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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
William P. Keesley, Circuit Court Judge

Appellate Court Case No. 2024-001057
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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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	Case No.: 2022CP0201498
DAVID W. BLAKE, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER ON MOTION TO ALTER OR AMEND
	)	BY AIKEN DESIGN REVIEW BOARD
	)	
CITY OF AIKEN, ET AL.,	)	
	)	
Defendants.	)	
_____	)	

Heard: May 9, 2024 via Webex Virtual Courtroom, by consent
 Attorneys for Plaintiffs: W. Andrew Gowder, Jr. and Michael T. Rose
 Attorney for City of Aiken: Daniel C. Plyler
 Attorneys for Aiken Design Review Bd.: Andrew F. Lindemann and James M. Holly
 Court Reporter: None – Webex Recording Procedure

The Aiken Design Review Board (DRB) moves to have the court reconsider and to alter or amend its order of June 1, 2023, which denied DRB's motion to dismiss the case against it under Rules 12(b)(1) and 12(b)(6), SCRCP. The order granted DRB's motion to make the complaint more definite and certain under Rule 12(e) as to plaintiffs' Fourth Cause of Action.¹ Following the prior order, an Amended Complaint was filed and subsequent motions appear to have been heard by other judges. The new pleading and any subsequent rulings are not part of this reconsideration decision. The current motion raises issues under Rule 12(b)(1), and is granted in part and denied in part, so that the ruling is modified, as follows.

¹ Two days before the hearing, an amended complaint was filed, without judicial approval or written consent. After the hearing, DRB filed another motion on March 14, 2023, seeking the same relief, but raising the failure to have authorization to amend. The amended complaint removed DRB members named in their individual capacities, which is one of the requests in the motion. DRB's counsel has withdrawn the objection to the filing of the amended complaint, and the August 2022 motion was argued as though it addresses the amended complaint.

- (1) The prior ruling is amended in that the court now finds that it lacks subject matter jurisdiction to review the decision by DRB to issue a conditional Certificate of Appropriateness (“COA”) because the plaintiffs failed to file a timely appeal under S.C. Code Ann. §6-29-900(A).² DRB is a quasi-judicial body, as the court previously found and which the plaintiffs admit in their pleading.³ The plaintiffs had actual knowledge of the decision to grant a conditional COA and failed to file their appeal within 30 days. The prior order is amended to delete the finding that the conditional nature of the decision meant that it was not a decision that was immediately appealable. The decision announced on March 1, 2022, was a decision under §6-29-900(A) and the triggering point for filing an appeal. The court disagrees with the assertion by the DRB that the court improperly raised an issue *sua sponte*. The complaint being reviewed raised the incomplete nature of the DRB’s action, and in order to evaluate whether there was compliance with the timeframe for filing an appeal, one would have to determine the triggering point.
- (2) The court agrees with the DRB that the bar against bringing the current action for declaratory and injunctive relief applies not just to the ultimate merits of the decision to grant the conditional COA, but also any to any jurisdictional, procedural, or evidentiary irregularities

² S.C. Code Ann. § 6-29-900(A) provides as follows:

A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from *any decision* of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

S.C. Code Ann. § 6-29-900(A). (Emphasis added).

³ The motion to alter or amend contains language that the court is asked to reconsider that the Aiken DRB is legally a quasi-judicial body. The court’s reading of the prior order is that it has been determined that it is a quasi-judicial body.

or issues that arise in the issuance of that decision, including the composition of the DRB at that time.

(3) Notwithstanding the lack of subject matter jurisdiction over DRB's decision to grant a conditional COA, there are issues that are not dismissed at the time of the issuance of the June 1, 2023 order.

- a. The plaintiffs allege violations of the Freedom of Information Act (FOIA)⁴ by the DRB. Since the prior order required the plaintiffs to amend their Complaint to make it more definite and certain regarding the specific FOIA violations alleged against the DRB, a ruling on dismissal in a Rule 59 motion would be inappropriate. The court is looking to the situation as it existed at the time of the hearing leading to the June 2023 order. However, this is not a ruling on whether or not the FOIA claims against the DRB can survive a Rule 12(b) motion.
- b. The plaintiffs seek declaratory relief regarding whether members of the DRB are ineligible based on residency outside the City Limits of Aiken, South Carolina. The motion to dismiss these claims under Rules 12(b)(1) is denied. This ruling is subject to the determination that this particular lawsuit cannot use the composition

⁴ **SECTION 30-4-100.** Injunctive relief; costs and attorney's fees.

(A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. 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 relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees.

of the DRB as a ground for overturning the conditional COA (if that is something that the plaintiffs are seeking). Nothing contained herein prevents the filing of requests for any writ that might be applicable in this context or any appropriate action or amendment to address alleged improprieties of the DRB, provided that they do not seek to overturn the conditional COA issued in this case. Further, this order does not prevent the DRB from seeking dismissal on another basis or at a later stage.

- (4) The prior order is amended to delete the wording that deciding the issue of subject matter jurisdiction was premature and that jurisdictional facts must be construed in a “light most favorable to the Plaintiffs” (Order, pp. 6-7). Using a Rule 12(b)(1) motion is an appropriate vehicle to raise subject matter jurisdiction. On reconsideration, the court finds that the material facts on this issue were sufficiently developed. “[T]he question of subject matter jurisdiction is a question of law for the court, not a jury question.” *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 431 S.E.2d 631 (Ct. App. 1993). Moreover, “[i]f the facts which give rise to a jurisdictional issue are in dispute, the court, not a jury, must find the facts.” *Id.* It is also the Plaintiff’s burden – not the DRB’s burden -- to present jurisdictional facts to demonstrate the existence of subject matter jurisdiction. *See, Eldridge v. City of Greenwood*, 331 S.C. 398, 503 S.E.2d 191, 197 (Ct. App. 1998).

THEREFORE, IT IS ORDERED that the order of June 1, 2023, is amended to rule that this court lacks subject matter jurisdiction over the issuance of the conditional COA, as discussed above, and the motion by the DRB under Rule 12(b)(1), SCRCF, is granted as it relates to the existing conditional COA and the matters that could have been addressed in an appeal from the decision to grant the conditional COA.

IT IS FURTHER ORDERED that the motion to alter or amend is denied, in part, in that the plaintiffs' requests for declaratory and injunctive relief survive as of the time of the ruling on June 1, 2023, as they relate to alleged FOIA violations and attendant attorney's fees and costs, as well as challenges to the composition of the DRB; provided, however, that no such claims can be based on conduct related to the issuance of the conditional COA or the composition of the DRB when considering or making the decision to grant the conditional COA.

IT IS FURTHER ORDERED that nothing contained herein prevents the plaintiffs from filing other actions or motions regarding the conduct and composition of the DRB that may properly fall within the realm of declaratory and injunctive relief.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

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

Case Number: 2022CP0201498

Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	Case No.: 2022CP0201498
DAVID W. BLAKE, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER ON MOTION TO DISMISS
	)	BY AIKEN DESIGN REVIEW BOARD
	)	
CITY OF AIKEN, ET AL.,	)	
	)	
Defendants.	)	
_____	)	

Heard: March 1, 2023 via Webex Virtual Courtroom, by consent
 Attorneys for Plaintiffs: W. Andrew Gowder, Jr. and Michael T. Rose
 Attorney for City of Aiken: Daniel C. Plyler
 Attorneys for Aiken Design Review Bd.: Andrew F. Lindemann and James M. Holly
 Attorney for Aiken Mun. Development Bd.: David F. Morrison
 Attorneys for Gary Smith: Clarke W. McCants, III and Clarke W. McCants, IV
 Court Reporter: None – Webex Recording Procedure

The Aiken Design Review Board (DRB) seeks to have the court dismiss the case against it under Rules 12(b)(1) and 12(b)(6), SCRCF, or, in the alternative, to make the complaint more definite and certain under Rule 12(e). Because of the strict standards applicable to motions to dismiss at the pleadings stage, the Rule 12(b) motions are respectfully denied. The court agrees that a separate cause of action for attorney's fees and costs is not technically the way to plead for that relief, but sees no reason to dismiss the claim at this stage. The Rule 12(e) motion is granted. The plaintiffs must make their Fourth Cause of Action more definite and certain to set out with more specificity the factual actions or inactions that the DRB did or did not do that violate the Freedom of Information Act,¹ as opposed to the other defendants. In making the ruling requiring

¹ Two days before the hearing, an amended complaint was filed, without judicial approval or written consent. After the hearing, DRB filed another motion on March 14, 2023, seeking the same relief, but raising the failure to have authorization to amend. The amended complaint removed DRB members named in their individual capacities,

amendment, the court is aware that the body of the amended complaint states a number of ways that the DRB is asserted to have violated the FOIA. Due to the length of the pleading, however, and lumping together all the defendants in the Fourth Cause of Action, the court finds that more specificity is required to put the DRB on notice of what things it is required to investigate and defend. Nothing in this order prohibits the plaintiffs from seeking to amend their complaint at a later stage, if discovery reveals further alleged violations.

The review of a Rule 12(b)(6) motion differs from one under Rule 12(b)(1). A Rule 12(b)(6) motion is limited to evaluating the averments within the four corners of the amended complaint, and all of them and all reasonable inferences therefrom must be accepted as true. A Rule 12(b)(1) motion does not have that limitation, but dismissal on the pleadings under either rule is a drastic remedy that is to be invoked cautiously.

BACKGROUND

The plaintiffs allege that they have been aggrieved and will continue to be so by the defendants, including the DRB, concerning a proposed renovation in the City of Aiken known as the Pascalis Project, which includes demolition of existing structures. The project involves the Hotel Aiken property and other properties located within the Pascalis Block in the heart of the City. These properties are alleged to be subject to restrictions related to historic properties. The focus of the action against the RDB relates to the issuance of a “Conditional” Certificate of Appropriateness (COA) for the project.

Paragraph 2 of the amended complaint states that the plaintiffs are seeking 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

which is one of the requests in the motion. DRB’s counsel has withdrawn the objection to the filing of the amended complaint, and the August 2022 motion was argued as though it addresses the amended complaint.

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.

DISCUSSION

DRB's argument is that the court should: (1) dismiss the amended complaint against the DRB, pursuant to Rule 12(b)(1) and Rule 12(b)(6), SCRCPP; or alternatively, (2) make the plaintiffs amend the Fourth Cause of Action to make it more definite and certain, pursuant to Rule 12(e), SCRCPP.² The amended complaint is 112 pages in length, with 177 separately stated averments. It contains much detail.

The DRB bases its argument on the following grounds:

1. The amended complaint fails to present an actionable claim for declaratory or injunctive relief because these causes of action cannot be used as a substitute for an appeal.
2. Subject matter jurisdiction is lacking because the plaintiffs have not pleaded a justiciable claim.
3. The plaintiffs have failed to exhaust all administrative remedies prior to filing this lawsuit, including specifically an appeal of the DRB decision.
4. The causes of action are not ripe for adjudication for the same reasons as stated above, and as a result, the plaintiffs have not presented a justiciable action against the DRB.
5. The Fourth Cause of Action fails to state a cause of action because recovery of attorney's fees under S.C. Code Ann. § 15-77-300 does not create a separate cause of action.
6. In the alternative, DRB requests a more definite statement with respect to Paragraph 173 of the amended complaint related to alleged FOIA violations. That paragraph asserts seven different purported violations have been lumped together in general terms, without delineating with specificity what DRB is alleged to have done. This is asserted to be violative of Rule 8, SCRCPP and the notice requirements.

² The Fourth Cause of Action asserts FOIA violations against all defendant. It accuses the defendants of violations "in numerous respects" including meeting without proper notice, misuse of executive sessions, failure to provide timely minutes, failure to produce documents, denying public access to the minutes, meetings, and agendas, failing to respond to FOIA requests within 15 days, and violations of record keeping requirements.

