(14) "Redevelopment contract" means a contract between a commission and a redeveloper for redevelopment under the provisions of this chapter.

(15) "Redevelopment plan" means a plan for the redevelopment of a redevelopment area made by a commission in accordance with the provisions of this chapter.

(16) "Redevelopment project" means any work or undertaking:

(a) to acquire blighted or conservation areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;

(b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements

essential to the preparation of sites for uses in accordance with the redevelopment plan;

(c) to sell land in such areas for residential, recreational, commercial, industrial, or other use or for the public use to the highest bidder set out by the provisions of this chapter or to retain such land for public use, in accordance with the redevelopment plan;

(d) to carry out plans for a program of repair, rehabilitation, or reconditioning of buildings or other improvements in such areas, including the making of loans; and

(e) to engage in programs of assistance and financing, including the making of loans for rehabilitation, repair, construction, acquisition, or reconditioning of residential units in a redevelopment area.

The term "redevelopment project" may also include the **preparation of a redevelopment plan**, including the planning, survey and other work incident to a redevelopment project, and the **preparation of all plans and arrangements** for carrying out a redevelopment project.” (Emphasis added.)

24. S.C. Code Ann. § 31-10-30 (a) states in part as follows:

“Each municipality is authorized to create . . . a redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance creating a commission to function within the territorial limits of the municipality or portion of the municipality” (Emphasis added.)

25. S.C. Code Ann. § 31-10-70 states in part as follows:

“No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, nor shall the member have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project . . .”

26. S.C. Code Ann. § 31-10-90 states in part as follows:

“A commission shall constitute a **public body**, corporate and politic, exercising public and essential governmental powers . . . including . . .

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(4) to prepare or cause to be prepared and recommend redevelopment plans to the governing body of its parent municipality and to undertake and carry out redevelopment projects within its area of operation;

(5) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with a redevelopment project;

(6) within its area of operation, to purchase . . . any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property, and **with the approval of the**

governing body of its parent municipality sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single redeveloper or in parts to several redevelopers; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the commission, with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property . . . in accordance with the redevelopment plan . . .; and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds and provide security for bonds; . . . and to enter into any contracts necessary to effectuate the purposes of this chapter;

. . . .

(14) to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice chairman and secretary or assistant secretary of the commission shall be held to have been properly executed for and on its behalf;” (Emphasis added.)

27. S.C. Code Ann. § 31-10-100 states in part as follows:

“Contents of redevelopment plan; **public hearing prior to adoption of plan**; approval by governing body or parent municipality; modification.

(a) A redevelopment plan must be **sufficiently complete** to **indicate its relationship to definite local objectives** such as appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area.

(b) A **commission shall not acquire real property for a development project unless the governing body of its parent municipality has approved the redevelopment plan as hereinafter prescribed.**

(c) The commission's redevelopment plan shall include, without being limited to, the following:

(1) the boundaries of the redevelopment area, with a map showing the existing uses of the real property therein;

(2) a land use plan of the redevelopment area showing proposed uses following redevelopment;

(3) standards of population densities, land coverage, and building intensities in the proposed redevelopment;

(4) a preliminary site plan of the redevelopment area;

(5) a statement of the proposed changes, if any, in zoning ordinances or maps;

(6) a statement of any proposed changes in street layouts or street levels;

(7) a statement of the estimated cost and method of financing redevelopment under the redevelopment plan;

(8) a statement of such continuing controls as may be deemed necessary to effectuate the purposes of this chapter; and

(9) a statement of a feasible method proposed for the relocation of the families displaced.

(d) **The commission shall hold a public hearing prior to its final adoption of a redevelopment plan. Notice of such hearing shall be given fifteen days prior thereto in a newspaper of general circulation in the municipality.**

(e) The commission shall submit to the governing body the redevelopment plan. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall utilize the local private planning, financing, and financial services to the greatest extent possible and shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the community and its environs, that will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and

other public utilities, schools, parks, recreational, and community facilities, and other public requirements, the promotion of sound design and arrangements, the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, slums, or conditions of blight.

(f) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(g) Upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the redevelopment plan, in accordance with the provisions of this chapter.

(h) A redevelopment plan may be modified at any time by the commission; provided, that if modified after the sale of real property in the redevelopment area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the commission determines that the proposed modification will substantially change the redevelopment plan as previously approved by the governing body, the modification must similarly be approved by the governing body as provided above.” (Emphasis added.)

28. S.C. Code Ann. § 31-10-110 states in part as follows:

“Contracting by commission for certain services; advertisement for bids from persons interested in purchasing or redeveloping property; commission’s real estate transactions under redevelopment plan.

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(b) A commission may sell, exchange, or otherwise transfer real property or any interest therein in a redevelopment area to any . . . in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this chapter; provided, that such sale, exchange, or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the municipality and after public notice and award as specified in subsection (c) of this section.

(c) The commission shall, by public notice, publish once a week for two consecutive weeks in a newspaper having general circulation in the municipality, invite proposals and shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof. . . . After receipt of all proposals, the sale shall be made to the developer submitting the plan for use of the property that best effectuates the purposes of the redevelopment plan set forth in subsection (e) of this section. All proposals may be rejected. All sales shall be subject to the approval of the governing body of the municipality. . . .

(d) In carrying out a redevelopment project, the commission may:

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(4) after a public hearing advertised in accordance with the provisions of subsection (d) of Section 31-10-100 and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. . . . All conveyances made under the authority of this subsection shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made;

(e) after receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a redeveloper may contain, without being limited to, any or all of the following provisions:

- (1) plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure, and general character of the proposed redevelopment;
- (2) a statement of the use intended for each part of the proposed redevelopment;
- (3) the amount, if known, of the consideration to be paid;
- (4) adequate safeguards for proper maintenance of all parts of the proposed redevelopment; and
- (5) such other continuing controls as may be deemed necessary to effectuate the purposes of this chapter.” (Emphasis added.)

29. S.C. Code Ann. § 31-10-160 states in part as follows:

“Availability of commission's books, records, bylaws, rules, and regulations for public inspection; annual report of commission's activities.

(a) The **books and records of a commission are at all times open and subject to inspection by the public.**

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, must be filed with the commission and be open for public inspection.

(c) At least **once each year a report of its activities for the preceding year** and such other reports as may be required by the municipality shall be made.” (Emphasis added.)

SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE PLANNING

ENABLING ACT OF 1994

Local Planning Commission

30. S.C. Code Ann. § 6-29-310 states in part that a “local planning commission” means a municipal planning commission . . .”

31. S.C. Code Ann. § 6-29-340(B) states in part as follows:

“Functions, powers, and duties of local planning commissions.

[T]he local planning commission has the . . . duty to:

(1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter;

(2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:

(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;

(b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;

(c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within

the -rights-of-way-, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;

(d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;

(e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and

(f) policies or procedures to facilitate implementation of planning elements.” (Emphasis added.)

32. S.C. Code Ann. § 6-29-340(B) states in part as follows:

“Planning process; elements; comprehensive plan.

(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual reevaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.

(B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(C) The basic planning process for all planning elements must include, but not be limited to:

- (1) inventory of existing conditions;
- (2) a statement of needs and goals; and
- (3) implementation strategies with time frames.

(D) A local comprehensive plan must include, but not be limited to, the following planning elements:

- (1) a population element . . .;
- (2) an economic development element . . .;
- (3) a natural resources element . . .;
- (4) a cultural resources element . . .;
- (5) a community facilities element . . .;
- (6) a housing element . . .;
- (7) a land use element . . .;
- (8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;
- (9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds

during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. . .

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years.” (Emphasis added.)

33. S.C. Code Ann. § 6-29-520 states in part as follows:

“ . . . [N]otice of meetings; recommendations by resolution;
transmittal of recommended plan.

. . . .

(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by

the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan.” (Emphasis added.)

34. S.C. Code Ann. § 6-29-530 states in part as follows:

“Adoption of plan or elements; public hearing.

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction.” (Emphasis added.)

35. S.C. Code Ann. § 6-29-540 states in part as follows:

“Review of proposals following adoption of plan; projects in conflict with plan . . .

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.

In the event the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community at least thirty days prior to awarding a contract or beginning construction. . . .” (Emphasis added.)

36. S.C. Code Ann. § 6-29-720 states in part as follows:

“(A) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts Within each district the governing body may regulate: . . .

(B) The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter.” (Emphasis added.)

37. S.C. Code Ann. § 6-29-760 states in part as follows:

“Procedure for enactment or amendment of zoning regulation or map; notice and rights of landowners

(A) Before enacting or amending any zoning regulations or maps, the governing authority, or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings,

notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of

the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission.” (Emphasis added.)

Aiken Design Review Board

38. S.C. Code Ann. § 6-29-870 states in part as follows:

“Board of architectural review; . . .

(A) A local government which enacts a zoning ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods . . . by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board of architectural review . . .

(B) The board shall consist of not more than ten members . . . The governing authority . . . creating the board may remove any member of the board which it has appointed.

. . . .

(D) The board shall . . . adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter. . . . The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which

immediately must be filed in the office of the board and must be a public record.” (Emphasis added.)

39. S.C. Code Ann. § 6-29-880 states in part as follows:

“Powers of board of architectural review.

The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. Decisions of the zoning administrator or other appropriate administrative official in matters under the purview of the board of architectural review may be appealed to the board where there is an alleged error in any order, requirement, determination, or decision.”

40. S.C. Code Ann. § 6-29-1120 states in part as follows:

“The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties, or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

(4) to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes; and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.”

41. S.C. Code Ann. § 6-29-1130 states in part as follows:

“Regulations.

(A) [T]he local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the harmonious development of the municipality and the county; for coordination of streets within subdivision and other types of land developments with other existing or planned streets or official map streets; . . . In particular, the regulations shall prescribe that no land development plan . . . will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare.

(B) . . . The governing authority of the municipality [is] given the power to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county.” (Emphasis added.)

42. S.C. Code Ann. § 6-29-1150 states in part as follows:

“Submission of plan or plat to planning commission; record . . .

(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans . . . with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty-day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans . . . with the **grounds for approval or disapproval and any conditions** attached to the action must be maintained as a public record. . . .” (Emphasis added.)

**SOUTH CAROLINA ETHICS, GOVERNMENT
ACCOUNTABILITY AND CAMPAIGN REFORM**

43. S.C. Code Ann. § 8-13-700 states in part as follows:

SECTION 8-13-700. Use of official position or office for financial gain; disclosure of potential conflict of interest.

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

(2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

(5) if he is a public member, he shall furnish a copy to the presiding officer of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

SOUTH CAROLINA FREEDOM OF INFORMATION ACT

44. S.C. Code Ann. § 30-4-20 states in part as follows:

“Definitions. (a) “Public body” means any . . . organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known . . .” (Emphasis added.)

45. S.C. Code Ann. § 30-4-20 states in part as follows: “Meetings of public bodies shall be open. Every meeting of all public bodies shall be open to the public . . .” (Emphasis added.)

46. S.C. Code Ann. § 30-4-55 states in part as follows:

“Disclosure of fiscal impact on public bodies offering economic incentives to business; cost benefit analysis required.

A public body as defined by Section 30-4-20(a), or a person or entity employed by or authorized to act for or on behalf of a public body, that undertakes to attract business or industry to invest or locate in South

Carolina by offering incentives that require the expenditure of public funds or the transfer of anything of value or that reduce the rate or alter the method of taxation of the business or industry or that otherwise impact the offeror fiscally, must disclose, upon request, the fiscal impact of the offer on the public body and a governmental entity affected by the offer after:

- (a) the offered incentive or expenditure is accepted, and
- (b) the project has been announced or any incentive agreement has been finalized, whichever occurs later.

The fiscal impact disclosure must include a cost benefit analysis that compares the anticipated public cost of the commitments with the anticipated- public benefits. . . .” (Emphasis added.)

47. S.C. Code Ann. § 30-4-70 states in part as follows:

“Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly. (a) A public body may hold a meeting closed to the public for one or more of the following reasons:

. . . .

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property . . .

. . . .

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a **description of the matter to be discussed** . . . No action may be taken in executive session except to (a) adjourn or (b) return to public session. **The members of a public body may not commit the public body to a course of action by a polling of members in executive session.**

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." (Emphasis added.)

48. S.C. Code Ann. § 30-4-80 states in part as follows:

"Notice of meetings of public bodies.

(a) All public bodies . . . must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty four hours before the

meeting. The notice must include the agenda, date, time, and place of the meeting. . . .

. . . .

(c) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(e) All public bodies shall **notify** persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings. (Emphasis added.)

49. S.C. Code Ann. § 30-4-90 states in part as follows:

“Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, **discussed** or decided and, at the request of any member, a record, by an individual member, of any votes taken.

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting . . .”

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction . . .” (Emphasis added.)

50. S.C. Code Ann. § 30-4-100 states in part as follows:

“Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.”

51. S.C. Code Ann. § 30-4-100 states in part as follows:

“Penalties.

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.”

AIKEN ZONING ORDINANCE

52. Section 2.6.1 of the City of Aiken Zoning Ordinance (“Zoning Ordinance”), which relates to the Historic Preservation Overlay District provides, in part “**It is essential that** the qualities, areas, sites, structures, and natural and man-made objects relating to the history of the City of Aiken, as well as that of Aiken County, the State of South Carolina, and the United States of America, **be preserved.**” (Emphasis added.)
53. Section 5.2.1 of the Zoning Ordinance provides that “Any property or structure listed on the Aiken Historic Register shall be subject to this Article” (i.e., subject to the Historic Preservation Overlay District).
54. Section 5.2.3(C) of the Zoning Ordinance requires that “Applications for a Certificate [of Appropriateness] **shall be accompanied by the following** unless waived by the Secretary or otherwise specified on the application form provided by the Board:
 - a. Drawings, including plans and exterior elevations, drawn to scale, with sufficient detail to show the exterior architectural design of the structure.
 - b. Specifications or other information describing proposed materials and textures; samples of materials may be required by the Board.

- c. Plot plan or site layout showing all existing structures and any improvements affecting appearances such as walls, walks, terraces, accessory buildings, signs, lights, plantings, and other elements.
 - d. Photographs of the site location, showing contiguous properties and streetscapes.
 - e. All other information requested by the Board.” (Emphasis added.)
55. Section 5.2.3(J) of the Zoning Ordinance pertains to Review Standards for the Historic Preservation Overlay District and states in subsection (1):
- “General. In reviewing applications, the Board and the Planning Director shall consider the standards stated in this Chapter for the purpose of determining whether alterations, construction, demolitions, or relocations are in harmony with the prevailing historical, architectural, archeological, or aesthetic character of the Historic District, a structure in a Historic District, or an Historic Site, or a structure included in an Historic Site. (Ord. 04142003A).”
56. Section 5.2.3(J) of the Zoning Ordinance states, in part, in subsection (3): “Demolition. In reviewing an application for demolition, the Board and the Planning Director shall consider the historical, archeological, and aesthetic character of the structure (or portion thereof) proposed for demolition.”
57. Section 5.2.3(J) of the Zoning Ordinance states further in subsection (3): “They shall also consider: (1) the structural integrity (i.e., condition) of the structure and (2) the integrity of materials, location, and design of the structure.”
58. Section 5.2.3(J) of the Zoning Ordinance states, further in subsection (3):

“No application for demolition shall be approved solely on the basis of a structure's deteriorated condition where the Board determines that the applicant is primarily responsible for the deteriorated condition. Finally, the Board shall consider the extent to which demolition would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property affected or upon the surrounding properties, or upon the district in which the structure is located. No application for demolition of a Landmark shall be approved.”

59. Section 5.2.4 of the Zoning Ordinance pertains to Demolition or Relocation and states, in part, in subsection (A)(2):

“The Board may delay the granting of the Certificate for a period of up to 60 days from the time of the filing of the application. The Board may extend this postponement for another 180 days after a public hearing and finding by the Board that the structure or landmark is of historical, architectural, or archeological importance to the public or City of Aiken.”

60. Section 5.2.4 of the Zoning Ordinance states further in subsection (A)(2): “Within any period of postponement, the Board shall endeavor to ascertain **what may be done to preserve the structure or landmark**. Such steps shall **include, but are not limited to, consultation with civic groups, interested citizens, public interest groups, and public boards and agencies.**” (Emphasis added.)

61. Section 5.2.4 of the Zoning Ordinance states in subsection (A)(3):

“After the postponement period has ended and the Board has been **unable to determine a reasonable alternative to demolition** or relocation, the Certificate shall be granted after a public hearing, with the notice required by 5.2.3.D being

given. However, if the Board finds that the structure contributes to the character of the Historic District or that the landmark is of historical, archeological, or architectural significance or that, for any other reason, **preservation in the public interest is warranted, the application shall be denied.** In the event of such denial, the owner may apply for an exception under 5.1.3.” (Emphasis added).

62. Section 5.2.4(B) of the Zoning Ordinance states, in part, in subsection (1):

“Prevention of Demolition by Neglect of Exterior. No owner or person with an interest in real property which is designated an Historic Site (Ord. 04142003A) in any part of the City or any property in an Historic District, whether that property is occupied or not, shall permit the structure or property to fall into a serious state of disrepair or to remain in a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property, or, if the structure or property is in an Historic District, upon the district.”

Section 5.2.4(B)(2) imposes a similar duty to prevent demolition by neglect of the interior of a Historic Site.

GENERAL FACTUAL ALLEGATIONS

Redevelopment Plans for Redevelopment Projects in Redevelopment Area of AMDC

63. The Hotel Aiken dominates the northern half of the block in downtown Aiken bounded by Laurens Street, Richland Avenue, Newberry Street and Park Avenue (the “Pascal Block”). The Pascal Block is the most prominent block in the City and the Hotel Aiken is the most prominent structure on that block.

64. In December 2017, Neel Shah (“Shah”), then the owner of the Hotel Aiken, announced the renovation of the Aiken Hotel with the addition of a new three-story wing at its eastern end. To help finance that renovation with tax credits, Shah arranged for the Hotel Aiken to be listed, on March 26, 2018, as a “Contributing Structure” in a Historic Site on the Aiken Historic Register.
65. The Pascalis Block is in, and subject to the requirements of, the Old Aiken Overlay District, as defined in the Zoning Ordinance. Section 5.2.1 of the Zoning Ordinance provides that “[a]ny property or structure listed on the Aiken Historic Register shall be subject to this Article” (i.e., subject to the Historic Preservation Overlay District). Because the Hotel Aiken is listed in the Aiken Historic Register as a Contributing Structure on a Historic Site, the Hotel Aiken is subject to the requirements of the Historic Preservation Overlay District as well as the requirements of the Old Aiken Overlay District.
66. The Aiken City Council (“Council”) created the Aiken Municipal Development Commission (“AMDC”) in August 2019, pursuant to S.C. Code Section 31-10-10 *et seq.* AMDC held its first meeting in May 2020. The AMDC is allowed to pursue “redevelopment” and “redevelopment projects” only within “blighted” or “conservation” “redevelopment areas” and in accordance with “redevelopment plans” and “redevelopment contracts,” all as defined in S.C. Code Section 31-10-20.
67. The AMDC purported to create two different Redevelopment Plans pursuant to S.C. Code Section 31-10-100 *et seq.*, but in each case failed to do so correctly as required by law. Those purported redevelopment plans were Redevelopment Plan One for Downtown Aiken (“Plan One”) and the AECOM Strategic Economic Development Action Plan (“AECOM Plan”).

68. Plan One is not a valid Redevelopment Plan because, *inter alia*, the AMDC did not hold a public hearing regarding Plan One, as required. The AECOM Plan is a generic economic development master plan and is not a valid redevelopment plan because it does not meet, and was not designed or intended to meet, the requirements of Section 31-10-10 *et seq.* Among other things, the AECOM Plan does not contain the words "blight" or "conservation area" and was commissioned by and prepared for the City and not by or for AMDC. In addition, AMDC did not hold a valid public hearing on the AECOM Plan, as required. AMDC has made confusing references to the Plan One and AECOM Plan in connection with Project Pascalis, saying sometimes Project Pascalis was part of Plan One and at other times it was part of the AECOM Plan. The only mention in the AMDC minutes authorizing Project Pascalis as a "Redevelopment Project" pursuant to S.C. Code Section 31-10-10 *et seq.* appears in a resolution dated November 8, 2021, that says Project Pascalis is being pursued within the "Redevelopment Area" of Plan One.
69. In July 2020, the AMDC adopted Plan One which describes ideas for possible redevelopment projects to redevelop the most northern portions of the Pascalis Block and the block immediately to its east. Plan One included nine specific lots (five on the Pascalis Block and four on the adjacent lot). Plan One provided in part for renovation of the existing Hotel Aiken and that there "are no changes proposed in street layout or level of service." Plan One was approved by Aiken City Council in August 2020. Neither the City nor the AMDC has ever officially voted to designate, or referred to, a specific project as a "redevelopment project" pursuant to S.C. Code Section 31-10-20(16), in accordance with Plan One, the AECOM Plan or any other plan. In time, the City undertook redevelopment of the lots adjacent to the Pascalis Block, and AMDC's role was reduced to redeveloping

the five lots on the Pascalis Block. There is nothing in any minutes of the AMDC showing a vote to authorize anything as a "redevelopment project" pursuant to S.C. Code Section 31-10-20(16)," let alone "in accordance with Plan One" or "in accordance with the AECOM Plan." On November 9, 2020, the AMDC voted to approve resolutions that state that the "Commission has determined to undertake a redevelopment project within the Redevelopment Area, known at this time as Project Pascalis ("Project Pascalis")," but these resolutions do not designate Project Pascalis as a redevelopment project pursuant to S.C. Code Section 31-10-20(16) or in accordance with Plan One, or any other redevelopment plan.

70. The City of Aiken hired AECOM, a private consulting company, to create the AECOM Strategic Economic Development Action Plan, a strategic economic development plan for the entire City of Aiken. On February 2, 2021, the AMDC voted to adopt this plan created by AECOM for the City, as a new "redevelopment plan" for the AMDC as provided by S.C. Code Section 31-10-100 ("AECOM Plan").
71. As described in the minutes of the February 16, 2021, AMDC meeting, AMDC Executive Director Tim O'Briant explained in that meeting that the AMDC purposefully adopted this broad and general AECOM Plan as an AMDC redevelopment plan as a way to avoid the time, expense and limitations of "very specific redevelopment plans" such as those required by S.C. Code Section 31-10-10 *et seq.* and thereby to allow the AMDC to work in any area in the City and on virtually any project, even if not located in a "Blighted" or "Conservation" area. However, the AECOM Plan was and is not a valid "redevelopment plan" as defined by and in accordance with applicable statutes, including S.C. Code Sections 31-10-20(15) and 31-10-100, because, *inter alia*, it was prepared by and for the

City, not by the AMDC; was not created following the process defined by statute for a redevelopment commission to create a redevelopment plan, including but not limited to failing to have the content required by S.C. Code Section 31-10-100(c) and failing to have a public hearing before adoption of the redevelopment plan as required by S.C. Code Section 31-10-100(d); makes no reference to “blight,” is not restricted to and was not based on “Blighted Areas” or “Conservation Areas;” and mostly pertains to issues not related to blight, conservation or redevelopment. Nevertheless, on March 22, 2021, the City Council approved the AECOM Plan as a redevelopment plan for the AMDC pursuant to S.C. Code Section 31-10-100, even though it was and is not a valid redevelopment plan pursuant to S.C. Code Sections 31-10-20(15) and 31-10-100.

72. Plan One has not been properly adopted by the AMDC as a redevelopment plan as defined in S.C. Code Sections 31-10-20(15) and 31-10-100 because AMDC did not conduct a public hearing about the adoption of Plan One as a redevelopment plan. The AECOM Plan has not been properly adopted by the AMDC as a redevelopment plan as is defined in S.C. Code Sections 31-10-20(15) and 31-10-100 because the AMDC, the City and AECOM, did not follow the specific process required to be followed by S.C. Code Section 31-10-10 *et seq.* to create the AECOM Plan as a redevelopment plan for the AMDC. Neither Plan One nor the AECOM Plan is a valid redevelopment plan for the AMDC and the AMDC does not have, and never has had, a valid redevelopment plan for redevelopment as defined and required by S.C. Code Section 31-10-10 *et seq.*

73. Pursuant to S.C. Code Section 31-10-10 *et seq.*, the AMDC is only allowed to pursue “redevelopment projects” in “blighted” or “conservation” areas in accordance with a properly approved “redevelopment plan” for a “redevelopment area.” Contrary to law, the

AMDC is pursuing “redevelopment projects” in areas of the City of Aiken that are not in accordance with a valid “redevelopment plan,” are not in “blighted” or “conservation” areas or in a “redevelopment area,” as provided in S.C. Code Section 31-10-10 *et seq.*

74. As reported on Wednesday March 17, 2021, in a story published by the Aiken Standard newspaper, the AMDC announced the existence of Project Pascalis and that for Project Pascalis the AMDC had “identified and recruited a well-capitalized and successful real estate investor” interested in partnering and exploring “one or more potential commercial development projects.” The properties or projects under the Project Pascalis umbrella were not immediately clear. Project Pascalis has changed significantly over time. At all times since its inception, Project Pascalis has been inconsistent with, and has borne no resemblance to any project described in, Plan One or the AECOM Plan. Nothing in the minutes of the AMDC in this time period or since shows that the AMDC voted to (a) authorize Project Pascalis or designate Project Pascalis as a redevelopment project pursuant to S.C. Code Section 31-10-20(16) or in accordance with Plan One, or the AECOM Plan or any other redevelopment plan. Furthermore, Plan One and the AECOM Plan are not valid redevelopment plans, and the AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* Consequently, even if Project Pascalis bore a resemblance to Plan One or the AECOM Plan, which it does not, the AMDC was still not authorized to pursue Project Pascalis.

75. The Aiken Standard story dated March 17, 2021 also said that the AMDC had authorized its entering into a cost-sharing agreement with a private party now known to be WTC Investments, LLC (“WTC”), an Aiken development company, for architectural and engineering studies regarding Project Pascalis. At no time was WTC selected by AMDC

or the City by using a Request for Proposal or a competitive bid or selection process, as required by law, including S.C. Code Section 31-10-110(c).

76. Project Pascalis violates, is inconsistent with and bears no resemblance to Plan One, the AECOM Plan or any redevelopment plan of the AMDC. Project Pascalis violated and is inconsistent with Plan One in several respects, including but not limited to each of the following:

- A. In Chapter 1 of Plan One, the plan boundaries include the Pascalis Block and the block just to the east. The Pascalis Project is only on the Pascalis block. The boundaries are also defined as nine specific lots, five on the Pascalis Block and four on the block just to the east. Only five of the ten lots in the current Pascalis Project are named in Plan One, and they are all in the northernmost section of the Pascalis Block, close to Richland Avenue, whereas the current Project Pascalis encompasses three quarters of the Pascalis block.
- B. In Chapter 3 of Plan One, the proposed land use is a “*renovated hotel*” and mixed-use commercial. The parking garage is 180 spaces and is on the other, non-Pascalis block. The current Project Pascalis contemplated demolition of the Hotel from the outset (as we show later), adds a convention center, 100 apartments and a 400-car garage, all on the Pascalis Block, but none of these features are shown in Plan One.
- C. In Chapter 6 of Plan One, the last sentence reads: “*There are no changes proposed in street layout or level of service.*” However, the current Project Pascalis shuts down part of Newberry Street and puts buildings on .27 acres of it.

D. Chapter 7 of Plan One estimates the total cost at \$16.5-\$20.5 million. The current Project Pascalis is estimated to cost over \$100 million.

E. Chapter 8 of Plan One requires compliance with the Old Aiken Design Guidelines. The current Project Pascalis does not comply with those guidelines.

77. In furtherance of Project Pascalis, WTC entered into purchase and sale agreements (described as options in AMDC minutes) (a) on March 2, 2021, to acquire from Shah six lots, including the Hotel Aiken, in the northern part of the Pascalis Block and (b) on April 15, 2021, to acquire from Myrtle Anderson a seventh lot on Newberry Street (collectively the “Pascalis Properties”). In addition, between March and June 2021, Ray Massey (“Massey”), an Aiken attorney and investor, or investors led by Massey, acquired four lots along Newberry Street in the Pascalis Block under the name Aiken Alley Holdings, LLC.

78. When Massey acquired four lots along Newberry Street in the Pascalis Block under the name Aiken Alley Holdings, LLC, Massey was the attorney for WTC and the law partner of Gary Smith (“Smith”), the designated City attorney. At all times pertinent to this lawsuit, Massey and Smith have been partners in the same law firm, and Smith has been counsel to the City and to the AMDC regarding Project Pascalis. In response to a FOIA request, in May 2022, the AMDC claimed that Smith had recused himself from representing the AMDC regarding Project Pascalis in October 2021, but AMDC was unable to produce written evidence of such a recusal. If Smith indeed did recuse himself in October 2021, the recusal was not in writing and did not explain the reason for the recusal in writing and nothing about the recusal was noted in the minutes of the City Council or the AMDC, all in violation of S.C. Code Section 8-13-700 (A) and (B). Nevertheless, Smith continued to participate in discussions of, and to advise the City, AMDC and the

public about matters related to Project Pascalis, at least until the March 28, 2022, Council meeting and possibly up to April 20, 2022, in violation of S.C. Code Sections 8-13-700 (A) and (B). The first public announcement of Gary Smith's recusal was made at the second of two information meetings about Project Pascalis, both held on April 20, 2022. No information about Smith's recusal has been noted in any minutes or other public record of the AMDC or the City, as required by S.C. Code Sections 8-13-700(B).

79. In May 2021, WTC abandoned Project Pascalis, which surprised the City. At that time, the City did not have immediate access to the funds required to assume the WTC options, as was its right. To assist the AMDC in furtherance of Project Pascalis, the Aiken Chamber of Commerce ("ACOC") assumed the WTC options on or about June 3, 2021, for payments totaling \$135,000 by the ACOC to Shah and Anderson (\$100,000 to Shah and \$35,000 to Anderson). By doing that, the ACOC held the options on behalf of the AMDC until the AMDC exercised them in November 2021, and reimbursed the ACOC for the \$135,000 option price. AMDC eventually exercised these options to acquire the seven lots referenced above, in violation of law because the purchase was not pursuant to a valid redevelopment plan or redevelopment project. Two of the lots were not named in Plan One and the AECOM Plan makes no mention of the lots at all. Neither Plan One nor the AECOM Plan are valid redevelopment plans and the AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* At no time was ACOC selected by AMDC or the City by using a Request for Proposal or a competitive bid or selection process, as required by S.C. Code Section 31-10-110(c).
80. The AMDC has not done any due diligence about environmental and other matters, financial analysis of potential investments required, follow-on expenses or the potential

return on its investment regarding Project Pascalis. That is fiscally irresponsible and violates even the most basic purchasing procedures and requirements.

Request for Proposals

81. The AMDC created a one-and-one-quarter-page document dated May 19, 2021, called “Project Pascalis Background and Preliminary Details” together with an aerial view plan of the lots and a seven-page presentation labeled “Conceptual Plans – May 3, 2021, Revision” (“Project Pascalis documents”). That background document claims AMDC “holds contracts to purchase” the Pascalis Properties; refers to a planned encroachment into Newberry Street (and both plans show it) but is silent regarding any demolition associated with Project Pascalis. The Conceptual Plans show a four-story Hotel Aiken, which proves AMDC intended then to demolish the existing three-story Hotel Aiken and the three adjacent shops on Laurens Street from the outset.
82. AMDC never publicized these Project Pascalis documents as an RFP (Request for Proposal) or a solicitation, so many developers were not aware of the documents or, if aware, may have felt they would not be welcomed, especially since the news and rumor mill had reported the City and the AMDC already were working with WTC, and AMDC had not made public WTC’s withdrawal. Moreover, AMDC and City officials stated at various times that that they did not favor developers who were only interested in portions of the project. On information and belief, a number of developers felt, at the time, that it was either futile to participate or that they had been discouraged from participating, in part because it was known AMDC had already chosen a developer (WTC) and had not made public WTC's withdrawal as the chosen developer. On information and belief, AMDC did

not encourage the participation of preservation developers because it intended to demolish the Hotel Aiken from the outset.

