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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2024-000438

Faye P. Croft, Personally and as Trustee
of the James A. Croft Trust; James A.
Croft Trust; William A. Harbeson;
Heyward G. Hutson; James Stephen
Greene, Jr., Brian Peachier; Robert
Klinger; Mary Becker; Summerville
Preservation Society; and Dorchester
County Taxpayers Association,
individually, and on behalf of all others
similarly situated,

Appellants,

v.

Town of Summerville; Town of
Summerville Redevelopment Corporation;
Town of Summerville Planning
Commission; and Town of Summerville
Board of Architectural Review,

Respondents.

**RECORD ON APPEAL
VOLUME II of III**

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Faye P. Croft, personally and as Trustee of the
James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson;
James Stephen Greene, Jr.; Brian Peacher;
Robert Klinger; Mary Becker; Summerville
Preservation Society; and Dorchester County
Taxpayers Association, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in
his capacity as Mayor; Terry Jenkins, Aaron
Brown, Walter Bailey, William McIntosh,
Kima Garten-Schmidt and Robert Jackson, in
their capacities as members of Town Council;
Town of Summerville Redevelopment
Corporation; Town of Summerville
Redevelopment Commission; Town of
Summerville Planning Commission; and Town
of Summerville Board of Architectural
Review,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-18-00713

2015 JUN 15 PM 12:15
DORCHESTER COUNTY

CERTIFIED COPY

**SECOND AMENDED
COMPLAINT**

JURY TRIAL DEMANDED

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

I. PRELIMINARY STATEMENT

1. This is a civil action for declaratory, mandamus and injunctive relief brought for violations and threatened violations of, and to enforce the requirements of, *inter alia*, Article I,

Article VIII and Article X of the South Carolina Constitution; 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 Building Codes law, S.C. Code Ann. § 6-9-5 *et. seq.*; the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10 *et. seq.*; S.C. Code Ann. § 6-1-730 (use of revenue from local hospitality tax); S.C. Code Ann. § 6-7-10 (planning by local governments); the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; the Summerville Historic Preservation Ordinance, Article IV, Sec. 32-171, *et. seq.*; the Summerville Planning Commission Ordinance, Article II, Sec. 20-31, *et. seq.*; the Summerville Tree Protection Ordinance, Article VIII, Sec. 32-324; the Summerville Purchasing Ordinance Sec. 2-320 - Sec. 2-326; the Summerville Noise Ordinance; the United States Constitution; and 42 U.S.C. § 1983 ("Section 1983").

2. This action is brought by the Plaintiffs, individually, in their representative capacities and on behalf of their members residing within the Town of Summerville, to (1) obtain a declaration from the Court that purported contracts and provisions of those purported contracts between and among some of the Defendants 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 all provisions of those contracts; (3) obtain a writ of mandamus to require governmental Defendants to perform non-discretionary duties required by law; and (4) otherwise remedy certain violations of various federal and state-protected regulatory, statutory and Constitutional rights afforded to each of the Plaintiffs in this action by the Constitution of the United States; by the Constitution and statutes of the State of South Carolina; and by the ordinances, rules, regulations and customs of the Town of Summerville, South Carolina.

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 are 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).

II. PARTIES

A. The Plaintiffs

5. Faye P. Croft ("Croft" or "Faye Croft") is a taxpayer in the Town of Summerville, South Carolina ("Town" or "Summerville"), and is the Trustee and the beneficiary of the James A. Croft Trust, which owns and rents a residence on land located at 214 West Richardson Avenue, Summerville, SC. Croft has standing as a Plaintiff in this action both as a taxpayer and

due to direct and unique damages to Croft and the James A. Croft Trust 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 their property and the ability to rent their property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of their property. Croft has paid and will continue to pay taxes, including hospitality taxes, that fund the Town of Summerville, and brings this action individually on her behalf and on behalf of all others similarly situated.

6. The James A. Croft Trust ("Croft Trust") is a trust created under the laws of the State of South Carolina, for which Faye Croft is the trustee and the beneficiary; owns and rents a residence on land located at 214 West Richardson Avenue, Summerville, SC; and is a taxpayer in and to the Town. The Croft Trust has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to the Croft Trust 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 its property and the ability to rent its property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of its property. The Croft Trust brings this action individually on its behalf and on behalf of all others similarly situated.