The first four rely heavily on the argument that the action against the DRB cannot proceed because the plaintiffs failed to perfect an appeal, thus failing to exhaust their administrative remedies. DRB asserts that if the plaintiffs have standing to bring this lawsuit, they would have standing to pursue an appeal. The DRB also maintains that there is not a specific case or controversy. The court disagrees that any of these arguments warrant dismissal on the pleadings.

It is undisputed that an appeal was not filed under S.C. Code Ann. § 6-29-900.³ Plaintiffs' counsel argues that the DRB is misconstruing the allegations of the lawsuit. They state that the lawsuit against the DRB is not an effort to overturn the decision of the board which granted the conditional COA. Rather, the plaintiffs say they are seeking different relief: to have the court declare that the DRB acted improperly and illegally, and that it continues to do so. The DRB argues that the plaintiffs are just trying to reframe their argument so as to back off from their pleadings and redefine what the amended complaint states. DRB asserts that the plaintiffs want a remedy that is more appropriately addressed at the ballot box.

³ **SECTION 6-29-900.** Appeal from board of architectural review to circuit court; pre-litigation mediation; filing requirements.

(A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

(B) A property owner whose land is the subject of a decision of the board of architectural review may appeal either:

(1) as provided in subsection (A); or

(2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-915.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of architectural review decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(C)(1).

Many improprieties are asserted against the DRB, which include claiming that the board was not properly constituted and failed to follow the law. It is important to distinguish between the DRB, which is admittedly a quasi-judicial entity, the Aiken Municipal Development Commission (AMDC), and the City of Aiken for the purposes of this motion. The court accepts the argument of the DRB that it is not the entity that makes the appointments to the DRB – that is the City. However, there are allegations that the board is improperly constituted, making its actions void.

The amended complaint alleges the following:

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.

Paragraph 37 of the amended complaint refers to the DRB as a Board of Architectural Review, subject to S.C. Code Ann. § 6-29-870, *et seq.*

Paragraph 49 cites S.C. Code Ann. § 30-4-100 [the Freedom of Information Act] as stating, 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.

Accepting the argument made by plaintiffs' counsel at the hearing, the plaintiffs seek declaratory and injunctive relief, but are not seeking to overturn the actual conditional approval by the DRB. They say that they want a declaration that the DRB acts contrary to law. As noted above, the amended complaint alleges that the plaintiffs will continue to be harmed by the actions of the DRB.

Viewed in the light required in motions to dismiss on the pleadings, the plaintiffs' contention is that the DRB invented an inappropriate, unprecedented, and unauthorized form of decision and action when they issued what they called a conditional COA. The plaintiffs argue that conditional approval is not allowed. (See Paragraph 5 of the amended complaint.) In the light most favorable to the plaintiffs, this can be construed as asserting that there has been no final decision that would trigger an appeal.

Paragraph 103 of the amended complaint alleges:

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.

Paragraph 104 reads:

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.

The conditional nature of the decision is that it was contingent on seeing the final plans.

At this point, the court must recognize that this should be construed in the light most favorable to the plaintiffs as saying not only that the actions of the DRB were unauthorized and inappropriate, but that there has been no final decision at all.

The plaintiffs allege various improprieties between the DRB, the City, and the AMDC.

Paragraph 131 of the amended complaint reads:

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.

There must be allowance for further development of the record in order to assess the argument that the DRB has acted and continues to act in an unauthorized manner. As for the conditional COA that was issued, and recognizing that S.C. Code Ann. § 6-20-900 refers to any decision from a board of architectural review, the court must accept at this stage an interpretation that it would lead to an absurd result to construe the statute's use of the word "any" as meaning anything other than that an appeal be made from a final decision. Otherwise, any appeal would seemingly be of an interlocutory nature and a waste of resources. In addition, the statutory scheme uses the permissive word "may" in stating that an aggrieved party may appeal.

Since dismissal at this stage is a drastic remedy to be cautiously invoked, and the court has questions under the unique circumstances presented here about whether the conditional nature of the COA made this less than an appealable decision, the court is unable at this point to accept DRB's argument that dismissal is required due to the failure to appeal and failure to exhaust administrative remedies. Further support of this position is that S.C. Code Ann. § 6-29-900, et seq.⁴ requires that the decision be set forth in findings of fact and conclusions of law. The court has not been presented with any such decision to review. The amended complaint can be interpreted as asserting that there was a failure to provide such details in the conditional decision.

Paragraphs 62 through 100 of the amended complaint contain allegations against the AMDC and the City of Aiken. These are under the heading of "General Factual Allegations."

⁴ **SECTION 6-29-920.** Notice of appeal; transcript; supersedeas.

(A) Upon filing of an appeal with a petition as provided in Section 6-29-900(A) or Section 6-29-915(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of architectural review, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.

Factual allegations against the DRB are listed in Paragraphs 101 through 162, with additional allegations for FOIA violations contained in Paragraphs 153, and 155 through 158. In Paragraph 133, the plaintiffs accuse the DRB of issuing a “sham report.” Allegations include that the DRB failed to do required evaluations, improperly issued a “Conditional” COA, and engaged in knowing violations of ordinances, regulations, and laws.

Paragraph 135 reads:

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.

The amended complaint asserts that the DRB has not complied with 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, including zoning laws.

The court finds that the amended complaint, on its face, raises a justiciable controversy and that this action against the DRB is not presently barred on the basis of its being a substitute for an appeal. The record before the court does not allow it to find that the plaintiffs failed to exhaust administrative remedies related to the DRB. This court has subject matter jurisdiction

over the causes of action alleged against the DRB. The present posture of this case does not permit the court to determine that the case against the DRB lacks ripeness.

As stated at the outset of this order, the court agrees that claims for attorney's fees and costs are not a separate cause of action. However, the court finds no reason to dismiss based on a pleading irregularity that still gives proper notice that attorney's fees and costs are being asserted. The motion to dismiss that cause of action is denied, though the plaintiffs may rework their pleadings when they file their second amended complaint in response to this order.

The court agrees with the DRB that it is entitled to more specific factual averments as to how it is alleged to have violated the FOIA, as opposed to the other defendants. The allegations do not meet the requirements of Rule 8, SCRCF, in that they fail to distinguish the actions of one entity from those of the other entities. The complaint must be amended, filed, and served within 30 days from the date of this order.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

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

Case Number: 2022CP0201498

Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2023-06-01 13:21:15 page 11 of 11

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

FORM 4

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 June 12, 2023, the Aiken Design Review Board filed a motion to have the court to reconsider and to alter or amend its order of June 1, 2023. The motion also asks for oral argument. The court elects to decide the motion on written submissions, without oral argument, under Rule 59(f), SCRPC. The moving party may file any additional documents by August 11, 2023. Opposing parties may file documents by August 25, 2023. Any responsive documents from the moving party must be filed by September 1, 2023. Copies of any documents filed shall be sent to the undersigned judge and his law clerk as attachments to email addressed to wkeesleyj@sccourts.org and wkeesleylc@sccourts.org .

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 07/31/2023 .

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/Scheduling Order

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2023-07-31 16:13:51 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.
 W. Andrew Gowder, Jr., (SC Bar #7895)
 AUSTEN & GOWDER, LLC
 1629 Meeting Street, Suite A
 Charleston, South Carolina 29405
 Phone: 843.727.2229
andy@austengowder.com

Michael T. Rose, (SC Bar #4910)
 MIKE ROSE LAW FIRM, PC
 406 Central Ave.
 Summerville, SC 29483
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 Facsimile: 843-478-7595
mike@mikeroselawfirm.com

James G. Carpenter, (SC Bar #1136)
 The Carpenter Law Firm, P.C.
 819 East North Street
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james.carpenter@carpenterlawfirm.net

COUNSEL FOR PLAINTIFFS

July 5, 2022
 Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
))
))
David W. Blake, Luis E. Rinaldini,)
Dudley Richard Dewar, Jenne Stoker,)
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LLC; Raines Company and its subsidiary or)
division Raines Development; Gary Smith;)
John or Jane Does 1-10,)
))
Defendants.)
))
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

CASE NO. 2022-CP-_____

COMPLAINT

(Declaratory Judgment)

Nonjury

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.

.

(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.

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(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.)

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:

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

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(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]henever 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, SCRCF, 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,

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

July 5, 2022
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.,	)	
Green Boundary Foundation, and	)	
South Carolina Public Interest Foundation,	)	FIRST 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. § 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:

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(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]henver 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,

/s. W. Andrew Gowder, Jr.
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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.

(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.)

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 (Velcome 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 (Velcome 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, SCRCF, 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,

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COUNSEL FOR PLAINTIFFS

June 29, 2023
Charleston, South Carolina

Jun 24 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

William P. Keesley, 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 order of the Honorable William P. Keesley dated June 5, 2024. Appellants received written notice of entry of the Order on Motion to Alter or Amend on June 5, 2024.

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Jun 24 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2022-CP-02-01498

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Aiken Foundation, Inc., Green
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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 24th day of June, 2024 to:

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Counsel for Respondent Aiken Design Review Board

/s/ Bailey L. Pope

Bailey L. Pope

Assistant to W. Andrew Gowder, Jr.

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,

**NOTICE OF MOTION AND
MOTION TO DISMISS,
OR ALTERNATIVELY, MOTION FOR
MORE DEFINITE STATEMENT
FILED BY AIKEN DESIGN REVIEW
BOARD DEFENDANTS**

v.

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: W. ANDREW GOWDER, JR., MICHAEL T. ROSE AND JAMES G. CARPENTER,
COUNSEL FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants Aiken Design Review Board, McDonald Law, John McMichael, Katy Lipscomb, Ben Lott, Ahmad Mikell, Hannah Robbins, and Josh Stewart, in their capacities as members of the Aiken Design Review Board (hereinafter collectively referred to as "DRB Defendants") will move before the Presiding Judge of the Second Judicial Circuit at the Aiken County Judicial Center, Aiken, South Carolina, at such time and place as may be set by the Court, for an Order:

- (1) Dismissing the Plaintiffs' Complaint against the DRB Defendants, pursuant to Rule 12(b)(1) and Rule 12(b)(6), SCRCP; or alternatively
- (2) Making Paragraph 203 of the Plaintiffs' Complaint more definite and certain, pursuant to Rule 12(e), SCRCP.

The DRB Defendants' motion is based upon the following grounds:

1. The Plaintiffs' Complaint fails to present an actionable claim for declaratory or injunctive relief because it is well settled under South Carolina law that an action seeking declaratory or injunctive relief is not a substitute for an appeal. The South Carolina Court of Appeals has held 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). In their Complaint, the Plaintiffs seek declaratory and injunctive relief based on their challenge of the DRB's decision at its March 1, 2022 meeting to conditionally approve Application #CERD22-001023 for a Certificate of Appropriateness. The Plaintiffs challenge that decision on both procedural and substantive grounds. The Plaintiffs, however, never filed an appeal from the DRB's decision pursuant to S.C. Code Ann. § 6-29-900, and their time for filing an appeal expired prior to the filing of this action. The Plaintiffs are clearly seeking to use this civil action for declaratory and injunctive relief as a substitute for an appeal which is contrary to established South Carolina law, and that is particularly true where the time for filing an appeal has expired and all appeal rights have been forfeited. Each of the grounds raised by the Plaintiffs in their

Complaint, including all procedural challenges to the DRB's decision, could have and should have been adjudicated by way of a timely appeal to the Circuit Court pursuant to S.C. Code Ann. § 6-29-900. As a result, the Circuit Court lacks subject matter jurisdiction to hear the Plaintiffs' challenges to the DRB decision by way of a civil action for declaratory and injunctive relief.