83. The Project Pascalis documents referenced above first appeared publicly, together with a minimalist scoring grid, on the AMDC website under the heading “Pascalis Proposal Solicitation and RFP Scoring” in March 2022, almost a year after their creation on May 19, 2021. This appearance on the AMDC website was an attempt to falsely create an *ex post facto* Request for Proposal (“RFP”) for selecting the developer for Project Pascalis, after the developer already had been selected by the AMDC.
84. These Project Pascalis documents referenced above were not sufficient to constitute an RFP pursuant to S.C. Code Ann. § 31-10-110(c), which requires that the RFP “shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof.” *Id.* (Emphasis added.) The information provided by AMDC in May 2021, was so limited that no developer could make a reasonable proposal without seeking extensive further information from, and engaging in lengthy discussions with, AMDC. For example, there was no information as to the condition of the structures, environmental assessments, restrictions due to historic structures and the Old Aiken Overlay District. There were no directions with regard to preservation alternatives versus new building. There was no information about the value of the assets in question or the financial and other terms of the proposed sale and other agreements. There was no precise information on which lots were in question or potential changes in the lots. There was no information on the construction requirements or amenities expected of the developer and only minimal information on the responsibilities of the developer versus the AMDC. There was also no information as to the selection

process and criteria. Moreover, even if the materials had been adequate, they do not reflect whether the project is authorized pursuant to Plan One or to the AECOM Plan.

85. No RFP was publicized, as required by S.C. Code Section 31-10-110(c), by the AMDC or the City in May 2021, or at any time before the AMDC selected RPM Development Partners, LLC as the developer for Project Pascalis on December 3, 2021, as described below. There is no record of any publication of an RFP in the Aiken Standard or any other newspaper, or a public announcement of an RFP, or a public hearing on or any mention of an RFP in any minutes of the AMDC or the City Council, and the AMDC never voted to approve an RFP or an RFP process, before the AMDC selected RPM as the developer for the Pascalis Project. Repeated FOIA requests to AMDC have confirmed that there was no RFP before the AMDC selected RPM as the developer for Project Pascalis.
86. On June 8, 2021, AMDC authorized the Chair of its Executive Committee, Keith Wood, to enter into negotiations with a developer regarding to Project Pascalis. The name of the developer was not revealed and there was no mention of why or how the developer was chosen in the AMDC minutes or in any other public record. There is no public record of when, how or by whom the AMDC Executive Committee was created, who is on it or what it does or is authorized to do.
87. On August 9, 2021, Aiken City Council approved raising \$10 million for AMDC to acquire properties for Project Pascalis. On September 22, 2021, AMDC members toured Florence, SC, as guests of the Raines Company and saw the renovation of the Florence Hotel by the Raines Company. The first public mention of the Raines Company by the AMDC or the City was in the AMDC's minutes dated September 22, 2021.

88. On October 6, 2021, the City issued \$9.6 million in bonds to finance the purchase of the Pascalis Properties by AMDC. At the time, the AMDC had never had, and the City Council and the AMDC knew, or should have known, that the AMDC had never had, a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* and therefore was not authorized to purchase the properties contemplated to be purchased with these bonds issued by the City on October 6, 2021.
89. On October 27, 2021, RPM Development Partners, LLC, was formed, with Ray Massey as agent. As described by Tim O'Briant in the City Council meeting of March 28, 2022, RPM is owned one-third each by Raines Development, a subsidiary or division of the Raines Company of Florence, SC (collectively "Raines"); Lat Purser & Associates of Charlotte, NC; and Ray Massey.
90. During November 9-10, 2021, the AMDC acquired the Pascalis Properties to implement Project Pascalis. The AMDC resolution authorizing this purchase states that AMDC has adopted Plan One as a "Redevelopment Plan" for a "Redevelopment Area" "consisting of the area of the City bounded by Laurens Street, Chesterfield Street, Richland Avenue, and Park Avenue" in accordance with S.C. Code Section 31-10-10 *et seq.* and "determined to undertake a redevelopment project within the Redevelopment Area, known at this time as Project Pascalis."
91. The acquisition of the Pascalis Properties violated S.C. Code Ann. § 31-10-100(b) because (a) Project Pascalis at the time bore no resemblance to Plan One and Plan One does not include two of the acquired lots on Newberry Street (121-21-08-004 and 121-21-08-009), (b) the AECOM Plan does not contain any reference to or description of Project Pascalis or any similar redevelopment project, (c) neither Plan One nor the AECOM Plan are valid

redevelopment plans and (d) the AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10 *et seq.* Furthermore, the AMDC made false claims in its resolutions because it knew that Project Pascalis bore no resemblance to Plan One, including for the reasons stated above, and was not a valid Redevelopment Project pursuant to Plan One or any other redevelopment plan.

92. The AMDC did not get appraisals of the properties it acquired on November 10, 2021, or do due diligence on environmental and other matters, financial analysis of potential investments required, follow-on expenses or the potential return on its investments regarding the properties it acquired on November 10, 2021.

93. On November 23, 2021, AMDC Chair Wood stated, as described in the minutes of an AMDC board meeting held that day:

We have had many discussions with developers. One has come to fruition where there is consideration of a Purchase and Sale agreement for the Commission to consider for Project Pascalis. The Executive Committee as well as staff have recently had two meetings to discuss the Purchase and Sale agreement. He said the Executive Committee did meet with Gary Pope, Attorney, and others, and the developer about a week ago. A proposed developer has provided some information for the Commission to consider. The Executive Committee did have a lot of questions that the proposed developer is considering. He said it is felt that we are at the point where the whole Commission needs to look at the **agreement**, ask questions of staff, and discuss the **agreement** in detail. This needs to happen for the Executive Committee to go back and have further discussions with the proposed developer. With that in mind, he said he would like for the Commission

to consider going into executive session to discuss a proposed Purchase and Sale Agreement in connection with Project Pascalis. (Emphasis added.)

Afterwards, the AMDC went into executive session to review a draft purchase and sale agreement with a prospective developer, who we now know but the public did not then know was RPM.

94. On November 30, 2021, the AMDC approved a resolution authorizing the AMDC to enter into a Purchase and Sale Agreement with a potential developer for Project Pascalis. On December 3, 2021, AMDC announced it had selected RPM as the developer for Project Pascalis and that the AMDC was moving forward toward signing a Master Development Agreement with RPM. From the inception of Project Pascalis in March 2021, until December 3, 2021, AMDC never voted to approve or to issue or to publicize an RFP and never issued or publicized an RFP as required by S.C. Code Section 31-10-110(c) to select a developer for Project Pascalis. AMDC has never had a valid redevelopment plan pursuant to S.C. Code Section 31-10-10, *et seq.*, let alone one that describes or includes Project Pascalis. For this reason and because AMDC never conducted a valid RFP, RPM was improperly and unlawfully selected as the developer for Project Pascalis by AMDC on December 3, 2021, and RPM has never been properly and lawfully selected as a developer for Project Pascalis.

95. On December 13 and 20, 2021, which is after AMDC had announced on December 3, 2021, that it had selected RPM as the developer, AMDC advertised an RFP for developers and listed Plan One as the document for developers to respond to, when AMDC was not, and knew it was not, pursuing any project in accordance with Plan One. The advertisement stated that responses had to be received by the AMDC by December 22, 2021. On May

18, 2022, the AMDC disclosed, in response to repeated FOIA requests, the existence of an affidavit of publication dated December 20, 2021, that stated that the advertisements of an RFP for developers had been published on December 13 and 20, 2021. Thus, on December 3, 2021, the AMDC announced it had selected RPM as the developer for the Pascalis Project without having issued an RFP as required by S.C. Code Section 31-10-110(c) but on December 13 and 20, 2021, advertised a purported RFP soliciting developers, when AMDC had already selected a developer. This purported RFP is a second *ex post facto* effort to appear to have complied with the RFP requirements in Section 31-10-110(c). Furthermore, the advertisement published on December 13 and 20, 2021 contained false and misleading information because it referenced Plan One, but the projects described in Plan One bear no relation to Project Pascalis. Project Pascalis was the project AMDC was actually pursuing at the time the advertisement was published. The December 13 and 20 dates of publication, so close to the holidays, and the extraordinarily short response time (two days) make it clear AMDC expected few people to see the advertisements and wanted no responsible party to respond to them. The affidavit contains only a copy of the advertisements. AMDC failed to produce any supporting documentation that would constitute an actual RFP, despite repeated FOIA requests seeking those documents.

96. On information and belief, no materials were sent to potential developers in connection with the December 13 and 20, 2021, RFP advertisements, and no developers, including RPM, responded to the advertisements. The advertisements themselves were not sufficient to constitute an RFP pursuant to S.C. Code Section 31-10-110(c), which requires that the RFP “shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof.”

Id. The information provided in the December 13 and 20, 2021, advertisements and in Plan One, which was referenced in the advertisements, was so limited, and contradicted the May 2021 documents sent to developers, that no developer could make a reasonable proposal without extensive further discussions with and substantial additional information from AMDC. No information was provided by the AMDC as to the condition of the structures, environmental assessments, restrictions due to historic structures and the Old Aiken Overlay District, etc. No directions with regard to preservation alternatives vs new construction were provided. No information about the value of the assets in question or the financial and other terms of the proposed sale and other agreements was provided. No precise information on which lots were in question or potential changes in the lots was provided. No information about the construction requirements or amenities expected of the developer was provided. No information as to selection process and criteria was provided. Moreover, even if the solicitation materials had been adequate, AMDC was not pursuing any project that was consistent with and in accordance with Plan One or the AECOM Plan.

97. An agenda item for the January 24, 2022, City Council meeting was to approve a fully drafted ordinance for first reading authorizing the sale of two lots owned by the City to CTR, LLC, an entity represented and/or controlled by Ray Massey (the “CTR Sale”). One lot is in the Pascalis Block and is a part, fronting on Newberry Street on the south side of The Alley, of Lot 121-21-06-001 (the Old Municipal Building Lot that is now part of Project Pascalis), and the other is Lot 121-21-02-010, the parking lot directly across Richland Avenue from the Hotel Aiken. The price was established at \$750,000 for the 0.2-acre lot that fronted on Newberry Street and \$50,000 for the 0.3-acre parking lot on

Richland Avenue, even though there were no restrictions disclosed on the future use of the parking lot. The price was a discounted price that represented a \$185,000 loss to the City based on its purchase price 13 years earlier in 2008. The background memorandum from Stuart Bedenbaugh as City Manager points out the negative of the City having carried these lots with no income for 13 years and makes no mention of the rapid increases in real estate values during that time and the dramatic increase in the value of real estate that is in and around the Pascalis Block in the last two years. On information and belief, the City never got an appraisal or a third-party estimate of the value of these lots or put these lots up for auction to the highest bidder. According to AMDC, Ray Massey is also a one-third owner of RPM. The CTR Sale was initiated well before December 21, 2021, and was only known to the Plaintiffs because it was briefly on the agenda for the City Council's January 24, 2022, meeting, but was quickly taken off the agenda and "postponed until a later date." The CTR Sale was documented in a fully negotiated Purchase and Sale agreement dated December 21, 2021, initialed on every page by, and signed by, Ray Massey and ready for City signatures. The Ordinance had signature blocks for Rick Osbon as Mayor, Gary Smith as City attorney, and Sara Ridout as City Clerk. The CTR Sale documents do not explain how the CTR Sale fits or does not fit with Project Pascalis or why the City was pursuing the sale or why it chose to sell the lots to CTR, LLC and not to RPM. The CTR sale adds one more unexplained twist to the story of Project Pascalis and makes it even more difficult for the public and the DRB to follow what Project Pascalis actually is or is not. The CTR sale also highlights the conflicts, or potential conflicts, of interest that can result from the tangled web of relationships between representatives of the City, the DRB and AMDC, on

the one hand, and participants in RPM and property owners, or prospective property owners in and near the Pascalis Block, on the other hand.

98. The content and components of Project Pascalis changed so frequently that any AMDC solicitation that might have existed was quickly no longer applicable as an RFP, even if it had been applicable and sufficient some time earlier. The purported RFPs (Request for Proposal) created by AMDC in December 2021, and March of 2022 were not applicable or valid from the start. AMDC never intended to conduct an RFP process. Instead, AMDC chose the developer for Project Pascalis by having secret bilateral discussions with confidentially selected parties rather than providing a proper “level playing field” where all parties had the same information, the same opportunity and clear selection criteria at the same time. AMDC conducted a process of its own design with no defined criteria so that it controlled and manipulated the process and used its own preferences to select a developer that it favored. This process is further tainted by the fact that the developer AMDC chose is the law partner of the City Attorney advising the AMDC and the City about the RFP and the project for which the developer was chosen.
99. Key decisions about the subjects of this lawsuit were made by the AMDC using as support the votes of three individuals (Catina Broadwater, Stuart MacVean, and Chad Matthews) who were serving as commissioners of the AMDC illegally because they were not residents of the City of Aiken as required by the City of Aiken Code of Ordinances (“City Ordinance”) Section 11.2. On information and belief, those three commissioners continue to serve as members of the AMDC, even after members of the public complained, in early June 2022, that they were serving as AMDC commissioners illegally because they were not residents of the City as required by the City Ordinance Section 11.2. Any decisions

made by the AMDC which relied on the vote of one or more of these commissioners for a majority vote or on their presence for a quorum, are invalid because their presence and their vote were in violation of City Ordinance Section 11.2. Moreover, decisions and actions at meetings of the AMDC were not valid where made at a meeting that did not have a quorum because of the invalidity of the membership of these three individuals on the AMDC, and/or because two members of the AMDC recused themselves from voting on a decision involving Project Pascalis.

100. Members of the AMDC have acquired one or more interests, direct or indirect, in (1) Project Pascalis and other redevelopment projects and in property included or planned to be included in the AMDC's redevelopment area and (2) in one or more contracts or proposed contracts for materials or services to be furnished or used by the AMDC or with a developer or a prospective redeveloper relating, directly or indirectly, to an AMDC redevelopment project, in violation of S.C. Code Ann. § 31-10-70. For example, David Jameson is CEO of the Aiken Chamber of Commerce ("ACOC"), which paid \$135,000 to assume the WTC lot options and held them for AMDC, for which the AMDC paid the ACOC \$135,000. No AMDC commissioner has (a) resigned, as required by S.C. Code Section 31-10-70 or (b) recused himself properly and disclosed and described his conflicts in writing and recorded them in the AMDC minutes as required by S.C. Code Sections 8-13-700(A) and (B). As result, the information about the five appointments and individuals referred to above contained in the agendas and minutes for numerous meetings of the AMDC are incomplete and inaccurate, and in each case represent a violation of the FOIA.
101. The minutes of the City Council in and around September 2020, show that the mayor suggested, and the Council agreed to delegate to the AMDC the drafting of its own

bylaws, knowing that Tim O'Briant, the City's Director of Economic Development, would draft the bylaws for the AMDC, which he did. In this manner, the City Council gave up its right to approve the bylaws of the AMDC. In December 2020, the AMDC adopted self-serving bylaws but did not include a copy of these bylaws in the agenda or the minutes of any AMDC meeting or publish these bylaws on any website of the AMDC or the City. Among other things, the AMDC bylaws provide that any money generated by the AMDC from its projects from the sales of real estate can only be used for AMDC projects and would not be returned to the City. The AMDC bylaws also provide that new commissioners can only be selected by commissioners then in office, in violation of City Ordinance Section 11.2 and S.C. Code Section 31-10-40, and that commissioners need not be residents of the City if they have a business interest in the City, in violation of City Ordinance Section 11.2. The bylaws also provide that each commissioner has a four-year term of office, but S.C. Code Section 31-10-50 mandates that only two-year terms are allowed. The bylaws also provide that the Chair of the AMDC can create any committee he or she likes, and name commissioners of his or her choosing to such committees without the approval of other commissioners, thus avoiding public disclosure in the AMDC minutes of the existence and composition of any AMDC committees. As a result of all this, (a) the AMDC bylaws are not valid or lawful and the bylaws have not been properly enacted, (b) one or more Commissioners of the AMDC have not been properly appointed, (c) the Executive Director and the Executive Committee of the AMDC have acted and are acting without proper authorization, and (d) the information about the commissioners, the Executive Director, the Executive Committee and any matters regarding or dependent on or governed by the bylaws of the AMDC contained in the agendas and minutes for

numerous meetings of the AMDC are incomplete and inaccurate, and in numerous instances represent a violation of the FOIA.

Design Review Board

102. The DRB is a quasi-judicial entity under South Carolina law. In pursuing its mandates, the DRB is required (a) to develop a comprehensive, sufficient, and balanced record and (b) to follow established, sufficient, and balanced procedures so as to arrive, to the best of its ability, at informed, fair, and balanced decisions on the matters that are under its jurisdiction.
103. Pursuant to the Aiken Zoning Ordinance, the DRB reviews applications for a Certificate of Appropriateness (“COA”) for construction, alteration, or demolition of structures in the Old Aiken Overlay District and the Historic Preservation Overlay District and is required to follow guidelines approved by the City for such districts. The guidelines required for the Historic Preservation Overlay District are the Historic Design Review Manual and United States Secretary of the Interior's Standards for Rehabilitation (“DOI Standards”). The guidelines required for the Old Aiken Overlay District are the Old Aiken Design Guidelines. Section 5.1.2 of the Zoning Ordinance provides that “[w]henver there is conflict between the regulations of the remainder of this Ordinance and this Chapter, the more restrictive shall apply.”
104. The DRB first reviews applications for a COA in a “Work Session” that is open to the public, but generally does not ask for public comment at these meetings. The DRB officially reviews, discusses, deliberates, and acts on applications for a COA at a “Regular Meeting” that is set for each month or at a “Special Meeting” called when needed (each a

“Meeting”). The DRB provides agendas for Work Sessions and Meetings and the agendas regularly contain the applications, with voluminous supporting materials supporting each application to aid the DRB in its deliberations about the applications.

105. The DRB violated its duties as a quasi-judicial entity regarding the Pascalis Project. At all times during its review of a demolition request regarding the Pascalis Project, members of the DRB, and its chairman in particular, made unfounded and unsupported statements in favor of demolition and expedited procedures to further their already predetermined agenda of approving demolition and allowed the developer to speak for far more time, while improperly restricting the public to three minutes per person when the DRB bylaws provide for five minutes per person for public comments. The DRB acted prior to receiving a COA application and then accepted a fatally flawed application (a) despite the fact that it was presented seven days before the relevant DRB meeting, when the Zoning ordinance requires an application to be submitted 14 days before such meeting and (b) without making any effort to examine its completeness and accuracy or to scrutinize or question it, let alone correct it. The minutes of some DRB meetings incorrectly refer to RPM as the applicant when RPM had not made an application. In its review, the DRB relied entirely on incomplete and misleading information provided solely by the developer and neither sought nor received any independent, expert, or unbiased advice or analysis of the subject structures or the proposed project and did not seek, receive, develop, examine, or pursue preservation alternatives and cost estimates despite requirements in the Zoning Ordinance to do so. Furthermore, the DRB violated provisions of the Zoning Ordinance and devised procedures not contemplated by the Zoning Ordinance, violated S.C. Code Section 30-4-10, and went against (a) its own preservation mandate, described as

“essential” in the Zoning Ordinance, (b) all the applicable preservation requirements adopted by the City, and (c) all the prevailing Strategic, Master, Economic Development and Comprehensive Plans (and many earlier plans) adopted by the City.

106. The DRB hastily approved, in its first Meeting on Project Pascalis, with less than six minutes of deliberation, a fatally flawed and incomplete application for demolition by using an unprecedented and unauthorized form of “conditional” COA that is not allowed by the Zoning Ordinance and is contrary to expressed provisions of the Zoning Ordinance Section 5.2.4(A)(3), which states that “the **application shall be denied**” (emphasis added). In approving the COA on March 1, 2022, the DRB ignored questions as to (a) the applicability of certain provisions of the Zoning Ordinance and certain guidelines and procedures and (b) pleas by its own members and by members of the public to slow the DRB process down and provide and review more complete information about RPM’s demolition application.

107. On November 4, 2021, the DRB held a Work Session, where AMDC and the City gave DRB a briefing on the plans for the purchase of the Pascalis Properties for the Pascalis Project and the subsequent fast track on which they wanted to get those plans approved. In that briefing, the AMDC said “the development team is close to identifying a developer, but does not have a contract in place yet,” and that things would move quickly after that, with construction expected to begin in approximately six months.

108. The first DRB meeting that reviewed the new Pascalis Project was a Work Session on January 4, 2022. At that meeting Ray Massey introduced the RPM team, there was a general discussion of Project Pascalis with little detail, and no plans or other supporting materials were provided or included in the agenda or the minutes of the Work Session. The

discussion of Project Pascalis at this DRB meeting was not included in the agenda for the meeting. The agenda referred only to “Economic Development Update” and “Pre-Application Conferences.” The agenda made no reference to Project Pascalis, RPM or AMDC. Based on this agenda, the public had no way of knowing that Project Pascalis would be discussed. Minutes of the meeting made no mention of Project Pascalis, RPM or AMDC. These omissions in the agenda and the minutes of the January 4, 2022, DRB Work Session are in violation of the Freedom of Information Act and its open meetings provisions. There was no public comment at that Work Session and Project Pascalis was not discussed at the subsequent Regular Meeting of the DRB that same day.

109. On February 1, 2022, the DRB toured the site of the Hotel Aiken and reviewed various aspects of the Pascalis Project in another Work Session, at which there was no discussion of the historic and preservation value of, preservation alternatives for, or cost estimates for preservation of, the Hotel Aiken. There was no public comment at that Work Session and the DRB did not hold a Regular Meeting after this Work Session on this date. The discussion of Project Pascalis at this DRB meeting was not included in the agenda for the meeting. The agenda referred only to “Review of site visit for 235 Richland Avenue West and Neighboring Parcels” and “Pre-Application Reviews.” The agenda made no reference to Project Pascalis, RPM or AMDC. Based on this agenda, the public would have no way of knowing that Project Pascalis would be discussed. Minutes of the meeting made no mention of Project Pascalis, RPM or AMDC. These omissions in the agenda and the minutes of the February 1, 2022, DRB Work Session are in violation of the Freedom of Information Act.

110. On February 17, 2022, RPM presented the Taylor and Viola engineering report on the condition of the Hotel Aiken at a Work Session of the DRB. The Taylor and Viola report was prepared for RPM and concludes that “Much of the building can be preserved if desired, but it should be expected that preservation measures would be extensive in nature.” Raines gave a PowerPoint presentation that described the RPM team, explained some history of its development experience and provided a simplified site plan for Project Pascalis. Raines indicated that it wished to demolish the Hotel Aiken because that would allow RPM to build what it wanted and because renovation would be too costly but gave no financial or other analysis to support that statement. No member of the DRB reminded the public that the Taylor and Viola report was prepared for RPM, not for the DRB. No member of the DRB asked for any information or financial analysis on the potential cost of preservation versus demolition and new construction. DRB Chair McDonald Law made several unsubstantiated statements, including that (a) the brick walls of the Hotel were unlikely to survive an earthquake, (b) a separate sprinkler system would be required between the floor and the existing ceilings, and (c) it would be necessary to “completely rebuild the building in order for it to be renovated.” Chair Law cited no studies that supported these conclusions and had no personal expertise that allowed him to reach these conclusions without expert analysis and advice. There was no discussion of preservation values, preservation alternatives or preservation cost estimates. At the end of the meeting, Chair McDonald Law urged RPM to apply for a COA for demolition of the Hotel Aiken as soon as practical. There was no public comment at the Work Session and no Regular Meeting was held afterwards. The discussion of Project Pascalis at this DRB meeting was not clearly described in the agenda for this meeting. The agenda refers only to “Downtown

Development Update with Raines Development and partners. The update will include a review of the structural assessment report for Hotel Aiken.” The agenda made no reference to demolition, Project Pascalis, RPM or AMDC. Based on this agenda, the public would easily be confused as to whether Project Pascalis would be discussed and who the other names mentioned were, who the Hotel Aiken structural assessment was prepared for, etc. It should be noted that up to that time little information on and no plans of Project Pascalis had been made public. Minutes of the meeting misleadingly referred to RPM as “applicants” when RPM had made no application, and yet made no reference to Project Pascalis, RPM or AMDC. These omissions and obfuscations in the agenda and the minutes of the February 17, 2021, DRB Work Session are in violation of the Freedom of Information Act. There was no public comment at the Work Session and no Special Meeting was held afterward that day.

111. On February 21, 2022, RPM applied for a COA and the DRB staff forwarded it to the DRB on February 23, 2022. The application covers both the Hotel Aiken on lot 121-21-09-002 and the three adjacent shops on Laurens Street on lot 121-21-09-001 and consists of a map of the lots; some photos; the simplified site plan from the February 17, 2022, presentation; a section view of Newberry Street that is deceptive since it does not point out the dramatic change proposed; and the Taylor and Viola report. The application provides no information on the historic values or considerations of the Hotel Aiken and no information at all on the three structures on lot 121-21-09-001, even though that lot number is clearly indicated on the application and the staff report references “demolition of former Hotel Aiken and associated shops and structures.” (Emphasis added.) The application did not provide and the DRB did not consider information on the whole Project Pascalis, for

which permission to demolish these structures was requested. On information and belief, the DRB had never approved a portion of a major project without seeing and reviewing extensive information on the whole project but did just that regarding the application to demolish the Hotel Aiken and adjoining structures.

112. The three pre-1900 shops on lot 121-21-09-001 are listed as “Contributing Structures,” by the South Carolina State Historic Preservation Office (“SHPO,”) and in the Historic Resources Survey done by the City of Aiken in 2010 and are all occupied and in sound physical condition. The Hotel Aiken on lot 121-21-09-002 is listed in the Aiken Historic Register as a “Contributing Structure” on a Historic Site. Section 5.2.1 of the Zoning Ordinance provides that “Any property or structure listed on the Aiken Historic Register shall be subject to this Article,” which is the Historic Preservation Overlay District. Therefore, the Hotel Aiken is subject to the requirements of the Historic Preservation Overlay District. Demolition of any of these structures, as requested in the application, would violate numerous provisions of the Zoning Ordinance.

113. The DRB violated the Zoning Ordinance by accepting and considering a limited and incomplete application from RPM despite the fact that the application was for demolition of the most prominent building on the most prominent block of the City and three other structures that are among the oldest in the City. The Hotel Aiken is listed on the Aiken Historic Register as a Contributing Structure in a Historic Site and the three other structures are listed as Contributing Structures by SHPO and in the Aiken Historic Resources Survey of 2010. Section 5.2.3(C) of the Zoning Ordinance requires significant additional material to be included in an application for a COA in the Historic Preservation Overlay District than was included in the RPM application. The overall mandates in

Sections 2.6, 5.2 and 5.3 of the Zoning Ordinance for the review of applications for Certificates of Appropriateness require the DRB to evaluate numerous subjects and extensive materials in order to comply with the review standards in Section 5.2.3(J) and 5.3.2(M), to develop preservation alternatives pursuant to Section 5.2.4(A)(2) and to make determinations of demolition by neglect pursuant to Section 5.2.4. No materials that would be responsive to those subjects was included in the RPM application or requested by the DRB. Furthermore, the demolition of the Hotel Aiken is part of a much larger project designated by the AMDC as Project Pascalis. Without explanation, deliberation, or a procedural vote, the DRB accepted an application for only a small portion of Project Pascalis and requested no information on the overall project that would enable them to consider the demolition portion in the context of the whole. Even if they had requested such material, AMDC and RPM had acknowledged that many aspects of Project Pascalis had not been decided yet, so the DRB knew at the time it accepted the February 21, 2022, RPM application that many of the materials it should have required to be included in the application did not yet exist. In accepting the RPM February 21, 2022, application, the DRB violated Section 6.1.3(E) of the Zoning Ordinance which states that a complete application is required.

114. On information and belief, all the Strategic Plans, Master Plans, Economic Development Plans and Comprehensive Plans adopted by the City in the last ten years (and many earlier plans) contain statements that highlight the importance of, recommend that the City promote, and urge the City to maintain and preserve, the historical structures in the City, the unique 1835 historic downtown street grid of the City and its resulting parkways.

115. Sections 2.6, 5.2 and 5.3 of the Zoning Ordinance require that the DRB evaluate not just the demolition impact, but also the cumulative impact of the project as a whole. DRB accepted a limited and incomplete application by RPM that had no information on one of the lots cited in the application and lacked any information at all on the project as a whole, which includes eight other adjacent or nearby lots on the same block and encroaches on a prominent and historically significant street in Aiken's historic downtown street grid to erect structures on it. Sections 2.6, 5.2 and 5.3 of the Zoning Ordinance also require that the DRB evaluate not just the demolition impact but also the attributes and design of the structures that are proposed to replace the demolished structures. The DRB accepted a limited and incomplete application that had minimal information on the replacement structure and no relevant information on any of the other structures in Project Pascalis other than a rudimentary partial, and now superseded, site plan.
116. Section 5.2.3(C) of the Zoning Ordinance specifically requires that the application "shall be accompanied by the following unless waived by the Secretary or otherwise specified on the application form provided by the Board.
- a. Drawings, including plans and exterior elevations, drawn to scale, with sufficient detail to show the exterior architectural design of the structure.
 - b. Specifications or other information describing proposed materials and textures; samples of materials may be required by the Board.
 - c. Plot plan or site layout showing all existing structures and any improvements affecting appearances such as walls, walks, terraces, accessory buildings, signs, lights, plantings, and other elements.

- d. Photographs of the site location, showing contiguous properties and streetscapes.
- e. All other information requested by the Board.

None of these items was included in complete form in the February 21, 2022, RPM application or requested by the DRB or provided to the DRB.

117. When questioned by a DRB member during the March 1, 2022, Work Session about this lack of information, a DRB staff person “informed the Board that the Old Aiken Design Guidelines only require a plan to be presented.” She then read a short portion of page 42 of the Old Aiken Overlay Design Guidelines. However, the full text of page 42 states “3.1.11 DEMOLITIONS & RELOCATIONS Demolition **of existing buildings is strongly discouraged. Consequently, the Design Review Board will use its authority to delay demolition of historic structures whenever possible to investigate means to save the building.** However, it is recognized that, in some cases, older structures may deteriorate to the point that rehabilitation is technically infeasible. In such cases, **it is the responsibility of the property owner to demonstrate that rehabilitation is not appropriate AND demonstrate a clear plan for the re-use of the site and any related new construction after demolition.** Guidelines: If an existing building's condition is deteriorated such that rehabilitation and use of the building is judged to not be feasible, a request for demolition may be considered by the Review Board. **It is the responsibility of the property owner to demonstrate that rehabilitation is not feasible.** If public safety is threatened, interim steps may be taken to close and stabilize the structure. Any requests for relocations to or from the Overlay District shall be reviewed by the Review Board. **Any application for a demolition shall include plans for the re-development of the site after**

demolition.” A caption for a photograph on page 42 states further: “Occasionally, demolition is the only course of action that remains for a property. **A plan for the site’s re-use is a critical component in the evaluation for a request for demolition.**” (Emphasis added.). Furthermore, pursuant to Section 5.1.2 of the Zoning Ordinance, the most restrictive requirements of (a) page 42 or page 63 of the Old Aiken Design Guidelines or (b) the requirements applicable to Historic Preservation Overlay District or (c) Zoning Ordinance Section 5.2.3(C) apply.

118. DRB did not comply with the City of Aiken Zoning Ordinance in reviewing the limited and incomplete application from RPM despite the fact that the application was for demolition of the most prominent building on the most prominent block of the City and three other structures that are among the oldest in the City. The Hotel Aiken is listed on the Aiken Historic Register as a Contributing Structure in a Historic Site and the three other structures are as listed as Contributing Structures in the Historic Resources Survey of 2010 and by the SHPO.

119. Section 2.6.1 of the Zoning Ordinance provides, in part, “**It is essential that** the qualities, areas, sites, structures, and natural and man-made objects relating to the history of the City of Aiken, as well as that of Aiken County, the State of South Carolina, and the United States of America, **be preserved**” (Emphasis added.).