7. The Summerville Preservation Society ("Preservation Society") is a non-profit corporation incorporated in 1972 under the laws of the State of South Carolina; and is a 501 (c)(3) federally tax-exempt organization. The mission of the Preservation Society is to protect the historic fabric of Summerville by preserving Summerville's historic structures, neighborhoods and public spaces, by controlling the growth and development that affects it, and by enhancing the quality of life in the Town. The Preservation Society is suing as a

representative of its members who reside in and are citizens, qualified electors and taxpayers in Summerville and/or Dorchester County, South Carolina. The Preservation Society brings this action individually on its behalf and on behalf of all others similarly situated.

8. The Dorchester County Taxpayers Association ("DCTA") is a non-profit corporation incorporated in 1998 under the laws of the State of South Carolina. The mission of the DCTA is to encourage government to tax its citizens less and to work more efficiently with the taxes collected. The DCTA is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in the Town of Summerville and/or Dorchester County, South Carolina. DCTA brings this action individually on its behalf and on behalf of all others similarly situated.

9. William A. Harbeson ("Harbeson") is a citizen, resident and taxpayer of the Town of Summerville, and owns land located in Summerville. Harbeson has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Harbeson that have been caused and that will continue to be caused by the actions of the Defendants, including but not limited to the reduction in value of his property increased traffic and noise, flooding, and other impairments to the use and enjoyment of his property. Harbeson has paid and will continue to pay taxes, including hospitality taxes, which fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

10. Heyward G. Hutson ("Hutson") is a citizen, resident and taxpayer of the Town of Summerville, owns residences on land located in Summerville at 207 West Richardson Avenue and 200 South Pine Street, and is President of Plaintiff Summerville Preservation Society. Hutson has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Hutson that have been caused and that will continue to be caused by the actions of

the Defendants, including but not limited to the diminishment in value of his property and the ability to rent his property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of his property. Hutson has paid and will continue to pay taxes, including hospitality taxes that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

11. James Stephen Greene, Jr. ("Greene") is a citizen, resident and taxpayer of Summerville, and has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Greene being caused and that will continue to be caused by the actions of the Defendants due to increased traffic and noise, flooding, and other impairments to the use of his property. Greene has paid and will continue to pay taxes, including hospitality taxes, that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

12. Brian Peacher ("Peacher") is a citizen, resident and taxpayer of Summerville, and has standing as a Plaintiff in this action as a taxpayer. Peacher has paid and will continue to pay taxes, including hospitality taxes, that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

13. Robert Klinger ("Klinger") is a citizen, resident and taxpayer of Summerville, and has standing as a Plaintiff in this action as a taxpayer. Klinger has paid and will continue to pay taxes, including hospitality taxes, that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

14. Mary Becker ("Becker") is a citizen, resident and a taxpayer of Summerville, and has standing as a Plaintiff in this action as a taxpayer. Becker has paid and will continue to pay

taxes, including hospitality taxes, that fund the Town of Summerville, and brings this action individually on her behalf and on behalf of all others similarly situated.

15. Plaintiffs are entitled to standing based on their status as taxpayers and fee payers who have contributed to the fund at issue, and because of the great public importance of the issues that this civil action raises and that are capable of being repeated.

16. 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.

17. Each of the above-described Plaintiffs alleging tax payer standing has as an overriding public purpose or concern as the basis for his, her or its suit on behalf of his fellow taxpayers regarding the proper use and allocation of tax receipts by the Town 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 for future guidance, as the public interest involved is the prevention of the unlawful expenditure of money raised by taxation. Each taxpayer Plaintiff has a real, material, and substantial interest in whether the Town and its civic bodies followed the requirements and procedures set out in the state constitution, state enabling statutes and Town ordinances, procedures, rules, guidelines and customs specifically designed to ensure wise management of the public fisc.

18. Each of the organization Plaintiffs (Preservation Society and DCTA) has 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 Second Amended 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 claim the organizations assert, nor the relief they request, requires the participation of the individual members of those organizations in this action.

19. Each of the Plaintiffs, whether alleging taxpayer standing, actual injury to his or her real or personal property or acting on behalf of organizational members, has suffered an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

B. The Defendants

20. The Town of Summerville ("Town") is a body corporate and a municipal corporation of the State of South Carolina located in Dorchester County, South Carolina.

21. The Town of Summerville Redevelopment Commission ("Commission," "Corporation" or "RDC") purportedly, according to the Town, is a public body and a body corporate and politic purportedly created and organized pursuant to the South Carolina Community Development Act, S.C. Code Ann. § 31-10-10 et. seq. The Summerville Redevelopment Corporation is liable for all wrongful actions of the Summerville Redevelopment Commission alleged in this Amended Complaint.