2. The Plaintiffs have not pled a justiciable claim for the reasons stated above, and as a result, subject matter jurisdiction is lacking. "To fall within the intended purpose and scope of the Declaratory Judgment Act, the parties must seek adjudication of a justiciable controversy." *Tourism Expenditure Review Committee v. City of Myrtle Beach*, 403 S.C. 76, 742 S.E.2d 371, 373-374 (2013). The South Carolina Supreme Court has explained that "it is fundamental that the Declaratory Judgments Act does not eliminate the case-or-controversy requirement." 742 S.E.2d at 374.

3. The Plaintiffs have failed to exhaust all administrative remedies prior to filing this lawsuit, including specifically an appeal of the DRB decision. *See, Stanton v. Town of Pawley's Island*, 309 S.C. 126, 420 S.E.2d 502 (1992) (plaintiff is generally required to exhaust administrative remedies before seeking relief from the courts); *Moore v. Sumter County Council*, 300 S.C. 270, 387 S.E.2d 455 (1990) (court could not adjudicate takings issue until plaintiff had exhausted administrative remedies).

4. The Plaintiffs' causes of action are not ripe for adjudication for the same reasons as stated above, and as a result, the Plaintiffs have not presented a justiciable action against the DRB Defendants. *See, Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634, 637 (Ct. App. 2020) ("[t]he concept of justiciability encompasses the doctrines of ripeness, mootness, and standing").

5. The Defendants McDonald Law, John McMichael, Katy Lipscomb, Ben Lott, Ahmad Mikell, Hannah Robbins, and Josh Stewart, who are sued in their official capacities, are the alter egos of the Aiken Design Review Board. *See, Kentucky v. Graham*, 473 U.S. 159

(1985) (“[o]fficial capacity suits ... genuinely represent only another way of pleading an action against an entity of which the officer is an agent”). Thus, the suit against the Defendants Law, McMichael, Lipscomb, Lott, Mikell, Robbins, and Stewart in their official capacities should be dismissed as duplicative. *See, Love-Lane v. Martin*, 355 F.3d 766, 783 (4th Cir. 2004) (affirming the dismissal of a claim against a superintendent in his official capacity because it was essentially a claim against the board of education and was, therefore, duplicative).

6. By statute, only a "public body" is the proper defendant for an enforcement action under South Carolina Freedom of Information Act (“FOIA”), S.C. Code Ann. § 30-4-10, *et seq.* The term “public body” is defined to include “any public or governmental body or political subdivision of the State, including ... municipalities.” S.C. Code Ann. § 30-4-20(a). The term “public body” is not defined to include any employee or elected or appointed official of a governmental entity or municipality. *Id.* While the Plaintiff’s actual allegations of FOIA violations against the DRB Defendants are not clear and require a more definite statement (see below), it is nonetheless well settled that the "public body" is the only entity against which injunctive and declaratory relief may be entered under the provisions of FOIA. There is no statutory authority for asserting a FOIA claim against any employees of a government entity or any elected or appointed officials. The Plaintiffs’ FOIA claim should therefore be dismissed to the extent it is pled against the Defendants McDonald Law, John McMichael, Katy Lipscomb, Ben Lott, Ahmad Mikell, Hannah Robbins, and Josh Stewart.

7. The Plaintiffs’ Fourth Cause of Action fails to state a cause of action. In their Fourth Cause of Action, the Plaintiffs seek the recovery of attorney’s fees under S.C. Code Ann. § 15-77-300. S.C. Code Ann. § 15-77-300 is an attorney’s fees provision, and the statute does not create a separate cause of action. *See, Douan v. Charleston City Council*, 373 S.C. 384, 645 S.E.2d 241 (2007).

8. In the alternative, the DRB Defendants request a more definite statement with respect to Paragraph 203 of the Plaintiffs' Complaint. Paragraph 203, as currently pled, applies to all of the Defendants collectively. In other words, in Paragraph 203, the Plaintiffs generally alleges seven different purported FOIA violations committed by the Defendants collectively. That paragraph does not, however, set forth with the required specificity under Rule 8, SCRCp, the FOIA violations which are alleged specifically against the DRB Defendants (as opposed to other Defendants). In addition, the Plaintiffs fail to provide specific factual allegations of the FOIA violations alleged against the DRB Defendants to satisfy notice pleading requirements and as is necessary to allow the DRB Defendants to properly respond to the FOIA cause of action and to prepare a defense.

The DRB Defendants' motion is based upon the pleadings filed in this case; a supporting memorandum to be filed; the rules of court; and such other matters as may be presented to the Court at or before the time of the hearing.

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 Ben Lott, Ahmad Mikell, Hannah Robbins, and
 Josh Stewart*

August 29, 2022

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,)

**PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO
AIKEN DESIGN REVIEW BOARD'S
MOTION TO DISMISS**

vs.)

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

Defendants.)

TO: THE DEFENDANT AIKEN DESIGN REVIEW BOARD THROUGH ITS COUNSEL
OF RECORD

The Plaintiffs submit this memorandum in opposition to the Rule 12(b)(6), SCRCF, motion to dismiss filed by the Defendant Aiken Design Review Board.

INTRODUCTION

This case is a declaratory judgment action filed by citizens and citizens groups 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 enabling statutes and local ordinances governing the development approval process. As a result of this lawsuit, the City has halted this particular project and is not pursuing its partnership with the developer named in the complaint. The problems with the way in which the City proceeded with this project and in the way it continues to operate remain, however, and the Plaintiffs are pursuing declaratory and equitable

relief from the court to ensure that the City will follow the requirements of state law and local ordinance as it proceeds with this and other projects.

The Defendant City of Aiken Design Review Board has moved to dismiss under Rule 12(b)(6), arguing that the Plaintiffs' action is in effect an appeal of its issuance of a Certificate of Appropriateness and cannot be pursued through a declaratory judgment.

This Defendant misapprehends the allegations of the Complaint and the Plaintiffs' requested relief because the Plaintiffs do not seek to overturn the March 1, 2022, conditional issuance of the Certificate of Appropriateness for the failed project, but instead to seek this Court's declaration that the way the City proceeded in numerous, specifically alleged instances, was contrary to state and local law.

The question before the court is whether, based on the allegations of the Complaint and the reasonable inferences from them, in the light most favorable to the Plaintiffs, and with every doubt resolved in their behalf, the Complaint states any valid claim for declaratory relief and the equitable remedy of injunction.

Based on the standard of review required by Rule 12(b)(6), the Complaint clearly sets forth a valid claim and the Defendant Aiken Design Review Board's motion to dismiss must be denied.

LEGAL STANDARD

In deciding a motion to dismiss pursuant to 12(b)(6), SCRCF, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). The Court must deny a motion to dismiss under Rule 12(b)(6) if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Id.*; *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) ("The 12(b)(6) motion may not be sustained if the facts alleged, and inferences therefrom would entitle the plaintiff to any relief on any theory."). "The question is whether, in the light most favorable to the

plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Id. “Pleadings in a case should be construed liberally so that substantial justice is done between the parties.” *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Plyler*, 373 S.C. at 645, 647 S.E.2d at 192.

FACTS AS ALLEGED IN THE COMPLAINT

The complaint states the following allegations of fact.

- The City of Aiken failed to adopt a redevelopment plan that satisfied the Community Development Act and failed to hold public hearings and follow other procedural requirements of that Act. (First Amended Complaint paragraphs 65-72)
- The specific project undertaken by the City with the private developer, Project Pascalis, did not comply with the redevelopment plan that was adopted by the City. (First Amended Complaint paragraphs 74-75).
- 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. (First Amended Complaint paragraphs 78-100).
- With regard to 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 prior to receiving any application (paragraphs 104, 106-109), 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 (paragraphs 104, 110-127).

- 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. (paragraph 139).
- Also following the issuance of the conditional COA, the DRB attempted to replace a member questioning its procedures in reviewing Project Pascalis without following procedures required by law for removing and replacing members. (paragraph 141-146).
- As part of this process, the public discovered that at a 3-5 of the members of the DRB 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 (paragraphs 147-148).
- The proceedings of the DRB 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 and did not put the public on fair notice of the actions to be taken by the DRB at the upcoming meeting (paragraph 155-156).
- 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 169 (a)-(s) and its Freedom of Information Act (paragraph 173).

ARGUMENT

Contrary to the argument of the Defendant DRB in its motion, the Plaintiffs do not seek to appeal or overturn the March 1, 2022, action of the DRB in issuing the conditional COA.

What they seek, as evidenced by the allegations made and the relief sought, is a declaration that the City, and specifically here, the DRB, have acted illegally. The Plaintiffs seek a declaration enforcing the laws of procedure governing the manner in which the DRB holds hearings and receives evidence

under the open meetings law and issues decisions in accordance with the state enabling act and the City's zoning ordinance. The complaint also asks that the Court rule on the way in which the DRB selects and removes its members in accordance with its governing ordinance.

Barring all requests for a declaratory judgment regarding DRB actions on the ground that a specific DRB decision has not been appealed would preclude judicial review and correction of any DRB action when there is no DRB decision to appeal. There must be a means of challenging illegal DRB actions and that means is through a declaratory judgment action, as pled here.

Additionally, FOIA provides a cause of action independent of the statutory procedure for appealing DRB decisions, and therefore FOIA claims cannot be dismissed because there is no pending appeal of a DRB decision.

CONCLUSION

The allegations of the complaint, under the standards of Rule 12(b)(6), are presumed to be true and would entitle the Plaintiffs to relief if proven. Accordingly, the Plaintiffs respectfully request that this Court deny the Motion to Dismiss filed by the Defendant City of Aiken Design Review Board.

Respectfully submitted,

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COUNSEL FOR PLAINTIFFS

March 1, 2023
Charleston, South Carolina

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,)

**MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS,
OR ALTERNATIVELY, MOTION FOR
MORE DEFINITE STATEMENT
FILED BY AIKEN DESIGN REVIEW
BOARD DEFENDANTS**

v.)

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.)

INTRODUCTION

On July 5, 2022, the Plaintiffs filed a Complaint against multiple governmental entities and individuals including the Aiken Design Review Board (“DRB”) seeking only declaratory and injunctive relief with respect to the redevelopment project in downtown Aiken known as “Project Pascalis.” The allegations asserted against the Defendant DRB and its members are summarized in Paragraph 163, which states:

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.

See, Complaint, ¶ 163. Similarly, in Paragraph 133 of their Complaint, the Plaintiffs allege as follows:

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.

See, Complaint, ¶ 133.

In essence, the Plaintiffs are suing the DRB for declaratory and injunctive relief related to a vote taken at a March 1, 2022 DRB meeting to grant a conditional Certificate of Appropriateness ("COA"). The Aiken DRB Defendants have filed a Rule 12 motions including a motion to dismiss under Rule 12(b)(1) and 12(b)(6), SCRCPP, on several grounds as discussed in its motion and in the analysis below.

LEGAL ANALYSIS

I. No Justiciable Claim and Lack of Subject Matter Jurisdiction

The Aiken DRB Defendants submit that the First and Second Causes of Action as pled in the Plaintiffs' Complaint fail to present a justiciable claim for declaratory or other prospective relief because it is well settled under South Carolina law that an action seeking declaratory or injunctive relief is not a substitute for an appeal, and accordingly, the Plaintiffs have not stated a justiciable claim against the Aiken DRB Defendants. The DRB is a quasi-judicial body created and operating under S.C. Code Ann. §§ 6-29-870 through 6-29-940.

The South Carolina Supreme Court has explained that the Declaratory Judgment Act clearly "has its limits." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462, 466 (2004). "To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Id.* As the Supreme Court has explained, "[a] justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Id.* "An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act." *Id.* The Supreme Court has held that "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, 742 S.E.2d 371, 374 (2013). See, *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634, 637 (Ct. App. 2020) ("[t]he concept of justiciability encompasses the doctrines of ripeness, mootness, and standing").

