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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,

Respondents.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT ERR IN GRANTING THE CITY OF AIKEN'S MOTION FOR SUMMARY JUDGMENT DISMISSING THE PLAINTIFFS' DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF CAUSES OF ACTION WHEN THOSE ACTIONS WERE NOT MOOT?

II. DID THE CIRCUIT COURT ERR IN GRANTING THE CITY OF AIKEN'S MOTION FOR SUMMARY JUDGMENT DISMISSING THE PLAINTIFFS' DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF CAUSES OF ACTION, GIVEN THE PUBLIC IMPORTANCE OF THE ISSUES AND THE NEED FOR FUTURE GUIDANCE?

STATEMENT OF THE CASE

On July 5, 2022, 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 filed this action in the Court of Common Pleas in Aiken County against the City of Aiken, the Aiken Municipal Development Commission, the Aiken Design Review Board, their elected and appointed members, RPM Development Partners, Raines Company, and Gary Smith, the town attorney. (R. pp. 8-103) The original complaint (and its two amendments) stated a declaratory judgment action challenging a downtown revitalization project undertaken by the City of Aiken in partnership with a private developer for failing to follow the state's Community Development Law and numerous other state statutes and local ordinances governing the development approval process.

The plaintiffs filed a First Amended Complaint on February 27, 2023, (R. pp. 104-215), and a Second Amended Complaint on June 29, 2023, (R. pp. 216-336), removing all the defendants except the City of Aiken, the Aiken Municipal Development Commission, the Aiken Design Review Board, and Gary Smith. The Second Amended Complaint serves as the operative complaint in this action (unless a distinction is relevant, all three complaints will be referred to as "Complaint" herein).

On July 21, 2023, the City of Aiken filed a motion for summary judgment, arguing that the case was moot. The Plaintiffs filed a response opposing that motion, and a hearing was held on September 19, 2023.

On November 13, 2032, the Circuit Court issued a Form 4 Order with a Statement of Judgment granting the City's motion concerning the First and Second Causes of Action but denying the City's motion regarding the Third Cause of Action. (R. pp. 2-4).

On November 22, 2023, the Plaintiffs filed a motion under Rule 59(e), SCRCP, to reconsider, stating that the November 13 Order did not state the grounds for the Court's decision to grant the motion for summary judgment regarding the first two causes of action. (R. pp. 410-413). The motion asked the Court to respond to the following arguments: (1) The First Cause of Action alleged in the Second Amended Complaint for declaratory relief is not moot; (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 motion requested the Court reverse the November 13, 2023 Order partially granting the Motion for Summary Judgment or, in the alternative, provide the basis for its ruling. (R. pp. 410-413).

On January 2, 2024, the Court issued a Form 4 Order with a Statement of Judgement denying the motion, stating: "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 judgment. After reviewing Plaintiff's motion to reconsider and the filings associated with Defendants' original motion for summary judgment, the Court respectfully denies Plaintiffs' motion to reconsider."

The Plaintiffs timely filed their Notice of Appeal on January 18, 2024. (R. pp. 371-374).

STANDARD OF REVIEW

When reviewing the grant of summary judgment, the appellate court applies the same standard used by the trial court under Rule 56(c), SCRCP. *Peterson v. West Am. Ins. Co.*, 336 S.C. 889, 94, 518 S.E.2d 608, 610 (Ct. App. 1999).

Rule 56(c), SCRCP, 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), SCRCP).

The purpose of summary judgment is to expedite the disposition of cases that do not require 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).

STATEMENT OF FACTS

Allegations of Fact in the Second Amended Complaint

The Complaint states a civil action for declaratory and injunctive relief brought for violations and threatened violations of, and to enforce the requirements of, several state statutes and local 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. (R. p. 216, line 4 – R. p. 217, line 2). The challenges relate to the actions of the City of Aiken, its redevelopment commission, its architectural review board, and private developers in pursuing a large redevelopment project in the historic downtown area of Aiken.

Among other violations of law and *ultra vires* actions, the Complaint alleges that the City of Aiken failed to adopt a redevelopment plan that satisfied the Community Development Act, failed to hold public hearings, and failed to follow other procedural requirements of that Act (R. pp. 259-266).

The specific project undertaken by the City with the private developer, Project Pascalis, did not comply with the redevelopment plan adopted by the City. (R. p. 265, line 3 – R. p. 266, line 4).