120. Zoning Ordinance Section 5.2.3(J) Review Standards states in subsection (1): “General. In reviewing applications, the Board and the Planning Director shall consider the standards stated in this Chapter for the purpose of determining whether alterations, construction, demolitions, or relocations are in harmony with the prevailing historical, architectural, archeological, or aesthetic character of the Historic District, a structure in a

Historic District, or an Historic Site, or a structure included in an Historic Site. (Ord. 04142003A).” DRB did not address these considerations during its March 1, 2022, review of the RPM February 21, 2022, application.

121. Zoning Ordinance Section 5.2.3(J)(2) addresses Construction and Alteration, implying a duty to review these matters if the project involves Construction and Alteration as well as demolition, which is the case here. DRB did not address these considerations during its March 1, 2022, review of the RPM February 21, 2022, application.
122. Zoning Ordinance Section 5.2.3(J) Review Standards states, in part, in subsection (3): “Demolition. In reviewing an application for demolition, the Board and the Planning Director shall consider the historical, archeological, and aesthetic character of the structure (or portion thereof) proposed for demolition.” DRB did not address these considerations during its March 1, 2022, review of the RPM February 21, 2022, application.
123. Zoning Ordinance Section 5.2.3(J) Review Standards states, further in subsection (3): “They shall also consider: (1) the structural integrity (i.e., condition) of the structure and (2) the integrity of materials, location, and design of the structure. During their review DRB accepted at face value the developer’s engineering report and made no independent inquiry into the above considerations. DRB could have availed itself of materials from the earlier Shah renovation project and other studies related to the Aiken Hotel. In August 2020, the DRB and the City concluded that the Aiken Hotel was not in a condition that represented demolition by neglect. The DRB did not raise this issue in their March 1, 2022, review of the RPM February 21, 2022, application or present any information from these earlier studies to the members of the DRB or the public. In addition, the DRB did not get or provide advice from any preservation expert (or anyone else) as to the condition of the

building or the difficulty of preserving it, in direct violation of Section 5.2.4(A)(2), which states “Within any period of postponement, the Board **shall endeavor to ascertain what may be done to preserve the structure or landmark.**” (Emphasis added.)

124. Zoning Ordinance Section 5.2.3(J) Review Standards states, further in subsection (3): “No application for demolition shall be approved solely on the basis of a structure's deteriorated condition where the Board determines that the applicant is primarily responsible for the deteriorated condition. Finally, the Board shall consider the extent to which demolition would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property affected or upon the surrounding properties, or upon the district in which the structure is located. No application for demolition of a Landmark shall be approved.” DRB did not make any determination or otherwise address these considerations during its March 1, 2022, review of the RPM February 21, 2022, application.
125. Zoning Ordinance Section 5.2.4 Demolition or Relocation states, in part, in subsection (A)(2): “The Board may delay the granting of the Certificate for a period of up to 60 days from the time of the filing of the application. The Board may extend this postponement for another 180 days after a public hearing and finding by the Board that the structure or landmark is of historical, architectural, or archeological importance to the public or City of Aiken.” Page 42 and 63 of the Old Aiken Design Guidelines both state that “Demolition of existing buildings is strongly discouraged. Consequently, the Design Review Board **will use its authority to delay demolition of historic structures** whenever possible to investigate means to save the building.” (Emphasis added.) DRB took only

one day and spent less than an hour in its March 1, 2022, review of the RPM February 21, 2022, application.

126. Zoning Ordinance Section 5.2.4 Demolition or Relocation states, further in subsection (A)(2): “Within any period of postponement, the Board **shall endeavor to ascertain what may be done to preserve the structure or landmark.** Such steps shall include, but are not limited to, consultation with civic groups, interested citizens, public interest groups, and public boards and agencies.” (Emphasis added.) DRB did not do any of this in its March 1, 2022, review of the RPM February 21, 2022, application.
127. Section 5.2.4(A)(3) of the Zoning Ordinance provides, in part “if the Board finds that the structure contributes to the character of the Historic District or that the landmark is of historical, archeological, or architectural significance or that, for any other reason, preservation in the public interest is warranted, **the application shall be denied.**” *Id.* (Emphasis added.) The four structures that are the subject of the March 1, 2022, COA approval are designated as contributing structures pursuant to the Zoning Ordinance and the Hotel Aiken is listed in the Aiken Historic Register as a Contributing Structure in a Historic Site. Therefore, the application for demolition was required to be denied. This requirement is clear and the DRB ignored it. The process is also clear in that the Zoning Ordinance, as intended, protects designated and undesignated contributing structures and requires the owner to prove economic hardship pursuant to Section 5.1.3 to obtain a Certificate of Appropriateness for demolition of such structures. Furthermore, the Old Aiken Design Guidelines specifically require the owner to demonstrate that rehabilitation is not feasible. Moreover, the Hotel owner’s own engineering report concluded that “Much of the building can be preserved if desired.” Even though the Hotel owner had

clearly not demonstrated that rehabilitation is not feasible, and the Zoning Ordinance required the DRB to deny the application, the DRB willfully and knowingly went ahead on March 1, 2022, and approved the RPM February 21, 2022, application for demolition of the historic Hotel Aiken and three other historic structures it had not even considered and on which it had no information.

128. Zoning Ordinance Section 5.2.4(B) Demolition by Neglect states, in part, in subsection (1): “Prevention of Demolition by Neglect of Exterior. No owner or person with an interest in real property which is designated an Historic Site (Ord. 04142003A) in any part of the City or any property in an Historic District, whether that property is occupied or not, shall permit the structure or property to fall into a serious state of disrepair or to remain in a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property, or, if the structure or property is in an Historic District, upon the district.” Zoning Ordinance Section 5.2.4(B)(2) imposes a similar duty to prevent demolition by neglect of the interior of any structure in a Historic Site. DRB did not address these considerations during its March 1, 2022, review of the RPM February 21, 2022, application for a COA for demolition, despite earlier concerns expressed by the City and by the DRB itself regarding demolition by neglect in and around August 2020. Furthermore, since (a) in 2020 both the City and the DRB determined that the Hotel Aiken was not yet suffering demolition by neglect and the then owner was in the process of renovating and preserving that structure, and (b) the current owner was applying in 2021 for a COA for demolition, the DRB had a prima facie duty to investigate what changed, whether demolition by neglect had occurred, who is responsible and, at the very

least, determine whether it could or should grant the demolition requested by the current owner without further investigation. The DRB did none of these things in its March 1, 2022, review of the RPM February 21, 2022, application.

129. In and around August 2020, the DRB was involved in an investigation into whether the then owner of the Hotel Aiken was culpable of seeking or causing demolition of the Hotel Aiken by neglect. As stated in the minutes of the AMDC November 17, 2020, meeting, both the DRB and a City building inspector had by then determined that the structure was still sound and there were not sufficient grounds to bring an action for demolition by neglect. However, on March 1, 2022, the developer claimed the Hotel Aiken was too far gone to make renovation practical and should be demolished instead, and the DRB agreed without questioning them. Despite this obvious juxtaposition of a structure that was declared sound in November 2020, and required demolition 14 months later, the DRB never raised the issue and never examined the question of demolition by neglect, in its March 1, 2022, review of the RPM February 21, 2022, application, in a clear violation of Sections 5.2.4(A)(2) and 5.2.4(B) of the Zoning Ordinance.

130. Nowhere in the Zoning Ordinance or in any applicable rule is the DRB given the authority to grant a Certificate of Appropriateness without having seen the final plans for the structure that will replace the demolished structure. Such a process makes no sense, as it would be equivalent to finding a defendant guilty or innocent contingent on seeing the evidence. The DRB invented this conditional option on its own volition and without valid authorization.

131. DRB simultaneously and inadvertently approved the demolition of the three structures on lot 121-21-09-001 without any information, review, discussion,

consideration, public input, expert advice, etc., and did not even know it was approving their demolition when it approved the demolition of the Hotel Aiken.

132. DRB made decisions to alter its usual procedures by treating RPM differently than other applicants, including by its decision to grant a conditional COA subject to seeing final plans. In doing so, DRB members, notably the Chair, met with City officials, members of the AMDC and the RPM team and other members of the DRB before and outside the regular and noticed public meetings of the DRB with an agenda to make these decisions. At the DRB's March 1, 2022, Work Session, "Chairman Law explained that the DRB is working with the Raines Group in phases to prevent work delays." Minutes, DRB Work Session, March 1, 2022. Thus, as the DRB Chair acknowledged, the DRB unlawfully made these decisions outside the regular and noticed public meetings of the DRB with agenda, for which there are no minutes or record of notice, discussion or deliberation of these decisions as required for a public meeting. By engaging in this behavior, DRB committed numerous violations of the South Carolina Freedom of Information Act and of the laws regulating the DRB.

133. The DRB historically has been and is a stickler for seeing the whole project and having complete applications before giving an approval. The DRB regularly requests extensive information and brings applicants back for multiple reviews to get every detail right on the most insignificant project, before its grants an approval for anything. In contrast, regarding this RPM application the DRB bent over backwards to grant a demolition approval on what is one of the most complex and largest projects in Aiken history, with no information, no details, and missing plans that did not even exist yet, all assuming some future process would make the demolition right. The Zoning Ordinance

and pages 42 and 63 of the Old Aiken Design Guidelines (42 is for all structures and 63 is for historic structures, but both pages are identical) make it super-clear that DRB has to look at (a) the project as a whole and (b) the replacement use, and the replacement plans **before** they approve a demolition. There is also nothing that says the DRB can approve parts of projects piecemeal, as it did with the RPM application. The whole DRB approval regime is set up to require the applicant to submit extensive information on all aspects of a project and not to approve any parts of the project until DRB has reviewed all the parts. RPM (a) failed to submit its application form and all required submittals at least fourteen days before the DRB meeting at which they are to be considered, in violation of Zoning Ordinance Section 6.1.3(D), and (b) failed to submit an application that is complete, in violation of Zoning Ordinance Section 6.1.3(E), but the DRB accepted it anyway.

134. On February 23, 2022, a mere two days after RPM's application for a COA was received by the DRB, the DRB staff issued a sham report that is barely a page long and makes no mention of completeness of the application or the appropriateness of the materials submitted. Accompanying materials for the report include only the application, some photos, and a lot map. The DRB staff report contained no information on preservation issues or alternatives, even though the structures to be demolished are among the most prominent structures on the most prominent block in the City and were protected contributing structures. The staff report erroneously says the application can be evaluated using the Old Aiken Design Guidelines because the Pascalis Block is within the Old Aiken Overlay District. However, the application must also be evaluated using the requirements of the Historic Preservation Overlay District, which include the Historic Design Review Manual and the DOI Guidelines, since the application includes the Hotel Aiken, which is

listed in the Aiken Historic Register. If there are any conflicts in the guidelines, the more restrictive must be applied. Nothing was mentioned about the structures on lot 121-21-09-001 in the staff report or in any meetings of the DRB leading up to and including approval by the DRB of the demolition COA on March 1, 2022.

135. On March 1, 2022, in a DRB Work Session, RPM presented a first glimpse at the elevations for the new proposed hotel to replace the Hotel Aiken. At the subsequent Regular Meeting of the DRB the same day, RPM gave a general presentation of the project, limited to the previously presented site plans. RPM and the AMDC commented that all the plans presented were preliminary, fluid, and subject to significant changes. The public was allowed to comment, and some spoke for demolition and some against. One member of the public pointed out that the Zoning Ordinance allowed the DRB to delay acting on the application for 60 days (plus up to an additional 180 days if needed) and beseeched the DRB to take its time and follow the ordinances of the City of Aiken. Another member of the public asked about a cost estimate for preserving the Hotel Aiken and was told that no such estimate had been prepared. Another member of the public asked about preservation alternatives, and it became clear none had been developed or considered. A member of the DRB asked Chair Wood of the AMDC if there was a plan approved by the City Council that showed that the proposed Pascalis Project was the most appropriate for the location and if the AMDC's redevelopment plan was Plan One. Chair Wood replied that the AMDC was not following Plan One and was following the AECOM Plan instead. During the meeting, Chair Law vigorously supported haste and demolition; made unfounded, unsupported, and unsupportable comments about the condition of the Hotel Aiken; and erroneously limited public comments to three minutes per person. Chair Law even asserted

that speedy approval was needed to accommodate the developer, who had not been properly selected. Two DRB members asked questions about the appropriateness of proceeding with such limited information, but those questions were ignored. After public comment, the DRB took less than six minutes to vote to grant a COA to allow demolition of the Hotel Aiken subject to approving the final plans and elevations, which they had not seen, with only DRB member Lucy Knowles dissenting. The DRB never discussed the architectural significance of any of the structures, did not consider the structures on lot 121-21-09-001 at all, and did not consider or apply the requirements of the Historic Preservation Overlay District or the Old Aiken Overlay District. There was no substantive discussion of preservation issues, preservation alternatives, cost estimates for preservation or the clear evidence of a potential case of demolition by neglect.

136. On March 1, 2022, the DRB ignored (a) its duties as a quasi-judicial entity, (b) all the above-referenced Sections of the Zoning Ordinance, (c) all the above-referenced Sections of the S.C. Code of Laws, (d) all the above-referenced guideline documents, and (e) all the above-referenced plans adopted by the City to approve a fatally flawed and incomplete application by granting the unprecedented and unauthorized form of “conditional” COA for demolition of a Contributing Structure in a Historic Site and three other Contributing structures based on very limited and biased information, in one meeting, with less than half an hour of total consideration and less than six minutes of deliberation. The structures approved for demolition are among the most prominent structures on the most prominent block in the City.

137. On March 11, 2022, Craig Bennett, a renowned expert in seismic masonry retrofit, historic preservation and National Historic Landmarks (including, in particular, in

preservation of brick buildings) and former head of the Charleston Board of Architectural Review, was retained by Preservation South Carolina, a prominent preservation group. On behalf of Preservation South Carolina, Bennett inspected the Hotel Aiken that day and afterwards declared it can be renovated rather than demolished. Bennett noted the building has strong foundations and the latter portion of the Hotel has a concrete and steel fireproof floor structure. On March 14, 2022, Bennet delivered a letter to the City of Aiken saying in part: “we found no major structural issues that would prevent its reuse” and “the building appears to qualify for the historic provisions of the International Existing Building Code.”

138. On March 28, 2022, the City Council held a first reading of an ordinance to convey a portion of Newberry Street to RPM for Project Pascalis. When opened up for public comment, various persons spoke for and against the ordinance. Dione Carroll spoke about a letter she had submitted pointing out that there were so many unanswered questions that it was imprudent and improper for the Council to vote on the proposed ordinance without providing citizens and themselves with adequate information and answers. Numerous persons pointed out that the inconsistencies and lack of financial analysis or details of the overall project made it premature and improper to vote to convey a portion of a prominent street to a private developer for no stated consideration. Moreover, the City cannot convey this portion of Newberry Street to RPM because it has not complied with federal and state requirements that are applicable because Richland Avenue is US (United States) Route 1, and the South Carolina Department of Transportation owns Newberry Street at both ends of the Pascalis Block.

139. As previously noted, (1) Project Pascalis is not a redevelopment plan validly created pursuant to S.C. Code Section 31-10-10 *et seq.*, and, therefore, the AMDC was not

authorized to pursue Project Pascalis, to participate in any conveyance of Newberry Street or to authorize RPM to receive such conveyance, and (2) RPM had not properly been selected as a developer pursuant to S.C. Code Section 31-10-110(c) and therefore had no standing to receive or to make any applications or representations regarding such conveyance. As a result, the City and the AMDC took the first step to authorize, despite repeated requests not to do so, conveying a valuable public asset for no consideration to an improperly selected private developer in furtherance of an unauthorized project which was being unlawfully pursued by the City and its AMDC agency without a validly authorized redevelopment plan.

140. On April 19, 2022, at a regular DRB Meeting, Luis Rinaldini and David Blake objected that the DRB was not applying its criteria correctly or consistently, as it was giving other applications greater scrutiny than it had given to RPM when approving its COA on March 1, 2022. Attorney Dione Carroll spoke about a letter dated April 19, 2022, she had submitted the same day pointing out that DRB had failed to follow proper procedures and was continuing to do so. A motion to add the subject of improving DRB procedures to the agenda of the next Meeting of the DRB was introduced by Member Knowles and seconded by Member Lipscomb and failed by a vote of 3-2. Member Knowles reminded the DRB that she had asked for a legal opinion on a number of aspects of the DRB procedures related to the March 1, 2022, approval of the COA for demolition of the Hotel Aiken and the three adjacent shop structures. To date the DRB has not responded to Member Knowles' request for this legal opinion or to any of the concerns about procedures or the requests to review procedures that were raised in this meeting.

141. On April 20, 2022, the City hosted two meetings for RPM to present more details about their development projects for Project Pascalis. The program was the same for both meetings, held at 11:30 am and 5:30 pm. These meetings were advertised as “public input” meetings and the public was invited to speak. The developers were awarded about an hour of time to make their presentation and members of the public were granted three minutes each.
142. On April 25, 2022, the City Council voted to appoint Laura Blessing Thomas (“LBT”) to the DRB, replacing Lucy Knowles. Section 7.1.7(C) of the Zoning Ordinance provides, in part, that “The members of the Board shall be appointed by City Council which shall allow the public an adequate and reasonable opportunity to comment on all such appointments.” (Emphasis added.) No such comment by any member of the public was allowed regarding appointing LBT to replace Lucy Knowles at the April 25, 2022, Council meeting. Section 7.1.7(D) of the Zoning Ordinance sets forth qualification requirements for members of the DRB and of the DRB as a whole. No information was given on LBT’s qualifications or the balance of qualifications on the DRB resulting from the appointment of LBT to replace Lucy Knowles on the DRB. On April 29, 2022, Dione Carroll gave a letter dated April 29, 2022, to the Council objecting to (a) Knowles’ dismissal, saying it was retaliatory for Knowles having voted against the RPM COA on March 1, 2022, and intended to intimidate other members of the DRB and (b) LBT’s appointment, saying it was void and invalid on the grounds that the Council had failed to follow required procedures and, therefore, Knowles was still the designated member of the DRB, as provided by Section 7.1.7(E)(2) of the Zoning Ordinance.

143. In dismissing Lucy Knowles from the DRB, in April 2022, the City engaged in unlawful retaliatory behavior to punish Knowles for voting against granting the RPM COA for demolition on March 1, 2022. What is more, the dismissal has a clear intimidating effect on other members of the DRB, who would naturally feel that if they voted against the City's wishes in the future, they too would be dismissed.
144. In appointing LBT to the DRB to replace Knowles, the City Council abdicated its duties to examine her qualifications and the overall resulting qualifications of the DRB, as required by Section 7.1.7(D) of the Zoning Ordinance. There is no record of the City Council making any determination about qualifications, either for LBT or the DRB as a whole.
145. As a result, LBT was not properly appointed to the DRB and Knowles was still on the DRB when it held its Regular Meeting on May 3, 2022. Per Zoning Ordinance Section 7.1.7(E)(2), DRB members are seated until they are replaced. Therefore, the May 3, 2022, DRB meeting was improperly called, as Knowles had been given improper notice of her dismissal, was still a member of the DRB and was not invited to attend. At that meeting, LBT was absent also and the DRB made no disclosure of LBT's purported appointment or Knowles' purported dismissal, in violation of the Freedom of Information Act.
146. At the May 3, 2022, regular DRB Meeting, Plaintiff Luis Rinaldini objected to the fact that the DRB had not disclosed the dismissal of Lucy Knowles and the purported appointment of LBT as her replacement. As a result of this nondisclosure, neither the applicants nor the public knew whether LBT or Knowles was the proper member of the Board and whether the DRB meeting was validly constituted, as Knowles had not been invited to attend the meeting and neither Knowles nor LBT attended the meeting.

147. Despite these issues, which even rudimentary inspection would have uncovered, Jim Holly, acting as attorney for the DRB, berated Luis Rinaldini when he mentioned this Knowles/LBT matter, assured the public that LBT had been properly appointed and the meeting had been properly called and invited Rinaldini to consult his own counsel if he disagreed. It subsequently was learned that LBT was not qualified to be a member of the DRB because she is not a resident of the City of Aiken, in violation of Section 7.1.7(D) of the Zoning Ordinance.
148. Subsequently it emerged that three members of the DRB, including LBT, were not qualified to sit, as they were not residents of the City. Two other, long sitting members (Velice Cummings, Ricky Brown) of the DRB also did not live in the City and therefore were not qualified to sit on and were not valid members of the DRB. These missteps further illustrate the pattern of negligence, incompetence, illegality, and wrongdoing that characterized and characterizes the DRB and its procedures.
149. When key decisions were being made about the redevelopment project(s) that are the subject of this lawsuit, two members (Velice Cummings, Ricky Brown) of the DRB were not valid members of the DRB because they were not residents of the City of Aiken as required by Zoning Ordinance Section 7.1.7(B). The City claims the three illegally appointed purported members (Cummings, Brown, and Thomas) resigned from the DRB in June 2022, but that statement is inaccurate. These three purported members were never lawfully appointed and therefore were never members of the DRB and therefore could not resign. The situation was only corrected due to members of the public complaining that these people were serving illegally because they were not residents of the City as required by Zoning Ordinance Section 7.1.7(B). Any decisions made by the DRB with the presence

of one or more of these purported members for the purposes of a quorum or the votes of one or more of these purported members causing a majority vote when in violation of Zoning Ordinance Section 7.1.7(B) are invalid. The information provided by the City about these three appointments and individuals contained in the agendas and minutes for numerous meetings of the Council and the DRB are incomplete and inaccurate, and in each case the City's inadequate response represents a violation of FOIA.

150. On May 9, 2022, the City Council held the second reading of the ordinance to convey a portion of Newberry Street to RPM. When opened up for public comment, various persons spoke for and against the ordinance. Dione Carroll spoke about the concerns expressed in a new letter from her that the City Council was abdicating its responsibilities and acting improperly by granting approvals before having all the facts, and that if AMDC reached agreement with RPM, the conveyance would not come back to Council for approval. Luis Rinaldini spoke about the lack of transparency (including not disclosing the facts that RPM was improperly selected and AMDC was not authorized to pursue Project Pascalis), the failure to follow proper procedures, and the fiscal irresponsibility of having no appraisal or analysis of the value conveyed or received, the poor governance resulting from the preceding shortcomings as well as the terrible precedent set by transferring to a private developer a section of a prominent public street for no known consideration, to accommodate a project that is not properly authorized and does not fit on the lots held by a developer who was not properly selected and who had no development agreement known to the public. Several members of the public commented that they would like to receive ownership of half the street in front of their lots for no known consideration, as the City was proposing to do and doing with RPM. The Council

voted to approve the ordinance by a vote of six to one, with Council member Woltz voting no. By approving the second reading, City had now fully authorized, despite repeated objections, conveying a valuable public asset for no consideration to an improperly selected private developer in furtherance of an unauthorized project which was being unlawfully pursued by the City and its own AMDC agency.

151. The City knew, or should have known, at the time that AMDC was not authorized to pursue Project Pascalis and that RPM had not been chosen pursuant to a valid RFP. AMDC is an agency of the City and the AMDC and the City both shared two common attorneys in this matter. Stuart Bedenbaugh, the City Manager is a City employee and an ex-officio member of the AMDC. Tim O'Briant, the City's Director of Development, is a City employee and the Executive Director of the AMDC. Dr. Thomas Hallman is a City Employee and the Program Manager of the AMDC. The City knows everything the AMDC knows about Project Pascalis and vice versa. AMDC recognized, in its minutes of June 16, 2020, and elsewhere, that Plan One had a limited scope and City officials participated in that meeting. AMDC tried to expand its authority by improperly characterizing the AECOM plan as a valid redevelopment plan in accordance with S.C. Code Section 31-10-10 *et seq.* even though it was not, and the City participated in that process. Subsequently, AMDC confusingly and improperly alternatively referred to Plan One or the AECOM Plan, or both, as the redevelopment plan it was following. On or around December 13, 2021, the City's and AMDC's attorney filed the false *ex post facto* RFP advertisement and may have created it. In March of 2022, the AMDC posted documents on its website purporting to have been an RFP when it knew it had not conducted an RFP pursuant to S.C. Code Section 31-10-110(c). These clumsy attempts at

obfuscating which plan AMDC was following and the creation of documents purporting to be an RFP that never existed show that the City and the AMDC were aware they had a problem with their invalid authorizations and procedures. In public comments by the plaintiffs and other members of the public, the City was warned repeatedly, and in writing, of irregularities and shortcomings, including the AMDC's lack of authorization and the improper selection of RPM as the developer. Thus, on May 9, 2022, the City, AMDC and the attorneys for the City and AMDC were aware of irregularities and shortcomings regarding AMDC's authorization and RPM's selection as a developer. Rather than take a step back, examine the procedures and correct any irregularities and shortcomings, the City, AMDC and their attorneys went forward and knowingly authorized the conveyance of a valuable and important public asset for no consideration to an improperly selected private developer in furtherance of an unauthorized project which was being unlawfully pursued by the City and its own AMDC agency.

152. Neither the City nor AMDC got appraisals of the properties in question regarding the conveyance of a portion of Newberry Street or did any financial analysis on the potential investment required, the follow-on expenses or the potential return on the value of the property transferred to the developer. This is fiscally irresponsible and violates even the most basic purchasing procedures and requirements.

153. DRB and the AMDC should have known that, as a Municipal Development Commission, AMDC was required to follow a Redevelopment Plan, and that the developer for any AMDC project had to be chosen by a public RFP, in all cases pursuant to S.C. Code Section 31-10-10 *et. seq.* If the DRB did not know this in advance, the City and the AMDC had the duty to ensure the DRB knew it as part of any application before the DRB for

Project Pascalis. This duty is heightened because the City and AMDC had their own doubts about these matters at the time, as evidenced by their confusing conflicting references to the AECOM Plan as well as Plan One and their clumsy attempts to falsely create a purported RFP after the fact. AMDC's resolutions authorizing the November 10, 2021, purchase of the lots under review by the DRB state that AMDC was pursuing Plan One and that Project Pascalis was part of Plan One. Minimal due diligence by the DRB would have revealed that Project Pascalis bore no resemblance to Plan One and that there had not been any visible or valid RFP process for choosing RPM as the developer. At the very least, DRB should have questioned under what authority AMDC was allowing RPM to apply for a COA. The DRB did no investigation and did not question any aspect of the AMDC's or RPM's authority or qualifications in connection with the February 21, 2022, RPM application for a COA.

D. Freedom of Information Act Violations

154. Due to the lack of transparency and clarity of the disclosures related to Project Pascalis, numerous public meetings of the City Council, the DRB and the AMDC have been held where the public had or was given incomplete, inaccurate, or misleading information. As a result, the public record with regard to Project Pascalis is incomplete, inaccurate, or misleading in numerous places and instances. Every public meeting related to Project Pascalis and every occasion where the public was asked to comment on Project Pascalis was tainted by this incomplete, inaccurate, or misleading information, because members of the public could not reach informed opinions or make informed comments based on such information.

155. The City Council has not properly disclosed the conflicts of interest of Gary Smith and Mayor Osbon regarding Project Pascalis, and these conflicts have not been recorded and described in the minutes of Council meetings, as required by S.C. Code Section 8-13-700(B). The Council has also not disclosed the status of the CRT Sale, which is a material fact when evaluating Project Pascalis. As a result, the public record regarding Project Pascalis was incomplete, and members of the public were not properly informed when, for example, defendants commented on the potential transfer of a valuable portion of Newberry Street in the March 28, 2022, and May 9, 2022, Council meetings.
156. The agendas of the DRB meetings on Project Pascalis are confusing and misleading. In the agendas for the January 4, February 1, and February 17, 2022, DRB Work Sessions, for example, (a) the labels used for Project Pascalis are different from meeting to meeting and do not mention Project Pascalis, RPM or AMDC; (b) Project Pascalis was not included in the items labeled Pre-Application Conferences or Pre-Application Reviews, and RPM was referred to as “applicant” in minutes of these meetings, when, in all cases, no application had yet been received; (c) the DRB reviewed the merits of Project Pascalis when Section 6.1.2 of the Zoning Ordinance states, in part, that pre-application conferences serve to “discuss procedures, standards, or regulations required by this Ordinance;” and (d) the items related to Project Pascalis were always under New Business, even after the first meeting, when in fact they were Old Business. As a result, these agendas did not give adequate notice of the purpose and content of these meetings and the public could not reasonably determine that Project Pascalis would be discussed and what aspect of Project Pascalis would be discussed at these meetings.

157. Contrary to all prior procedures and custom for projects of similar importance, the DRB approved the application for a COA to demolish four prominent historic structures in one quick Meeting on March 1, 2022. Because the Zoning Code imposes extensive duties on the DRB when dealing with demolition of historic structures, the public could not have reasonably expected such a quick approval, particularly when the Zoning Ordinance requires that such an application “shall be denied.” The agenda for the March 1, 2022, DRB Meeting does not disclose that the DRB would or could grant an approval at the first Meeting on such an important project. The agenda description for this meeting was not sufficient, and there was no disclosure of the intended change in procedures in the minutes of any prior DRB meeting. As a result, the public had no way to know or to expect that such an approval would or could occur on March 1, 2022. In addition, the application materials included in the agenda were seriously deficient and contained no information on three of the four structures that were approved for demolition on March 1, 2022. As a result, the public record was incomplete and members of the public had not been properly informed when the DRB voted to demolish the four structures on March 1, 2022, in violation of the requirements of FOIA, as well as numerous violations of the Zoning Ordinance.

158. AMDC knew it had not followed the requirements of S.C. Code Section 31-10-10 *et seq.* from the inception of Project Pascalis. It knew it had not held a public hearing for either Plan One or the AECOM plan, as required by S.C. Code Section 31-10-100(d) and that the AECOM plan did not meet the requirements of S.C. Code Section 31-10-100(c). AMDC also knew Project Pascalis bore no resemblance to Plan One and therefore was not a redevelopment project in accordance with Plan One. Despite this, AMDC made

misleading disclosures in its resolutions to acquire the Pascalis Properties and in its confusing statements that it was pursuing Project Pascalis at times in accordance with Plan One and at other times in accordance with the AECOM Plan. As a result, the AMDC's public record with regard to Project Pascalis was and is incomplete and members of the public had not been properly informed at any of the public meetings of the AMDC.

159. From its inception in May 2020 to date, the AMDC somehow determined:

- To collaborate with the City to include a portion of Newberry Street in Project Pascalis.
- The features to be included in Project Pascalis.
- To pursue Project Pascalis, as configured in March 2021.
- To solicit approximately eight developers for Project Pascalis in May 2021.
- The content of materials to be distributed to such developers in and around May 2021.
- A process for evaluating and selecting a developer for Project Pascalis.
- To select WTC Investments, LLC, as a developer for Project Pascalis and enter into option agreements with WTC in March 2021.
- To select ACOC as a developer for Project Pascalis and enter into undisclosed option and reimbursement arrangements with ACOC in and around May 2021.
- To select RPM as a developer for Project Pascalis and enter into an undisclosed cost sharing arrangement with RPM, in and around November 2021.

- To collaborate with the City to arrange for the conveyance of a portion of Newberry Street to RPM.
- To change Project Pascalis to include two additional lots on Newberry Street as part of the conveyance of a portion of Newberry Street to RPM.
- To collaborate with the City and DRB to arrive at a process to approve an unprecedented form of COA for RPM, including granting separate approvals for segments of Project Pascalis and accelerated approval of demolition of the Hotel Aiken and the three adjacent shop structures.
- To collaborate with the City to include the Old Municipal Building in Project Pascalis.
- To further change Project Pascalis to reduce its intrusion into Newberry Street.

The AMDC never voted on any of these and other actions that it took and none of these actions are recorded in the minutes of meetings of AMDC in that time period. Therefore, AMDC acted on these matters outside its public meetings in violation of the Freedom of Information Act, including but not limited to S.C. Code Section 30-4-60, which provides in part: "No action may be taken in executive session except to (a) adjourn or (b) return to public session," and (b) failed to keep accurate minutes of its meetings in violation of S.C. Code Section 30-4-90(a). Each of these instances is one or more violations of the FOIA.