As discussed above, in their Complaint, the Plaintiffs seek declaratory and injunctive relief based on their challenge to the DRB's decision at its March 1, 2022 meeting to conditionally approve Application #CERD22-001023 for a Certificate of Appropriateness. The Plaintiffs challenge that decision on both procedural and substantive grounds. The Plaintiffs, however, never filed an appeal from the DRB's decision pursuant to S.C. Code Ann. § 6-29-900, and their time for filing an appeal expired prior to the filing of this action. The Plaintiffs are clearly seeking to use this civil action for declaratory and injunctive relief as a substitute for an appeal, where the time for filing an appeal has expired and all appeal rights have been forfeited. The Plaintiffs' action against the Aiken DRB Defendants is contrary to established South Carolina law.

To that point, the South Carolina Court of Appeals has clearly held 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). Yet, each of the grounds raised by the Plaintiffs in their Complaint, including all procedural challenges to the DRB's decision, could have and should have been adjudicated by way of a timely appeal to the Circuit Court pursuant to S.C. Code Ann. § 6-29-900. As a result, the Circuit Court lacks subject matter jurisdiction to hear the Plaintiffs' challenges to the DRB decision by way of a civil action for declaratory and injunctive relief.

Our Supreme Court has also rejected the use of a declaratory judgment action to select a forum or to circumvent a statutory process in place. 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.

That is also consistent with South Carolina law on the exhaustion of administrative remedies. *See, Stanton v. Town of Pawley's Island*, 309 S.C. 126, 420 S.E.2d 502 (1992) (plaintiff is generally required to exhaust administrative remedies before seeking relief from the courts); *Moore v. Sumter County Council*, 300 S.C. 270, 387 S.E.2d 455 (1990) (court could not adjudicate takings issue until plaintiff had exhausted administrative remedies). In the case at bar, the Plaintiffs, as persons alleged to have “a substantial interest in any decision of the board of architectural review,” had appeal rights pursuant to S.C. Code Ann. § 6-29-900, which requires an appeal to be filed “within thirty days after the affected party receives actual notice of the decision of the board of architectural review.” *See*, S.C. Code Ann. § 6-29-900(A). The Plaintiffs, however, never filed an appeal, and that appeal time has now expired. They cannot use this civil action for declaratory and injunctive relief as a substitute for an appeal that they failed to pursue – i.e., administrative remedies that they failed to exhaust.

Importantly, the Declaratory Judgment Act may not be invoked to circumvent the administrative approval processes as provided by state statutory law and local ordinances and

thereby seek a judicial determination by means of a declaratory judgment action. In land use matters, the Circuit Court typically serves only an appellate role providing judicial review of decisions of zoning boards of appeal, planning commissions, and boards of architectural review, and in such appeals, there is a very limited standard of review. Those administrative processes and that standard of review cannot be cast aside or avoided by the use of the Declaratory Judgment Act – either as an act of procedural fencing or to resurrect a stale appeal that was never pursued.

In sum, the Plaintiffs have not presented this Court with a justiciable claim against the Aiken DRB Defendants under the Declaratory Judgment Act, and for that reason, the First and Second Causes of Action should be dismissed.

II. Fourth Cause of Action

In their Fourth Cause of Action, the Plaintiffs seek the recovery of attorney's fees under S.C. Code Ann. § 15-77-300. The Plaintiffs, however, fail to state a cause of action. S.C. Code Ann. § 15-77-300 is an attorney's fees provision, and the statute does not create a separate cause of action. *See, Douan v. Charleston City Council*, 373 S.C. 384, 645 S.E.2d 241 (2007). Instead, it provides an avenue for a prevailing party to seek attorney's fees if the conditions of the statute are met. Moreover, if the Court dismisses the First and Second Causes of Action for the reasons stated above, there is no basis under S.C. Code Ann. § 15-77-300 for the Plaintiffs to seek or recover attorney's fees against the Aiken DRB Defendants.

III. Freedom of Information Act Claim

South Carolina law mandates notice pleading, and that requires that a defendant be placed

on fair notice of the alleged acts or omissions upon which a plaintiff is suing. Notice pleading is a major component of due process and thus ensures fundamental fairness. It provides for the proper joinder of claims for adjudication to allow for full discovery on those claims to be pursued and to prevent any surprises at trial. These concepts of notice pleading are expressed in *Watts v. Metro Security Agency*, 346 S.C. 235, 550 S.E.2d 869 (Ct. App. 2001), where the Court of Appeals explained:

The purpose of a pleading is fair notice to the opponent and the court. In this state, Rule 8, SCRCF, mandates that a pleading contain "ultimate facts" rather than "evidentiary facts" to state a cause of action. Ultimate facts fall somewhere between the verbosity of "evidentiary facts" and the sparsity of "legal conclusions."

550 S.E.2d at 871.

In their Third Cause of Action, the Plaintiffs generally allege a violation of the South Carolina Freedom of Information Act ("FOIA"). However, Paragraph 203, as currently pled, applies to all of the Defendants collectively. In other words, in Paragraph 203, the Plaintiffs generally allege seven different purported FOIA violations, all of which are stated in general terms, committed by the Defendants collectively. That paragraph does not, however, set forth with the required specificity under Rule 8, SCRCF, the FOIA violations which are alleged specifically against the Aiken DRB (as opposed to other Defendants).

Likewise, the Plaintiffs fail to provide specific factual allegations of the FOIA violations alleged against the Aiken DRB to satisfy notice pleading requirements and as is necessary to allow the Aiken DRB to properly respond to the FOIA cause of action and to prepare a defense. Accordingly, the Defendant Aiken DRB requests a more definite statement with respect to Paragraph 203 of the Plaintiffs' Complaint. The Court is requested that the Plaintiffs allege with specificity those acts or omissions by the DRB that they contend violated FOIA.

CONCLUSION

Based on the foregoing discussion and legal analysis, the Aiken DRB Defendants respectfully request that the Court dismiss the First and Second Causes of Action of Plaintiffs' Complaint based on lack of justiciability and lack of subject matter jurisdiction. The Aiken DRB Defendants further request that the Court dismiss the Fourth Cause of Action as a separate cause of action for attorney's fees. Finally, the Aiken DRB Defendants request that the Court direct the Plaintiffs to provide a more definite statement with respect to Paragraph 203 of the Plaintiffs' Complaint and to satisfy the requirements of Rule 8, SCRCF, to describe the specific violations of FOIA that are asserted against the Aiken Design Review Board.

Respectfully submitted,

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 Josh Stewart*

March 1, 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,

**NOTICE OF MOTION AND MOTION
TO DISMISS, OR ALTERNATIVELY,
MOTION FOR MORE DEFINITE
STATEMENT OF DEFENDANT
AIKEN DESIGN REVIEW BOARD**

v.

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

TO: W. ANDREW GOWDER, JR., MICHAEL T. ROSE, AND JAMES G. CARPENTER,
COUNSEL FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant Aiken Design Review Board will move before the Presiding Judge of the Second Judicial Circuit at the Aiken County Judicial Center, Aiken, South Carolina, at such time and place as may be set by the Court, for an Order:

- (1) Dismissing the Plaintiffs' Amended Complaint against the Defendant Aiken Design Review Board, pursuant to Rule 12(b)(1) and Rule 12(b)(6), SCRCP; or alternatively
- (2) Making Paragraph 173 of the Plaintiffs' Amended Complaint more definite and certain, pursuant to Rule 12(e), SCRCP.

The Defendant Aiken Design Review Board's motion is based upon the following grounds:

1. The Plaintiffs' Amended Complaint fails to present an actionable claim for declaratory or injunctive relief because it is well settled under South Carolina law that an action

seeking declaratory or injunctive relief is not a substitute for an appeal. The South Carolina Court of Appeals has held 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). In their Amended Complaint, the Plaintiffs seek declaratory and injunctive relief based on their challenge of the DRB’s decision at its March 1, 2022 meeting to conditionally approve Application #CERD22-001023 for a Certificate of Appropriateness. The Plaintiffs challenge that decision on both procedural and substantive grounds. The Plaintiffs, however, never filed an appeal from the DRB’s decision pursuant to S.C. Code Ann. § 6-29-900, and their time for filing an appeal expired prior to the filing of this action. The Plaintiffs are clearly seeking to use this civil action for declaratory and injunctive relief as a substitute for an appeal which is contrary to established South Carolina law, and that is particularly true where the time for filing an appeal has expired and all appeal rights have been forfeited. Each of the grounds raised by the Plaintiffs in their Amended Complaint, including all procedural challenges to the DRB’s decision, could have and should have been adjudicated by way of a timely appeal to the Circuit Court pursuant to S.C. Code Ann. § 6-29-900. As a result, the Circuit Court lacks subject matter jurisdiction to hear the Plaintiffs’ challenges to the DRB decision by way of a civil action for declaratory and injunctive relief.

2. The Plaintiffs have not pled a justiciable claim for the reasons stated above, and as a result, subject matter jurisdiction is lacking. “To fall within the intended purpose and scope of the Declaratory Judgment Act, the parties must seek adjudication of a justiciable controversy.” *Tourism Expenditure Review Committee v. City of Myrtle Beach*, 403 S.C. 76, 742 S.E.2d 371, 373-374 (2013). The South Carolina Supreme Court has explained that “it is fundamental that the Declaratory Judgments Act does not eliminate the case-or-controversy requirement.” 742 S.E.2d at 374.

3. The Plaintiffs have failed to exhaust all administrative remedies prior to filing this lawsuit, including specifically an appeal of the DRB decision. *See, Stanton v. Town of Pawley's Island*, 309 S.C. 126, 420 S.E.2d 502 (1992) (plaintiff is generally required to exhaust administrative remedies before seeking relief from the courts); *Moore v. Sumter County Council*, 300 S.C. 270, 387 S.E.2d 455 (1990) (court could not adjudicate takings issue until plaintiff had exhausted administrative remedies).

4. The Plaintiffs' causes of action are not ripe for adjudication for the same reasons as stated above, and as a result, the Plaintiffs have not presented a justiciable action against the DRB Defendants. *See, Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634, 637 (Ct. App. 2020) ("[t]he concept of justiciability encompasses the doctrines of ripeness, mootness, and standing").

5. The Plaintiffs' Fourth Cause of Action fails to state a cause of action. In their Fourth Cause of Action, the Plaintiffs seek the recovery of attorney's fees under S.C. Code Ann. § 15-77-300. S.C. Code Ann. § 15-77-300 is an attorney's fees provision, and the statute does not create a separate cause of action. *See, Douan v. Charleston City Council*, 373 S.C. 384, 645 S.E.2d 241 (2007).

6. In the alternative, the Defendant Aiken Design Review Board requests a more definite statement with respect to Paragraph 173 of the Plaintiffs' Amended Complaint. Paragraph 173, as currently pled, applies to all of the Defendants collectively. In other words, in Paragraph 173, the Plaintiffs generally alleges seven different purported FOIA violations committed by the Defendants collectively. That paragraph does not, however, set forth with the required specificity under Rule 8, SCRCp, the FOIA violations which are alleged specifically against the Defendant Aiken Design Review Board (as opposed to other Defendants). In addition, the Plaintiffs fail to provide specific factual allegations of the FOIA violations alleged against the DRB Defendants to satisfy notice pleading requirements and as is necessary to allow

the Defendant Aiken Design Review Board to properly respond to the FOIA cause of action and to prepare a defense.

7. The Amended Complaint was filed and served without obtaining compliance with the requirements of Rule 15(a) prior to the filing, specifically either (1) that leave of court was obtained or (2) that the Plaintiff obtained written consent of all adverse parties prior to filing.

The Defendant Aiken Design Review Board's motion is based upon the pleadings filed in this case; a supporting memorandum to be filed; the rules of court; and such other matters as may be presented to the Court at or before the time of the hearing.

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Counsel for Defendant Aiken Design Review Board

March 14, 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,) Civil Action No. 2022-CP-02-1498

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; Gary Smith,)

Defendants.)