When the first developer for Project Pascalis fell through, the City failed to issue a Request for Proposal properly and legally under applicable procurement laws to contract with a subsequent private developer. (R. p. 266, line 5 – R. p. 280, line 2)

Concerning this particular project, the Aiken Design Review Board (DRB) failed to follow its procedures, local ordinances, and state law as a quasi-judicial body in considering this project by, among other things, holding numerous "Work Sessions" during which it heard and considered facts related to the project before receiving any application (R. p. 280, line 18 – R. p. 283, line 22), receiving and acting on a flawed application, and failing to follow the procedures and guidelines for decision-making required by city ordinance and state law (R. p. 280, line 18 – R. p. 294, line 5).

Following the issuance of the "conditional" Certificate of Appropriateness on March 1, 2022, the DRB refused to consider calls by one of its members and citizens appearing before it to revise its procedures to comply with state law and local ordinances. (R. p. 297, line 12 – R. p. 300, line 8).

Also, following the issuance of the conditional COA, the DRB attempted to replace a member who questioned its procedures in reviewing Project Pascalis without following the procedures required by law for removing and replacing members (R. p. 302, line 7 – R. p. 304, line 7).

As part of this process, the public discovered that some of the DRB members were not legally qualified to sit on the DRB, as they were not City residents and were not qualified to act on its behalf, though they did so on numerous occasions, including actions regarding Project Pascalis (R. p. 304, line 8 – R. p. 305, line 6),

The DRB's proceedings did not comply with the Open Meetings Law portions of the state's Freedom of Information Act (FOIA) in that the agendas required to be published before the meetings did not comply with the Act. They did not put the public on fair notice of the actions to be taken by the DRB at the upcoming meeting (R. p. 308, line 13 – R. p. 309, line 8).

As a result, the complaint requests declaratory relief that the City and its DRB did not comply with the City's zoning ordinance, the state's Comprehensive Planning Enabling Act, and its Community Development Law as specified in paragraph 170 (a)-(s) and its Freedom of Information Act (R. p. 320, line 20 – R. p. 321, line 14).

Actions After the Filing of the Action Detailed in the Affidavit of Luis E. Rinaldini

Following the filing of the complaint and during the pendency of the action, the City continued to pursue redevelopment in the historic district of downtown Aiken in ways that further violated the laws cited in the complaint. One of the plaintiffs, Luis Rinaldini, detailed these in his affidavit

submitted in support of the plaintiffs' opposition to the City's motion for summary judgment. Those allegations include the following statements, listed below.

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. (R. p. 404, lines 6-11).

The City continues to pursue public-private partnerships to develop this property, raising many of the same issues of compliance with state and local law alleged in the complaint. (R. p. 404, line 12 – R. p. 405, line 1),

Specifically, the City is actively working on (a) a new building that will house the Savanah 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. (R. p. 405, lines 2–5).

In September 2022, 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 (R. p. 405, lines 6–8).

Immediately after, 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 (R. p. 405, lines 9–11).

By the end of 2022, most of the AMDC commissioners had resigned. 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 (R. p. 405, lines 12 – 14).

In the last quarter of 2022, the City of Aiken (the "City"), the AMDC, and 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. (R. p. 405, lines 15-23).

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. (R. p. 405, line 24 – R. p. 406, line 2).

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. (R. p. 406, lines 3 – 5).

During the first half of 2023, the AMDC and then the City staff presented 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 several 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 determine "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 review its processes and procedures to improve compliance. (R. p. 406, lines 10-19).

The DRB ignored the plaintiff's comments and requests, made no determination of demolition by neglect even though the property met the criteria established by the City Zoning Ordinance, and continued to act as it had been without any review of processes and procedures (R. p. 406, lines 20-22).

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) several other alterations approved 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 consider these unauthorized alterations in granting the Nance Approval. (R. p. 406, line 23 – R. p. 407, line 5).

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, who makes the relevant decisions, and who receives the benefit pose significant governance issues 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 (R. p. 407, lines 14-19).

The SRNL project and the Hotel Aiken project are simply continuations of Project Pascalis in a different form. The governance and accountability issues raised in this action regarding the defendants, the City, the AMDC, the DRB, and the City Attorney remain the same. They are equally present in the current projects as they were in and during Project Pascalis (R. p. 407, line 24 – R. p. 408, line 3).