22. The Town of Summerville Redevelopment Corporation ("Corporation," "Commission" or "RDC") is a South Carolina corporation for which the Secretary of State of the State of South Carolina issued a Certificate of Incorporation on June 13, 2014. The Summerville Redevelopment Commission is liable for all wrongful actions of the Summerville Redevelopment Corporation alleged in this Amended Complaint.

23. The Town of Summerville Planning Commission ("Planning Commission") is an organization created by the Town of Summerville by Ord. No. 1997-1003, 11-12-1997 and Ord. No. 08-0902, 10-8-2008, as provided in S.C. Code 1976, § 6-29-310 *et seq.*

24. The Town of Summerville Board of Architectural Review ("BAR") is an organization created by the Town of Summerville by Ord. No. 2000-0901, § 13-5, 10-11-2000 and Ord. No. 06-0701, 8-9-2006, as provided in S.C. Code 1976, § 6-29-870 *et seq.* See Sec. 32-175 of the Summerville Town Ordinances. The members of the BAR are appointed and removed by the Mayor of Summerville with the approval of the Summerville Town Council; serve on the BAR as fiduciaries of the Town of Summerville and its citizens; and are prohibited from conflicts of interest while serving and performing duties as a member of the BAR.

25. William C. Collins ("Collins") was the Mayor of the Town of Summerville and the Chairman of and a Commissioner of the RDC at all times pertinent to this Second Amended Complaint, and is being sued only in his official capacities.

26. Terry Jenkins ("Jenkins") was a member of the Town Council of Summerville and the Vice-Chairman of and a Commissioner of the RDC at all times pertinent to this Second Amended Complaint, and is being sued only in his official capacities.

27. Aaron Brown ("Brown") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

28. Walter Bailey ("Bailey") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

29. William McIntosh ("McIntosh") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

30. Kima Garten-Schmidt ("Garten-Schmidt") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in her official capacities.

31. Robert Jackson ("Jackson") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

C. Others

32. Applegate & Co. ("Developer" or "Applegate") is a corporation 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, Developer's main office and principal place of business is 4130 Faber Place Drive # 111, North Charleston, South Carolina, in Charleston County.

33. "SPE" as used in this Complaint is a "special purpose entity" created or to be created by the Developer. Should the Developer create this entity, Plaintiffs reserve the right under the South Carolina Rules of Civil Procedure to amend to add that to-be-formed business entity as a Defendant.

34. The Dorchester, LLC, is a limited liability company incorporated under the laws of the State of South Carolina.

35. Arthur H. Applegate (together with Applegate & Co. referred to as the "Developer" or "Applegate") is President of Applegate & Co.; a Manager of The Dorchester, LLC; and the promised personal guarantor of a \$3.75 million loan sought to be made by the RDC to the Dorchester, LLC. Upon information and belief, Applegate is a resident of Charleston County.

36. The Town of Summerville Finance Committee ("Finance Committee") is a committee of the Town of Summerville and has the authority and duty, pursuant to the Town's

Purchasing Ordinance enacted on May 9, 2012, Sec. 2-322(c), to approve all purchases over \$25,000 by the Town. The Town is liable for all wrongful actions of the Finance Committee alleged in this Amended Complaint.

37. The Master Plan Advisory Committee ("MPAC") is, and at all times pertinent to the Second Amended Complaint was, an advisory committee composed of citizens appointed by the Town of Summerville that met on several occasions in Town facilities at the request of the Town. The MPAC gave advice to and performed other actions for, regarding and at the request and direction of the Town and the Town's consultants regarding the manner of, and priorities and expenditures for, development by the Town and the RDC, and did so without complying with the requirements of the South Carolina Freedom of Information Act. The recommendations, votes and other actions of the MPAC promoted, served as the basis for, and caused the creation of, the Town's Master Plan, Vision Plan and Comprehensive Plan, and the RDC's development plan.

38. Peter M. Gorman ("Gorman") is a citizen, resident and taxpayer of Summerville and a representative of the East Historic District Civic Association in Summerville.

39. Phil Dixon ("Dixon") was the Chairman and a member of the BAR at all times pertinent to the Second Amended Complaint. Dixon had conflicts of interest regarding the Hotel project and therefore should have recused and was required to recuse himself from any actions as a member of the BAR regarding the Hotel project.

40. David Price ("Price") was the Vice Chairman and a member of the BAR at all times pertinent to the Second Amended Complaint. Price had conflicts of interest regarding the Hotel project and therefore should have recused and was required to recuse himself from any actions as a member of the BAR regarding the Hotel project.