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND
ORDER AND/OR MOTION TO
RECONSIDER OF DEFENDANT AIKEN
DESIGN REVIEW BOARD**

TO: THE HONORABLE WILLIAM P. KEESLEY

W. ANDREW GOWDER, JR., MICHAEL T. ROSE, AND JAMES G. CARPENTER,
COUNSEL FOR PLAINTIFFS

DANIEL C. PLYLER AND RACHEL E. LEE COUNSEL FOR DEFENDANT
CITY OF AIKEN

DAVID L. MORRISON, COUNSEL FOR DEFENDANT
AIKEN MUNICIPAL DEVELOPMENT COMMISSION

CLARKE W. MCCANTS, III AND CLARKE W. MCCANTS, IV,
COUNSEL FOR DEFENDANT GARY SMITH

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant
Aiken Design Review Board will move before the Honorable William P. Keesley, at such time and
place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCF, reconsidering,

altering, and/or amending the Order on Motion to Dismiss by Aiken Design Review Board as filed on June 1, 2023. The Defendant Aiken Design Review Board's counsel received written notice of entry of the Order on June 1, 2023.

The Defendant Aiken Design Review Board's motion is based on the following:

1. In its Order filed June 1, 2023, the Court respectfully erred in *sua sponte* concluding that an appeal filed pursuant to S.C. Code Ann. § 6-29-900 applies only to a “final decision” of the Aiken Design Review Board (“DRB”) and not to a Certificate of Appropriateness that was conditionally issued based on a decision of the DRB made on the application for a Certificate of Appropriateness in a public hearing on March 1, 2022. That decision and the alleged errors of the DRB in making that decision are the subject of Paragraphs 104 through 135 of the Amended Complaint. Specific relief is sought against the DRB on a number of alleged errors committed by the DRB in reaching that decision. *See*, Amended Complaint, ¶ 169(a)-(q).

S.C. Code Ann. § 6-29-900(A) provides as follows:

A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from *any decision* of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

S.C. Code Ann. § 6-29-900(A). (Emphasis added). The literal meaning of “any decision” is just that – any decision. S.C. Code Ann. § 6-29-900(A) allows for appeals from an architectural review board for “any decision.” In *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 621 S.E.2d 361 Ct. App. 2005), the Court of Appeals held that S.C. Code Ann. § 6-29-900(A) should

be construed based on the “plain meaning” of the language used. In that case, the Court of Appeals ruled that “the triggering mechanism for filing an appeal is actual notice of the adverse decision, not receipt of written notice.” 621 S.E.2d at 363. The statute, in fact, recognizes that an appeal by an interested person does not even require written notice of a decision because typically the property owner or applicant, but not another type of interested person, is served with the written decision of the board.¹

2. The Court also found that a decision regarding subject matter jurisdiction is premature and that at this stage the jurisdictional facts must be construed in a “light most favorable to the Plaintiffs.” (Order, pp. 6-7). The Defendant DRB disagrees and respectfully requests the Court to reconsider that ruling. The proper stage for asserting a challenge to subject matter jurisdiction is by way of a Rule 12(b)(1) motion. *See, Edens v. Bellini*, 359 S.C. 433, 597 S.E.2d 863, 867 (Ct. App 2004) (“[t]he proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss pursuant to Rule 12(b)(1), SCRCP, rather than a motion for summary judgment pursuant to Rule 56, SCRCP”). As the Court of Appeals has held, “[t]he question of subject matter jurisdiction is a question of law for the court, not a jury question.” *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 431 S.E.2d 631 (Ct. App. 1993). Moreover, “[i]f the facts which give rise to a jurisdictional issue are in dispute, the court, not a jury, must find the facts.” *Id.* It is also the Plaintiff’s burden – not the DRB’s burden -- to present jurisdictional facts to demonstrate the existence of subject matter jurisdiction. *See, Eldridge v. City of Greenwood*, 331 S.C. 398, 503 S.E.2d 191, 197 (Ct. App. 1998) (“[i]t is

¹ The Court is referred to the decision of the Court of Appeals in *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995), which allowed for an appeal from a certificate of appropriateness that was issued by an architectural review board.

generally true that the plaintiff in an action bears the burden of proving jurisdiction when the defendant challenges”).² Moreover, the Court has opined that “dismissal at this stage is a drastic remedy to be cautiously invoked.” (Order, p. 7). While the grant of summary judgment has been often described as a “drastic remedy,” there is no case law that identifies a dismissal for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) as a “drastic remedy.”³ The issue of subject matter jurisdiction, in fact, should be addressed at the earliest stage of litigation – which is precisely why the issue is to be resolved by way of a Rule 12(b)(1) motion which by rule is supposed to be filed in response to a pleading.

3. The Court is also asked to reconsider that the Aiken DRB is legally a quasi-judicial body. In several opinions, the South Carolina Attorney General has recognized that an architectural review board is a quasi-judicial body. See, S.C. Op. Atty. Gen., May 17, 2006, 2006 WL 1574905; S.C. Op. Atty. Gen., May 13, 2002, 2002 WL 1340430. Therefore, by allowing a person with a substantial interest to commence a civil action for declaratory and injunctive relief against a quasi-judicial body is no different than allowing an aggrieved party before a circuit court to sue the court for declaratory and injunctive relief instead of filing an appeal, which is the appropriate and only means to challenge a judicial or quasi-judicial decision. Importantly, an appeal may be utilized to address not just the ultimate merits of a decision but also any jurisdictional, procedural, or evidentiary irregularities or issues that arise, including the

² As the Court of Appeals has explained, “[t]he court may consider affidavits on a question of law in a jurisdictional motion without converting the motion into one for summary judgment.” *Edens v. Bellini*, 359 S.C. 433, 597 S.E.2d 863, 867 (Ct. App 2004). The Plaintiffs did not submit any jurisdictional facts by way of affidavit. However, in the absence of evidence submitted by the Plaintiffs, it is erroneous to simply take the jurisdictional facts pled as true or in the light most favorable to the Plaintiff, which is what the Court did in its Order.

³ The only case law that addresses dismissal as a “drastic remedy” involves Rule 12(b)(8) motions, which are not at issue in this case. See *e.g.*, *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524, 532 (Ct. App. 2009).

composition of the court or the quasi-judicial body. Thus, while the Plaintiffs argue that that they are not challenging the Aiken DRB's grant of a conditional Certificate of Appropriateness on March 1, 2022, the Amended Complaint tells a different story. The Plaintiffs are challenging, by the Court's own review of the Amended Complaint, whether the DRB has complied with statutory law and whether it properly received and reviewed evidence and other procedural issues. See, Amended Complaint, ¶¶ 104-135. Those are the very quasi-judicial acts that are no different than what a circuit court judge engages in, i.e., receiving evidence, evaluating evidence, complying with statutory law and rules of procedure, etc.; yet, there is no doubt that this Court would not find that a circuit court may be sued for declaratory and injunctive relief rather than being subject solely to an appeal to a higher court when an aggrieved party seeks to challenge the court's rulings or authority. The Plaintiffs are attempting to have this Court rule on issues that the DRB will have to abide by in deciding future applications, including ones on the properties that are identified in the Amended Complaint, in a collateral proceeding rather than through an appeal as provided for by statute. One of those issues is whether the DRB may issue decisions subject to conditions. This approach is beyond the subject matter jurisdiction of the Circuit Court. If it is not, then S.C. Code Ann. § 6-29-900(A) and the process for appealing a decision of an architectural review board has little meaning.

4. Finally, it is incorrect to conclude that a DRB's decision is not subject to an appeal in the Circuit Court because it is not "final," but that very decision (and the process that led to that decision) would be subject to Circuit Court review by way of a declaratory judgment action. That is, in essence, what the Court has allowed with its denial of the DRB's Rule 12(b)(1) motion. In effect, the Court's decision, if correct, will subject judicial and quasi-judicial bodies to limitless review by way of declaratory judgment actions. In addition, such review

would be subject to a statute of limitations under the Declaratory Judgment Act and the application of laches for an injunctive claim, rather than complying with typically a thirty-day deadline for appeals, and that will result in delayed justice and uncertainty and lack of finality in judicial and quasi-judicial decision-making.

These are the very policy reasons that a declaratory judgment action as brought by the Plaintiffs against the DRB is not jurisdictionally allowed. Our 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”).

⁴ See also, *Ex Parte Sadisco of Greenville, Inc. v. Greenville County Board of Zoning Appeals*, 340 S.C. 57, 530 S.E.2d 383 (2000) (Rule 60 motion could not used to extent or expand the time for an appeal to be filed); *Burnett v. South Carolina State Highway Dept.*, 252 S.C. 568, 167 S.E.2d 571 (1969) (circuit court did not have authority to extend time for landowner to appeal from a decision of the board of condemnation after the statutory time limit for appeal had expired).

See also, Smith v. South Carolina Retirement System, 336 S.C. 505, 520 S.E.2d 339 (Ct. App. 1999).

In short, the Circuit Court has jurisdiction over decisions of an architectural review board, but that jurisdiction is limited to *appellate jurisdiction* statutorily granted pursuant to S.C. Code Ann. § 6-29-900. There is no precedent that this Court has cited or that the Plaintiffs have cited to allow a quasi-judicial body to be sued for declaratory or injunctive relief after the appeal time has expired or to merely challenge the procedures generally employed by a quasi-judicial body.

The Defendant Aiken Design Review Board's motion is based upon the Order on Motion to Dismiss by Aiken Design Review Board as filed on June 1, 2023; the pleadings and previous filings in this case; a supporting memorandum to be filed; the rules of court; and such other matters as may be presented to the Court at or before the time of the hearing.

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Counsel for Defendant Aiken Design Review Board

June 12, 2023

ORAL ARGUMENT REQUESTED

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,)

**PLAINTIFFS' MEMORANDUM
IN OPPOSITION TO CITY OF
AIKEN DESIGN REVIEW BOARD'S
MOTION TO RECONSIDER UNDER
RULE 59(e), SCRPC.**

vs.)

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

Defendants.)

The Plaintiffs submit this memorandum in opposition to the Rule 59(e), SCRPC, motion to dismiss filed by the Defendant Aiken Design Review Board.

INTRODUCTION

The Defendant City of Aiken Design Review Board has moved the court to reconsider its order of June 1, 2023, under Rule 59(e), arguing that the court erred or misapprehended its arguments made prior to the court's ruling.

Under Rule 59(e), SCRPC, the movant must demonstrate a change in the law, new evidence, or a clear error in law made by the court in its ruling. Here, the Aiken DRB simply disagrees with the court's conclusion and seeks to reargue its motion which the court has already denied, with a well-reasoned opinion, in its June 1, 2023, Order.

Based on the standard of review required by Rule 59(e), the Defendant Aiken Design Review Board's motion to reconsider must be denied.

LEGAL STANDARD

Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036- JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F. Supp. 3d 685, 691 (D.S.C. 2017); see also Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

ARGUMENT

In its June 1 order, the court denied the motion to dismiss filed by the Aiken DRB on the grounds that, viewing the pleadings in the light most favorable to the Plaintiffs as is required under Rule 12, SCRCp, the Plaintiffs have stated a claim that the actions of the Aiken DRB were unauthorized and inappropriate and were conditional in nature, not final, and so denied the DRB's motion to dismiss. (See Order of June 1, pages 7-8).

There is nothing new, in either law or fact in the DRB's motion for reconsideration under Rule 59(e), and nothing that the DRB did or could have argued prior to the court's ruling.

The DRB argues first that the court "erred" in finding that the "any decision" applies also to the DRB's activity challenged in the complaint, which the court found could be construed not to be covered by the statute's reference to "any decision." (See Order of June 1, page 8) ("the court must accept at this stage an interpretation that it would lead to an absurd result to construe the statute's use of the word "any" as meaning anything other than that an appeal be made from a final decision.") Clearly, the court considered this argument and ruled on it. The DRB is simply rearguing the same issue that the court has already decided.