Conflicts of Interest

160. Gary Smith, the City Attorney, participated in numerous meetings dealing with, and gave advice and numerous opinions regarding, matters related to Project Pascalis and matters related thereto after his law partner, Ray Massey, became and was an interested

party in or before March 2021 by acquiring interests in Pascalis Project property and by representing WTC and RPM, and even though Mary Guynn, his law partner, owns a building on the Pascalis block and may represent other owners, investors and/or tenants in the Pascalis block; and

161. Mayor Rick Osbon participated in numerous meetings dealing with, and voted and gave advice and numerous opinions regarding, matters related to Project Pascalis, Project Renaissance, and similar projects from and after the time he was elected Mayor, when he knew these projects would likely benefit him personally by causing harm to or the closing of Warneke Cleaners. Mayor Osbon is the owner of Osbon Cleaners in downtown Aiken. Warneke Cleaners is Mayor Osbon's nearest and only competitor in the Aiken downtown area and is located on lot 121-21-08-009 of Project Pascalis, which is to be demolished.

162. Members of the AMDC participated in discussions about and helped make decisions about Project Pascalis and other AMDC business and failed to disclose in the minutes of an AMDC meeting specifically why they recused themselves from one vote of the AMDC as required by S.C. Code Section 8-13-700(B).

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment)

163. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

164. S.C. Code Ann. § 15-53-30 provides that any person whose rights, status or other legal relations are affected by a contract, statute, or ordinance may have determined any question regarding construction or validity and obtain a declaration of rights, status, or other legal relations.

165. Plaintiffs seek a declaratory judgment pursuant to S.C. Code Ann. § 15-53-30 and Rule 57, SCRCPP, for the purposes of resolving one or more actual cases and controversies between and among the parties to this case.

166. These issues are ripe for this Court's determination because, among other things, Defendants have taken the actions described herein which violate numerous provisions of the statutes as set forth below.

167. The Defendants are all parties in interest, concerning the declaratory relief being sought, because they acted or failed to act according to law as described herein.

Community Development Law

(S.C. Code Ann. Sec. 31-10-10, et. seq.)

168. Plaintiffs seek an Order declaring that the following actions by the Defendants, particularly the AMDC, violate provisions of the Community Development Law in numerous respects, including but not limited to each of the following:

- a. Adopting, approving, and implementing redevelopment plans improperly for multiple reasons, including but not limited to without a required public hearing, without complying with statutory criteria and including in a redevelopment area locations and property that are not blighted or in a conservation area.
- b. Adopting, approving, and implementing redevelopment projects, including but not limited to Project Pascalis, improper for multiple reasons, including but not limited to not being pursuant to and consistent with a properly created redevelopment plan and not being located completely in areas that are blighted or a conservation area.
- c. Selecting improperly RPM and/or others as one or more redevelopers for one or more redevelopment projects, including the Pascalis Project, improperly for

multiple reasons, including but not limited to by failing to publish a proper Request for Proposal to select the redeveloper and to provide all pertinent information about the redevelopment projects for prospective redevelopers to consider, as required by S.C. Code § 31-10-110(c).

- d. Authorizing the AMDC to enter and entering into a Purchase and Sale Agreement with a potential developer for Project Pascalis without a properly authorized redevelopment plan and a proper process for selecting the developer.
- e. Approving raising and raising approximately \$10 million of bonds for AMDC to acquire properties for Project Pascalis when Project Pascalis has not been properly created and no redevelopment plan and no redeveloper had been properly created or selected regarding Project Pascalis.
- f. Approving the purchase of and purchasing for \$9.5 million and additional expenses, seven real estate lots on or around November 10, 2021, without a properly authorized redevelopment plan.
- g. Claiming in the resolutions to approve the purchase of real estate on or about November 10, 2021, that Project Pascalis was part of Plan One while knowing full well Project Pascalis bore no resemblance to Plan One.
- h. Incurring additional expenses, including cost-sharing development expenses, in connection with Project Pascalis and other projects without a properly authorized redevelopment plan and a properly selected developer.
- i. Publishing a false, misleading, improper, and *ex post facto* Request for Proposal advertisement for developers for Plan One when AMDC was pursuing Project Pascalis, not Plan One, and Project Pascalis bore no resemblance to Plan One; and

when the advertisement was published long after the redeveloper for Project Pascalis already had been selected.

- j. Moving forward toward signing a Master Development Agreement with RPM when RPM has not been validly selected as a redeveloper.
- k. Having the AMDC pursue redevelopment projects at locations that are not blighted or in a conservation area.
- l. Entering into contracts and spending money with redevelopers and others secretly and in pursuit of purported redevelopment projects and redevelopment plans that are improper and invalid.
- m. Causing and allowing the AMDC to purchase or acquire the Pascalis Properties to implement Project Pascalis, in violation of, *inter alia*, S.C. Code Ann. § 31-10-100(b).
- n. Conveying or authorizing the conveyance of part or all of Newberry Street and of other properties to RPM; and
- o. Allowing five individuals to serve on and participate in making key decisions for the AMDC when they did not qualify to do so because either (a) they were not residents of the City of Aiken, or (b) they had financial interests that prohibited them from being commissioners of the AMDC pursuant to S.C. Code Ann. § 31-10-70.

South Carolina Local Government Comprehensive Planning Enabling Act of 1994

(S.C. Code Ann. Sec. 6-29-740 et. al.)

169. Plaintiffs seek an Order declaring that the actions by the Defendants referenced herein violate provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.

Town of Aiken's Ordinance, Regulations and Customs

170. Plaintiffs seek an Order declaring that the actions by the Defendants, especially the DRB, referenced herein violate ordinances, rules, regulations, and customs of the City of Aiken, including but not limited to by doing each of the following:
- a. Approving a fatally flawed and incomplete application for demolition of the Hotel Aiken and three adjacent Contributing Structures.
 - b. Granting the unprecedented and unauthorized form of a “conditional” COA.
 - c. Failing to request and evaluate significant material as specifically required by Zoning Ordinance Section 5.2.3(C).
 - d. Failing to evaluate and to comply with the overall mandates in Zoning Ordinance Sections 2.6, 5.2 and 5.3.
 - e. Failing to comply with the review standards in Zoning Ordinance Section 5.2.3(J).
 - f. Failing to develop preservation alternatives and to make determinations of demolition by neglect pursuant to Zoning Ordinance Section 5.2.4.
 - g. Failing to evaluate (1) the demolition impact and attributes and design of the structures proposed to replace the demolished structure and (2) the cumulative impact of the Pascalis Project as a whole, as required by Zoning Ordinance Sections 2.6, 5.2 and 5.3.

- h. Failure to require compliance with the applicable guidelines and requirements of the Historic Preservation Overlay District and the Old Aiken Overlay District.
- i. Failure to preserve the qualities, areas, sites, structures, and natural and man-made objects relating to the history of the City of Aiken, as well as that of Aiken County, the State of South Carolina, and the United States of America, as required by Zoning Ordinance Section 2.6.1.
- j. Failing to properly consider specified standards for the purpose of determining whether proposed alterations, construction, demolitions, or relocations are in harmony with the prevailing historical, architectural, archeological, or aesthetic character of the Historic District, a structure in a Historic District, or an Historic Site, or a structure included in an Historic Site, as required by Aiken Ord. 04142003A) and Zoning Ordinance Section 5.2.3(J).
- k. Failing to properly address Construction and Alteration as stated in Zoning Ordinance Section 5.2.3(J)(2).
- l. Failing to properly address or consider Zoning Ordinance Section 5.2.3(J)'s requirement that "In reviewing an application for demolition, the Board and the Planning Director shall consider the historical, archeological, and aesthetic character of the structure (or portion thereof) proposed for demolition;"
- m. Failing to properly address or consider, as required by Zoning Ordinance Section 5.2.3(J), "(1) the structural integrity (i.e., condition) of the structure and (2) the integrity of materials, location, and design of the structure.
- n. Failing to properly address or consider the following required by Zoning Ordinance Section 5.2.3(J): "No application for demolition shall be approved solely on the

basis of a structure's deteriorated condition where the Board determines that the applicant is primarily responsible for the deteriorated condition. Finally, the Board shall consider the extent to which demolition would, in the judgment of the Board, produce a detrimental effect upon the character of the structure or property affected or upon the surrounding properties, or upon the district in which the structure is located. No application for demolition of a Landmark shall be approved;”

- o. Failing to comply with Zoning Ordinance Section 5.2.4’s requirement that “Within any period of postponement, the Board shall endeavor to ascertain what may be done to preserve the structure or landmark. Such steps shall include, but are not limited to, consultation with civic groups, interested citizens, public interest groups, and public boards and agencies” (Emphasis added.).
- p. Failing to consider, as required by Zoning Ordinance Section 5.2.4(A)(3), whether the structures sought to be demolished contribute to the character of the Aiken Historic District or that the landmark is of historical, archeological, or architectural significance or that, for any other reason, preservation in the public interest is warranted.
- q. Allowing individuals to serve on the DRB and the AMDC who were not qualified to serve in those positions because they were not residents of the City of Aiken.
- r. Dismissing DRB member Lucy Knowles from the DRB in retaliation for voting against demolition of the Hotel Aiken and related structures; and
- s. Replacing DRB member Lucy Knowles on the DRB with Laura Blessing Thomas who was not qualified to serve on the DRB because she was not a resident of the City of Aiken, in violation of Zoning Ordinance Section 7.1.7(D).

FOR A SECOND CAUSE OF ACTION

(Permanent Injunction and Other Equitable/Injunctive Relief)

171. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated herein.
172. Based on the aforementioned declarations, Plaintiffs respectfully seek a Permanent Injunction enjoining, restraining, and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:
- a. Implementing in any way, including paying, directly or indirectly, any money regarding, Project Pascalis until and unless Project Pascalis becomes a valid redevelopment project pursuant to a valid redevelopment plan.
 - b. Violating the South Carolina Community Development Law.
 - c. Violating the South Carolina Government Comprehensive Planning Enabling Act of 1994.
 - d. Violating the South Carolina Freedom of Information Act.
 - e. Violating zoning, procurement and other ordinances, rules, regulations, and customs of the City of Aiken applicable to development; and
 - f. Any and all other such acts as this Court deems appropriate for injunctive relief.

FOR A THIRD CAUSE OF ACTION

(Violations of the S.C. Freedom of Information Act)

173. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.
174. By their actions referenced herein the Defendants have violated, and may continue to violate, sometimes willfully and knowingly, provisions of S.C. Code Ann. § 30-4-10 et

seq., in numerous respects, including but not limited to the following:

- a. Giving no notice or inadequate notice of meetings of public bodies.
- b. Excessive and unjustified use of executive sessions.
- c. Failing to provide minutes of meetings within a reasonable time.
- d. Failing without justification to produce documents for inspection and copies of documents.
- e. Denying public access to meetings, meeting minutes and meeting agendas.
- f. Failing to respond within 15 working days, or at all, to FOIA requests; and
Failing to create and keep documents and records, including agendas for, and minutes of, meetings and resolutions, which are accurate, complete, and not misleading.

FOIA VIOLATIONS BY DRB

A. Improper Notice, Agendas and Minutes - Violations of S.C. Code Ann. § 30-4-80 and S.C. Code Ann. § 30-4-90

175. On information and belief, at various times from January 4, 2022, to September 29, 2022, the DRB did not give proper notice of certain meetings because said notices included agendas that were misleading, inadequately informative, and otherwise not proper agendas for said meetings, in violation of Section 34-10-80. Said agendas and minutes of meetings did not appropriately describe the topics/substance that the DRB intended to discuss or did discuss at said meetings, including but not limited to that said topics/substance involved Project Pascalis, and the City of Aiken and the AMDC as participants in Project Pascalis, in violation of S.C. Code Ann. § 30-4-80 and S.C. Code Ann. § 30-4-90.

176. As described in paragraph 108 above, the first DRB meeting that reviewed the new Pascalis Project was a Work Session on January 4, 2022. At that meeting Ray Massey introduced the RPM team and there was a discussion of Project Pascalis. The discussion of Project Pascalis at this DRB meeting was not included in the agenda or the minutes for the meeting. The agenda referred only to “Economic Development Update” and “Pre-Application Conferences.” The agenda and the minutes made no reference to Project Pascalis, RPM or AMDC. Based on this agenda and these minutes, the public had no way of knowing that Project Pascalis would be discussed or was discussed.
177. As described in paragraph 109 above, on February 1, 2022, the DRB toured the site of the Hotel Aiken and reviewed various aspects of the Pascalis Project in another Work Session. The agenda referred only to “Review of site visit for 235 Richland Avenue West and Neighboring Parcels” and “Pre-Application Reviews.” The agenda made no reference to Project Pascalis, RPM or AMDC. Based on this agenda, the public was misled and would have no way of knowing that Project Pascalis would be discussed or was discussed. The minutes of the meeting made no mention of Project Pascalis, RPM or AMDC. These misleading omissions in the agenda and in the minutes of the February 1, 2022, DRB Work Session violate Section 30-4-80 and Section 30-4-90 of the Freedom of Information Act.
178. As described in paragraph 109 above, on February 17, 2022, RPM presented the Taylor and Viola engineering report on the condition of the Hotel Aiken at a Work Session of the DRB. This was a specially called DRB Work Session devoted almost exclusively to Project Pascalis. The discussion of Project Pascalis at this DRB meeting was not clearly described in the agenda for this meeting. The agenda refers only to “Downtown

Development Update with Raines Development and partners. The update will include a review of the structural assessment report for Hotel Aiken,” but does not make any connections regarding the participants, the Hotel Aiken and Project Pascalis. The project is categorized as “New Business” despite having been reviewed at the last two DRB meetings. The label confusingly refers to Raines Development for the first time without distinguishing it from RPM or explaining its role or identifying the related project. The agenda refers to the Hotel Aiken for the first time, without explaining that it is the same as 235 Richland Avenue or explaining its connection with Project Pascalis. The agenda uses the labels the project “Downtown Development Update” but does not connect it in any way to the “Economic Development Update” or “235 Richland Avenue” designations used earlier, or to Project Pascalis. This was the fourth different reference used for the same project and still did not give the public any way of knowing what the project was and why it was important. There is no way that the public could tell by the agendas alone that the agenda items for the November 4, 2021, January 4, 2022 and February 1, 2022 and February 17, 2022 meetings refer to the same project. The agenda item references “the structural engineering report for the Hotel Aiken,” without disclosing that it was prepared for the developer. The agenda does not disclose that the developers had already chosen to demolish the historic Hotel Aiken and three adjacent shops, a subject of great interest to the public. Neither the engineering report nor the RPM presentation were included in the agenda, so the public had no opportunity to study them in advance of the meeting. The agenda and the minutes made no reference to demolition, Project Pascalis, RPM or AMDC. Based on this agenda and these minutes, the public was confused and uninformed as to whether Project Pascalis would be discussed or was discussed, and who

the other names mentioned were, who the Hotel Aiken structural assessment was prepared for, etc. Up to that time little information on and no plans of Project Pascalis had been made public. Minutes of the meeting misleadingly and incorrectly referred to RPM as “applicants” when RPM had made no application, and yet made no reference to Project Pascalis, RPM or AMDC. These omissions, misstatements and obfuscations in the agenda and the minutes of the February 17, 2021, DRB Work Session violate Sections 30-4-80 and 30-4-90 of the Freedom of Information Act.

179. As stated in paragraph 156 above, the agendas of the DRB meetings on Project Pascalis are confusing and misleading. In the agendas for the January 4, February 1, and February 17, 2022, DRB Work Sessions, for example, (a) the labels used for Project Pascalis are different from meeting to meeting and do not mention Project Pascalis, RPM or AMDC; (b) Project Pascalis was not included in the items labeled Pre-Application Conferences or Pre-Application Reviews, and RPM was referred to as “applicant” in minutes of these meetings, when, in all cases, no application had yet been received; (c) the DRB reviewed the merits of Project Pascalis when Section 6.1.2 of the Zoning Ordinance states, in part, that pre-application conferences serve to “discuss procedures, standards, or regulations required by this Ordinance;” and (d) the items related to Project Pascalis were always under New Business, even after the first meeting, when in fact they were Old Business because the same Project Pascalis topics had been discussed by the DRB in its previous meetings. In addition, none of the agendas regarding any DRB meeting about Project Pascalis identifies the City and the AMDC as participants in the project, a fact that is highly relevant to the public. As a result, these agendas did not give adequate notice of the purpose and content of these meetings and the public was misled and could not

reasonably determine that Project Pascalis would be discussed and what aspect of Project Pascalis would be discussed at these meetings, in violation of Section 30-4-80 of the Freedom of Information Act. In addition, the minutes of the meetings regarding Project Pascalis did not adequately state the substance of those meetings, in violation of Section 30-4-90 of the Freedom of Information Act.

180. As described in paragraph 157 above, in a break with all prior procedures and customs for projects of similar importance, the DRB approved the application for a COA to demolish four prominent historic structures in one quick meeting on March 1, 2022. Because the Zoning Ordinance imposes extensive duties on the DRB when dealing with demolition of historic structures, the public could not have reasonably expected such a quick approval, particularly when the Zoning Ordinance requires that such an application “shall be denied.” The agenda for the March 1, 2022, DRB meeting does not disclose that the DRB would or could grant an approval at the first Meeting on such an important project. The agenda description for this meeting was misleading and not sufficient, and there was no disclosure of the intended change in procedures in the minutes of any prior DRB meeting. As a result, the public had no way to know or to expect that such an approval would or could occur on March 1, 2022. In addition, the application materials included in the agenda were seriously deficient and contained no information on three of the four structures that were approved for demolition on March 1, 2022. As a result, the public record was incomplete and misleading, and members of the public had not been properly informed when the DRB voted to demolish the four structures on March 1, 2022, in violation of Section 30-4-80 of the FOIA.

181. The agenda for the November 4, 2021 DRB Work Session meeting was deficient. The agenda label “Economic Development Update” describing the purpose of the meeting is misleading. It gives the impression that the meeting would be about economic development in the City broadly. Instead, the meeting was exclusively about Project Pascalis. The agenda does not (a) mention Project Pascalis by name, disclose the existence of such a project or give a substantive description of it; (b) disclose the potential purchase and redevelopment of seven lots; (c) mention the AMDC or the City as key participants; or (d) give any sense of the importance or impact of what was to be discussed.
182. The agenda for the January 4, 2022, DRB Work Session meeting was deficient. The agenda label “Economic Development Update” describing the purpose of the meeting is misleading because the topic was Project Pascalis, which was of much greater interest to the general public. It gives the impression that the meeting would be about economic development in the City broadly. Instead, the discussion was exclusively about Project Pascalis. The agenda does not give the public any sense that the subject has any connection to a major project that is imminent. The agenda still does not (a) mention Project Pascalis by name, disclose the existence of such a major project or give a substantive description of it; (b) indicate that the AMDC/City now owns the seven downtown lots, has selected RPM as the developer and signed a redevelopment contract (both announced on December 3, 2021); (c) mention the City, the AMDC or RPM as key participants; or (d) give any sense of the importance of what was to be discussed. The agenda does not refer to the Project Pascalis item as a pre-application meeting, when no application had been received.

183. The agenda for the February 1, 2022, DRB Work Session meeting was deficient. The agenda does not mention the Hotel Aiken by name and did not contain the plans distributed to the DRB, which would clearly indicate the historic Hotel Aiken would be demolished. The agenda still does not (a) mention the City, the AMDC or RPM, as key participants; (b) indicate the ownership of the seven lots; (c) indicate the selection of RPM and its redevelopment contract; (d) cite Project Pascalis by name, disclose the existence of that major project or give a substantive description of it; or (d) give any sense of the importance of what was to be discussed. The project is categorized as “New Business” despite the fact that it was “Old Business” because it was discussed at the previous DRB meeting. The agenda labels the project “235 Richland Avenue and Neighboring Parcels,” but does not connect it in any way to Project Pascalis or to the Economic Development Update designation used by DRB earlier. There is no way that the public could tell by the agendas alone that the items cited on the November 4, 2021, January 4, 2022 and February 1, 2022 agendas are the same. As a result, the agenda did not give the public any sense of why the Hotel Aiken was being visited and why that should be relevant.
184. The agenda for the March 1, 2022, DRB Work Session meeting was deficient. The vague “Downtown Development Update” label in the agenda is extremely misleading, as the subject was specifically the demolition of four historic properties. The agenda says nothing about demolition, which was clearly requested in the application that was the true subject of the Work Session and would have been of great interest to the public. The label for the corresponding item in the agenda for the Regular meeting that immediately followed this Work Session is completely different, even though the true subject of that Work Session meeting was the same as the true subject of that Regular Meeting. The

project is categorized as “New Business” yet again, despite having been reviewed at the last four DRB meetings and now being subject of a formal application for a COA. The agenda makes no connection to Project Pascalis or its participants, the Hotel Aiken or any of the other agenda labels used for the same project earlier on. There is no way the public could tell by the agendas alone that the agenda items for previous Project Pascalis meetings and this Work Session meeting (or for the upcoming Regular meeting also on March 1, 2022) all refer to the same project.

185. The agenda for the March 1, 2022, DRB Regular meeting was deficient. The agenda describes the applicants and the requested approvals, but does not connect them in any way to the City/AMDC, the Hotel Aiken, any of the other agenda labels used earlier by the DRB, or to Project Pascalis. This misled the public into assuming this is an isolated project that can be considered on its own, when it is part of a much larger project and the DRB is required to review the larger project as a whole. The project is categorized as “New Business” yet again despite having been reviewed at the last five DRB meetings and now being subject of a formal application for a COA. This label is completely different than the one used for the corresponding item in the Work Session immediately preceding. There is no way that the public could tell by the agendas alone that the agenda items for previous Project Pascalis meetings and this one, all refer to the same project. For the first time, the agenda mentions demolition, but does not point out that four important historic structures are targeted. If the agenda had used the names of the structures, the public would have immediately recognized that these were historic buildings. Instead of identifying the Hotel Aiken by name, the agenda uses its street number, which would be unknown to most citizens. Instead of giving the names of the

three adjacent shops, the agenda gives one street address, which would be unknown to most citizens and gave the impression only one location is affected, not three. The Zoning Ordinance and the Applicable Guidelines impose significant burdens of proof on the DRB to permit the demolition of a structure and give it ample time to carry out its investigations. The public would and could not have known or suspected that the DRB would approve the demolition of four important historic buildings in its first official meeting on the subject, when so much information was missing regarding (a) the condition of the existing structures, (b) the plans for the replacement project and (c) preservation alternatives that would avoid demolition. The agenda did not properly alert the public to the identity of the structures that might be demolished and what would occur at the meeting.

186. The agendas for these DRB meetings regarding Project Pascalis:

- a. Never identified the project as Project Pascalis, the name that was familiar to the public, and instead gave it five or six different labels, to disguise its exact nature. This made it impossible for the public to know that Project Pascalis would be considered at each said meeting and gave the impression that five or six different, perhaps unconnected, topics would be considered instead.
- b. Never identified the City and the AMDC as principal participants in Project Pascalis. The public would naturally have a greater interest in a project that involved public funds and was driven by public officials versus a project by a private owner on his or her own lot.
- c. Continuously referred to the project in question as “New Business,” and gave the public the impression each time that a new and different project would be considered. Instead, all six DRB meetings considered Project Pascalis.
- d. Did not properly identify the January 4, February 1, and February 17, 2022 meetings as pre-application conferences. By doing so, the agendas gave the public the false impression that these meetings were part of the DRB’s investigations of Project Pascalis. However, the DRB is not allowed to discuss the merits of a case before it receives an application and accepts it as complete.

- e. Presented the demolition of the Hotel Aiken and the adjacent shops as a separate project from Project Pascalis. The agendas never identified the Hotel Aiken or the shops by name, which the public would immediately recognize as historic buildings. Instead, the agendas used street addresses alone, which would not be a useful identifier for most of the public.
- f. Never alerted the public that the Chair had determined in advance to approve the demolition of the Hotel at the first possible moment after receiving RPM's application (at the Regular DRB meeting of March 1, 2022). This is a major departure from the norm, as the approval of a demolition by the DRB is expected to be a lengthy process that could last up to 240 days. As a result, the DRB's hasty approval was a stunning surprise for the public. It is unlikely the Chair made such a determination without consulting other members of the DRB, to be assured of a majority vote. This would either (a) constitute a decision of the DRB made at a secret meeting in violation of Section 30-4-60 or (b) an attempt to circumvent Section 30-4-60, which is prohibited by Section 30-4-70. The DRB is required by the Zoning Ordinance to conduct a lengthy examination, including seeking expert advice, cost estimates for stabilizing the structure and preservation alternatives before approving any demolition. Furthermore, if the structure is a "contributing structure," the Zoning Code requires that any application for its demolition "shall be denied." The DRB blatantly ignored these required investigations and its obligation to deny the RPM application. The DRB was reminded of these obligations by the public and nevertheless went ahead and voted for an unlawful approval. There was no discussion of these issues among the members of the DRB during the March 1, 2022, Regular meeting, which leads the plaintiffs to conclude they must have been agreed in advance.
- g. The purpose of the obfuscations in the agendas for the Project Pascalis meetings, including the misleading separation of the Hotel portion of Project Pascalis, was throw the public "off the scent," and to undercut the safeguards provided by the Zoning Ordinance, so the Chairman could "ram the demolition through" before the public became aware and could mount an effective dissent.

B. Decisions Made/Action Taken in Non-Open Meetings -
Violations of S.C. Code Ann. § 30-4-60 and S.C. Code Ann. §
30-4-70(c)

187. On information and belief, the DRB held or engaged in non-open, non-public meetings at which a quorum of the DRB discussed, made decisions about and/or took other actions regarding Project Pascalis, in violation of Section 30-4-60 and Section 30-4-70(c).
188. The DRB is allowed to make decisions only at its “Regular” or “Special” (specially-called) meetings, where the public is allowed to comment. The only meeting at which the DRB could legally “act upon a matter” regarding Project Pascalis, as provided in Section 30-4-70(c), was the DRB’s March 1, 2022 Regular Meeting. The DRB also holds “Work Sessions,” where the public is not allowed to comment. The DRB by-laws do not allow the DRB to make decisions at Work Sessions.
189. The DRB held six meetings related to Project Pascalis: Five Work Sessions on November 4, 2021, and January 4, February 1, February 17, and March 1, 2022; and one Regular Meeting on March 1, 2022, immediately following the Work Session that day.
190. The DRB is supposed to discuss the merits of a project only after it has received an application that is deemed to be complete and the application has been posted as an agenda item at a Work Session and/or a Regular or Special Meeting. Section 6.1.2 of the Zoning Ordinance allows for pre-application meetings, but only to discuss “procedures, standards, or regulations required by this Ordinance.”
191. On information and belief, at various times from November 10, 2021 to September 29, 2022, members of the DRB met or communicated with representatives of the City, the AMDC, the ACOC, and/or RPM outside of open public meetings. In those secret meetings and communications, members of the DRB discussed and acted upon matters over which the DRB had supervision, control, jurisdiction, or advisory power, all in violation of Section 34-10-60 and/or Section 34-10-70 (c).

192. On information and belief, DRB followed a new process for review of Project Pascalis that was outside the norm of the customary review process followed by the DRB for other projects at that time. There is no record of decision(s) to adopt this new process for Project Pascalis at an open public meeting of the DRB, so it is clear said decision(s) was(were) made in secret meetings or communications of the DRB prohibited by Section 34-10-60 and/or Section 34-10-70 (c).
193. As stated in paragraph 107 above, on November 4, 2021, the DRB held a Work Session, where AMDC and the City gave DRB a briefing on the plans for the purchase of the Pascalis Properties for the Pascalis Project and the subsequent fast track on which they wanted to get those plans approved. As described in paragraph 110 above, at the end of the February 17, 2022 Work Session, the Chair of the DRB urged RPM to present an application for demolition of the Hotel Aiken as quickly as possible. The Zoning Ordinance makes no provision for stepwise, phased, incremental approval of a project by the DRB. However, by February 17, 2022, the DRB on the one hand and the AMDC and RPM on the other hand, had agreed on an accelerated plan to present and act upon Project Pascalis in stages and to act on the demolition of the Hotel Aiken as a first and separate step. Said decision(s) was(were) made in secret meetings or communications of the DRB prohibited by Section 34-10-60 and/or Section 34-10-70 (c).
194. Paragraphs 102-136 above describe numerous decisions by the DRB to follow new procedures which are outside the norm of established DRB procedures or to not follow established DRB procedures. As stated in paragraph 132 above, the DRB made decisions to alter its usual procedures by treating RPM differently than other applicants, including by its decision to grant a conditional COA subject to seeing final plans. At the DRB's

March 1, 2022, Work Session, “Chairman Law explained that the DRB is working with the Raines Group in phases to prevent work delays.” Minutes, DRB Work Session, March 1, 2022 (emphasis added). Thus, as the DRB Chair acknowledged, the DRB unlawfully made these decisions outside the regular and noticed public meetings of the DRB, for which there are no published minutes or record of notice, agenda, discussion, or deliberation of these decisions as required for a public meeting.

195. Both the Zoning Ordinance and the Applicable Guidelines require the DRB to only consider any project as a whole, so it can assess the full impact before granting an approval. They also require that any application for demolition of a historic building include plans which allow the DRB to assess the replacement project before approving the demolition. No plans of the replacement project were presented at any of the relevant Project Pascalis meetings; only schematic layouts that rapidly became obsolete were presented. At the relevant meetings, the AMDC, RPM and the DRB repeatedly noted that replacement plans did not exist yet and the entire project was subject to extensive changes. This was proved to be true. Over the next three months, the project and the replacement plans changed dramatically several times.
196. The January 4, 2022, Work Session was the first meeting held by the DRB to review the Project Pascalis. The minutes of the November 4, 2021, Work Session show the DRB was put on notice that the AMDC would require a very accelerated response from the DRB, as it intended to commence construction on Project Pascalis in six months. While the DRB logically requested to receive information in stages in the November 4, 2021, meeting, it was improper to approve Project Pascalis in stages rather than as a whole. The DRB decided to do this and granted the first partial approval at the March 1 Regular

meeting. The DRB never deliberated or decided in an open meeting to grant such “special treatment” in an open meeting. Whenever the Chair noted that the DRB intended to approve Project Pascalis in stages, no board members objected or asked for discussion. On the contrary, other board members and the applicants affirmed such a process or nodded their approval, consistent with this having been decided in advance in a secret process.

197. The DRB accepted RPM’s application even though it was defective in many ways. RPM submitted its application on February 21, 2022 and the DRB staff forwarded it to the DRB on February 23, 2022. This was the first application for the most important project in City history and the staff took only two days to review it. The application was reviewed at the March 1, 2022, DRB Regular Meeting (eight days later), even though the Zoning Ordinance requires all applications to be submitted 14 days in advance. The DRB never deliberated or decided to grant this “special treatment” in an open meeting. In accepting the RPM application, either the DRB made a decision before the meeting or a *de facto* decision by not raising any issues, or the application was “waved through” with a secret approval.

198. At its March 1, 2022, Regular meeting, the DRB approved a COA for the demolition of the Hotel Aiken and three other important historic buildings in the most important block of downtown Aiken in its first-ever official meeting on the subject. The DRB took a total of 27 minutes and less than six minutes to deliberate the motion after required public comment. The Zoning Ordinance and the Applicable Guidelines provide for up to 240 days to deal with the extensive procedures required before such an approval. Furthermore, the DRB approved a piece of Project Pascalis without seeing anything that remotely resembled a reasonable plan for the whole of Project Pascalis. There is nothing in the Zoning Ordinance or the Applicable Guidelines that contemplates or permits such

an expedited decision. The DRB never deliberated or decided to grant such “special treatment” in an open meeting. This super-acceleration and the total disregard for required procedures evidence a secretly-agreed, pre-determined outcome agreed to by the DRB in one or more non-public meetings, in violation of the FOIA.