41. Beth Huggins ("Huggins") was a member of the BAR and a member of the Master Plan Advisory Committee at all times pertinent to the Second Amended Complaint. Huggins had conflicts of interest regarding the Hotel project and therefore should have recused and was required to recuse himself from any actions as a member of the BAR regarding the Hotel project.

42. Madelyn Robinson ("Robinson") is and/or was at all times pertinent to the Second Amended Complaint, the Town's Director of Planning & Economic Development.

43. Lucy Dreyer ("Dreyer") is a Town Staff Planner and the Secretary of the BAR.

44. Lisa Wallace ("Wallace") was, at all times pertinent to the Second Amended Complaint, the Town's Director of Administrative Services, Clerk and Treasurer; the Secretary of the RDC; and the Town's Purchasing Agent pursuant to Town Ordinance Sec.2-321.

III. STATUTORY AND REGULATORY FRAMEWORK

45. The creation, regulation, financing and implementation of development by a municipality of the State of South Carolina, including but not limited to the Defendant Town of Summerville, 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 Town of Summerville.

A. SOUTH CAROLINA CONSTITUTION

46. Article X, Section 5 of the State Constitution requires that taxes (public funds) be spent only for public purposes.

47. Article X, Section 11 of the South Carolina Constitution states, in relevant part, as follows:

"Credit of State and political subdivisions.

The credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution Neither the State nor any of its political subdivisions shall become a joint owner of or stockholder in any company, association, or corporation." (Emphasis added.)

48. Article X, Section 11 of the State Constitution proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981).

49. The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement." *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967)

50. Article X, Section 14 of the South Carolina Constitution states, in relevant part, as follows:

"Bonded indebtedness of political subdivisions.

(1) '[P]olitical subdivisions' shall mean the . . . incorporated municipalities of the State

(2) The political subdivisions of the State shall have the power to incur bonded indebtedness in such manner and upon such terms and conditions as the General Assembly shall prescribe . . . in the following categories and in no others:

(a) General obligation debt; and

(b) Indebtedness payable only from a revenue producing project or from a special source as provided in subsection (10) of this section.

(3) 'General obligation debt' shall mean any indebtedness of the political subdivision which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power.

(4) General obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision." (Emphasis added.)

(10) Indebtedness payable solely from a revenue producing project or from a special source, which source does not involve revenues from any tax or license, may be issued upon such terms and conditions as the

General Assembly may prescribe by general law; provided, that the General Assembly may authorize by general law that indebtedness for the purpose of redevelopment within incorporated municipalities and counties may be incurred, and that the debt service of such indebtedness be provided from the added increments of tax revenues to result from any such project. Any and all indebtedness incurred pursuant to the provisions of this subsection shall contain a statement on the face thereof specifying the sources from which payment is to be made and shall state that the full faith, credit, and taxing powers are not pledged therefor. (Emphasis added.)

B. SOUTH CAROLINA STATUTES

(1) COMMUNITY DEVELOPMENT LAW

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

"Definitions.

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

(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.

(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. § 31-10-60 states in part that a “commission may delegate to one or more of its members, agents, or employees such of its powers as it deems necessary to carry out the purposes of this chapter, subject always to the supervision and control of the whole commission.” (Emphasis added.)

54. 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 . . .”

55. 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 developers; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the commission, with developers 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.)

56. 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.)

57. 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.)

58. S.C. Code Ann. § 31-10-120 states in part as follows:

"Power of commission to issue and sell bonds . . .

(a) The commission may issue bonds on which the principal and interest are payable:

(1) exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds;

(2) exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant, or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

. . . The bonds and other obligations of the commission (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality or the State and neither the municipality nor the State is liable on them, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of the commission acquired

for the purpose of this chapter. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. . . . Bonds may be issued by a commission under this chapter notwithstanding any debt or other limitation prescribed in any statute. This chapter without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission hereunder and such authorization and issuance is not subject to any conditions, restrictions, or limitations imposed by any other statute whether general, special, or local, except as provided in subsection (d) of this section.

(c) . . . Prior to the public sale of bonds hereunder, the commission shall first cause a notice of the sale of the bonds to be published at least once at least ten days before the date fixed for the receipt of bids for the bonds in a newspaper of general circulation in the commission's area of operation . . ." (Emphasis added.)