In its second, third, and fourth arguments, the DRB explicitly "disagrees and respectfully requests the Court to reconsider" that the court is not barred by lack of subject matter jurisdiction from deciding the case, given the allegations in the complaint that the DRB has and continues to act contrary to law and that conditional approvals are not allowed by law. Again, the DRB is not pointing out new evidence, new law, or clear errors of law or manifest injustice. Rather, the DRB is rearguing (admittedly) what it previously argued by brief and at the hearing. Such is not the basis of a Rule 59(e) reversal.

The DRB has made no arguments that would justify the court reversing its decision in its June 1, 2023, order, and the Plaintiffs respectfully request that the court deny the motion of the Defendant City of Aiken Design Review Board.

Respectfully submitted,

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COUNSEL FOR PLAINTIFFS

August 25, 2023
Charleston, South Carolina

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,)

v.)

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

Defendants.)

**REPLY TO PLAINTIFFS'
MEMORANDUM IN OPPOSITON TO
MOTION TO ALTER OR AMEND
ORDER AND/OR MOTION TO
RECONSIDER OF DEFENDANT AIKEN
DESIGN REVIEW BOARD**

By Form Order filed July 31, 2023, the Court advised the parties that the pending Motion to Alter or Amend Order and/or Motion to Reconsider filed by the Defendant Aiken Design Review Board ("DRB") would be decided on written submissions without oral argument pursuant to Rule 59(f), SCRCF. Accordingly, the Court gave the Plaintiffs the opportunity to file a written memorandum in opposition to the DRB's Rule 59(e) motion. The Court also provided the Defendant DRB the opportunity to reply.

In accordance with that Form Order, the Plaintiffs filed an opposition memorandum on August 25, 2023. In that memorandum, the Plaintiffs have declined to address the merits of any of the four issues for reconsideration set forth in the DRB's motion filed June 12, 2023. Instead, the Plaintiffs argue only that the federal standard for Rule 59(e) motions applies to this case, and under that federal standard, the DRB's motion to reconsider should be dismissed. The Plaintiffs,

as indicated, never address the merits of the DRB's motion and state only in conclusory fashion that "[t]he DRB has made no arguments that would justify the court reversing its decision in its June 1, 2023 order."

The federal standard under Rule 59(e), FRCP, limits reconsideration to the following circumstances: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). However, the South Carolina appellate courts have never adopted that limited federal standard of review for Rule 59(e). To the contrary, our appellate courts have crafted a broad view of the purpose and necessity for filing a Rule 59(e) motion. The state standard for a Rule 59(e) motion has been enunciated best in *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), in which the Supreme Court wrote:

[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review."

602 S.E.2d at 780. Thus, under the state standard, a motion to reconsider is permitted where a litigant believes the court "misunderstood" or "failed to fully consider" an argument or issue.

In addition, our appellate courts make it clear that a Rule 59(e) motion must be filed when a court decides an issue *sua sponte* or rules on a matter based on arguments or issues not directly made by the litigants. For instance, in *Godfrey v. Heller*, 311 S.C. 516, 429 S.E.2d 859 (Ct. App. 1993), the trial court addressed the issue of unjust enrichment even though plaintiff

“did not raise unjust enrichment as a basis for recovery, nor was the theory argued at trial.” 429 S.E.2d at 862. The Court of Appeals found that the “unjust enrichment” issue was not preserved for appellate review because the appellant did not challenge the trial court’s ruling by a Rule 59(e) motion. The Court of Appeals explained that “where an appellate learns for the first time when the appellant receives the order that the respondent would be granted certain relief, the appellant must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment to preserve the record for appeal.” *Id.*, citing *Pelican Building Centers v. Dutton*, 311 S.C. 56, 427 S.E.2d 673, 675 (1993). *See also*, *State v. Oxner*, 391 S.C. 132, 705 S.E.2d 51, 52 (2011) (finding an argument relating to subject matter jurisdiction unpreserved because the appellant failed to file a Rule 59(e) motion challenging the circuit court’s *sua sponte* jurisdictional ruling); *In re Timmerman*, 331 S.C. 455, 502 S.E.2d 920, 922 (Ct. App. 1998) (“[w]hen a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal”).

In the case at bar, the DRB raised by way of its Rule 59(e) motion a number of issues including challenges to rulings that the Court made *sua sponte* which had not been first argued by the Plaintiffs in response to the DRB’s Rule 12(b) motions. The Court is reminded that the Plaintiffs treated the DRB’s Motion to Dismiss solely as a Rule 12(b)(6) motion and never attempted to address the jurisdictional and justiciability defenses raised under Rule 12(b)(1) in that motion. *See*, Plaintiffs’ Opposition Memorandum, filed March 1, 2023. Thus, most, if not all, of the rulings in the Court’s Order on the DRB’s Motion to Dismiss filed June 1, 2023, were not argued by the Plaintiffs. That includes the Court’s *sua sponte* ruling that an appeal filed pursuant to S.C. Code Ann. § 6-29-900 applies only to a “final decision” of the DRB and not to a

Certificate of Appropriateness that was conditionally issued by the DRB. That is also the case with the Court's ruling that a decision on subject matter jurisdiction is premature and that at this stage the jurisdictional facts must be construed in a "light most favorable to the Plaintiffs." (Order, p. 7).¹ Those are clearly rulings that were made by the Court without those points having been argued or presented by the Plaintiffs. As a result, in accordance with the Rule 59(e) case law cited above, the Defendant DRB is mandated to seek relief by way of a Rule 59(e) motion, which is precisely what the DRB has done.

Further, the DRB submits that the use of a Rule 59(e) motion is particularly appropriate where the order at issue addresses issues of subject matter jurisdiction, which must be raised by a Rule 12(b)(1) motion and not by a later motion for summary judgment.² See, *Oxner*, 705 S.E.2d at 52 (where Supreme Court held "[t]he State failed to ask the circuit judge to reconsider her subject matter jurisdiction ruling before appealing the order to this Court. Accordingly, it has failed to preserve any issue related to that ruling for our review").

In sum, the Plaintiffs' reliance on the federal Rule 59(e) standard is misplaced. This action is brought and pending in state court, and accordingly, it is the state Rule 59(e) standard that applies. The Defendant DRB is not just within its right to seek reconsideration from this Court when it believes that the Court misunderstood or failed to fully consider an issue, but on

¹ This ruling is at odds with *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 431 S.E.2d 631 (Ct. App. 1993), where the Court of Appeals explained that "[t]he question of subject matter jurisdiction is a question of law for the court" and that "every court has the power and duty to determine whether it has jurisdiction which includes the power to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction." 431 S.E.2d at 631-632.

² See, *Edens v. Bellini*, 359 S.C. 433, 597 S.E.2d 863, 867 (Ct. App 2004) ("[t]he proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss pursuant to Rule 12(b)(1), SCRPC, rather than a motion for summary judgment pursuant to Rule 56, SCRPC").

such rulings that are *sua sponte* or based on arguments not made first by the Plaintiffs, the DRB is mandated to challenge those issues by way of Rule 59(e) motion. The fact that the Plaintiffs have continued their previous pattern of avoiding a discussion of the jurisdictional and justiciability issues on their merits should signify the obvious: the DRB's positions are meritorious and the filing of a *timely* appeal from the DRB to the Circuit Court – *and not the filing of an action seeking declaratory and injunctive relief against a quasi-judicial body* -- is the only proper means for obtaining judicial review of a decision of the DRB or procedures employed by the DRB. The Court is respectfully requested to grant the DRB's motion to reconsider its previous Order and to dismiss the Plaintiffs' First and Second Causes of Action based on the lack of justiciability and the lack of subject matter jurisdiction, leaving solely the FOIA claim to be further adjudicated.

Respectfully submitted,

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Counsel for Defendant Aiken Design Review Board

September 1, 2023

1 STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT 2
2 COUNTY OF AIKEN) COURT C.A NO..2022-CP-02-01498
3
4 David W. Blake, et al,)
5 Plaintiff,)
6 Versus)
7 City of Aiken, et al,)
8 Defendant.)
9
10 H E A R I N G
11
12 DATE: May 9, 2024
13
14 LOCATION: South Carolina Circuit Court 2
15
16 JUDGE: William P. Keesley
17
18 TRANSCRIBED BY: ERIN REILLY
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22 Greenville, South Carolina 29606
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EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 PROCEEDINGS

2 THE COURT: David W. Blake and others versus City of
3 Aiken and others, 2022CP0201498. It's May the 9th, 2024, 10:05
4 a.m. We're doing the sharing by virtue of the WebEx courtroom.
5 Court reporters are not assigned to these hearings. If a
6 transcript were to be needed will be prepared by a
7 transcriptionist using the WebEx recording. The rules require
8 the consent of all the parties to proceed in this fashion. My
9 understanding is everybody consents. So, Mr. Lindemann, is
10 this your motion?

11 MR. LINDERMANN: It is, Your Honor. Thank you. May
12 it please the Court and thank you for granting us a hearing,
13 Your Honor, on this 59 -- Rule 59 E motion. This -- the motion
14 that before your court, as I indicated is a motion to
15 reconsider or alter amend your previous order in the case that
16 was issued June 1 of 2023, denying the motion to dismiss filed
17 by my client and Mr. Holly's client, the Aiken Design Review
18 Board which I'll be referring to as the DRB for short, Your
19 Honor. This particular lawsuit as Your Honor's aware of from
20 your prior adjudication of that motion is a challenge by a
21 number of different citizens of the City of Aiken challenging a
22 redevelopment project in downtown Aiken, referred to as Project
23 Pascalis.

24 As part of the development process, a number of
25 matters came before the Aiken DRB including an application for

1 a Certificate of appropriateness. In a hearing held on March
2 1st, 2022 the DRB provided conditional approval to that
3 application. And so conditionally approved a certificate of
4 appropriateness. Following that decision, no appeal was filed
5 as is statutorily provided by any of the Plaintiffs to the
6 Circuit Court. We would submit that the Circuit Court only has
7 appellate jurisdiction from any type of decision or whether
8 it's procedural, evidentiary on the merits, interlocutory or
9 whatever it is that the Circuit Court only has appellate
10 jurisdiction. If an aggrieved party appropriately files a
11 timely appeal pursuant to the provisions of 6-29-900. It is
12 undisputed that no appeal was filed by any of these particular
13 Plaintiffs.

14 Instead, some months later, they filed this extremely
15 lengthy lawsuit seeking declaratory and injunctive relief
16 against a number of parties, including the Design Review Board.
17 As Your Honor correctly ruled in your previous order, the
18 Design Review Board is a quasi-judicial body. And as a quasi-
19 judicial body, it is no different than a judicial body. It is
20 no different than the Circuit Court, it's no different than any
21 administrative law court, et cetera.

22 So, our primary basis for our motion to dismiss was
23 pursuant to Rule 12B1 for lack of subject matter jurisdiction.
24 And respectfully, we believe that the Court made some errors
25 oversights in your previous order in denying that motion to

1 dismiss and allowing the Plaintiffs to proceed at that juncture
2 with their claims for declaratory and injunctive relief against
3 quasi-judicial body. If I could just highlight several of
4 those, they're stated in detail in our Rule 20 -- 59E motion.

5 And I would note before I go to the merits, Your
6 Honor. You did give the parties an opportunity or you did give
7 the Plaintiffs an opportunity to brief an opposition. And the
8 opposition memorandum that was filed by Mr. Gowder and his co-
9 counsel did not address the merits of the 59 E motion.
10 Instead, relying on the federal court standard for Rule 59 E
11 motions, which has never been adopted by the South Carolina
12 appellate courts.

13 And in fact, it's very much at odds with how South
14 Carolina appellate courts interpret Rule 59E and apply Rule
15 59E. They simply said that this was not an appropriate motion.
16 Clearly, it is under South Carolina law that the federal -- the
17 reliance on the federal case law we would submit is totally
18 meritless. So, moving to the merits of our Rule 59E motion.