These projects that the City is actively working on daily raise the same issues of governance and historic preservation that Project Pascalis did. The court must 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, guide this City and others as they pursue this and other similar public-private partnerships. (R. p. 408, lines 4-8).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN GRANTING THE CITY OF AIKEN'S MOTION FOR SUMMARY JUDGMENT, DISMISSING THE PLAINTIFFS' DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF CAUSES OF ACTION WHEN THOSE ACTIONS WERE 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 Appellants. The Appellants have spent much time and resources bringing 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 moot even if the project is not going forward because the City has not conceded it did anything wrong. The issue of the violations of these statutes is very much in controversy. Many of the declarations of violation of law sought by the Appellants in the First Cause of Action are not dependent on whether the case is proceeding and should be decided.

Even more strikingly, the City has stated that it has abandoned Project Pascalis, making this declaratory judgment action moot, but then has pursued Project Pascalis in another form, as detailed in the affidavit of Mr. Rinaldini.

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 Court is fully capable of providing the relief requested by the Plaintiffs despite the project's failure because whether the Town violated the applicable law cited in the complaint is still very much at issue. Despite the project's failure, the Town has not conceded that it did anything wrong. As a result, there remains a justiciable controversy for the courts of this state to decide.

II. THE CIRCUIT COURT ERRED IN GRANTING THE CITY OF AIKEN'S MOTION FOR SUMMARY JUDGMENT DISMISSING THE PLAINTIFFS' DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF CAUSES OF ACTION, GIVEN THE PUBLIC IMPORTANCE OF THE ISSUES AND THE NEED FOR FUTURE GUIDANCE.

In the civil context, the mootness doctrine has three general exceptions. 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 significant 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 Circuit Court concluded the case is moot, it should have decided this case given the public importance of the issues and the need for future guidance for the City of Aiken and other

municipalities in this state. In addition, these issues are undoubtedly 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.

Again, the City of Aiken has apparently learned nothing from the failure of Project Pascalis and, as outlined in the affidavit of Mr. Rinaldini, has continued to violate the same local and state laws in pursuing the latest redevelopment on the same footprint since no court has issued an order declaring its violations of law during the first Project Pascalis. There was no countervailing testimony before the court that the City had abandoned the redevelopment that it had initially termed Project Pascalis or was not pursuing redevelopment in the same manner as challenged in the Complaint. Even if there was some evidence before the Court, at the summary judgment stage, a mere scintilla of evidence from the Plaintiffs should have precluded a grant of summary judgment.

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 an 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 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 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 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 Greenville County's selection of contractors under the procurement code. The court found that, by design, the procurement code's exception allowing the 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 before the beginning of the trial. Because the fundamental inquiry, in this case, concerns the validity of using an expedited procurement process, 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 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." The DOT said they would inspect private bridges in the future, which is the activity challenged by the Plaintiff. Moreover, the court found that this issue will typically become moot before it can be reviewed because inspection of roadways and bridges can usually 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 and had since returned to school and that the suspension had 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 capable of repetition, 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 fits into the evading review exception of the mootness doctrine, even if it was 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, state or local 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, the courts need 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.

In this case, there are too many issues of public importance to grant summary judgment based on mootness. Further, the issues raised in the Complaint are capable of repetition but evading review. According to the evidence before the Court, the City is repeating them now. The Court must decide these questions of imperative and manifest urgency to establish a rule for future conduct in these

matters of significant public interest for the City of Aiken and local governments throughout the state. Finally, the trial court could affect future events that have collateral consequences for the City of Aiken in the redevelopment it is currently pursuing so that this action is not moot, even though the court cannot give effective relief regarding the first iteration of the redevelopment, Project Pascalis. See *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596.

CONCLUSION

Appellants respectfully request an order reversing the Circuit Court's decision. The violations of law by the City of Aiken and its commissions and boards did not disappear when the underlying project undertaken by the City was abandoned. There needs to be a reckoning of these actions by this local government through a consideration of the facts and the law in this declaratory judgment action. Further, the Circuit Court erred in dismissing the action of the Plaintiffs given the public importance of these matters involving the expenditure of public funds and allegations of conflicts of interest and other inappropriate action by local officials and where both this City and other local governments in South Carolina could benefit from the Court's guidance in this case. The Circuit Court's order granting the Defendant City of Aiken's Motion for Summary Judgement should be reversed, and the case remanded for trial.

Respectfully submitted,

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