199. In approving the COA for the demolition of the Hotel and the other historic buildings, the DRB “invented” a “conditional COA,” that would be subject to seeing the final plans for the full project and would expire if the redevelopment contract with RPM was not signed. Those final plans would have to include a host of highly relevant and controversial elements, including additional demolitions of historic buildings and intrusion into a prominent City street. This is akin to finding a criminal defendant guilty, subject to seeing the relevant evidence, and providing that the defendant would be found innocent if the evidence were not produced. There is nothing in the Zoning Ordinance or the Applicable Guidelines that contemplates or permits such a conditional COA. The DRB never deliberated or decided to grant such a “conditional COA” in an open meeting. Therefore, and upon information and belief, that was decided in a secret DRB process and agreed in advance with the applicants, in violation of the open meetings requirements of the FOIA.

200. The Plaintiffs are entitled to declaratory and injunctive relief pursuant to S.C. Code Ann. § 30-4-100 (A) declaring that such conduct by the Defendants as stated violated the Freedom of Information Act and enjoining any such further conduct. Further under S.C. Code Ann. § 30-4-100 (B), Plaintiffs are entitled to an award of attorney’s fees and costs.

RELIEF REQUESTED

WHEREFORE, Plaintiffs prays for this Honorable Court to grant the declaratory, injunctive, and other relief requested herein; grant attorneys’ fees and costs pursuant to S.C. Code

Ann. § 15-77-300 and S.C. Code Ann. § 30-4-100 (B); and grant such other, further, or different relief as may be deemed just and proper.

Respectfully submitted,

/s. W. Andrew Gowder, Jr.
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COUNSEL FOR PLAINTIFFS

June 29, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF AIKEN)

C/A NO.: 2022-CP-02-01498)

David W. Blake, Luis E. Rinaldini, Dudley
 Richard Dewar, Jenne Stoker, Beatrice B.
 McGhee, Gail King, Historic Aiken
 Foundation, Inc., Green Boundary
 Foundation, and South Carolina Public
 Interest Foundation,

Plaintiffs,

vs.

City of Aiken; Rick Osbon, in his capacity as
 Mayor; Rick Osbon, Kay Brohl, Gail Diggs,
 Ed Girardeau, Andrea Gregory, Lessie Price,
 and Ed Woltz, in their capacities as members
 of the Aiken City Council; Aiken Municipal
 Development Commission; Tim O'Briant,
 Keith Wood, Catina Broadwater, Marty
 Gillam, David Jameson, Stuart MacVean,
 Philip Merry, Chad Matthews, Douglas
 Slaughter, and Chris Verenes, in their
 capacities as members of the Aiken
 Municipal Development Commission; Aiken
 Design Review Board; McDonald Law, John
 McMichael, Katy Lipscomb, Ben Lott,
 Ahmad Mikell, Hannah Robbins, Josh
 Stewart, in their capacities as members of the
 Aiken Design Review Board; RPM
 Development Partners, LLC; Raines
 Company and its subsidiary or division
 Raines Development; Gary Smith; John or
 Jane Does 1-10,

Defendants.

**ANSWER ON BEHALF OF
 DEFENDANTS CITY OF AIKEN,
 OSBON, BROHL, DIGGS,
 GIRARDEAU, GREGORY, PRICE, AND
 WOLTZ**

{Jury Trial Demanded}

Defendants City of Aiken, Osbon, Brohl, Diggs, Girardeau, Gregory, Price, and Woltz
 (more properly the "City of Aiken"), without waving any arguments set forth in their Motion for
 Partial Dismissal and specifically asserting said arguments as if set forth verbatim herein, hereby
 answer Plaintiffs' Complaint as follows:

FOR A FIRST DEFENSE

1. Defendants Osbon, Brohl, Diggs, Girardeau, Gregory, Price, and Woltz have only been sued by Plaintiffs in their official capacities, and in such capacities, said Defendants are simply the alter-ego of the City of Aiken, and therefore said Defendants must be dismissed. Said Defendants specifically reserve and do not waive the arguments made by them in their pending Motion to Dismiss and crave reference to same as if set forth verbatim herein.

FOR A SECOND DEFENSE

2. Plaintiffs' Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted. Defendant reserves its right to file a motion pursuant to Rule 12(b)(6), SCRCF.

FOR A THIRD DEFENSE

3. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.

4. As to the allegations set forth in Paragraphs 1, 2, 3, and 4 of Plaintiffs' Complaint, these Defendants assert that said allegations attempt to establish legal conclusions, which do not require a response from these Defendants, and these Defendants, therefore, crave reference thereto. Further answering, to the extent said allegations attempt to establish liability on the part of these Defendants, those allegations are denied.

5. As to the allegations set forth in Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, these Defendants assert that said allegations are jurisdictional in nature, and/or these Defendants lack sufficient information upon which to form a belief as to the veracity of those allegations, and therefore these Defendants deny same and demand strict proof thereof.

6. As to the allegations set forth in Paragraph 19 of the Complaint, these Defendants

would admit that the City of Aiken is a municipality and/or political subdivision pursuant to the terms and conditions of the South Carolina Tort Claims Act.

7. As to the allegations set forth in Paragraphs 20, 21, 22, 23, 24, 25, and 26 of the Complaint, Defendants admit only that said Defendants are elected officials serving on the City of Aiken's City Council, which is the legislative branch of the City's form of government, and that they are only sued in their official capacities. Further answering, as such, said Defendants are merely the alter-ego of the City of Aiken and must be dismissed from this suit.

8. As to the allegations set forth in Paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49 of the Complaint, these Defendants assert that said allegations are not directed to them and/or said allegations are jurisdictional in nature, and therefore do not require a response from these Defendants. Further answering, to the extent said allegations are construed as to attempt to establish liability on the part of these Defendants, those allegations are denied.

9. As to the allegations set forth in Paragraphs 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, and 79 of the Complaint, these Defendants assert that said allegations attempt to establish legal conclusions and/or quote purported statutes and therefore do not require a response from these Defendants, or in the alternative, these Defendants would crave reference to the actual statutes and/or laws as the best source of what said statutes and/or laws actually say. Further answering, to the extent said allegations were to be construed as attempting to establish liability on the part of these Defendants, said allegations are denied.

10. As to the allegations set forth in Paragraphs 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90 of the Complaint, these Defendants assert that said allegations attempt to establish legal

conclusions, which do not require a response from these Defendants, and/or said allegations attempt to quote purported Ordinances of the City of Aiken, and to that extent these Defendants would crave reference to said Ordinances as the best source for what said Ordinances actually say. Further answering, to the extent said allegations were to be construed as to attempt to establish liability on the part of these Defendants, said allegations are denied.

11. As to the allegations set forth in Paragraphs 91, 92, 93, 94, 95, 96, 97, 98, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, and 187 of the Complaint, to the extent said allegations are directed to these Defendants and/or those allegations attempt to establish liability on the part of these Defendants, those allegations are denied, and any other allegations contained in said Paragraphs of the Complaint are denied as stated.

12. As to Paragraph 188 of the Complaint, these Defendants reiterate each and every allegation and/or defense to same. Further, these Defendants object to the jumbling of causes of action.

13. As to Paragraphs 189, 190, 191, and 192 of the Complaint, these Defendants assert that said allegations attempt to establish legal conclusions and/or are jurisdictional in nature, and therefore these Defendants crave reference thereto. Further answering, to the extent those allegations are to be construed as to attempt to establish liability on the part of these Defendants, those allegations are denied.

14. As to the allegations set forth in Paragraphs 193, 194, 195, 196, 197, 198, and 199 of

the Complaint, these Defendants assert that said allegations are not directed to these Defendants and/or said allegations attempt to establish legal conclusions, which do not require a response from these Defendants, and therefore crave reference thereto. Further answering, to the extent said allegations were to be construed as to attempt to establish liability on the part of these Defendants, those allegations are denied.

15. As to Paragraph 200 of the Complaint, these Defendants reiterate each and every allegation and/or defense to same. Further, these Defendants object to the jumbling of causes of action.

16. As to the allegations set forth in Paragraph 201 of the Complaint, Defendants deny Plaintiffs are entitled to such relief and/or deny same.

17. As to Paragraph 202 of the Complaint, these Defendants reiterate each and every allegation and/or defense to same. Further, these Defendants object to the jumbling of causes of action.

18. As to the allegations set forth in Paragraphs 202 and 203 of the Complaint, these Defendants deny same and demand strict proof thereof.

19. As to Paragraph 205 of the Complaint, these Defendants reiterate each and every allegation and/or defense to same. Further, these Defendants object to the jumbling of causes of action.

20. As to the allegations set forth in Paragraphs 206 and 207 of the Complaint, these Defendants deny same and demand strict proof thereof.

21. These Defendants deny that Plaintiffs are entitled to the relief sought in their Complaint or any other relief from these Defendants.

FOR A FOURTH DEFENSE

22. These Defendants assert that Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

FOR A FIFTH DEFENSE

23. These Defendants assert that Plaintiffs' claims are barred, in whole or in part, by waiver.

FOR A SIXTH DEFENSE

24. These Defendants assert that Plaintiff's claims are time-barred, in whole or in part, by the applicable statute of limitations.

FOR A SEVENTH DEFENSE

25. These Defendants assert that Plaintiffs lack standing to bring this action, and/or are not a real party in interest, and therefore this matter must be dismissed.

FOR AN EIGHTH DEFENSE

26. These Defendants assert that the Court should refuse Plaintiffs' request for declaratory judgment pursuant to S.C. Code Ann. § 15-53-70.

FOR A NINTH DEFENSE

27. These Defendants assert that Plaintiffs' requests for damages in the form of attorney's fees and costs against these Defendants are against the public policy of the State, and therefore such pray for relief should be stricken from the Complaint.

FOR A TENTH DEFENSE

28. Plaintiffs' claims, being equitable in nature, are barred by the unclean hands doctrine.

FOR AN ELEVENTH DEFENSE

29. These Defendants would allege that the claims by Plaintiffs are barred in whole, or in part, by Plaintiffs' failure to mitigate its alleged damages.

FOR A TWELFTH DEFENSE

30. These Defendants assert Plaintiffs' claims are barred, in whole or in part, the doctrine of equitable estoppel.

FOR A THIRTEENTH DEFENSE

31. These Defendants assert they are immune from suit pursuant to the protections and limitations on liability as set forth in the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* as may be pled more specifically herein.

FOR A FOURTEENTH DEFENSE

32. These Defendants assert they are entitled to immunity, in whole or in part, by application of S.C. Code Ann. § 15-78-60(1), (2), (3), (4), (5), (11), (13), (17), and (20).

FOR A FIFTEENTH DEFENSE

33. Defendants Osbon, Brohl, Diggs, Girardeau, Gregory, Price, and Woltz are entitled to absolute employee immunity pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70, and therefore must be dismissed from this case.

FOR A SIXTEENTH DEFENSE

34. These Defendants assert they are entitled to immunity as these Defendants were acting in good faith, and for a public purpose and/or for the good of the public, and therefore these Defendants must be dismissed.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays that the Complaint be dismissed with prejudice, and for such other and further relief as the Court deems just and proper.

SMITH | ROBINSON

s/ Daniel C. Plyler

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Columbia, South Carolina

August 15, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	C/A NO.: 2022-CP-02-01498
	)	
David W. Blake, Luis E. Rinaldini, Dudley	)	
Richard Dewar, Jenne Stoker, Beatrice B.	)	
McGhee, Gail King, Historic Aiken	)	
Foundation, Inc., Green Boundary	)	
Foundation, and South Carolina Public	)	ANSWER TO AMENDED COMPLAINT
Interest Foundation,	)	ON BEHALF OF DEFENDANT CITY
	)	OF AIKEN
Plaintiffs,	)	
	)	{Jury Trial Demanded}
vs.	)	
	)	
City of Aiken; Aiken Municipal	)	
Development Commission; Aiken Design	)	
Review Board; and Gary Smith;	)	
	)	
Defendants.	)	
	)	

Defendant City of Aiken hereby answers Plaintiffs' Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Plaintiffs' Amended Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted. Defendant reserves its right to file a motion pursuant to Rule 12(b)(6), SCRCF.

FOR A SECOND DEFENSE

2. Defendant denies each and every allegation of the Amended Complaint not hereinafter specifically admitted, qualified, or explained.

3. As to the allegations set forth in Paragraphs 1, 2, and 3 of Plaintiffs' Amended Complaint, this Defendant asserts that said allegations attempt to establish legal conclusions, which do not require a response from this Defendant, and this Defendant, therefore, craves reference thereto. Further answering, to the extent said allegations attempt to establish liability on the part of this Defendant, those allegations are denied.

4. As to the allegations set forth in Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, this Defendant asserts that said allegations are jurisdictional in nature and/or attempt to establish legal conclusions, and therefore this Defendant craves reference thereto. Further answering, to the extent said allegations are to be construed as to attempt to establish liability on the part of this Defendant, those allegations would be denied.

5. As to the allegations set forth in Paragraph 18 of the Amended Complaint, this Defendant would admit that the City of Aiken is a municipality and/or political subdivision pursuant to the terms and conditions of the South Carolina Tort Claims Act. As to the remaining allegations set forth in Paragraph 18 of the Amended Complaint, this Defendant would admit that this Defendant did have a commission, commonly referred to as the Aiken Municipal Development Commission (“AMDC”), with commissioners appointed thereto by this Defendant, but that currently the AMDC is managed by city councilmembers in their ex officio capacity.

6. As to the allegations set forth in Paragraphs 19 and 20 of the Amended Complaint, this Defendant asserts that said allegations are not directed to this Defendant and/or said allegations are jurisdictional in nature, and therefore do not require a response from this Defendant. Further answering, to the extent said allegations are construed as to attempt to establish liability on the part of this Defendant, those allegations are denied.

7. As to the allegations set forth in Paragraphs 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 of the Amended Complaint, this Defendant asserts that said allegations attempt to establish legal conclusions and/or purport to quote portions of the S.C. Code, and this Defendant craves reference thereto, and more specifically craves reference to the actual statutes as the best source of what those statutes do, or do not, say. Further answering, to the extent said allegations were to be construed as attempting to establish liability on the part of this Defendant, said allegations are denied.

8. As to the allegations set forth in Paragraphs 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, and 61 of the Amended Complaint, this Defendant asserts that said allegations attempt to establish legal conclusions, which do not require a response from this Defendant, and/or said allegations attempt to quote Ordinances of the City of Aiken, and to that extent this Defendant would crave reference to said Ordinances as the best source for what said Ordinances do, or do not, say. Further answering, to the extent said allegations were to be construed as to attempt to establish liability on the part of this Defendant, said allegations are denied.

9. As to the allegations set forth in Paragraphs 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, and 161 of the Amended Complaint, to the extent said allegations are directed to this Defendant and/or those allegations attempt to establish liability on the part of this Defendant, those allegations are denied, and any other allegations contained in said Paragraphs of the Amended Complaint are denied as stated.

10. As to Paragraph 162 of the Amended Complaint, this Defendant reiterates each and every allegation and/or defense to same. Further, this Defendant objects to the jumbling of causes of action.

11. As to Paragraphs 163, 164, 165, and 166 of the Amended Complaint, this Defendant asserts that said allegations attempt to establish legal conclusions and/or are jurisdictional in nature, and therefore this Defendant craves reference thereto. Further answering, to the extent those allegations are to be construed as to attempt to establish liability on the part of this Defendant, those allegations are denied.

12. As to the allegations set forth in Paragraphs 167, 168, and 169 of the Amended Complaint, this Defendant asserts that said allegations are not directed to this Defendant and/or said allegations attempt to establish legal conclusions, which do not require a response from this Defendant, and therefore crave reference thereto. Further answering, to the extent said allegations were to be construed as to attempt to establish liability on the part of this Defendant, those allegations are denied.

13. As to Paragraph 170 of the Amended Complaint, this Defendant reiterates each and every allegation and/or defense to same. Further, this Defendant objects to the jumbling of causes of action.

14. As to the allegations set forth in Paragraph 171 of the Amended Complaint, this Defendant denies Plaintiffs are entitled to such relief and/or denies same.

15. As to Paragraph 172 of the Amended Complaint, this Defendant reiterates each and every allegation and/or defense to same. Further, this Defendant objects to the jumbling of causes of action.

16. As to the allegations set forth in Paragraphs 173 and 174 of the Amended Complaint, this Defendant denies same and demands strict proof thereof.

17. As to Paragraph 175 of the Amended Complaint, this Defendant reiterates each and every allegation and/or defense to same. Further, this Defendant objects to the jumbling of causes of action.

18. As to the allegations set forth in Paragraphs 176 and 177 of the Amended Complaint, this Defendant denies same and demands strict proof thereof.

19. This Defendant denies that Plaintiffs are entitled to the relief sought in their Amended Complaint or any other relief from this Defendant.

FOR A THIRD DEFENSE

20. This Defendant asserts that Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

FOR A FOURTH DEFENSE

21. This Defendant asserts that Plaintiffs' claims are barred, in whole or in part, by waiver.

FOR A FIFTH DEFENSE

22. This Defendant asserts that Plaintiffs' claims are time-barred, in whole or in part, by the applicable statute of limitations.

FOR A SIXTH DEFENSE

23. This Defendant asserts that Plaintiffs lack standing to bring this action, and/or are not a real party in interest, and therefore this matter must be dismissed.

FOR A SEVENTH DEFENSE

24. This Defendant asserts that the Court should refuse Plaintiffs' request for declaratory judgment pursuant to S.C. Code Ann. § 15-53-70.

FOR AN EIGHTH DEFENSE

25. This Defendant asserts that Plaintiffs' requests for damages in the form of attorney's fees and costs against this Defendant is against the public policy of the State, and therefore such pray for relief should be stricken from the Amended Complaint.

FOR A NINTH DEFENSE

26. Plaintiffs' claims, being equitable in nature, are barred by the unclean hands doctrine.

FOR A TENTH DEFENSE

27. This Defendant would allege that the claims by Plaintiffs are barred in whole, or in part, by Plaintiffs' failure to mitigate its alleged damages.

FOR AN ELEVENTH DEFENSE

28. This Defendant asserts Plaintiffs' claims are barred, in whole or in part, the doctrine of equitable estoppel.

FOR A TWELFTH DEFENSE

29. This Defendant asserts it is immune from suit pursuant to the protections and limitations on liability as set forth in the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* as may be pled more specifically herein.

FOR A THIRTEENTH DEFENSE

30. This Defendant asserts it is entitled to immunity, in whole or in part, by application of S.C. Code Ann. § 15-78-60(1), (2), (3), (4), (5), (11), (13), (17), and (20).

FOR A FOURTEENTH DEFENSE

31. This Defendant asserts it is entitled to immunity as this Defendant was acting in good faith, and for a public purpose and/or for the good of the public, and therefore this Defendant must be dismissed.

FOR A FIFTEENTH DEFENSE

32. This Defendant asserts that Plaintiffs' claims are moot, and therefore must be dismissed.

FOR A SIXTEENTH DEFENSE

33. This Defendant asserts that Plaintiffs lack standing, and therefore this matter must be dismissed.

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WHEREFORE, having fully answered Plaintiffs' Amended Complaint, Defendant prays that the Amended Complaint be dismissed with prejudice, and for such other and further relief as the Court deems just and proper.

SMITH | ROBINSON

s/ Daniel C. Plyler

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Counsel for Defendant City of Aiken

Columbia, South Carolina

March 14, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) C/A NO.: 2022-CP-02-01498

David W. Blake, Luis E. Rinaldini, Dudley
Richard Dewar, Jenne Stoker, Beatrice B.
McGhee, Gail King, Historic Aiken
Foundation, Inc., Green Boundary
Foundation, and South Carolina Public
Interest Foundation,

Plaintiffs,

vs.

City of Aiken; Aiken Municipal
Development Commission; Aiken Design
Review Board; and Gary Smith;

Defendants.

**ANSWER TO SECOND AMENDED
COMPLAINT ON BEHALF OF
DEFENDANT CITY OF AIKEN**

{Jury Trial Demanded}

Defendant City of Aiken hereby answers Plaintiffs' Second Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Plaintiffs' Second Amended Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted. Defendant reserves its right to file a motion pursuant to Rule 12(b)(6), SCRPC.

FOR A SECOND DEFENSE

2. Defendant denies each and every allegation of the Second Amended Complaint not hereinafter specifically admitted, qualified, or explained.

3. As to the allegations set forth in Paragraphs 1, 2, and 3 of Plaintiffs' Second Amended Complaint, this Defendant asserts that said allegations attempt to establish legal conclusions, which do not require a response from this Defendant, and this Defendant, therefore, craves reference thereto.

Further answering, to the extent said allegations attempt to establish liability on the part of this Defendant, those allegations are denied.

4. As to the allegations set forth in Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, this Defendant asserts that said allegations are jurisdictional in nature and/or attempt to establish legal conclusions, and therefore this Defendant craves reference thereto. Further answering, to the extent said allegations are to be construed as to attempt to establish liability on the part of this Defendant, those allegations would be denied.

5. As to the allegations set forth in Paragraphs 18 and 19 of the Second Amended Complaint, this Defendant would admit that the City of Aiken is a municipality and/or political subdivision pursuant to the terms and conditions of the South Carolina Tort Claims Act. Further, this Defendant would admit that this Defendant did have a commission, commonly referred to as the Aiken Municipal Development Commission (“AMDC”), with commissioners appointed thereto by this Defendant, but that currently the AMDC is managed by city councilmembers in their ex officio capacity.

6. As to the allegations set forth in Paragraphs 20 and 21 of the Second Amended Complaint, this Defendant asserts that said allegations are not directed to this Defendant and/or said allegations are jurisdictional in nature, and therefore do not require a response from this Defendant. Further answering, to the extent said allegations are construed as to attempt to establish liability on the part of this Defendant, those allegations are denied.

7. As to the allegations set forth in Paragraphs 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51 of the Second Amended Complaint, this Defendant asserts that said allegations attempt to establish legal conclusions and/or purport to quote portions of the S.C. Code, and this Defendant craves reference thereto, and more

specifically craves reference to the actual statutes as the best source of what those statutes do, or do not, say. Further answering, to the extent said allegations were to be construed as attempting to establish liability on the part of this Defendant, said allegations are denied.

8. As to the allegations set forth in Paragraphs 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, and 62 of the Second Amended Complaint, this Defendant asserts that said allegations attempt to establish legal conclusions, which do not require a response from this Defendant, and/or said allegations attempt to quote Ordinances of the City of Aiken, and to that extent this Defendant would crave reference to said Ordinances as the best source for what said Ordinances do, or do not, say. Further answering, to the extent said allegations were to be construed as to attempt to establish liability on the part of this Defendant, said allegations are denied.

9. As to the allegations set forth in Paragraphs 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, and 162 of the Second Amended Complaint, to the extent said allegations are directed to this Defendant and/or those allegations attempt to establish liability on the part of this Defendant, those allegations are denied, and any other allegations contained in said Paragraphs of the Second Amended Complaint are denied as stated.

10. As to Paragraph 163 of the Second Amended Complaint, this Defendant reiterates each and every allegation and/or defense to same. Further, this Defendant objects to the jumbling of causes of action.

11. As to Paragraphs 164, 165, 166, and 167 of the Second Amended Complaint, this

Defendant asserts that said allegations attempt to establish legal conclusions and/or are jurisdictional in nature, and therefore this Defendant craves reference thereto. Further answering, to the extent those allegations are to be construed as to attempt to establish liability on the part of this Defendant, those allegations are denied. Furthermore, as is the case with many portions of the pleading, the allegations do not satisfy the pleading requirements of Rule 8, SCRCp.

12. As to the allegations set forth in Paragraphs 168, 169, and 170 of the Second Amended Complaint, this Defendant asserts that said allegations are not directed to this Defendant and/or said allegations attempt to establish legal conclusions, which do not require a response from this Defendant, and therefore crave reference thereto. Further answering, to the extent said allegations were to be construed as to attempt to establish liability on the part of this Defendant, those allegations are denied. Furthermore, as is the case with many portions of the pleading, the allegations do not satisfy the pleading requirements of Rule 8, SCRCp.

13. As to Paragraph 171 of the Second Amended Complaint, this Defendant reiterates each and every allegation and/or defense to same. Further, this Defendant objects to the jumbling of causes of action.

14. As to the allegations set forth in Paragraph 172 of the Second Amended Complaint, this Defendant denies Plaintiffs are entitled to such relief and/or denies same.

15. As to Paragraph 173 of the Second Amended Complaint, this Defendant reiterates each and every allegation and/or defense to same. Further, this Defendant objects to the jumbling of causes of action.

16. As to the allegations set forth in Paragraph 174 of the Second Amended Complaint, this Defendant denies same and demands strict proof thereof.

17. As to the allegations set forth in Paragraphs 175, 176, 177, 178, 179, 180, 181, 182,

183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, and 200 of the Second Amended Complaint, this Defendant asserts that said allegations are not directed to this Defendant and/or said allegations attempt to establish legal conclusions, which do not require a response from this Defendant, and therefore crave reference thereto. Further answering, to the extent said allegations were to be construed as to attempt to establish liability on the part of this Defendant, those allegations are denied. Furthermore, as is the case with many portions of the pleading, the allegations do not satisfy the pleading requirements of Rule 8, SCRCP.

18. That as to the WHEREFORE Paragraph of the Second Amended Complaint, this Defendant would deny same and demand strict proof thereof.

19. This Defendant denies that Plaintiffs are entitled to the relief sought in their Second Amended Complaint or any other relief from this Defendant.

FOR A THIRD DEFENSE

20. This Defendant asserts that Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

FOR A FOURTH DEFENSE

21. This Defendant asserts that Plaintiffs' claims are barred, in whole or in part, by waiver.

FOR A FIFTH DEFENSE

22. This Defendant asserts that Plaintiffs' claims are time-barred, in whole or in part, by the applicable statute of limitations.

FOR A SIXTH DEFENSE

23. This Defendant asserts that Plaintiffs lack standing to bring this action, and/or are not a real party in interest, and therefore this matter must be dismissed.

FOR A SEVENTH DEFENSE

24. This Defendant asserts that the Court should refuse Plaintiffs' request for declaratory judgment pursuant to S.C. Code Ann. § 15-53-70.

FOR AN EIGHTH DEFENSE

25. This Defendant asserts that Plaintiffs' requests for damages in the form of attorney's fees and costs against this Defendant is against the public policy of the State, and therefore such pray for relief should be stricken from the Second Amended Complaint.

FOR A NINTH DEFENSE

26. Plaintiffs' claims, being equitable in nature, are barred by the unclean hands doctrine.

FOR A TENTH DEFENSE

27. This Defendant would allege that the claims by Plaintiffs are barred in whole, or in part, by Plaintiffs' failure to mitigate its alleged damages.

FOR AN ELEVENTH DEFENSE

28. This Defendant asserts Plaintiffs' claims are barred, in whole or in part, the doctrine of equitable estoppel.

FOR A TWELFTH DEFENSE

29. This Defendant asserts it is immune from suit pursuant to the protections and limitations on liability as set forth in the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* as may be pled more specifically herein.

FOR A THIRTEENTH DEFENSE

30. This Defendant asserts it is entitled to immunity, in whole or in part, by application of S.C. Code Ann. § 15-78-60(1), (2), (3), (4), (5), (11), (13), (17), and (20).

FOR A FOURTEENTH DEFENSE

31. This Defendant asserts it is entitled to immunity as this Defendant was acting in good faith, and for a public purpose and/or for the good of the public, and therefore this Defendant must be dismissed.

FOR A FIFTEENTH DEFENSE

32. This Defendant asserts that Plaintiffs' claims are moot, and therefore must be dismissed.

FOR A SIXTEENTH DEFENSE

33. This Defendant asserts that Plaintiffs lack standing, and therefore this matter must be dismissed.

FOR A SEVENTEENTH DEFENSE

34. To the extent Plaintiffs are attempting to raise a cause of action under the Community Development Law, S.C. Code Ann. §§ 31-10-10, *et seq.*, this Defendant asserts said statutes do not provide for a private right of action.

FOR AN EIGHTEENTH DEFENSE

35. This Defendant asserts that Plaintiffs' claims under the Freedom of Information Act (FOIA) are time-barred, in whole or in part, and craves reference to S.C. Code Ann. § 30-4-100.

{The remainder of this page was intentionally left blank for formatting purposes.}

WHEREFORE, having fully answered Plaintiffs' Second Amended Complaint, Defendant prays that the Second Amended Complaint be dismissed with prejudice, and for such other and further relief as the Court deems just and proper.

SMITH | ROBINSON

s/ Daniel C. Plyler

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Counsel for Defendant City of Aiken

Columbia, South Carolina

July 12, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

David W. Blake, Luis E. Rinaldini,)
Dudley Richard Dewar, Jenne Stoker,)
Beatrice B. McGhee, Gail King, Historic)
Aiken Foundation, Inc., Green Boundary)
Foundation, and South Carolina Public)
Interest Foundation,)

Civil Action No. 2022-CP-02-1498

Plaintiffs,

**ANSWER TO SECOND AMENDED
COMPLAINT ON BEHALF OF DEFENDANT
AIKEN DESIGN REVIEW BOARD**

v.

City of Aiken; Aiken Municipal)
Development Commission; Aiken Design)
Review Board; Gary Smith,)
Defendants.)

The Defendant Aiken Design Review Board (“DRB”), reserving all rights pursuant to pending Motion to Dismiss filed August 29, 2022 and Motion to Alter or Amend Order and/or Motion for Reconsideration filed June 12, 2023, answers the Plaintiffs’ Second Amended Complaint herein as follows:

FOR A FIRST DEFENSE

1. The Plaintiffs' Second Amended Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted against the Defendant DRB. The Defendant DRB reserves its right to file a motion pursuant to Rule 12(b)(6), SCRCP and/or Rule 12(c), SCRCP.

FOR A SECOND DEFENSE

2. The Circuit Court lacks subject matter jurisdiction over this action. The Defendant DRB reserves its right to file a motion pursuant to Rule 12(b)(1), SCRCP, or to file any

additional motions challenging the lack of subject matter jurisdiction depending on how the pending Motion to Alter or Amend Order and/or Motion for Reconsideration filed June 12, 2023, is ultimately adjudicated.

FOR A THIRD DEFENSE

3. The Defendant DRB denies each and every allegation of the Plaintiffs' Second Amended Complaint not hereinafter specifically admitted, qualified, or explained.

4. The allegations set forth in Paragraphs 1 and 2 of the Plaintiffs' Second Amended Complaint purport to state a general characterization or description of the Plaintiffs' claims. The Defendant DRB denies those claims and further denies that the Plaintiffs are entitled to any relief sought against the Defendant DRB.

5. The allegations set forth in Paragraph 3 of the Plaintiffs' Second Amended Complaint are denied.

6. As to the allegations set forth in the first sentence of Paragraph 4 of the Plaintiffs' Second Amended Complaint, the Defendant DRB admits, upon information and belief, that the Plaintiff David W. Blake is a resident in and taxpayer of the City of Aiken. The remaining allegations in Paragraph 4 are denied.

7. As to the allegations set forth in the first sentence of Paragraph 5 of the Plaintiffs' Second Amended Complaint, the Defendant DRB admits, upon information and belief, that the Plaintiff Luis E. Rinaldini is a resident in and taxpayer of the City of Aiken. The remaining allegations in Paragraph 5 are denied.

8. As to the allegations set forth in the first sentence of Paragraph 6 of the Plaintiffs' Second Amended Complaint, the Defendant DRB admits, upon information and belief, that the Plaintiff Richard Dewar is a resident in and taxpayer of the City of Aiken. The remaining allegations in Paragraph 6 are denied.

9. As to the allegations set forth in the first sentence of Paragraph 7 of the Plaintiffs' Second Amended Complaint, the Defendant DRB admits, upon information and belief, that the Plaintiff Jenne Stoker is a resident in and taxpayer of the City of Aiken. The remaining allegations in Paragraph are 7 denied.

10. As to the allegations set forth in the first sentence of Paragraph 8 of the Plaintiffs' Second Amended Complaint, the Defendant DRB admits, upon information and belief, that the Plaintiff Beatrice B. McGhee is a resident in and taxpayer of the City of Aiken. The remaining allegations in Paragraph 8 are denied.

11. As to the allegations set forth in the first sentence of Paragraph 9 of the Plaintiffs' Second Amended Complaint, the Defendant DRB admits, upon information and belief, that the Plaintiff Gail King is a resident in and taxpayer of the City of Aiken. The remaining allegations in Paragraph 9 are denied.