19 I've touched on it already. The primary allegations
20 of the Plaintiffs against the DRB focus on this, granting of a
21 conditional certificate of appropriateness at a March 1st, 2022
22 hearing. There are a number of collateral arguments that are
23 made around that not any different than could be made if this
24 case was in a court of law, if it was in a circuit court based
25 on appeal.

1 They have challenged the composition of the board;
2 they have challenged evidentiary decisions. They have
3 challenged procedural decisions whether ordinances were
4 followed, et cetera. They're all relate to the merits of the
5 decision that was made by this quasi-judicial body. And so
6 principally we relied on some -- I would submit on point case
7 law from the South Carolina Supreme Court that is cited not
8 only in our initial memorandum but also in our Rule 59 E
9 motion. That a declaratory judgment action, which is what
10 they have brought is not a substitute for an appeal in
11 Wessinger versus Rauch 1986, Court of Appeals decision. I'm
12 sorry, I mentioned Supreme Court.

13 Court of Appeals decision specifically said a
14 declaratory judgment action is not a substitute for a new trial
15 or an appeal. In earlier cases, the Supreme Court indicated
16 that -- and we cite the case of Williams Furniture Corporation
17 versus Southern Coatings, that a declaratory judgment action is
18 not a substitute for following the appropriate procedures or
19 special statutory procedures that have been adopted by the
20 General Assembly.

21 In fact, in Williams Furniture, the Court said,
22 "Ordinarily, the Court will refuse a declaration where a
23 special statutory remedy has been provided or where another
24 remedy will be more effective or appropriate under the
25 circumstances." So, initially we would point out that in this

1 case, the Plaintiffs missed their deadline to file an appeal,
2 they didn't do so. As aggrieved parties, they would've had the
3 right to appeal that decision. And to circumvent that they
4 have filed this action for declaratory relief and asking this
5 court to not exercise appellate jurisdiction but to exercise
6 general jurisdiction over this matter.

7 And we would submit the Court does not have general
8 jurisdiction over this matter. Your jurisdiction would be
9 limited to appellate jurisdiction, if an appeal had been
10 appropriately brought. The Court -- in this court in your June
11 1st, 2023 order made several observations, several that were
12 sua sponte that were not even argued by the Plaintiffs that we
13 would respectfully ask the Court to reconsider.

14 First of all, you made the observation that a
15 dismissal on the basis of subject matter jurisdiction at this
16 stage is a drastic remedy that should be cautiously invoked.
17 And as we indicated in our motion that the cautious -- the
18 drastic remedy language is typically seen in motions for
19 summary judgment, which this is not. And in fact, going back,
20 I could not find a single rule 12B1 motion, where any
21 appellate court described that as a drastic remedy.

22 The only thing I found was a 12B8 motion, which is of
23 course, a lot different than a motion based on the absence of
24 subject marriage jurisdiction. You also ruled that the facts
25 in the complaint needed to be taken in a light most favorable

1 to the Plaintiff. And I would respectfully disagree with that,
2 Your Honor, whereas that is a correct observation for a 12B6
3 motion, it is -- we would submit not a correct observation for
4 a Rule 12B1 motion. In fact, as we've cited in our motion that
5 for a 12B1 motion. Jurisdictional facts are to be determined
6 by the Court and are to be determined by the Court, even if
7 they are in controversy. We cited the Court to Chew versus
8 Newsom Chevrolet, a 1993 Court of Appeals case.

9 And the Court of Appeals stated, "The question of
10 subject matter jurisdiction is a question of law for the Court.
11 And every court has the power and duty to determine whether it
12 has jurisdiction. Which includes the power to decide all
13 questions, whether of law or a fact, decision of which is
14 necessary to determine the question of jurisdiction." We would
15 also submit that a Rule 12B1 motion is the appropriate way to
16 challenge subject matter jurisdiction. And that's the motion
17 that we brought, that it's not appropriate to allow for
18 discovery to take place and ultimately jurisdiction to be
19 decided on a motion for summary judgment. In fact, in such
20 cases as Edens versus Bellini, the Court of Appeals has
21 cautioned that a summary judgment motion is not the proper way
22 to challenge jurisdiction. It's only by Rule 12B1 motion.

23 So, we believe that we've brought the motion as
24 appropriately before the Court. The burden is on the
25 Plaintiffs to present jurisdictional facts to support the

1 jurisdiction of the Court. In this particular case, Plaintiffs
2 filed no affidavits, they didn't present the Court with any
3 documentation. And to simply rely on the allegations of the
4 complaint is not sufficient. Nonetheless, I believe that even
5 based on the allegations of the complaint, based on the law
6 that I've already articulated and we'll discuss a little bit
7 more, as a quasi-judicial body the DRB cannot be sued just as
8 if a party had an issue with -- for instance, we obviously have
9 an issue with your ruling at this point in this case. Our
10 appropriate remedy is to seek reconsideration and at the
11 appropriate time, if we're not satisfied to appeal it, that's
12 how you deal with obviously judicial decisions.

13 Well, a quasi-judicial decision is no different. We
14 would submit, if they have -- are aggrieved by a decision of
15 the DRB, they can't file an action against the Court but that's
16 essentially what they have done. It would be the equivalent of
17 us suing a judge or suing a court because we disagree with a
18 decision. And what makes it worse is here they had the ability
19 to timely appeal and they didn't. So, what in essence, by
20 allowing them to bring a declaratory judgment action as a
21 substitute for an appeal, it -- instead of it being limited to
22 the appeal time that the general assembly has stated. It gives
23 them the ability to bring a claim all the way out to the end of
24 the statute of limitations if it's a matter of law. Or even
25 worse, since this is injunctive relief and declaratory relief,

1 | arguably the cases would be governed by latches the doctrine of
2 | latches.

3 | And who knows how long that could grade a limitations
4 | period. And obviously, decisions of courts, whether it's a
5 | judicial body or a quasi-judicial body needs to reach some type
6 | of finality. It can't be spread out over numerous years.
7 | Which is again, why we take exception to the Court's decision,
8 | because that's essentially what we're facing here is the
9 | Plaintiffs are challenging a decision procedurally,
10 | evidentially, and on the merits of a quasi-judicial body. And
11 | in essence, they could bring that claim at any point into the
12 | future if all you have to do is file a DJ action instead of
13 | filing an appeal. So, in essence, Your Honor, we would ask the
14 | Court to reconsider your previous decision.

15 | Oh, let me touch on one other point. You -- the
16 | issue that you raised, sua sponte Your Honor, and this was not
17 | raised by the Plaintiff whatsoever. Is the question as to
18 | whether the Plaintiffs could have appealed the conditional
19 | grant of Certificate of Appropriateness? Because it was
20 | conditional and Your Honor, questioned whether or not in
21 | essence an interlocutory appeal could be filed as opposed to
22 | having to wait for a final decision.

23 | And Your Honor, recognized that 6-29-900, which provides
24 | the appeal rights from a Board of Architectural Review, which
25 | is what the DRB is. Indicates that an agreed party may appeal

1 from any decision of the board to the Circuit Court. So, it
2 does use the phrasing any decision. So, we would submit that
3 the plain and clear language of that term should be should be
4 applied.

5 And in fact, we cited to the Court the case of -- let
6 me find it here, Your Honor, I'm sorry. The case of Blind
7 Tiger versus City of Charleston, a court of appeals decision
8 from 2005. Where the Court of Appeals actually interpreted 6-
9 29-900A not to this -- not to the point that Your Honor did but
10 as far as when the 30-day deadline for appeals begins to run.
11 And in interpreting that statute, the Court specifically
12 indicated that it was relying on the, "Plain meaning of the
13 language used.

14 So to determine what the triggering date was for the
15 filing of an appeal." And we would submit that the same -- that
16 the plain meaning of the term, any decision should be applied
17 in this particular instance. So, clearly they had the ability
18 to appeal and just taking that whole concept to do a little
19 further analysis.

20 I would submit to Your Honor that even if the
21 reasoning that you adopted were correct, what you in essence
22 have ruled is that they could not have appealed because there
23 was not a final decision. But instead of requiring them to
24 wait until there's a final decision to appeal what in essence,
25 this, Your Honor's decision is allowed is an appeal in the form

1 of a declaratory judgment action to be filed from an
2 interlocutory order. And I may not have articulated that real
3 well, but in essence you know, drawn an analogy to the Circuit
4 Court what in essence the equivalent would be is if a litigant
5 gets a decision on an interlocutory matter. For instance,
6 certification of a class, which clearly is at least according
7 to the Supreme Court is not immediately appealable, but one
8 could then bring a declaratory judgment action to challenge
9 that decision rather than waiting till a final appeal.

10 And I would submit respectfully, Your Honor, that's
11 the practical effect of the Court's decision by allowing a DJ
12 action to proceed on these issues as a substitute for an
13 appeal. Whether it's an timely -- whether it's an appeal of an
14 interlocutory order, whether it's an appeal from a final order.
15 The bottom line is the Plaintiff's remedy of their aggrieved by
16 a decision of a quasi-judicial body like the DRB is to file an
17 appeal and to follow the procedures in 6-29-900. So again
18 appreciate, Your Honor, providing us this opportunity to ask
19 for reconsideration of those issues. We would ask the Court to
20 grant the motion to dismiss based on lack of subject matter
21 jurisdiction, thereby dismissing the first and second positive
22 action -- all of the causes of action other than the FOIA
23 claim. Thank you, Your Honor.

24 THE COURT: Bear with me a moment, please.

25 MR. LINDERMANN: I'm sorry, Your Honor. I didn't

1 understand -- I didn't hear you.

2 THE COURT: Bear with me a moment.

3 MR. LINDERMANN: Okay. Thank you.

4 THE COURT: Checking on something on my end. All
5 right. So, Mr. Lindermann, on your side, I've got the -- most
6 of the parties is inactive. So, you've got the Aiken Design
7 Review Board?

8 MR. LINDERMANN: That's correct, Your Honor. Myself
9 and Mr. Holly.

10 THE COURT: Okay. And all these other McDonald Law,
11 Katy Lipscomb, Ben Lott, John McMichael, Ahmad Mikell, Hannah
12 Robinson, Josh Stewart, they're out of the case?

13 MR. LINDERMANN: Yeah. Those were all individual
14 members of the DRB and they have been dismissed, Your Honor.

15 THE COURT: All right. Who wishes to respond?

16 MR. GOWDER: Your Honor Andy Gowder. I represent the
17 Plaintiffs along with Mr. Rose who is also on the Zoom. Good
18 morning, and may it please the Court. Your Honor, there really
19 are two questions. I think before you this morning. The first
20 one has to do with whether this court should proceed with this
21 deciding this motion in view of the appeal of a motion to
22 dismiss that the City of Aiken represented by Mr. Plyler who's
23 on this -- in this hearing filed and Judge Hyman granted that
24 has now been appealed to the Court of Appeals.

25 In essence, that ruling was that the request for

1 declaratory judgment and the request for injunctive relief
2 against all Defendants was moot and he dismissed the case on
3 that basis. We, of course, disagree with that and have
4 appealed that, but that appeal is currently pending.

5 The question is whether or not given that appeal this
6 court -- this motion is a matter affected by the appeal. Rule
7 225A of the appellate rules says that the service of an appeal
8 and a civil matter acts to automatically stay matters, decided
9 in the Order on Appeal and to automatically stay the relief
10 order in the appealed order.

11 Also, South Carolina code annotated to 189220 says
12 that the trial court proceedings upon the judgment appealed
13 from or automatically stay during an appeal unless the matter
14 falls within a specified exception. And there are a number of
15 specific exceptions, including any of the enumerated exceptions
16 under 225B. Including execution of money judgments and
17 judgments directing the sale or delivery of real property.
18 Also, Your Honor, Rule 205 of the Appellate rules says that
19 upon service of the notice of appeal, the appellate rule shall
20 have exclusive jurisdiction over the appeal.