59. S.C. Code Ann. § 31-10-150 states in part as follows:

"Notice of intent to issue bonds

Prior to issuing any bonds under this chapter, a commission shall publish notice in a newspaper of general circulation in the municipality of its intent to issue such bonds Any interested person may within twenty days after the publication of such notice, but not thereafter, challenge the proposal of the commission to issue such bonds by action initiated in the circuit court for the circuit in which the commission is located. . . ." (Emphasis added.)

60. 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.)

**(2) SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE
PLANNING ENABLING ACT OF 1994**

(a) Local Planning Commission

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

62. 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.)

63. S.C. Code Ann. § 6-29-360(B) states in part that “[t]he commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and determinations, which record must be a public record.” (Emphasis added.) The Summerville Planning Commission violates this statutory public record requirement by not having adopted rules of organizational procedure; by not keeping a copy of its records on the Town website, even though it keeps records of other Town meetings on its website; by not creating and making its records available to the public timely; by not allowing public inspections of records timely; and by requiring written requests pursuant to the Freedom of Information Act accompanied by delays of fifteen days or more in order to inspect or obtain a copy of its records.

64. S.C. Code Ann. § 6-29-340 states in part that “[t]he governing authority may provide for the reference of any matters . . . to the local planning commission, with the provision that final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the governing authority to submit a report.” (Emphasis added.)

65. 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.)

66. 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.)

67. 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.)

68. 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.)

69. 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.)

70. 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.)

(b) Board of Architectural Review

71. 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.)

72. 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."

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

"Definitions.

(2) 'Land development' means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

(3) 'Market based incentives' mean incentives that encourage private developers to meet the governing authority's goals as developed in this chapter. Incentives may include, but are not limited to:

(a) density bonuses, allowing developers to build at a density higher than residential zones typically permit, and greater density bonuses, allowing developers to build at a density higher than residential affordable units in development, or allowing developers to purchase density by paying into a local housing trust fund;

(b) relaxed zoning regulations including, but not limited to, minimum lot area requirements, limitations of multifamily dwellings, minimum setbacks, yard requirements, variances, reduced parking requirements, and modified street standards;

(c) reduced or waived fees including those fees levied on new development projects where affordable housing is addressed, reimburse permit fees to builder upon certification that dwelling unit is affordable and waive up to one hundred percent of sewer/water tap in fees for affordable housing units;

(d) fast-track permitting including, but not limited to, streamlining the permitting process for new development projects and expediting affordable housing developments to help reduce cost and time delays; and

(e) design flexibility allowing for greater design flexibility, creating preapproved design standards to allow for quick and easy approval, and promoting infill development, mixed use and accessory dwellings." (Emphasis added.)

74. 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." (Emphasis added.)

75. 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.)

76. 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.)

(3) South Carolina Freedom of Information Act

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

"Definitions. (a) "Public body" means any public or governmental body or political subdivision of the State, including . . . municipalities, townships . . . or 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, and includes any quasi-governmental body of the State and its political subdivisions . . ." (Emphasis added.)

78. 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.)

79. 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.)

80. 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.)

81. 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. . . .

. . . .

(d) 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.)

82. 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”

83. 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.”

84. 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."

C. State and Municipal Procurement Laws

85. S.C. Code Sec. 11-35-50 requires political subdivisions such as the Town of Summerville to adopt and utilize "procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983."

86. On May 9, 2012, the Town of Summerville repealed its Code of Ordinances Article V, Division 2, entitled "Purchasing" in its entirety and replaced it with a new Ordinance (Ord 12-0301) which, although it has been enacted, has not yet been codified ("Purchasing Ordinance").

87. Regarding bids over \$25,000 in public funds, the Town's Purchasing Ordinance requires competitive bids, meaning there must be more than one bid to award a bid. Sec 2-323 (c)(8) states "The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in the bid evaluation that is not set forth in the invitation for bids."

88. Summerville's Purchasing Ordinance requires in Section 2-321(e) that the designated purchasing agent "[o]btain the most competitive prices on all purchases, contracts and services."

89. The Purchasing Ordinance states in Section 2-322, that "[t]o maximize the purchasing value of public funds, all procurements should be competitive, where practicable and serve the best interest of the town." Further, in subsection (c) thereof, pertaining to purchases of \$25,000 and over, that "purchases be made through competitive sealed bids and advertised

through local press . . . Purchases over \$25,000 must be approved by the finance committee of town council."

90. Section 2-322(d) provides that "[n]othing in this section shall prohibit a higher level, more stringent procurement method being used if it is determined by the purchaser that the town's best interest would be better served." There are no further references, examples, procedures or explanations of this section in the Purchasing Ordinance.