12. The Defendant DRB admits the allegations as set forth in the first two sentences of Paragraph 10 of the Plaintiffs' Second Amended Complaint. The remaining allegations in Paragraph 10 are denied.

13. The Defendant DRB admits, upon information and belief, the allegations as set forth in the first sentence of Paragraph 11 of the Plaintiffs' Second Amended Complaint. The remaining allegations in Paragraph 11 are denied.

14. As to the allegations set forth in Paragraph 12 of the Plaintiffs' Complaint, the Defendant DRB admits, upon information and belief, that the South Carolina Public Interest Foundation is a non-for-profit corporation organizing and existing under South Carolina law. The remaining allegations in Paragraph 12 are denied.

15. The allegations set forth in Paragraphs 13 through 17 of the Plaintiffs' Second Amended Complaint are denied.

16. The allegations set forth in Paragraph 18 of the Plaintiffs' Second Amended Complaint are admitted.

17. As to the allegations set forth in Paragraph 19 of the Plaintiffs' Complaint, the Defendant DRB lacks sufficient information to admit or deny those allegations, and therefore, denies the allegations at this time.

18. The allegations set forth in Paragraph 20 of the Plaintiffs' Second Amended Complaint are admitted, with the exception of the allegation that DRB members are fiduciaries of the City of Aiken. That allegation states a legal conclusion that is unsupported by law and hence denied.

19. As to the allegations set forth in Paragraph 21 of the Plaintiffs' Complaint, the Defendant DRB admits only that the Defendant Gary Smith has served and continues to serve as the City Attorney for the City of Aiken.

20. As to the allegations set forth in Paragraphs 22 through 51 of the Plaintiffs' Complaint, the Defendant DRB asserts that these allegations are an attempt to establish legal conclusions and/or merely quote purported statutes such that the Defendant DRB does not need to respond. Furthermore, the Defendant DRB craves reference to the actual statutes as the proper source of the law. Moreover, to the extent that these allegations are construed as an attempt to establish any liability on the part of the Defendant DRB, those allegations are denied.

21. As to the allegations set forth in Paragraphs 52 through 62 of the Plaintiffs' Complaint, the Defendant DRB asserts these allegations attempt to establish legal conclusions such that the Defendant DRB does not need to respond. Furthermore, to the extent these allegations attempt to quote purported Ordinances of the City of Aiken, the Defendant DRB would crave reference to the actual Ordinances as the proper source for what said Ordinances

state. Moreover, to the extent said allegations can be construed as to attempt to establish any liability on the part of the Defendant DRB, those allegations are denied.

22. As to the allegations set forth in Paragraph 63 of the Plaintiffs' Complaint, the Defendant DRB admits only that the Hotel Aiken is located in the downtown of the City of Aiken in the block as referenced. The remaining allegations are denied.

23. The allegations set forth in Paragraphs 63 through 101 of the Plaintiffs' Complaint are not directed at the Defendant DRB and, therefore, require no response. However, to the extent these paragraphs assert any wrongdoing or liability on the part of the Defendant DRB, those allegations are specifically denied.

24. The allegations set forth in the first sentence of Paragraph 102 of the Plaintiffs' Complaint are admitted. The remaining allegations are denied as stated.

25. As to the allegations set forth in Paragraphs 103 and 104 of the Plaintiffs' Complaint, the Defendant DRB craves reference to the applicable provisions of the South Carolina Code of Law and the City of Aiken Zoning Ordinances as to the allegations made therein.

26. As to the allegations set forth in Paragraph 105 of the Plaintiffs' Complaint, the Defendant DRB admits that it is a quasi-judicial entity. The remaining allegations are denied. Further answering, the Defendant DRB objects to any allegations pertaining to the decision-making, mental impressions, mental processes, and/or subjective motives of members of the DRB which are protected by the judicial or quasi-judicial testimonial privilege.

27. The allegations set forth in Paragraphs 106 through 118 of the Plaintiffs' Complaint are denied. Further answering, the Defendant DRB craves reference to the minutes of the various work sessions or meetings as referenced as the only admissible evidence of what transpired during such meetings. Moreover, the Defendant DRB objects to any allegations

pertaining to the decision-making, mental impressions, mental processes, and/or subjective motives of members of the DRB which are protected by the judicial or quasi-judicial testimonial privilege.

28. As to the allegations set forth in Paragraphs 119 through 128 of the Plaintiffs' Complaint, to the extent these allegations attempt to quote purported Ordinances of the City of Aiken, the Defendant DRB would crave reference to the actual Ordinances as the proper source for what those Ordinances state. Moreover, to the extent said allegations attempt to establish any liability on the part of the Defendant DRB, those allegations are denied. Further answering, the Defendant DRB objects to any allegations pertaining to the decision-making, mental impressions, mental processes, and/or subjective motives of members of the DRB which are protected by the judicial or quasi-judicial testimonial privilege.

29. The allegations set forth in Paragraphs 129 through 140 of the Plaintiffs' Complaint are denied. Further answering, the Defendant DRB craves reference to the minutes of the various work sessions or meetings as referenced as the only admissible evidence of what transpired during such meetings. Moreover, the Defendant DRB objects to any allegations pertaining to the decision-making, mental impressions, mental processes, and/or subjective motives of members of the DRB which are protected by the judicial or quasi-judicial testimonial privilege.

30. The allegations set forth in Paragraphs 141 through 152 of the Plaintiffs' Complaint are not directed at the Defendant DRB and, therefore, require no response. However, to the extent these paragraphs assert any wrongdoing or liability on the part of the Defendant DRB, those allegations are specifically denied.

31. The allegations set forth in Paragraph 153 of the Plaintiffs' Complaint are denied to the extent directed at the Defendant DRB. Further answering, the Defendant DRB objects to

any allegations pertaining to the decision-making, mental impressions, mental processes, and/or subjective motives of members of the DRB which are protected by the judicial or quasi-judicial testimonial privilege.

32. The allegations set forth in Paragraph 154 of the Plaintiffs' Complaint are denied to the extent directed at the Defendant DRB.

33. The allegations set forth in Paragraph 155 of the Plaintiffs' Complaint are not directed at the Defendant DRB and, therefore, require no response. However, to the extent these paragraphs assert any wrongdoing or liability on the part of the Defendant DRB, those allegations are specifically denied.

34. The allegations set forth in Paragraphs 156 and 157 of the Plaintiffs' Complaint are denied.

35. The allegations set forth in Paragraphs 158 through 162 of the Plaintiffs' Complaint are not directed at the Defendant DRB and, therefore, require no response. However, to the extent these paragraphs assert any wrongdoing or liability on the part of the Defendant DRB, those allegations are specifically denied.

36. As to the allegations set forth in Paragraph 163 of the Plaintiffs' Second Amended Complaint, the Defendant DRB reiterates and realleges each corresponding paragraph of this Answer set forth herein.

37. The allegations set forth in Paragraphs 164 and 165 of the Plaintiffs' Second Amended Complaint are denied to the extent asserted as mechanisms for relief against the Defendant DRB. Further answering, the South Carolina appellate courts have recognized that "[a] declaratory judgment action is not a substitute for a new trial or an appeal." *Wessinger v. Rauch*, 288 S.C. 157, 341 S.E.2d 643, 644 (Ct. App. 1986).⁴ The Supreme Court has similarly rejected the use of a declaratory judgment action to select a forum or to circumvent an existing

statutory process. Specifically, in *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 56 S.E.2d 576 (1949), the Supreme Court held that “ordinarily the Court will refuse a declaration where a special statutory remedy has been provided, or where another remedy will be more effective or appropriate under the circumstances.” 56 S.E.2d at 578-579. “Gratuitous interference with the orderly processes of special statutory tribunals should be avoided.” 56 S.E.2d at 579. Moreover, “[t]he wholesome purposes of declaratory acts would be aborted by its use as an instrument of procedural fencing either to secure delay or to choose a forum.” 56 S.E.2d at 578. *See, Garriss v. Governing Board of South Carolina Reinsurance Facility*, 319 S.C. 388, 461 S.E.2d 819, 821 (1995) (“[d]eclaratory relief will ordinarily be refused where another remedy will be more effective or appropriate under the circumstances”).

38. The allegations set forth in Paragraphs 166 and 167 of the Plaintiffs’ Second Amended Complaint are denied.

39. The allegations set forth in Paragraphs 168 through 169 of the Plaintiffs’ Complaint are not directed at the Defendant DRB and, therefore, require no response. However, to the extent these paragraphs assert any wrongdoing or liability on the part of the Defendant DRB, those allegations are specifically denied.

40. The allegations set forth in Paragraph 170 of the Plaintiffs’ Second Amended Complaint, including all subparts, are denied.

41. As to the allegations set forth in Paragraph 171 of the Plaintiffs’ Second Amended Complaint, the Defendant DRB reiterates and realleges each corresponding paragraph of this Answer set forth herein. The Defendant DRB objects to the jumbling of causes of action.

42. The allegations set forth in Paragraph 172 of the Plaintiffs’ Second Amended Complaint, including all subparts, are denied.

43. As to the allegations set forth in Paragraph 173 of the Plaintiffs' Second Amended Complaint, the Defendant DRB reiterates and realleges each corresponding paragraph of this Answer set forth herein. The Defendant DRB objects to the jumbling of causes of action.

44. The allegations set forth in Paragraph 174 of the Plaintiffs' Second Amended Complaint, including all subparts, are denied to the extent directed at the Defendant DRB.

45. The allegations set forth in Paragraphs 175 through 200 of the Plaintiffs' Second Amended Complaint, including all subparts, are denied. Further answering, the Defendant DRB objects to any allegations pertaining to the decision-making, mental impressions, mental processes, and/or subjective motives of members of the DRB which are protected by the judicial or quasi-judicial testimonial privilege.

46. The allegations and relief sought in the Prayer for Relief are denied.

FOR A FOURTH DEFENSE

47. The Plaintiffs' claims are barred, in whole or in part, by the doctrine of mootness.

FOR A FIFTH DEFENSE

48. The Plaintiffs' Second Amended Complaint fails to set forth a claim against the Defendant DRB that is ripe for adjudication.

FOR A SIXTH DEFENSE

49. The Plaintiffs' claims are barred, in whole or in part, by judicial immunity and/or quasi-judicial immunity.

FOR A SEVENTH DEFENSE

50. The Plaintiffs' claims are, in whole or in part, barred by the Plaintiffs' failure to exhaust their administrative remedies, including their appellate rights pursuant to S.C. Code Ann. § 6-29-900(A).

FOR AN EIGHTH DEFENSE

51. The Plaintiffs' claims are, in whole or in part, barred based upon the defense of waiver.

FOR A NINTH DEFENSE

52. The Plaintiffs' claims are, in whole or in part, barred based upon the defense of unclean hands.

FOR A TENTH DEFENSE

53. The Plaintiffs' claims are, in whole or in part, barred based upon the defense of estoppel including equitable estoppel.

FOR AN ELEVENTH DEFENSE

54. The Plaintiffs' claims are, in whole or in part, barred by the Plaintiffs' lack of standing and for the Plaintiffs not being real parties in interest.

FOR A TWELFTH DEFENSE

55. The Plaintiffs' claims are, in whole or in part, barred by the applicable statute of limitations or other time-bars, including the doctrine of laches, S.C. Code Ann. § 6-29-900(A) and S.C. Code Ann. §30-4-100(A).

FOR A THIRTEENTH DEFENSE

56. The Plaintiffs' Second Amended Complaint raises non-justiciable issues including political questions over which the courts lack any authority or jurisdiction to render judgment or grant relief.

FOR A FOURTEENTH DEFENSE

57. The Plaintiffs' claims are, in whole or in part, barred by the separation of powers doctrine.

FOR A FIFTEENTH DEFENSE

58. The Plaintiffs' claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiffs' prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina. Moreover, there is no provision in the Declaratory Judgment Act nor any contractual provision authorizing the recovery of attorney's fees against a governmental entity under the circumstances presented by this litigation, particularly against a quasi-judicial body. The Plaintiffs' claim for attorney's fees is also barred by operation of judicial and/or quasi-judicial immunity.

WHEREFORE, having fully answered the Plaintiffs' Second Amended Complaint, the Defendant Aiken Design Review Board prays that the Second Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

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Counsel for Defendant Aiken Design Review Board

July 14, 2023

RECEIVED

Jan 18 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Case No. 2022-CP-02-01498

David W. Blake, Luis E.
Rinaldini, Dudley Richard
Dewar, Jenne Stoker, Beatrice
B. McGhee, Gail King, Historic
Aiken Foundation, Inc., Green
Boundary Foundation, and
South Carolina Public Interest
Foundation,

Appellants,

v.

City of Aiken, Aiken Municipal
Development Commission,
Aiken Design Review Board,

Respondents.

NOTICE OF APPEAL

David W. Blake, Luis E. Rinaldini, Dudley Richard Dewar, Jenne Stoker, Beatrice B. McGhee, Gail King, Historic Aiken Foundation, Inc., Green Boundary Foundation, and South Carolina Public Interest Foundation appeal the orders of the Honorable B. Alex Hyman Partially Granting Defendants' Motion for Summary Judgment dated November 13, 2023, and Denying Plaintiffs' Motion to Reconsider dated January 2, 2024. Appellants received written notice of entry of the Order Partially Granting Defendants' Motion for Summary Judgment on November 13, 2023, and the Order Denying Plaintiffs' Motion to Reconsider on January 2, 2024, by electronic notice.

January 12, 2024

/s/ W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr.
1629 Meeting Street, Suite A
Charleston, SC 29405
(843) 727-0060
andy@austengowder.com

Michael T. Rose
Mike Rose Law Firm, PC
406 Central Ave
Summerville, SC 29483
(843)871-1821
mike@mikeroselawfirm.com

James G. Carpenter
The Carpenter Law Firm, PC
819 East North St
Greenville, SC 29601
(864) 235-1269
james.carpenter@carpenterlawfirm.net

Counsel for Appellants

Other Counsel of Record:

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2530 Devine St, 3rd Fl
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Counsel for Respondent City of Aiken

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Counsel for Respondent Aiken Municipal Development Commission

Andrew F. Lindemann
Lindemann Law Firm, P.A.
5 Calendar Ct, Ste 202
PO Box 6923
Columbia, SC 29260
(803) 881-8920
andrew@ldlawsc.com
Counsel for Respondent Aiken Design Review Board

RECEIVED

Jan 18 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Case No. 2022-CP-02-01498

David W. Blake, Luis E.
Rinaldini, Dudley Richard
Dewar, Jenne Stoker, Beatrice
B. McGhee, Gail King, Historic
Aiken Foundation, Inc., Green
Boundary Foundation, and
South Carolina Public Interest
Foundation,

Appellants,

v.

City of Aiken, Aiken Municipal
Development Commission,
Aiken Design Review Board,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Notice of Appeal in the above referenced case has been served upon the following by emailing a digital copy this 12th day of January, 2024 to counsel listed below:

Daniel C. Plyler
Smith Robinson Law
2530 Devine St, 3rd Fl
Columbia, SC 29205
(803) 254-5445
daniel.plyler@smithrobinsonlaw.com
Counsel for Respondent City of Aiken

David L. Morrison
Morrison Law Firm, LLC
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Counsel for Respondent Aiken Municipal Development Commission

Andrew F. Lindemann
Lindemann Davis & Hughes
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PO Box 6923
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(803) 881-8920
Andrew@ldlawsc.com
Counsel for Respondent Aiken Design Review Board

/s. Bailey L. Pope
Bailey L. Pope
Assistant for W. Andrew Gowder, Jr.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	C/A NO.: 2022-CP-02-01498
	)	
David W. Blake, Luis E. Rinaldini,	)	
Dudley Richard Dewar, Jenne Stoker,	)	
Beatrice B. McGhee, Gail King, Historic	)	
Aiken Foundation, Inc., Green Boundary	)	MOTION FOR SUMMARY JUDGMENT
Foundation, and South Carolina Public	)	ON MOOTNESS GROUNDS
Interest Foundation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
City of Aiken; Aiken Municipal	)	
Development Commission; Aiken Design	)	
Review Board; and Gary Smith;	)	
	)	
Defendants.	)	
	)	

TO: W. ANDREW GOWDER, JR., ESQ.; MICHAEL T. ROSE, ESQ.; AND JAMES G. CARPENTER, ESQ.; ATTORNEYS FOR PLAINTIFFS:

Defendant City of Aiken (“the City”), by and through the undersigned counsel, respectfully moves, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order from this Honorable Court dismissing with prejudice the Second Amended Complaint of Plaintiffs David W. Blake, Luis E. Rinaldini, Dudley Richard Dewar, Jenne Stoker, Beatrice B. McGhee, Gail King, Historic Aiken Foundation, Inc., Green Boundary Foundation, and South Carolina Public Interest Foundation (collectively, “Plaintiffs”). The City will show that all of the issues raised by Plaintiffs are now moot and that there is simply no longer a justiciable controversy for this Court to decide.

Plaintiffs filed the instant action against the City, Aiken Municipal Development Commission (AMDC), Aiken Design Review Board (DRB), and Gary Smith (collectively, “Defendants”). Plaintiffs request this Court grant declaratory and injunctive relief in their favor

based on a multitude of legal theories. Despite the voluminous Second Amended Complaint, Plaintiffs’ underlying arguments and requested relief are actually quite narrow.

The thrust of the instant action is to enjoin Defendants from proceeding with “Project Pascalis.” This project was Defendants’ attempt to revitalize a portion of downtown Aiken. Plaintiffs take issue with several alleged shortcomings in Defendants’ attempts to create and execute Project Pascalis, citing in support of their arguments different provisions of the South Carolina Freedom of Information Act, South Carolina Local Government Comprehensive Planning Enabling Act of 1994, South Carolina Community Development Law, and the City of Aiken’s Zoning Ordinance. Despite the large number of academic questions submitted for the Court’s determination—simply put—the case is now moot. Project Pascalis is no more. In fact, the AMDC, which made the majority of the acts or omissions complained of by Plaintiffs in their Second Amended Complaint, has been dissolved. See Exhibit A (City Ordinance).

A court “only considers cases presenting a justiciable controversy.” *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006). It is well-established in South Carolina that our courts do not concern themselves with moot or speculative questions. *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). In other words, our courts will not voluntarily “adjudicate a matter when no actual controversy capable of specific relief exists.” *Id.* “A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *Id.* “Further, it is fundamental that the Declaratory Judgments Act does not eliminate the case-or-controversy requirement.” *Tourism Expenditure Review Committee v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 374 (2013).

In *Croft v. Town of Summerville*, the South Carolina Supreme Court—in an undivided opinion—addressed a virtually identical question of mootness. 433 S.C. 473, 860 S.E.2d 352

(2021). The *Croft* plaintiffs requested the court to invalidate approval granted by the Town of Summerville Board of Architectural Review for construction of a proposed development project. The plaintiffs alleged violations of the Freedom of Information Act and various Town of Summerville ordinances. The plaintiffs' requested relief was for the court "to invalidate the [Board] approvals of the Project and . . . require the [Developer] to obtain new approvals following lawful procedures." *Id.* at 480, 860 S.E.2d at 356. The Supreme Court succinctly identified the case-in-controversy and noted, "[a]t its core, the fight in this case is over whether the Developer can build the project as currently approved by the Board, or whether the Developer must return to the Board and obtain new approval before building the Project." *Id.* Because the developer decided to abandon the project, the *Croft* Court held the case was moot and that no exception to mootness applied.

Here, *Croft* applies and is plainly dispositive of this matter. Like the plaintiffs in *Croft*, Plaintiffs' requested relief is to stop the approved project and require that any new project follow lawful procedures. Specifically, Plaintiffs have sought the issuance of a permanent injunction in their Second Amended Complaint. The specific prayer reads:

Plaintiffs respectfully seek a Permanent Injunction enjoining, restraining, and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

a. Implementing in any way, including paying, directly or indirectly, any money regarding, Project Pascalis until and unless Project Pascalis becomes a valid redevelopment project pursuant to a valid redevelopment plan.

Second Amended Complaint, pg. 105, ¶ 172.

Like the developer in *Croft*, the developer responsible for the project has decided not to move forward with Project Pascalis. See Exhibit B (Affidavit of Tart). Furthermore, Project Pascalis has been ended by both the AMDC and the City of Aiken. See Exhibit C (City

Ordinance). Lastly, the AMDC has been dissolved by the legislative acts of City Council. *See* Exhibit A. Therefore, as was the case in *Croft*, Plaintiffs' case against the City is now moot without any exception to the mootness doctrine.

On September 14, 2022, the developer RPM provided a notice of termination of the agreement it held with the Aiken Municipal Development Commission to implement Project Pascalis. *See* Exhibit B. On September 22, 2022, the Aiken Municipal Development Commission acknowledged RPM's termination of Project Pascalis. *Id.* The decision to not move forward with Project Pascalis has since been memorialized in the minutes of the Aiken Municipal Development Commission. *See* Exhibit D (AMDC Meeting Minutes). Moreover, the Aiken Municipal Development Commission has been dissolved. *See* Exhibit A.

In sum, a decision rendered for any party to this case would not provide any practical relief and would be a purely academic exercise by this Court. The Court should find all issues raised in Plaintiffs' Second Amended Complaint are moot and should dismiss Plaintiffs' Second Amended Complaint with prejudice. The City reserves the right to file any additional legal memoranda and supportive evidence, including Affidavits, prior to a hearing on this Motion.

Respectfully submitted,

SMITH | ROBINSON

s/ Daniel C. Plyler

DANIEL C. PLYLER, SC Bar #72671

RACHEL E. LEE, SC Bar #104184

2530 Devine Street, Third Floor

Columbia, SC 29205

T: 803-254-5445

F: 803-254-5007

Daniel.Plyler@SmithRobinsonLaw.com

Rachel.Lee@SmithRobinsonLaw.com

Counsel for Defendant City of Aiken

Columbia, South Carolina
July 21, 2023

Exhibit A

ORDINANCE NO.: 05082023D

AN ORDINANCE APPROVING THE DISSOLUTION OF THE AIKEN MUNICIPAL DEVELOPMENT COMMISSION AND THE AMENDMENT OF THE AIKEN CITY CODE TO DELETE CHAPTER 11

WHEREAS, in August, 2019, the Council of the City of Aiken established the City of Aiken Municipal Development Commission [the Commission] and created Chapter 11 of the Aiken City Code by passage of Ordinance Number 08122019A; and,

WHEREAS, the Council of the City of Aiken has determined it is appropriate to dissolve the Commission and to have all assets currently in the possession of the Commission transferred to the City of Aiken; and

WHEREAS, the Council of the City of Aiken has further determined that it is necessary to amend the Aiken City Code by deleting Chapter 11; and

WHEREAS, the Council of the City of Aiken recognizes that there may be some items of business that may be necessary to be performed by the Commission in order to wrap up all of the affairs of the Commission and to ensure that all assets of the Commission are properly transferred to the City of Aiken; and

WHEREAS, the Council of the City of Aiken has concluded that the adoption of the proposed dissolution of the Aiken Municipal Development Commission and the amendment to the Aiken City Code to delete Chapter 11 is essential to the general health, safety, welfare and economic stability of the City and is in the best interest of its citizens;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AIKEN HEREBY ORDAINS THAT:

Section 1: The Aiken Municipal Development Commission is hereby dissolved effective June 1, 2023. The Chair of the Commission shall immediately commence the transfer of all of the Commission's assets to the City of Aiken. In the event it is necessary for the Commission to have any meeting to pass any resolution that may be necessary to effect the transfer of any of the assets of the Commission, that meeting shall be scheduled so that all necessary approvals are granted to allow the transfer to occur on or before June 1, 2023.

Section 2: Chapter 11 of the Aiken City Code shall be deleted effective June 1, 2023.

Section 3: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect.

Section 4: This ordinance shall become effective upon adoption by the Council of the City of Aiken.

ADOPTED by the Council of the City of Aiken at a regular meeting held this 8th day of May, 2023, at which a quorum was present and voting.

INTRODUCTION AND FIRST READING: March 27, 2023

SECOND READING AND ADOPTION: May 8, 2023

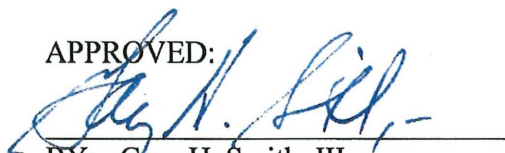
CITY OF AIKEN



BY: Rick N. Osbon

ITS: Mayor

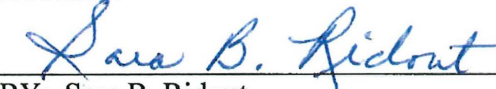
APPROVED:



BY: Gary H. Smith, III

ITS: Attorney

ATTEST:



BY: Sara B. Ridout

ITS: Clerk

I:\Ordinances\Aiken Municipal Development Commission-Dissolution of AMDC - Deletion of Chapter 11 - Aiken City Code 2023-03-27.doc

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

David W. Blake, Luis E. Rinaldini,
Dudley Richard Dewar, Jenne Stoker,
Beatrice B. McGhee, Gail King,
Historic Aiken Foundation, Inc.,
Green Boundary Foundation, and
South Carolina Public Interest Foundation,

PLAINTIFFS,

VS.

City of Aiken; Rick Osbon, in his capacity as Mayor; Rick Osbon, Kay Brohl, Gail Diggs, Ed Girardeau, Andrea Gregory, Lessie Price, and Ed Woltz, in their capacities as members of the Aiken City Council; Aiken Municipal Development Commission; Tim O'Briant, Keith Wood, Catina Broadwater, Marty Gillam, David Jameson, Stuart MacVean, Philip Merry, Chad Matthews, Douglas Slaughter, and Chris Verenes, in their capacities as members of the Aiken Municipal Development Commission; Aiken Design Review Board; McDonald Law, John McMichael, Katy Lipscomb, Ben Lott, Ahmad Mikell, Hannah Robbins, Josh Stewart, in their capacities as members of the Aiken Design Review Board; RPM Development Partners, LLC; Raines Company and its subsidiary or division Raines Development; Gary Smith; John or Jane Does 1-10.,

DEFENDANTS.

AFFIDAVIT OF DAVID TART

Personally appeared before me, David Tart, who deposes and says that:

1. I am a resident of the State of South Carolina and am over the age of 21. I give this affidavit freely and voluntarily.

2. I have personal knowledge of the matters stated in this affidavit, except those matters stated on information and belief and, as to those matters, believe them to be true.

3. I am a Member of RPM Development Partners, LLC.

4. I am a Managing Partner of Raines Company.

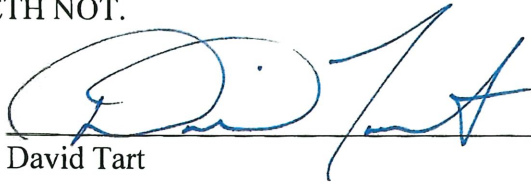
5. On December 6, 2021, RPM Development Partners, LLC ("RPM") entered into a Purchase and Sale Agreement with City of Aiken Municipal Development Commission for development of Project Pascalis (the "Agreement").

6. On September 14, 2022, attorney James D. Myrick, on behalf of RPM, provided notice of termination of the Agreement by letter ("Termination Letter") to the City of Aiken Municipal Development Commission. A true and accurate copy of the Termination Letter is attached hereto as **Exhibit A.**

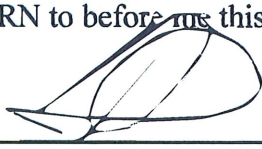
7. On September 22, 2022, Gary T. Pope, Jr., counsel for the City of Aiken Municipal Development Commission, sent an email ("Acknowledgement Email") to, among others, RPM's counsel James Wilson, acknowledging RPM's termination of the Agreement within the due diligence period. A true and accurate copy of the Acknowledgement Email is attached hereto at **Exhibit B.**

8. At no point in time did Raines Company hold a contract with the City of Aiken Municipal Development Commission or any other entity relating to Project Pascalis.

FURTHER AFFIANT SAYETH NOT.


David Tart

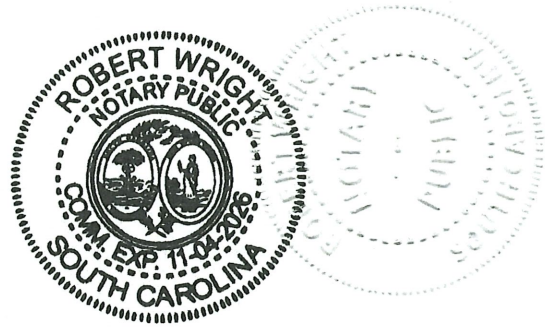
SWORN to before me this 29 day of September, 2022.



Notary Public, State of South Carolina

My Commission Expires: _____

My Commission
Expires: 11/04/2026



October 4, 2022

Womble Bond Dickinson (US) LLP

Post Office Box 999
Charleston, SC 29402

5 Exchange Street
Charleston, SC 29401

t: 843.722.3400

f: 843.723.7398

Molly McDermid
Associate

Direct Dial: 843-720-4650

Direct Fax: 843-723-7398

E-mail: Molly.McDermid@wbd-us.com

VIA E-FILING:

Aiken County Clerk of Court
109 Park Avenue SE
Aiken, SC 29801

**Re: *David W. Blake, et al. v. City of Aiken: et al.*
Case No. 2022-CP-02-01498**

Dear Sir or Madam:

On September 30, 2022, at 11:37 a.m., a Motion to Dismiss with supporting Affidavit of David Tart marked Exhibit A was filed in the Clerk's office. Exhibit A, the Affidavit of Mr. Tart, had two attachments: Exhibit A and Exhibit B, which were not attached to the filing and therefore not filed. I am attaching Exhibits A and B to the Affidavit of David Tart hereto.

Please attach the exhibits to Mr. Tart's Affidavit.

Thank you,

Best regards,

Womble Bond Dickinson (US) LLP

s/Molly McDermid

Molly McDermid
Associate

MMc/rrh

Enc.

Cc: Charles J. Baker, Esq.



September 14, 2022

Via Federal Express, Overnight Delivery to:
 City of Aiken Municipal Development Commission
 111 Chesterfield St. S.
 Aiken, SC 29801
 Attention: Executive Director

Via USPS Delivery to:
 City of Aiken Municipal Development Commission
 P.O. Box 1177
 Aiken, SC 29802
 Attention: Executive Director

Via Email to:
TObriant@CityofAikenSC.gov

Womble Bond Dickinson (US) LLP

Post Office Box 999
 Charleston, SC 29402

5 Exchange Street
 Charleston, SC 29401

t: 843.722.3400
 f: 843.723.7398

James D. Myrick
 Partner
 Direct Dial: 843-720-4643
 Direct Fax: 843-410-2343
 E-mail: Jim.Myrick@wbd-us.com

RE: PURCHASE AND SALE AGREEMENT FOR REAL ESTATE entered into as of the 6th day of December, 2021 (as amended, the "Agreement"), by and between City of Aiken Municipal Development Commission, a body politic and corporate (the "Commission" or "Seller"), and RPM Development Partners LLC, a South Carolina limited liability company ("Developer" or "Purchaser")

Dear Mr. O'Briant:

This letter is being delivered on behalf of Developer to give notice to the Commission under the Agreement. Capitalized terms used but not defined herein have the meanings set forth in the Agreement.

As you know, the Due Diligence Period for my client the Developer expires on September 15, 2022 pursuant to the Second Amendment to Purchase and Sale Agreement dated June 20, 2022. To date, the Commission has been unable to make the necessary progress on its performance under the Agreement, and we understand that the Commission is not able to proceed, for reasons other than any failure by Developer, including that the Commission intends to materially change the substantive components of the proposed Redevelopment Project as originally contemplated in the Agreement. As a result, most of the various Development Agreements contemplated under the Agreement have not been finalized or obtained. At this point it would not be possible for the Commission to complete the Closing as contemplated under the Agreement and within the required time under the Agreement. For these reasons, Developer is forced to hereby exercise its rights to terminate the Agreement and to require reimbursement of Developer's costs and expenses by the Commission.