21 Under Rule 205, the lower court is deprived of the
22 power to proceed with matters that are affected by the appeal,
23 is the operative phrase but is allowed to proceed with matters
24 not affected by the appeal. Matters that have been decided or
25 listed that are not affected by an appeal could be things like

1 admissions to bail or discovery disputes, or request for
2 continuances, motions for sanctions, motions to withdraw as
3 counsel or issues related to the record on appeal. But the
4 lower court's jurisdiction under these exceptions is limited
5 and the Court cannot take any action that would directly
6 undermine or contradict the issues being considered in the
7 appeal. When I raised this, Your Honor, by email as we were
8 setting this motion hearing. Mr. Lindemann said that since
9 your ruling was based on different grounds, they would like to
10 have you rule on it even though the full case under the first
11 and second causes of action for declaratory judgment and
12 injunctive relief are on appeal.

13 And so, my question is whether Mr. Lindemann would
14 agree that if you rule -- if you deny his motion for 59E relief
15 and you know, whether we would proceed to discovery and to
16 trial, I suspect he would not agree with that. And if that's
17 the case, if we -- if he believes that his client, the Design
18 Review Board, the action against that body was dismissed as a
19 result of the ruling by Judge Hyman. Then I'm not sure how
20 this court -- it's appropriate for this court to proceed or
21 whether it can or should proceed. So that's one issue, Your
22 Honor.

23 Second, on the merits of the Rule 59 E motion. As we
24 argued in our memorandum, there's nothing new here and there
25 are no grounds for the Court reconsidering its prior ruling,

1 which was detailed and well-reasoned. And Your Honor, I would
2 disagree with Mr. Lindemann. I mean, if you look in the notes
3 for the South Carolina Rule 59, it says in the first sentence,
4 this Rule 59 is substantially the federal rule. So, I believe
5 that the authorities that we cite is persuasive that says that
6 Motions for Reconsideration should not be granted absent highly
7 unusual circumstance.

8 And not unless there has either been a change in the
9 law, new evidence or a clear error or to prevent manifest
10 injustice. It's not a vehicle to re-litigate previously raised
11 issues or to raise arguments or present evidence that could
12 have been presented prior to the entry of judgment. And all
13 that you have heard from Mr. Lindemann this morning argued
14 very well as Mr. Lindemann always does, but all you heard was a
15 reargument of what you heard last summer. And so, there is no
16 reason for this court to reconsider or allow for a relitigation
17 of a matter that you have already decided.

18 And in fact, we cited a case that says that a party's
19 mere disagreement with the Court's ruling does not warrant a
20 Rule 59 E motion. But Your Honor, on the arguments that he's
21 raised, I mean, what you decided was that you first recognized
22 that in a declaratory judgment action there were many in this
23 declaratory judgment action. Specifically, there were many
24 issues raised in the complaint that had nothing to do with a
25 particular ruling of the DRB. They had -- it had to do with

1 the way in which the DRB proceeded, the way it was constituted,
2 the way it made its decisions and did include the conditional
3 approval of the Certificate of appropriateness. But it was not
4 an appeal and this is not an appeal of that decision. And in
5 fact, you also I think correctly raised the question about
6 whether or not this was a final decision that -- of the DRB on
7 the Certificate of Appropriateness that could be appealed.
8 Rather by reading the complaint as a whole, the Court concluded
9 that this challenge was a challenge to the way in which the DRB
10 proceeded in this matter as it relates to Project Pascals.

11 And it was an appropriate party along with the
12 redevelopment authority and the City of Aiken in this case.
13 And so, you decided all of that in your order, we think that it
14 was correctly decided. And so, we don't believe that there's
15 been any new argument here, new evidence or any clear error or
16 manifest injustice that would justify this Rule 59 E motion.

17 Again, Your Honor, we go back to the question of if this
18 - if the DRB, if the case against the DRB under the first and
19 second causes of action has been dismissed under Judge Hyman's
20 order then I'm not sure it's appropriate for this court to rule
21 here. If the Court does believe it's appropriate to rule here
22 then I think logically we should be able to proceed with the
23 case against the DRB under the first and second causes of
24 action. If you rule in our favor and deny the Rule 59E motion,
25 I frankly don't think that is the right result. I think we're

1 on appeal for all three Defendants on Judge -- as a result of
2 Judge Hyman's order. But anyway, I believe that's the
3 difficulty in this court ruling at this point. So, with that -
4 - I mean, I know that, you know, the DRB through and Mr.
5 Lindermann, its counsel, wanted to take another bite at the
6 apple here. But I don't believe it's appropriate with the case
7 on appeal. And in any event, there is no reason for this court
8 to reconsider its previous order. Which again, as I stated,
9 was detailed and well-reasoned and so we would ask that you
10 deny the motion.

11 THE COURT: Thank you, Mr. Gowder. Anyone else need
12 to speak?

13 MR. LINDERMANN: May I -- have you heard -- a reply,
14 Your Honor?

15 THE COURT: Mr. Lindermann?

16 MR. LINDERMANN: Thank you, Your Honor. To address
17 the jurisdictional issue as far as the pending appeal, Your
18 Honor. First of all, let me make the point that Judge Hyman's
19 order granted Aiken's motion to or Motion for Summary judgment
20 based on mootness. At this juncture the DRB did not join that
21 motion. I'm not suggesting that if Your Honor rules adversely
22 to us today, we would not file a separate motion based on the
23 law of the case on the mootness issue. I'm not suggesting that
24 at all. But ultimately filed this motion to dismiss obviously
25 right after the Plaintiff's initially filed their complaint.

1 So, our motion was filed back in August of 2022. It certainly
2 provides additional jurisdictional reasons for the DRB to be
3 dismissed from -- for the first and second cause of action.

4 And I would submit to you that regardless of the
5 issue on appeal, which is totally separate, it's a mootness
6 question due to the fact that the Project Pascalis has been
7 abandoned. It is an entirely different basis than what has
8 been argued before Your Honor. It -- we never raised a
9 mootness issue and we still are not raising a mootness issue.
10 And again, I'm not suggesting, as I indicated, that we're not
11 going to follow suit with the City of Aiken as necessary but
12 obviously there can be alternative basis for dismissing a
13 party.

14 Rule 205 of the Appellate Rule specifically says nothing
15 in these rules shall prohibit the Lower Court Commission or
16 tribunal with -- from proceeding with matters not affected by
17 the appeal. And notably, Your Honor as Mr. Gowder indicated
18 they are appealing the mootness decision.

19 So, it's not like the Plaintiffs have accepted that
20 ruling. So, in essence, if two or three years down the road,
21 the Court of Appeals reverses then this motion to reconsider is
22 going to be right back before Your Honor for a decision. It
23 would seem to me that judicial economy would merit, Your Honor,
24 proceeding with deciding this issue. If you decide in the --
25 in our favor in the DRBs favor and the Plaintiff's wish to

1 appeal that could certainly be joined with the existing appeal
2 which would certainly foster judicial economy. But in essence,
3 to go to the basis of Mr. Gowder's argument. Rule 205 of the
4 appellate court rules do not preclude us from pursuing these
5 alternative basis for dismissal. And they've been pending, as
6 I indicated, since we filed the motion back in August of 2022.

7 So, we would ask the Court to proceed with ruling on
8 the Motion for Reconsideration on the merits. As far as the
9 argument about the Rule 59E being patterned after the federal
10 rule. What the South Carolina Appellate Courts have said in
11 the Gardner versus Newsome Chevrolet, and I don't have the cite
12 of that but I've cited numerous times. Your Honor is probably
13 familiar with it. It says that the interpretation of federal
14 rules of civil procedure are entitled to great weight when
15 there is no corresponding authority interpreting the South
16 Carolina civil -- rules of civil procedure, where there's no
17 existing appellate authority applying to South Carolina rules.
18 That is definitely not the case with respect to Rule 59E. I
19 won't belabor the point. I mean, if our reply memorandum cited
20 the pertinent cases, I would just be like Elam versus South
21 Carolina Department of Transportation has been the seminal case
22 dealing with the standard for Rule 59E motions.

23 And the Supreme Court indicated that there are two
24 situations where parties may wish to file a 59E motion. And
25 they indicated the first one was a party may wish to file such

1 a motion when she believes the Court has misunderstood, failed
2 to fully consider, or perhaps failed to rule on an argument or
3 issue, and the party wishes for the Court to reconsider or rule
4 on that issue. So, they recognized that there is a broad
5 reconsideration authority not limited like the federal rule.
6 In addition, in this case, we respectfully submit that part of
7 your reasoning was sua sponte this idea that the only final
8 appeal, a final decision could be appealed. That is not
9 something that the Plaintiffs argued that you raised sua
10 sponte. And in fact, as we've cited in our reply memorandum at
11 pages two and three, there is a case law in South Carolina from
12 our appellate courts, that indicate that where a judge court
13 rules sua sponte, we have an obligation to raise and challenge
14 that by a Rule 59E motion.

15 Otherwise, that issue may be lost on appeal. And one
16 of the cases we cited was in Ray Timmerman, and if I can quote
17 it for the Court. It says, "When a party receives an order
18 that grants certain relief not previously contemplated or
19 presented to the trial court, the agreed party must move
20 pursuant to Rule 59E to alter or amend the judgment in order to
21 preserve the issue for appeal." And we've cited a number of
22 other cases that, that support that principle. So, this rule
23 59E motion, number one, is appropriately for you. I believe
24 you have jurisdiction to hear it. And I won't go through the
25 arguments again, but we would respectfully ask the Court to

1 reconsider. We believe the points that we raise for
2 reconsideration have merit and that a decision of a quasi-
3 judicial body should not be treated any differently than a
4 decision by a judicial body. When there's a right to appeal,
5 the appropriate way to challenge it is by an appeal and a
6 declaratory judgment is not a substitute for an appeal. Thank
7 you, Your Honor.

8 THE COURT: Thank you, sir. Do you have anything
9 else?

10 MR. GOWDER: Your Honor, all I would say is that on
11 the issue of the sua -- whether it's sua -- whether you ruled
12 sua sponte or whether it was related to an argument that we
13 raised, we believe that all of your findings were well founded
14 in law and fact and on the pleadings. And we believe there's
15 no reason for you to reconsider or reverse any of your
16 findings.

17 THE COURT: All right. Thank you, gentlemen. What
18 did Judge Newman do?

19 MR. GOWDER: I'm sorry I didn't hear you, Your Honor?

20 THE COURT: Wasn't Judge Newman involved in the case
21 after a while?

22 MR. GOWDER: Judge Newman was but the rulings I think
23 that are -- in that is relevant here is that Judge Hyman's
24 ruling on the motion for summary judgment.

25 MR. LINDERMANN: I think Judge Newman dismissed one

1 of the parties, Your Honor, if I remember correctly.

2 THE COURT: Were both Judge Newman's involved? Was it
3 Clifton and [indiscernible]?

4 MR. GOWDER: I think Judge Clifton was not involved.

5 THE COURT: Okay.

6 MR. GOWDER: I may be incorrect on that but I don't
7 think he was

8 THE COURT: All right. I apologize for the question.
9 I just -- that's something that I got kind of confused about
10 when I was going through the file again. All right, gentlemen.
11 I'll try to get some kind of decision to you quickly and I
12 greatly appreciate your patience and I hope everybody's doing
13 well now.

14 MR. LINDERMAN: Thank you, Your Honor.

15 MR. GOWDER: We hope you are.

16 [END OF HEARING]
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CERTIFICATE OF TRANSCRIBER

I, ERIN REILLY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 2, Aiken County, South Carolina, on the 9th day of May, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 29th, 2024

ERIN REILLY

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
William P. Keesley, Circuit Court Judge

Appellate Court Case No. 2024-001057
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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