While the Developer continues to believe this project would be enormously beneficial to the Aiken community, we cannot forfeit our rights to the return of the Earnest Money deposit and the reimbursement of our costs and expenses to date. The Agreement specifies return of these



monies to Developer if the Commission does not perform under the contract. See Sections 4(a) and 11(a)(1) of the Agreement. Therefore, my client respectfully provides notice of termination of the Agreement and requires both the return of the Earnest Money deposit of \$100,000 and reimbursement of all of Developer's costs and expenses, not to exceed \$150,000. An accounting of our costs and expenses will be provided separately. The Developer further reserves all other applicable rights and remedies under the Agreement.

We have appreciated the opportunity to work with the Commission and the City of Aiken and would like to continue to participate in the ongoing development of this project. We believe that our experience and expertise can be valuable to the Aiken community, and we look forward to responding to any new revised project proposal from the Commission when the time comes and hopefully working with you to advance the revised project.

With best regards, I am

Yours Very Truly,

Womble Bond Dickinson (US) LLP


James D. Myrick
Partner

JDM:def

cc: Pope Flynn, LLC
1411 Gervais Street Suite 300
Columbia, SC 29201
Attention: Gary Pope, Esq.
Email: gpope@popoeflynn.com

ELECTRONICALLY FILED - 2023 JUN 21 2:30 PM - AIKEN - COMMON PLEAS - CASE#2022CP0201498

From: Gary Pope Jr. <gpope@popeflynn.com>

Sent: Thursday, September 22, 2022 2:39 PM

To: Davis, Rob <Rob.Davis@ctt.com>; Wilson, James <James.Wilson@wbd-us.com>; Jake Barker <jbarker@glvlawfirm.com>

Cc: C.D. Rhodes <cdrhodes@popeflynn.com>; Wishart, Brenda <Brenda.Wishart@ctt.com>; David L. Morrison <david@dmorrison-law.com>

Subject: RE: ESC609210655 Aiken PSA -2 wires have been received - Escrow earnest money deposit - refund

External (gpope@popeflynn.com)

[Report This Email FAQ](#)

389

We acknowledge and recognize Purchaser's right to terminate the contract and obtain the return of the Earnest Money under § 4(a) of the Purchase and Sale Agreement.

Gary T. Pope, Jr.

Member | Pope Flynn, LLC

DIRECT: [\(803\) 354-4917](tel:(803)354-4917)

Exhibit C

ORDINANCE NO. 11142022AAN ORDINANCE TO REPEAL ORDINANCE NO. 05092022B

WHEREAS, on May 9, 2022, the Council of the City of Aiken approved a conditional conveyance of a portion of the right of way known as Newberry Street, located between Park Avenue and Richland Avenue in the City of Aiken, to RPM Development Partners, LLC by passage of Ordinance Number: 05092022B; and

WHEREAS, said conveyance was contingent on the execution of a master development agreement between the Aiken Municipal Development Commission and RPM Partners, LLC; and

WHEREAS, the intended purpose of the conditional conveyance was to allow the development of "Project Pascalis;" and

WHEREAS, Project Pascalis has been terminated and the Aiken Municipal Development Commission has voted to terminate their contract with RPM Partners, LLC; and

WHEREAS, since Project Pascalis has been terminated and the contract between the Aiken Municipal Development Commission has been terminated, the conditions and/or contingencies relating to the conveyance in question cannot be met;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AIKEN HEREBY ORDAINS THAT:

Ordinance Number: 05092022B is hereby repealed.

ADOPTED by Council of the City of Aiken at its regular meeting held this 14th day of November, 2022 at which a quorum was present and voting.

INTRODUCTION AND FIRST READING: October 24, 2022

SECOND READING AND ADOPTION: November 14, 2022


MAYOR

APPROVED: 
CITY ATTORNEY

ATTEST: 
CITY CLERK

Acting

I:\Ordinances\Newberry Street Right of Way (PO) Between Park & Richland to RPM Dev. Repealed 2022-10-24.docx

Exhibit D

Aiken Municipal Development Commission

111 Chesterfield Street S, Room 315

September 29, 2022

Commission Members Present: Marty Gillam, David Jameson (via phone), Philip Merry, Doug Slaughter, Chris Verenes, and Keith Wood.

Others Present: David Morrison, Attorney, Victor Seeger, Stuart Bedenbaugh, Dwight Drake, Matt Abee, Tim O'Briant, Sara Ridout, Matthew Christian of the Aiken Standard, and 14 citizens.

Mr. Wood, Chair of the Aiken Municipal Development Commission, called the meeting to order at 1:30 p.m.

APPROVAL OF AGENDA

Mr. Wood asked for approval of the agenda for September 29, 2022.

Mr. Merry moved, seconded by Mr. Gillam, that the Commission approve the Agenda.

MINUTES

Mr. Wood asked for consideration of approval of the minutes for June 13, 14, 23, August 1, and September 9, 2022.

Mr. Gillam moved, seconded by Mr. Merry, that the minutes for June 13, 14, 23, August 1, and September 9, 2022, be approved. The motion was unanimously approved.

EXECUTIVE SESSION

Mr. Wood welcomed those present and stated the purpose of the meeting was to go into executive session pursuant to Section 30-4-70(a)(2) for discussion and update on legal matters related to Project Pascalis regarding certain legal claims in connection therewith, and receipt of other related legal advice. He noted that the Commission may take action on any matter noticed for executive session following the executive session.

Mr. Wood stated at the September 9, 2022, meeting there was a motion which was continued to allow the Commission to do more due diligence from our legal counsel.

Mr. Merry moved, seconded by Mr. Slaughter, that the Municipal Development Commission go into executive session to receive an update on legal matters related to Project Pascalis and to discuss certain legal claims in connection with Project Pascalis matters. The motion was unanimously approved.

Those in the executive session were: Keith Wood, David Jameson (via phone), Philip Merry, Doug Slaughter, Chris Verenes, Chad Matthews, Stuart Bedenbaugh, David Morrison and Victor Seeger.

After discussion of the matters, Mr. Slaughter moved, seconded by Mr. Verenes that the Commission come out of executive session. The motion was unanimously approved.

The executive session ended at 3:55 p.m.

Mr. Gillam left the meeting.

Mr. Wood stated a motion was continued from the last meeting that has been discussed. The motion says that we will stop Project Pascalis, declare the purported existing contract null and void with RPM and propose to amend or cancel the redevelopment plan.

Mr. Verenes made a motion that we stop Project Pascalis, declare the purported existing contract null and void, and that we propose to cancel the Redevelopment Plan. The motion was seconded by Mr. Merry and unanimously approved.

Mr. Wood stated two Commission members would be making personal statements after the meeting is adjourned.

There being no further business, Mr. Verenes moved, seconded by Mr. Merry that the meeting be adjourned.

The meeting adjourned at 3:56 p.m.


Sara B. Ridout
City Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

CASE NO. 2023-CP-02-01489

David W. Blake, Luis E. Rinaldini,
Dudley Richard Dewar, Jenne Stoker,
Beatrice B. McGhee, Gail King,
Historic Aiken Foundation, Inc.,
Green Boundary Foundation, and
South Carolina Public Interest Foundation,

Plaintiffs,

vs.

City of Aiken; Aiken Municipal
Development Commission; Aiken Design
Review Board; and Gary Smith;

Defendants.

**PLAINTIFFS' MEMORANDUM
IN OPPOSITION TO CITY OF
AIKEN'S MOTION FOR SUMMARY
JUDGEMENT**

The Plaintiffs submit this memorandum in opposition to the City of Aiken's motion for summary judgment. This opposing memorandum is supported by the pleadings filed in the case and written discovery as well as the Affidavit of Luis E. Rinaldini filed September 15, 2023.

INTRODUCTION

The Defendant City of Aiken seeks to dismiss this case that raises numerous critically important issues related to the City of Aiken, its recently dissolved municipal development commission ("AMDC"), and its architectural review board's ("DRB") failure to comply with the state's Community Development Law, Freedom of Information Act, and Comprehensive Planning Enabling Act, as well as the City's zoning ordinance (the "Applicable Laws"). The City argues that since the public private partnership that the City pursued with a private developer ("Project Pascalis") failed, all

of the City's violations of state and local law outlined in the extensive complaint¹ are nonjusticiable because the case is now, conveniently, moot.

To the contrary, these issues are fully justiciable by this court, since there still exists a very real case or controversy between the parties across multiple factual issues and causes of action. The failure of the underlying project does not render this case moot.

If the sole object of this lawsuit were to stop Project Pascalis, there might be some merit to the Defendant's argument. The relief sought by the Plaintiffs, however, is a declaration that the actions of the City were unlawful and wrong. The Plaintiffs seek findings that the City and its boards violated the Applicable Laws in numerous instances in pursuit of this project. The Court is fully capable of providing the relief requested by the Plaintiffs despite the failure of the project, because the issue of whether the City violated the Applicable Laws numerous times is still very much in controversy. Despite the failure of the project, the City has not conceded that it did anything wrong or violated any provision of state or local law as pled in the Second Amended Complaint. As a result, there remains a justiciable controversy for this Court to decide.

Further, even if the Court were to conclude that the events underlying the case render it moot, the Court should decide this case given the public importance of the issues and the need for future guidance for this and other municipalities in this state. As the Affidavit of Luis E. Rinaldini states in detail, the City appears to be pursuing similar projects on the same property by another name only. Since these issues are certainly capable of repetition and yet evade review given the fact that the duration of contracts may be short, or projects may fail, but the issues surrounding them remain and need resolution, the Court should proceed to decide these issues and provide a remedy to these citizens who have brought this important action for decision.

¹ For a review of the facts of this case and the causes of action pled, see Plaintiffs' Second Amended Complaint dated June 29, 2023.

STANDARD FOR SUMMARY JUDGMENT

This case is not appropriate for summary judgment.

Rule 56(c), SCRCRCP, provides that a circuit court may grant a motion for summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Kunst v. Loree*, 404 S.C. 649, 653, 746 S.E.2d 360, 362 (Ct. App. 2013) *citing* *Bovain v Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (quoting Rule 56(c), SCRCRCP).

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "... [W]here the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment." *Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011) (citing *Hancock v. Mid-South Mgm't Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003).

Here, the parties are engaged in written discovery and have not yet been able to take depositions. There is much factual development of the record to occur before the Court can decide whether sufficient evidence exists to proceed to trial. For that reason alone, the Court should deny this motion.

ARGUMENT

1. **The causes of action alleged in the Second Amended Complaint, particularly the First and Third Causes of Act, are not moot.**

Courts may only consider cases where a justiciable controversy exists. See Byrd v. Irmo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co., 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). "Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable." Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001).

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." Curtis, 345 S.C. at 567, 549 S.E.2d at 596 (quoting Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)).

In this case, the fact that the developer and City are not proceeding with Project Pascalis does not resolve the issues brought by the Plaintiffs. The Plaintiffs have spent much time and resources to bring before the Court the City's failure to abide by the Applicable Laws, in the City's pursuit of this project. These issues are not made moot even if the project is not going forward, because the City has not conceded it did anything wrong, and the issue of the violations of these statutes is very much in controversy.

Many of the declarations of violation of law sought by the Plaintiffs in the First Cause of Action are not dependent on whether the case is proceeding or not and should be decided.

Even more strikingly, the many violations of the SC Freedom of Information Act alleged in the Third Cause of Action are not affected at all by the failure or abandonment of Project Pascalis. The local government bodies violated the state law, and the Plaintiffs are entitled to present evidence of those violations and seek a remedy under the state statute for those violations.

If the sole object of this lawsuit were to stop Project Pascalis, there might be some merit to the Defendants' argument. The relief sought in the First Cause of Action, however, is the declaration that the actions taken by the City were wrong. The relief sought in the Third Cause of Action is that the City violated the Freedom of Information Act in numerous ways.

The Court is fully capable of providing the relief requested by the Plaintiffs despite the failure of the project, because whether the Town violated the Applicable Law is still very much in controversy. Despite the failure of the project, the Town has not conceded that it did anything wrong. As a result, there remains a justiciable controversy for this Court to decide.

2. Even if the Court concluded the case is moot, the Court should deny the motion and decide the case given the public importance of the issues and the need for future guidance.

In the civil context, there are three general exceptions to the mootness doctrine. First, a court could take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. Second, a court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, that decision is not moot, even though the court cannot give effective relief in the present case. Curtis, 345 S.C. at 568, 549 S.E.2d at 596,

Even if the Court were to conclude the case is moot, it should decide this case given the public importance of the issues and the need for future guidance for other municipalities in this state. In addition, these issues are certainly capable of repetition and evade review given the fact that the duration of public private contracts may be short, or projects may fail, but the issues surrounding them remain and need resolution.

Despite an issue's mootness, a court may decide questions of "imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." Curtis, 345 S.C. at 568, 549 S.E.2d at 596. The seminal case in our state defining this exception to the mootness

doctrine is Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947). In Ashmore, the plaintiff sought to enjoin a government body from issuing bonds to fund the construction and maintenance of a new auditorium. Id. at 85, 44 S.E.2d at 91. The trial court denied the request for injunction. Id. An election was held in which the voters approved the sale of bonds, thereby rendering the issue moot. Id. The court nevertheless decided the case was justiciable because the issues raised were of substantial public importance, opining:

If this were an ordinary case, our opinion might well stop here. . . . But the case is not an ordinary one; it is not a private controversy between individuals, as such. On the contrary, it is defended by an intended governmental agency which the legislature undertook to create by their enactments; and raised on the record are earnestly argued public questions of importance. The last stated factor brings into play the principle, now generally established, that **questions of public interest originally encompassed in an action should be decided for future guidance, however abstract or moot they may have become in the immediate contest.** Id. at 96, 44 S.E.2d at 96-97; see also Berry v. Zahler, 220 S.C. 86, 89, 66 S.E.2d 459, 461 (1951) (reaffirming the "exception to the rule of rejection without decision of academic questions" articulated in Ashmore); People ex rel. Wallace v. Labrenz, 411 Ill. 618, 622, 104 N.E.2d 769, 772 (1952) ("Among the criteria considered in determining the existence of the requisite degree of public interest are the public or private nature [***28] of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question."); 20 [*554] Am. Jur. 2d Courts § 47 (2003) ("**Courts may decide moot issues or cases where such a decision would be in the public interest**"). (Emphasis added.)

The South Carolina Supreme Court has found exceptions to the mootness doctrine in public interest cases much like this one:

In Sloan v. Greenville Cty., 356 S.C. 531, 551-55, 590 S.E.2d 338, 349-51 (Ct. App. 2003), the court found against a mootness argument where the issue was likely to recur by evade review. That case challenged the selection of contractors by Greenville County under the procurement code. The court found that, by design, the procurement code's exception allowing use of design-build source selection accelerates the process of awarding public works contracts and the ultimate completion of the projects themselves. Though the plaintiffs initiated the actions in the present case within one week after the contracts were executed or the County's written determination was filed, construction on all three projects was complete prior to the beginning of trial in this case. Because the fundamental inquiry

in this case concerns the validity of using an expedited procurement process, though, the court found that it was improbable that similar challenges could navigate the litigation process before the question became a purely academic one. The court found an exception to the mootness doctrine and allowed the case to proceed to trial.

In S.C. Pub. Interest Found. v. S.C. DOT, 421 S.C. 110, 121-22, 804 S.E.2d 854, 860-61 (2017), the court concluded that the issue of whether the SCDOT could inspect bridges inside private, gated communities is one that is capable of repetition, yet will generally evade review. Just as here, with the City of Aiken, the court found the DOT capable of repeating their actions in the future, “especially since they maintain their conduct was lawful.” In fact, the DOT said they would inspect private bridges in the future, the very activity challenged by the Plaintiff. Moreover, the court found, this issue is one which will typically become moot before it can be reviewed, because inspection of roadways and bridges can typically be completed long before a court can review the propriety of the action. As a result, even though the court found the activity giving rise to this appeal is moot, the court found the controversy capable of repetition yet generally evading review.

In Sloan v. DOT, 365 S.C. 299, 306, 618 S.E.2d 876, 880 (2005), the plaintiff contended the respondents violated S.C. Code Ann. § 57-5-1620 by awarding construction contracts to someone other than the lowest qualified bidder (i.e., using the Design/Build process). The DOT contended it had other statutory authority to use the Design/Build procurement methods and, in any event, it does not matter because it awarded the contracts to the lowest bidders complying with § 57-5-1620. The court disagreed with that argument. The court found the fact that these three contracts were awarded to the lowest bidder was irrelevant. Though the court found that the issue in this specific case was moot because the contracts had been awarded and fully performed, the court determined it should address the issue of whether the DOT should have followed § 57-5-1620 in awarding other contracts.

In Byrd v. Irmo High Sch., 321 S.C. 426, 430-32, 468 S.E.2d 861, 863-64 (1996), the plaintiff challenged a student's suspension by the school. The school district argued that the court lacked jurisdiction because the issues were rendered moot by events occurring after the filing of the appeal. The school argued that the student served the suspension, had since returned to school, and that the suspension has been cleared from the student's record. The Supreme Court found that even if it is assumed that the issue in the present case was moot, it was an issue that is capable of repetition, but which would evade review. The court observed that short-term student suspensions, by their very nature, are completed long before an appellate court can review the issues they implicate. Therefore, the court concluded that the case clearly fit into the evading review exception of the mootness doctrine, even if it were not otherwise appropriate for the Court to address this appeal.

If state or local governments could avoid having their actions adjudicated as lawful or unlawful based on the length of a term of office of the official involved, the duration of the contract complained of, or the City's ability to reverse or "undo" the claimed unlawful conduct, government could render itself almost beyond review by the courts. That is not the purpose of the justiciability doctrine or its corollary, the concept of mootness.

These matters are of public importance, involving public funds, open government, and the sound administration of contracts with local government. As stated in the cases cited above, it is important for the courts to consider the government's action in light of the law and decide, for future guidance for this and other local governments, whether the City complied with, or violated, the Community Development Law in establishing the AMDC and in undertaking the public private partnership, whether Defendant's actions in pursuing Project Pascalis violated the Applicable Law, and specifically whether the Defendant's conduct in various proceedings surrounding this project violated the Freedom of Information Act.

There are too many issues of too much importance to grant summary judgment in this case, when discovery has not been completed, based on the concept of mootness.

The Plaintiffs respectfully request that this motion be dismissed.

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Counsel for Plaintiffs

September 18, 2023

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

CASE NO. 2023-CP-02-01489

David W. Blake, Luis E. Rinaldini,
Dudley Richard Dewar, Jenne Stoker,
Beatrice B. McGhee, Gail King,
Historic Aiken Foundation, Inc.,
Green Boundary Foundation, and
South Carolina Public Interest Foundation,

Plaintiffs,

vs.

City of Aiken; Aiken Municipal
Development Commission; Aiken Design
Review Board; and Gary Smith;

Defendants.

AFFIDAVIT OF LUIS E. RINALDINI

Luis E. Rinaldini, being sworn, states:

1. I am a citizen and resident of the City of Aiken, South Carolina and am one of the plaintiffs in this matter. I am submitting this sworn testimony in opposition to the City of Aiken's Motion for Summary Judgment filed July 21, 2023. I make this affidavit based on my personal knowledge and belief.
2. Despite the City of Aiken's decision to abandon the particular project, Project Pascalis, outlined in the First Amended Complaint and its decision to dissolve the Aiken Municipal Development Commission, there remain serious issues raised by the allegations of the complaint which require adjudication by this Court and deserve a ruling under the South Carolina Declaratory Judgment Act, to guide the City as it pursues yet another public private partnership on the site described in the complaint with a new site of partners.
3. The City continues to pursue public private partnerships to develop this same property, raising

many of the same issues of compliance with state and local law alleged in the complaint.

4. Specifically, the City is actively working on (a) a new building that will house the Savannah River National Laboratory that will be built on the Project Pascalis site, (b) an RFP for the renovation of the Hotel Aiken, including a possible demolition, and (c) undefined plans to enhance the remaining lots that made up Pascalis.
5. In September 2022, the RPM Development Partners LLC, the developer selected by the Aiken Municipal Development Commission (“AMDC”) for Project Pascalis withdrew and the AMDC subsequently voted to terminate Project Pascalis.
6. Immediately afterwards, Keith Wood and Chris Verenes, the Chairman and Vice-Chairman of the AMDC, respectively, issued statements, acknowledging that the AMDC had acted improperly and that the commissioners had been misled by staff.
7. By the year-end of 2022, most of the commissioners of the AMDC had resigned and in the first half of 2023, the City Council took over the AMDC and voted to dissolve it, thereby transferring the Project Pascalis properties acquired in November 2021 by the AMDC to the City.
8. In the last quarter of 2022, the City of Aiken (the “City”) and/or the AMDC and/or the Aiken Corporation, held confidential discussions with the Savannah River National Laboratory (“SRNL”) to build a workforce development center (the “SRNL Building”) on the Project Pascalis east of Bee Lane. SRNL is part of the United States Department of Energy. On January 23, 2023, in its annual State of the City address to the public, the City announced that it was working closely with SRNL to advance the SRNL building and that the Aiken Corporation would act as the developer for the project. The Aiken Corporation is a 501(c)(3) entity that encourages economic development and revitalization in the City and is primarily funded by the City.
9. In that same presentation, the City announced that it was working on plans to renovate the

Hotel Aiken, with demolition as a possible alternative, and expected to issue an RFP in 45 to 60 days.

10. Based on the information provided in the January 23, 2023 presentation, the proposed SRNL project and the revived Hotel Aiken project encompassed substantially all the lots that were part of Project Pascalis.
11. Around that time, Aiken Corporation entered into an agreement with Miller Pazdan Smith, an architectural firm (“MPS”) to conduct various studies regarding the SRNL Building. On February 6, 2023, and subsequently on September 14, 2023, MPS made presentations to the public regarding the progress of the SRNL building project.
12. During the first half of 2023, the AMDC and then the City staff made presentations to the City of Aiken Design Review Board (the “DRB”) regarding a proposed plan to stabilize the Hotel Aiken and prevent further deterioration of the structure. Some plaintiffs and a number of citizens commented to the DRB that this did not constitute a proper procedure, as nowhere in the applicable ordinances and regulations, does it call for the DRB to supervise maintenance programs for historic buildings in this manner. Plaintiffs argued that the ordinances required the DRB to make a determination of “demolition by neglect” and that any remedial action should be taken in response to such a determination. Plaintiffs also argued that the DRB had established a pattern of not following applicable ordinances, and guidelines and that it should undertake a review of its processes and procedures to improve compliance.
13. The DRB ignored plaintiffs comments and requests, made no determination of demolition by neglect even though the property clearly met the criteria established by the City Zoning Ordinance and continued to act as it had been, without any review of processes and procedures.
14. In May of 2023, the DRB approved an alteration to the front of a historic house in the City (the “Nance Approval”) even though the applicable guidelines recommend strongly against (a) any

alterations to the front façade of historic structures and (b) a number of other alterations approve by the DRB in this case. In addition, the DRB failed to review, recent alterations by the applicants. A cursory review would have shown that the applicants had conducted extensive alterations to contributing elements of the house without proper DRB approval. The DRB failed to take these unauthorized alterations into account in granting the Nance Approval.

15. In June of 2023, plaintiff Luis Rinaldini appealed the DRB's Nance Approval on a pro se basis, but the appeal was dismissed on technicalities. The appeal described in 41 pages, the extensive failures of the DRB to (a) follow applicable ordinances and guidelines and (b) to act as a quasi-judicial entity.
16. Plaintiffs and other citizens have made comments in DRB public hearings on a number of other applications before the DRB about the DRB's failure to follow applicable ordinances and guidelines and proper procedures for a quasi-judicial entity. To date, the DRB has not conducted any review of its processes and procedures.
17. The SRNL project and the Hotel Aiken project encompass substantially all the lots that were part of Project Pascalis. The nature and source of the funding for these projects and who makes the relevant decisions and who receives the benefit pose significant issues of governance raised in this action and have not been resolved. Two members of the City Council who were on the board of directors of the Aiken Corporation resigned and there are no elected officials who have direct oversight and accountability for the SRNL project.
18. Significant controversies have arisen during the past months, with citizens voicing anger and frustration in public hearings and in online public forums at the poor governance and lack of transparency and accountability of defendants the City, the AMDC, the DRB and the City Attorney.
19. The SRNL project and the Hotel Aiken project are simply a continuation of Project Pascalis in

a different form. The governance and accountability issues raised in this action regarding defendants the City, the AMDC, the DRB and the City Attorney remain the same and are equally present in the current projects as they were in and during Project Pascalis.

20. These projects that the City is actively working on daily raise the same issues of governance and historic preservation that Project Pascalis did. It is vital that the court let this case proceed so that the Court can determine if laws were violated, and preservation procedures were not followed, so that the court can through its ruling provide guidance for this City and others as they pursue this and other similar public private partnerships.
21. The City seeks to dismiss this case that raises numerous issues related to the City's failure to comply with state and local law, arguing that since Project Pascalis, one public private partnership that the City pursued with a private developer, failed, all of the City's malfeasance outlined in the extensive complaint¹ is nonjusticiable because it is moot.
22. These issues are fully justiciable by this court, however, since there still exists a very real case or controversy between the parties across multiple factual issues and causes of action. The failure of the underlying project does not render this case moot.
23. If the sole object of this lawsuit were to stop Project Pascalis, there might be some merit to the Defendant's argument. The relief sought by the Plaintiffs, however, is a declaration that the actions taken by the City were unlawful and wrong. The Court is fully capable of providing the relief requested by the Plaintiffs despite the failure of Project Pascalis, because the issue of whether the City violated numerous state and local laws is still very much in controversy. Despite the failure of the project, the City has not conceded that it violated the many provisions of state of local law as pled in the First Amended Complaint. As a result, there remains a justiciable controversy for this Court to decide.

¹ For a review of the facts of this case and the causes of action pled, see Plaintiffs' First Amended Complaint dated June 29, 2023.

24. Further, even if the Court were to conclude the case is moot, it should decide this case given the public importance of the issues and the need for future guidance for this other municipalities in this State. Also, given that these issues are certainly capable of repetition (and perhaps are currently being repeated) and yet evade review given the fact that the duration of contracts may be short, or projects may fail, the issues surrounding them remain and need resolution, and the Court should proceed to decide these issues and provide a remedy to these citizens who have brought this important action for decision.

25. On behalf of the other plaintiffs, I respectfully request that the court allow the Plaintiffs to complete discovery and bring this matter to a trial to obtain a decision on the merits of this controversy.

FURTHER AFFIANT SAYETH NOT.



Luis E. Rinaldini

SWORN before me this 15th day of September 2023



Notary Public for the State of South Carolina

My Commission Expires: 12/14/2027

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CASE NO.: 2022-CP-02-01498
David W. Blake, Luis E. Rinaldini,	)	
Dudley Richard Dewar, Jenne Stoker,	)	
Beatrice B. McGhee, Gail King,	)	
Historic Aiken Foundation, Inc.,	)	
Green Boundary Foundation, and	)	
South Carolina Public Interest Foundation,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
City of Aiken, Aiken Municipal	)	
Development Commission, Aiken Design	)	
Review Board,	)	
	)	
Defendants.	)	

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION TO RECONSIDER
(Rule 59(e), SCRPC)**

PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon as the parties may be heard, Plaintiffs David W. Blake, Luis E. Rinaldini, Dudley Richard Dewar, Jenne Stoker, Beatrice B. McGhee, Gail King, Historic Aiken Foundation, Inc., Green Boundary Foundation, and South Carolina Public Interest Foundation, ("Petitioners"), by and through undersigned counsel, will move pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure before the Honorable B. Alex Hyman for reconsideration of the November 13, 2023, Order of this Court partially granting Defendants' Motion for Summary Judgment. The Order grants in part the motion for summary judgment with regard to the First Cause of Action (declaratory judgment) and Second Cause of Action

(injunctive and other equitable relief) but denies the motion regarding the Third Cause of Action (violation of the South Carolina Freedom of Information Act).

The grounds for this motion are that the Order does not state the grounds for the Court's decision to grant the motion for summary judgment with regard to the first two causes of action. This Court's statement of the basis of the grant of summary judgment is necessary to preserve issues for appellate review. In particular, the Order does not address the following arguments presented by the Plaintiffs in their memoranda and exhibits submitted to the Court and in oral argument:

1. The First Cause of Action alleged in the Second Amended Complaint, for declaratory relief, is not moot.

If the sole object of this lawsuit were to stop Project Pascalis, there might be some merit to the Defendants' argument that the abandonment of Project Pascalis renders the cause of action moot. The relief sought in the First Cause of Action, however, is the declaration that the actions taken by the City were unlawful and should not be repeated in the future regarding future City projects. In fact, many of the faults that the Plaintiffs described with the adoption of Project Pascalis are continuing despite the failure of that project. The Court is fully capable of providing the relief requested by the Plaintiffs despite the failure of the project, because whether the City violated applicable law is still very much in controversy. Despite the failure of the project, the City has not conceded that it did anything wrong and has not agreed that it will not repeat the law violations in the future regarding future City projects. As a result, there remains a justiciable controversy for this Court to decide.

2. Even if the Court concluded the case is moot, the Court should deny the motion and decide the case given the public importance of the issues and the need for future guidance.

The matters raised in the Plaintiffs' First Cause of Action are of public importance, involving public funds, open government, and the sound administration of contracts by local government. It is important for the courts to consider the government's action in light of the law and to decide, for future guidance for this and other local governments and other projects, whether the City complied

with, or violated, the Community Development Law in establishing the AMDC and in undertaking the public private partnership; whether Defendant's actions in pursuing Project Pascalis violated the Applicable Law; and specifically whether the Defendant's conduct in various proceedings surrounding this project violated the Freedom of Information Act.

For these reasons, Petitioners respectfully request this Court reverse the November 13, 2023, Order partially granting the Motion for Summary Judgment or, in the alternative, provide the bases for its ruling. This motion is further supported by all pleadings, any evidence, and any memorandum of law filed and to be filed as well as all applicable law and further proof and testimony as may hereafter be offered at a hearing on this motion.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

November 22, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2022-CP-02-01498
	)	
	)	
	)	
	)	
DAVID W. BLAKE, ET AL,	)	
PLAINTIFFS,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
CITY OF AIKEN, ET AL,	)	
DEFENDANTS.	)	
_____	)	

September 19, 2023
Aiken, South Carolina

B E F O R E:

THE HONORABLE B. ALEX HYMAN, JUDGE.

A P P E A R A N C E S:

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Attorney for the Plaintiffs

DANIEL CLIFTON PLYLER, ESQ.
ROBERT L. BUCHANAN, ESQ.
THOMAS GARRY GARDNER, ESQ.
Attorney for the Defendants

PENNY M. JOHNSON
Court Reporter III

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

THE COURT: All right, we'll begin with the first and second matter.

Counsel.

MR. PLYLER: Thank you, Your Honor. May it please the Court. Daniel Plyler here on behalf of the City of Aiken. I do have a copy of the motion and exhibits with the Croft case as well, which is the case we're relying on heavily.

THE COURT: If you've got the exhibits right there, I wouldn't mind taking a look at those as well.

MR. PLYLER: This is one for you and your law clerk. I've already provided Mr. Gowder with a copy of it.

Thank you, Your Honor. The motion is pretty straight forward. We did not submit a separate memorandum because we believe it's fully briefed in the motion itself. The issue here before the Court is one of mootness, which we believe does away with this entire case.

The reason we've cited to the Croft case and rely on it heavily, Your Honor, is because, quite frankly, it is on all fours with this particular matter. In fact, it involves the same Plaintiff's counsel making the same sort of arguments that they're making in this case.

Your Honor is probably aware, yesterday, there was a memorandum in opposition filed. Essentially, that memorandum raises one argument broken into two parts for why

1 mootness would not apply to this case. The public
2 importance exception to mootness is, essentially, what
3 they're arguing.

4 They break it into two points saying that public
5 importance and future guidance, but those are really one
6 concept as set forth in the Croft case. I'd point Your
7 Honor to the fact that both of those arguments failed in
8 Croft. In fact, the South Carolina Supreme Court dealt with
9 both of those points in the Croft matter and found that that
10 did not require them taking up and deciding the merits of
11 the underlying dispute.

12 Specifically, in Croft, the Court found -- well, the
13 first exception they had raised in Croft was capable of
14 repetition, but evading review. To the extent that's been
15 briefed in their memo in opposition, I'll go ahead and
16 address it by just quoting from what the Croft court found.
17 Even if the issues related to alleged FOIA and ordinance
18 violations by the Board are capable of repetition, they do
19 not evade review. Here, petitioner's appeal became moot
20 because the developer decided to abandon the project not
21 because the petitioner's had insufficient time to challenge
22 the Board's approval before the controversy ended. That's
23 exactly the situation we have here with a little extra, Your
24 Honor.

25 As we set forth in the exhibits, this case in

1 controversy circles around what was called Project Pascalis.
2 It was going to be a redevelopment project involving several
3 parcels here in the center of downtown Aiken centering
4 primarily around what is called Hotel Aiken on a very
5 prominent block in downtown.

6 Plaintiffs had raised several issues with compliance
7 with the community redevelopment statutes, FOIA, including
8 the zoning ordinance in Aiken, other issues related to how
9 that project was progressing, related with an award of the
10 project to a certain development company. Very similar to
11 what you see in the Croft situation that they were alleging
12 in Croft.

13 That project has been ended. We presented exhibits
14 showing from the developer, RPM, that they've withdrawn from
15 the project, terminated the contract from the City and the
16 AMDC, which was the Aiken Municipal Development Commission,
17 which, essentially, is their redevelopment commission under
18 the community redevelopment statutes, where they both voted
19 to end Project Pascalis. And then we've, also, provided
20 documentation showing by ordinance that the City of Aiken
21 has now, in fact, dissolved the AMDC, it no longer exist as
22 a commission.

23 So in Croft, it was enough that the developer had
24 stepped away from the project. In the case before you, Your
25 Honor, not only did the developer step away from the

1 project, the City and the redevelopment commission both
2 voted to end the project and the City has dissolved the
3 redevelopment commission that was involved in the project.
4 So as in the Croft case, this is not something that's going
5 to evade review should a similar scenario present itself in
6 the future.

7 With the public interest exception, the Croft court
8 found for this exception to apply, the issue must present a
9 question of imperative and manifest urgency requiring the
10 establishment of a rule for future guidance in matters of
11 the public -- excuse me, important public interest.

12 They go on to say, however, we hold the public
13 importance exception does not apply in this case because
14 there exist no imperative or manifest urgency requiring this
15 court to issue an opinion on the application of FOIA and
16 Summerville's ordinances to the Board's activities. We,
17 therefore, refuse to apply the public importance exception.

18 Your Honor, they've given you the playbook. It's
19 pretty easy to execute and we believe it applies
20 wholeheartedly in this case. The case in controversy is
21 moot and summary judgment is appropriate.

22 THE COURT: Thank you. Just a couple of questions for
23 you.

24 MR. PLYLER: Yes, Your Honor.

25 THE COURT: And this is more of a background kind of

1 thing. You know, I don't live in Aiken, so I didn't know
2 necessarily the background on this. But was this property
3 previously owned by the City of Aiken?

4 MR. PLYLER: So it's a little convoluted and it takes a
5 lot of historical background to kind of get to where we are
6 today. The simple answer is no, it was not originally owned
7 by the City. It was property that was owned by a hotel
8 owner and then several other individual property owners.
9 The AMDC, which is now defunct, did go through a process of
10 acquiring those properties through a grant agreement that
11 was part of a redevelopment project the City was trying to
12 get underway.

13 I don't know how familiar Your Honor is with the
14 community redevelopment statutes, but to say they're
15 cumbersome is to put it lightly.

16 THE COURT: I was on City Council for three years, so.

17 MR. PLYLER: Yeah, it was one of those ideas the
18 General Assembly had that I think was well intended, but
19 they didn't give you a great playbook for how to execute it.

20 I don't think there's any dispute that the Hotel Aiken
21 property is in fact blighted. It's dilapidated. It's in
22 need of significant redevelopment. It can be reconditioned
23 maybe, we'll see how that goes in the future, but as it
24 currently stands, something needs to be done with it. So I
25 think the intent fits well within the community

1 redevelopment statutes, that there's an area that needs to
2 be corrected. It's not up to par and it's hurting downtown.

3 The process they went through, it's no secret, they've
4 admitted publicly, there were missteps. And because of
5 that, they've gone and undid everything they can with
6 regards to this project. Because of that, this case is moot
7 and, really, what we have is Plaintiffs that want to dig
8 deep into every action that was ever taken in this and run
9 up a bunch of attorney's fees associated with a matter that
10 has no practical effect at this point. The project is dead.
11 The commission that made the missteps primarily is gone. It
12 doesn't exist anymore. So, hopefully, that helps Your Honor
13 with some of the --

14 THE COURT: Yeah, I mean, that gives me a little bit of
15 background. I know most municipalities purchase property,
16 they will request proposals or request qualifications and at
17 that point get proposals that kind of guide the way it's
18 going to happen, but I understand --

19 MR. PLYLER: In a traditional economic development
20 situation, that's exactly how you would expect it to
21 proceed. And maybe in retrospect, that's the way this
22 should have proceeded. Under the community redevelopment
23 statutes, it provides for --

24 THE COURT: Well, there's only certain grants you can
25 get through that, so I understand.

1 MR. PLYLER: Correct. And there's an issue that's
2 raised by the Plaintiffs with regards to RFPs issued by the
3 AMDC, the now defunct AMDC. It kind of becomes the central
4 case in controversy if the project was going to continue.
5 But now that the project has been ended, anything associated
6 with that -- so, for instance, in the complaint, they're
7 asking the Court to say, you know, any votes that were taken
8 in regards to that are invalid, so you can't move forward
9 based on those votes. Well, we're not because the project
10 is gone. It wasn't your classic economic development
11 project if that helps Your Honor with the background.

12 THE COURT: Yes, I think it does.

13 MR. PLYLER: Happy to answer any other questions you
14 have.

15 THE COURT: I may come back to you. Let me hear from
16 counsel.

17 MR. PLYLER: Of course.

18 MR. GOWDER: Good afternoon, Your Honor. My name is
19 Andrew Gowder. May it please the Court?

20 THE COURT: Yes, sir.

21 MR. GOWDER: I represent the Plaintiffs in this case.
22 We rely on pleadings and, particularly, Your Honor, the
23 second amended complaint, which I would recommend the Court
24 reading. It is lengthy, but as Mr. Plyler said, this is a
25 convoluted case. There's a lot going on and a lot of moving

1 parts.

2 We, also, rely, Your Honor, on our memo in opposition,
3 which we filed and the Affidavit that we filed of Luis
4 Rinandini, who's one of the Plaintiffs.

5 Your Honor, in summary this afternoon, we, obviously,
6 rely on what we've already filed, I'm not going to go
7 through all of that, but I'd like to make three points with
8 you in summary.

9 First, summary judgment is not even appropriate at this
10 stage in this case. Secondly, as we argue in our memo, this
11 case is not moot. And thirdly, even if the Court were to
12 find that this case is moot, the public importance of the
13 issues and the need for future guidance would compel, I
14 think, Your Honor, the Court to hear this case and to decide
15 it.

16 But let me start with the Croft case because that's
17 where Mr. Plyler spent a lot of time. That case is clearly
18 distinguishable from this one for this reason, that case was
19 an appeal of a BAR [ph] decision. That case was not a
20 declaratory judgment case that alleged that numerous law
21 violations had occurred, including numerous Freedom of
22 Information Act violations and others. It was only an
23 appeal from the BAR.

24 And when we got to the Supreme Court and the Supreme
25 Court asked -- you know, I was arguing there with the

1 counsel for Summerville. The Court asked us what the status
2 of the project was and we both told them that it was not
3 going forward, the Court said well, we're arguing over the
4 BAR ruling, architectural review ruling on a project that's
5 not going forward, we think it's moot. The Supreme Court
6 brought that up on their own after oral argument.

7 In that case, though, Your Honor, and a related case
8 that's, also, called Croft, that's a declaratory judgment
9 case very much like this one that is raising numerous
10 violations of law there. That is still pending and it's not
11 been dismissed.

12 So the Croft case, the decision that is being cited to
13 you, perhaps, reasonably was dismissed because it was a BAR
14 review of a project that was going forward. The main case,
15 the declaratory judgment case that brings to the Court the
16 numerous violations by the local government that the Town of
17 Summerville in that case committed in pursuit of that
18 project is still going forward and it's not been dismissed.

19 Your Honor, I'd like to make the first point, which is
20 this is a motion for summary judgment. As the Court well
21 knows, usually, motions for summary judgment are brought to
22 the Court after discovery has been completed. Discovery has
23 not even really begun in this case. We've been thwarted by
24 numerous motions to quash, you're going to hear one here in
25 a few minutes, and motions not to bar discovery until this

1 dispositive motion is heard. The Plaintiffs are entitled to
2 engage in normal discovery in this case. If the Defendants
3 want to bring mootness or any other affirmative defenses to
4 the Court after discovery is completed, you know, at the
5 summary judgment stage, then that might be appropriate, but
6 not now.

7 The other reason, Your Honor, more traditionally that
8 summary judgment is not appropriate now is that there are
9 numerous questions of fact. As the Court knows, the
10 standard is whether or not there are substantial questions
11 of fact and whether or not there's even a scintilla of a
12 question of fact before the Court. And if there is, that
13 would prevent the Court from ruling on summary judgment.
14 There are numerous questions of fact, not only on the
15 merits, but, also, on the question of mootness as raised by
16 Mr. Rinaldini in his Affidavit. So, Your Honor, it would
17 not be appropriate for the Court to grant summary judgment
18 just on those bases alone.

19 The second, Your Honor, on mootness itself, this case
20 just simply is not moot. The case is not dependent on
21 whether or not Project Pascalis, which was the code name for
22 this particular project, goes forward or not. This case has
23 three causes of action. The first cause of action is asking
24 for declaratory judgment, that the City in its various
25 bodies committed numerous state and local violations of law

1 in its pursuant of this project. But whether or not the
2 project is going forward or not is not dispositive of the
3 declaratory judgment action. That action is very much alive
4 and justiciable.

5 There is a case for controversy. I haven't heard the
6 City of Aiken admit that any of the allegations that have
7 been made by the Plaintiffs are conceded or stipulated.
8 They're being contested. The City has not agreed that they
9 did anything wrong. So, Your Honor, the Plaintiffs deserve
10 the ability to move forward to have this case decided on
11 those various issues.

12 The second cause of action is for an injunction.
13 Admittedly, there's nothing -- the project does not at this
14 point need to be enjoined because it stopped.

15 But the third cause of action is for various violations
16 of the Freedom of Information Act. Surely, those don't
17 depend on whether or not the project is going forward. The
18 Plaintiffs, again, are entitled to an adjudication whether
19 or not the City and its various bodies violated a Freedom of
20 Information Act.

21 And thirdly, Your Honor, even if the Court concludes
22 that the case is moot, which we do not believe it is, the
23 Court should deny the motion and decide the case given the
24 public's importance of the issues and the need for future
25 guidance.

1 There are three exceptions -- we cite all of this in
2 our brief. Three exceptions to the mootness defense, the
3 Court can take jurisdiction if the issue raised is capable
4 of repetition, but evading review, or the Court may decide
5 questions of imperative and manifest urgency to establish a
6 rule for future conduct and matters of important public
7 interest. And third, if a decision by the trial court may
8 affect future events or have collateral consequences for the
9 parties, the decision is not moot, even though the Court
10 cannot give effected relief in the present case.

11 Your Honor, particularly, on the issue of public
12 importance, I cite in the brief the Ashmore case. I cite it
13 in more detail in the brief, but I'll just read this one
14 provision because I believe it's very much on point. If
15 this were an ordinary case, our opinion might well stop
16 here, but the case is not an ordinary one. It's not a
17 private controversy between individuals as such. On the
18 contrary, it's defended by an intended governmental agency,
19 which the legislature undertook to create by their
20 enactments and raised on the record are earnestly argued
21 public questions of importance. The last stated factor
22 brings into play a principle now generally established that
23 questions a public interest originally encompassed in an
24 action should be decided for future guidance however
25 abstract or moot they may become in the immediate context.

1 That's what this case is about. The fact that Project
2 Pascalis ran out of gas or was abandoned or whatever
3 happened to it is irrelevant to whether or not these
4 Plaintiffs are entitled to have the various violations of
5 the law adjudicated by our state's trial court.

6 I cite a number of cases, Your Honor, on these points,
7 Sloan vs. Greenville County, South Carolina Public Interest
8 Foundation vs. South Carolina DOT, Sloan vs. DOT and Byrd
9 vs. Irmo High School.

10 You know, importantly, too, Your Honor, in terms of
11 looking to see whether or not this could provide future
12 guidance, it certainly could guide not only this city
13 government, but the city governments throughout the state
14 when they undertake projects like this on how they should
15 proceed and how they should act and what's legal and what's
16 not legal. And Your Honor's experience in local government,
17 I'm sure, bears that out.

18 Mr. Rinaldini's Affidavit, Your Honor, indicates that
19 Project Pascalis itself may be abandoned, but the City is
20 pursuing the same project with different parties on the same
21 property through different bodies. The City continues to
22 pursue public and private partnerships to develop this same
23 property, raising many of the same issues of compliance with
24 state or local law that are alleged in the complaint.

25 Specifically, Your Honor, the City is actively working

1 on a new building that will house the Savannah River
2 National Lab that will be built on the Project Pascalis site
3 and has issued an RFP for the renovation of Hotel Aiken,
4 including a possible demolition of Hotel Aiken. And, also,
5 has undefined plans to enhance the remaining lots that make
6 up the Pascalis projects.

7 The first two are concrete projects the City is
8 actively working on, we understand, and these raise the same
9 issue of governance and preservation that Project Pascalis
10 did. It's vital to let our courts -- let the case proceed
11 so that we can determine whether the laws were violated then
12 to guide how that project and other projects should proceed.
13 These matters, Your Honor, are of public importance. They
14 involve public funds. They involve open government and the
15 sound administration of contracts by local governments.

16 As stated in the cases that we've cited, it's important
17 for the courts to consider this government's action in light
18 of the law and decide future guidance how this -- you know,
19 whether or not the City complied with the law or did not in
20 pursuing Project Pascalis.

21 Your Honor, there are too many issues of too much
22 importance to grant summary judgment at this stage in this
23 case when discovery has not been started, really, much less
24 completed and, you know, based simply on the concept of
25 mootness. You're not hearing any arguments based on the

1 merits here. You're hearing arguments saying well, Project
2 Pascalis is over, so we should all just go home. That's not
3 what the case is about. The case is about the City's
4 conduct in pursuit of that project. We believe it's not
5 moot and the Plaintiff's deserve the ability to be able to
6 develop the case. Thank you.

7 THE COURT: Thank you, Mr. Gowder.

8 Counsel, I'm going to let you reply briefly.

9 MR. PLYLER: Thank you, Your Honor.

10 I'll start with the new projects he's talking about.
11 One, they're not the same project. Two, they're proceeding
12 under completely different law. They're not proceeding
13 under the Community Redevelopment Statutes that they take
14 such exception with here.

15 I'd, also, point you back to the Croft opinion that the
16 Supreme Court issued. They said FOIA violations themselves
17 aren't going to be enough here. You can deal with those and
18 they're not such a matter of public importance that,
19 essentially, every decision made by a local municipality
20 would then be subject to endless declaratory judgment
21 actions. If it's moot, the relief you're seeking is moot,
22 the case is moot, we don't need to waste taxpayer dollars
23 continuing to argue about things that have no practical
24 effect, which is exactly what's happening here.

25 The issue of premature, if he was making arguments here

1 that we don't believe it actually is moot because Project
2 Pascalis is still going on, we believe, and we need to do
3 discovery on that, that would be one thing, but that's not
4 the argument that's been made. Project Pascalis is dead,
5 it's gone. That project that they sued about that is
6 mentioned in their lawsuit when you review the second
7 amended complaint, the first amended complaint or the
8 original complaint, they're all three about Project
9 Pascalis. That's over. It's gone. It's been done away
10 with.

11 New projects that are currently going through the
12 process of getting up and running, if they take exception to
13 how that's being handled, they can file a lawsuit about
14 that. They can challenge those projects. But going back
15 and looking at Project Pascalis is going to have no effect
16 on how those projects are proceeding because they're not
17 proceeding under the same statutory provisions and they're
18 not the same projects.

19 With public importance, he's skipping over what the
20 Croft court pointed out, which is for it to apply -- just
21 give me a second, Your Honor. For the public importance
22 exception to apply, the issue must present a question of
23 imperative and manifest urgency requiring the establishment
24 of the rule for future guidance in matters of important
25 public interest. There is no manifest urgency. There is no

1 time constraint here.

2 He did bring up a third exception to mootness, which I
3 don't think they're actually arguing this in this case, but
4 to the extent the Court is thinking about it, those
5 situations are we issued an order in this case, never got
6 the opportunity to be heard on it and if that decision now
7 has a practical effect on some other issue that's not
8 currently in front of the Court. So that situation, I
9 should be able to have this order undone so it doesn't hurt
10 me in this other situation. That's not what's happening
11 here nor has it been argued.

12 I believe the rest of it, we adequately addressed in
13 our original argument, but if the Court has questions for
14 me, I'm happy to answer them.

15 THE COURT: There's a lot to unpack here. Looking at
16 the second amended complaint, it's 121 pages. I'm assuming
17 the answer is maybe not that long, but close to it. I feel
18 like I really need to take those and go through them as well
19 as look at the cases that you provided. I certainly haven't
20 had a chance to really go through and look at the Croft
21 case. So in regards to the motion for summary judgment, I
22 am going to take it under advisement and take a minute to
23 kind of read all these things.

24 I understand y'all have a motion to quash as well.

25 MR. PLYLER: Well, I don't think my motion to quash is

1 currently pending. I think Mr. Massey's is.

2 THE COURT: Okay.

3 MR. PLYLER: There are other motions that are pending
4 in a case scheduled to be heard in October. As Your Honor
5 takes this under advisement, I would like to just maybe
6 offer a little bit of guidance with regards to the second
7 amended complaint. We cite to some of it in our motion,
8 which I think gets you to the core issue.

9 But if you look at Paragraph 2 of the amended
10 Complaint, they say this action is brought by the Plaintiffs
11 as individuals or in their representative capacities and as
12 organizations on behalf of their members residing in the
13 City of Aiken to one, obtain a declaration from the Court
14 that certain actions of the City and certain municipal
15 bodies are ultra vires, null and void ab initio and
16 incapable of being implemented in whole or in part. So
17 that's what they want. They want you to make these
18 declarations so that you then will prevent Project Pascalis
19 from going forward. That's what they say in Paragraph 2.

20 The second thing they said is, Obtain from the City
21 injunctions preventing the continued implementation of those
22 ultra vires acts.

23 And three, otherwise, remedy certain violations of
24 various state and city protected regulation and statutory
25 rights afforded to each one of the Plaintiffs in this action

1 by statute and by the ordinances, rules, regulations and
2 customs of the City of Aiken and its affiliated entities.

3 So -- and it says the lawsuit is based on purported
4 contractual agreements between and among the defendants
5 which are valid and void ab initio.

6 Just like in Croft, like what the Supreme Court saw and
7 put an end to so we don't waste more taxpayer money on it,
8 what they saw was this case boils down to you're asking us
9 to declare missteps were made that will not allow these
10 people to go forward with that project. That's what you're
11 asking for. Declare it and then issue an injunction.
12 That's what they asked for in this case, the exact same
13 things and it's moot because that project is dead.

14 I was just going to offer that as a good jumping off
15 point in the second amended complaint, but I understand
16 you're going to take it under advisement.

17 MR. GOWDER: Your Honor, if I could just briefly reply.

18 THE COURT: Briefly.

19 MR. GOWDER: Your Honor, I would direct you -- I mean,
20 obviously, the facts are important and I ask that you spend
21 some time with them. But go to the causes of action, go to
22 the first cause of action and the third cause of action.
23 That's the relief that's being sought by the Plaintiffs.
24 And none of those requests for relief, none of those
25 requested declarations that the City violated certain

1 orders. So we think that's important.

2 THE COURT: Thank you, Mr. Gowder.

3 Yes, sir, counsel, happy to hear from either one of
4 you.

5 MR. BUCHANAN: Thank you, Your Honor. I'm Bob Buchanan
6 and this is Thomas Gardner seated to my left. We represent
7 William Ray Massey, who is a non-party in the case. He is a
8 lawyer, who lives and practices in Aiken, South Carolina.
9 He is a business development tax lawyer, has an LLM in tax
10 and has been involved in the practice of law for a number of
11 years.

12 He has received a subpoena, Your Honor. Of course, we
13 recognize that there's an abundance of statutory and case
14 law that provides that where there's a pending dispositive
15 motion and where there are hardships related to compliance
16 with the subpoena that the Court can defer hearing the
17 motion to quash until the dispositive motion has been
18 decided. Obviously, if the motion for summary judgment is
19 granted, both the reason for the subpoena and the response
20 to it just go away.

21 So what we have here is -- and I don't know if Your
22 Honor has a copy of the subpoena that we filed --

23 THE COURT: Yeah, I've got a copy of the subpoena as
24 well as your motion.

25 MR. BUCHANAN: Thank you, sir.

1 This is a subpoena that really was not served. It was
2 e-mailed to Mr. Massey, I think, on July the 19th of this
3 year, about two months ago, really, and he never
4 acknowledged it. He's not accepted service. He's not been
5 personally served with the subpoena. The requirements of
6 the subpoena are simply onerous. They are clearly
7 overwhelming. They're going to present Mr. Massey with a
8 tremendous amount of time, a great deal of expense, a lot of
9 money. They're going to present him with attorney/client
10 privilege issues.

11 Your Honor, if you would look at -- the subpoena that
12 I've got doesn't have the page numbers, but if you take a
13 look -- if you go over to documents requested, that is
14 prominently displayed there at the beginning of the page,
15 documents requested.

16 Are you there, Your Honor?

17 THE COURT: I am, sir. Yes, sir.

18 MR. BUCHANAN: If you would just take a look at item
19 three, for example. All documents including evidence of
20 communications exchanged between or among the City and/or
21 you, Weldon Wyatt, Thomas Wyatt, WTC Laurens, LLC, WTC
22 Investments, LLC. Those are non-parties. To my knowledge,
23 they've never been a party to this case.

24 So this is a subpoena -- and by the way, Mr. Massey has
25 represented those persons and those entities through the

1 years. Those folks are big property developers, not just in
2 the State of South Carolina, but in multiple states. And
3 Mr. Massey has represented them in various capacities,
4 probably as a tax lawyer as well as a development lawyer.
5 So here we've got a situation where a non-party is
6 subpoenaed to provide all this information from his clients
7 who are large developers, multi-state developers. They're
8 not parties.

9 In addition to this subpoena not being served and,
10 also, not being provided to the Defendants prior to service
11 that the rule clearly requires and the case law requires,
12 we've got a non-party who's going to have to spend a whole
13 lot of time and money trying to respond. The privilege log
14 that's going to be involved with clients, huge amounts of
15 work. It's not just the Wyatts, Your Honor, there are other
16 individuals and entities listed and documents requested that
17 involve other non-parties. RPM was at one time, they've
18 been dismissed. Aiken Alley Holdings. Raines was at one
19 time, but they've been dismissed. They're no longer a party
20 to this action. Latt Pursur [ph], frankly, I don't even
21 know who that is, Your Honor. But that's somebody who's a
22 non-party.

23 So our client is going to have to sit down and spend
24 all this time going through every communication, every piece
25 of advice given to all these people, if any. Obviously, to

1 the Wyatts and, obviously, to Latt Pursur. I think Mr.
2 Pursur was represented by Mr. Massey. But the Chamber of
3 Commerce, David Jamison. You know, the only parties to this
4 case, the only Defendants in this case now are Aiken
5 Municipal Development Board, the City, the Design Review
6 Board and Gary Smith, who is the City attorney.

7 So this is just -- I've never seen anything like this.
8 I've been practicing since 1976 and I've never seen any kind
9 of overreaching subpoena to a non-party. And this motion to
10 quash, Your Honor, was filed by Mr. Massey because he is a
11 lawyer and he's an officer of the Court. I think a whole
12 lot of other non-parties got e-mailed a fairly comprehensive
13 subpoena. I don't think anybody's done anything. I think
14 they've just ignored it. Mr. Massey, because he is an
15 officer of the Court, has asked us to respond to it.

16 And, Your Honor, discovery, apparently, hasn't gone
17 very far. And if the parties to this case would do their
18 discovery and if in the process they identify something that
19 Mr. Massey can provide, Mr. Massey's willing to do it
20 provided he receives a subpoena that is tailored to that and
21 not a subpoena that's going to require him to go off and do
22 all this work with other non-parties that have no relation
23 to the City of Aiken or any of these Defendants.

24 This is a huge interruption to his practice. It's
25 going to cost him a lot of money to do it. Many of these

1 people are his clients, so it's not just a question of
2 showing up with what he has, he's got to do the privilege
3 log required by the rule.

4 So there's no question, Your Honor, it's prejudice,
5 it's undue burden and there really are no cost of delay.
6 They haven't done any discovery. The only cost will be if
7 the subpoena is enforced. And it's going to leave one
8 non-party to gather information from other non-parties and,
9 basically, end up doing the discovery for the Plaintiffs.
10 If the Plaintiffs would do their own discovery and find
11 something Mr. Massey -- and there's a tailored subpoena for
12 it, Mr. Massey is willing to do it, but this is just beyond
13 anything I've ever seen where a party subpoenas a non-party
14 to produce all kinds of information from other non-parties,
15 much of which involves attorney/client relationships.

16 So, Your Honor, in addition to that, the subpoena that
17 was e-mailed and e-mailed only, no service accepted, no
18 personal service, the rule requires service. Rules 45(4)(d)
19 and (4)(j) require personal service and there is a case on
20 it. Your Honor, there is a case of in re: Service, May
21 6th, 2022, and in that case, the Supreme Court, basically,
22 said that a subpoena is required to be served and that
23 e-mail service is not service. E-mail subpoena is not
24 service. So (4)(d), hasn't been served, (4)(j), he's not
25 accepted service. Rule 45 clearly under the case law, this

1 subpoena should be quashed.

2 In addition to that, it's obviously extraordinarily
3 burdensome on somebody who's a non-party. It, also,
4 involves privilege information. It's a 12-page subpoena, as
5 Your Honor can see. It's got 42 requests. Then there's an
6 instruction to search a whole lot of terms. If you just go
7 through those terms and look at it and try to do a computer
8 search, imagine how much time is going to be involved in
9 doing a computer search for each one of those terms.

10 Now, Your Honor, I think in addition to the fact that
11 it was not served and should be quashed, in addition to the
12 fact that it was not provided to other Defendants prior to
13 the e-mail, it ought to be quashed. And there's a case that
14 we did not cite, Your Honor, in our memo and I'll be happy
15 to --

16 Let the record reflect that I'm handing Plaintiff's
17 counsel, they may be familiar with it.

18 May I hand it up, Your Honor?

19 THE COURT: Yes, please.

20 MR. BUCHANAN: This is Hamm vs. South Carolina Public
21 Service Commission, a Supreme Court case of 1994. And what
22 it provides -- and I think it's on Page 5 of 6, Your Honor.
23 It would be the second paragraph. And it says, When a
24 person requesting protection from the Court shows --
25 initially shows good cause by alleging a particularized

1 harm, then upon that showing, then the Plaintiffs would be
2 required to demonstrate that what's required by that
3 subpoena is both relevant and necessary to their case. And
4 I don't know how in the world anything can be relevant from
5 a non-party supplying information to another non-party,
6 especially when it's attorney/client relations.

7 So wasn't properly served, proper notice was not given,
8 it doesn't allow sufficient time. I mean, I think it -- I
9 don't remember what it said, I think it was 14 days. I
10 think the subpoena provided that the material had to be
11 returned within 14 days. So, you know, getting through
12 about the first three lines of computer search on the terms
13 might take more than that time, Your Honor. There's no
14 telling how much time -- where you've got a client
15 relationship between Mr. Massey and the Wyatt individuals
16 and entities, there's no telling how much time and money
17 that would require. And what does it have to do with this
18 case?

19 And, Your Honor, I think some other non-parties got
20 subpoenaed. To my knowledge, nobody has responded. There's
21 been no motions to compel. There's been no motion to compel
22 served on us since we filed the motion to quash. Again, if
23 when they do their discovery, they identify something that
24 Mr. Massey may be able to provide and the subpoena is
25 tailored to that, then that's okay. He's willing to do

1 that. But this subpoena should be quashed. Thank you.

2 THE COURT: Mr. Gowder.

3 MR. GOWDER: May it please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 MR. GOWDER: Your Honor, I agree that service by
6 e-mail, unless it is accepted and consented to the recipient
7 is not good service, so we'll serve Mr. Massey by a process
8 server, not a problem.

9 The shame, Your Honor, is that we're here at all
10 because when -- first of all, many subpoenas were issued in
11 a short period of time. Most people wanted to be served by
12 e-mail rather than be served by process server and be
13 interrupted by being served by a process server, so that was
14 done by consent.

15 Immediately after Mr. Massey received his subpoena by
16 e-mail, I got a call from his counsel expressing the fact
17 that they had an issue. And I told them, first of all, I'd
18 give them more time if they needed it and I would ordinarily
19 tailor the request to them if they would like, if they would
20 suggest to me what that should be. I never got a response
21 from them on either one of those. They insisted on coming
22 here and arguing the motion to quash.

23 THE COURT: How are they to know what your request is?
24 You're saying they should tailor the request. This is a lot
25 of stuff. You're talking about 42 requests for different

1 things. Some of them, there's A, B, C through N. Very much
2 of this deals with Project Pascalis. I guess my question is
3 how is he to tell you how to tailor your requests when they
4 don't necessarily know exactly what you're requesting?

5 MR. GOWDER: Well, Your Honor, we never got to have
6 that conversation. My point was try to work this out with
7 them. I think their clients' position is he simply doesn't
8 want to reply at all. And that's not a position that any
9 citizen in South Carolina can take. Everyone is subject to
10 providing their evidence.

11 Again, I was happy to provide Mr. Massey as much time
12 as needed. And if he went through and said I don't have
13 half of this or three-quarters of this, I would have
14 accepted that and we would have accepted what he had that
15 was responsive, bu we never got to have that conversation.

16 So, I guess, to save the Court time, we agree that the
17 subpoena cannot be enforced and we will just issue a new
18 subpoena to him and serve it to him as the rules require.

19 THE COURT: Well, his attorney is here as an officer of
20 the court saying he'll comply with the subpoena if you can
21 tell him what it is you actually need. These are broad.
22 This is -- every communication between all of these people
23 within a four-year period, that's a lot.

24 MR. GOWDER: Again, as I said, I tried to have that
25 conversation before this hearing and we didn't have it. I'm

1 happy to have that conversation.

2 THE COURT: Well, based on service, I'm going to quash
3 the subpoena. I absolutely am asking y'all, though, to work
4 together. There's no reason for another judge to hear this
5 exact same issue and I'm telling you there are issues with
6 this subpoena.

7 MR. GOWDER: Thank you, Your Honor.

8 MR. BUCHANAN: Thank you, Your Honor.

9 THE COURT: All right. I think that takes care of the
10 matters -- all matters that are currently pending right now
11 with Blake vs. City of Aiken and others.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the hearing of the captioned case,
relative to appeal, in the Court of Common Pleas for Aiken
County, South Carolina, on the 19th day of September, 2023.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

March 22, 2024

Penny M. Johnson
Official Court Reporter

RECEIVED

Jul 29 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
B. Alex Hyman, Circuit Court Judge

Appellate Court Case No. 2024-000082
Circuit Court Case No. 2022-CP-02-01498

David W. Blake, Luis E. Rinaldini, Dudley Richard
Dewar, Jenne Stoker, Beatrice B. McGhee, Gail King,
Historic Aiken Foundation, Inc., Green Boundary
Foundation, and South Carolina Public Interest Foundation, ... Appellants,

v.

City of Aiken; Aiken Municipal Development Commission;
Aiken Design Review Board; Gary Smith, ... Defendants,

Of which City of Aiken; Aiken Municipal Development Commission;
and Aiken Design Review Board are Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.

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