91. Section 2-323(c)(1) requires that "[p]urchases and/or contracts valued at \$25,000 or greater shall be awarded by competitive, sealed bidding, except as may be provided elsewhere in this chapter."

92. Section 2-323(c) (12) provides that "[t]he bid shall be awarded with reasonable promptness by notice to the most responsive, responsible bidder whose bid meets the requirements and specifications and any other award criteria set forth in the invitation for bids, and in the best interest of the town." (Emphasis added.)

93. Section 2-323(c)(17) provides that "[p]rocurements costing more than \$25,000 shall be accomplished by purchase orders in accordance with departmental procedures with supporting bid award documents and source justification and/or written rationale as to why the procurement may be considered under other procurement methods as provided elsewhere within this chapter, or more specifically, considered as a sole source procurement, sensitive procurement, emergency procurement, procurement through the State of South Carolina or one of its agencies or procurement through an existing town contract. Supporting bid award documents should include bid tabulation and a concise statement as to the reasons for the bid award recommendation. Purchase orders more than \$25,000 must be approved by the finance committee of town council." (Emphasis added.)

94. Section 2-324, entitled "Competitive bidding; exceptions," provides that "[c]ompetitive bidding is required on all purchases exceeding \$2,500 with the following exceptions: [list of five exceptions that correspond to those described in Section 2-323(c) (17) quoted above]."

95. S.C. Code Ann. Sec. 11-35-1520(13), entitled "Minor Informalities and Irregularities in Bids," states that immaterial variation from the exact requirements of an invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, delivery or performance may be waived by a procurement officer:

96. S.C. Regulation 19-445.2070(A) provides: "Rejection of Individual Bids. A. General Application. Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." (Emphasis added.)

97. S.C. Code Ann. Sec. 11-35-1530(1) provides that the provisions of S.C. Code Ann. Sec. 11-35-1520(13) and S.C. Regulation 19-445.2070(A), both quoted above, apply to Requests for Proposals as well as to Invitations for Bids.

V. GENERAL FACTUAL ALLEGATIONS

A. AGREEMENTS

98. This lawsuit is based in part on purported contractual agreements between and among the Defendants which are invalid and void ab initio, including but not limited to each of the following:

(1) "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT"

99. On July 9, 2014, the Town of Summerville, the RDC and the Developer signed a purported agreement and contract entitled a "PARTICIPATION AGREEMENT" and a "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT ["Partnership Agreement"] BETWEEN

TOWN OF SUMMERVILLE, TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION AND APPLGATE & CO." (the "PARTIES"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. This Partnership Agreement causes the Town of Summerville and the RDC to be "partners" with the Developer, which is a private entity owned and controlled and that may become owned and controlled by persons unknown to the Town and the RDC and who may be or become undesirable as partners to the Town and the RDC. This Partnership Agreement is a "Redevelopment Contract" as defined by SC Code Section 31-10-20(14), and causes the Town and the RDC to contribute property, including real property and millions of dollars of loans, interest free and unsecured, to the Developer in a joint venture for the purpose and with the intended effect of making profits for the Developer, a private for-profit entity, the Town and the RDC. In this Partnership Agreement, Applegate & Co. is a "Redeveloper" within the meaning of Section 31-10-20(11).

100. The Partnership Agreement states that:

- A. The Town owns 1.58 acres of property ("TOWN PROPERTY") in downtown Summerville and solicited a Request-for-Proposals ("RFP") for private development of the TOWN PROPERTY;
- B. The Town received a proposal from the Developer "for a mixed-use development that includes a hotel, residential units and retail space;"
- C. The Developer has entered into a contract to purchase .65 acres adjacent to the TOWN PROPERTY;
- D. The Town "established the RDC to facilitate financing and funding for various . . . development projects . . . and desires to create a partnership to provide for the efficient and timely development of the proposed project" (emphasis added);
- E. The Developer will "construct a new mixed-use project" ("Project") . . . that will include both private and public improvements . . . expected [to cost] approximately \$20,000,000 . . ."
- F. The Developer entered into a contract to purchase .65 acres or property adjacent to the TOWN PROPERTY and that .65 acres will be combined with the TOWN

PROPERTY to constitute the "PROJECT SITE" where the Project will be built and operated; and

- G. The Developer will "construct public improvements" and "manage and operate, or cause the management and operation by means of the SPE of, [sic] the public parking garage and conference center . . ." Partnership Agreement, at 1-2.

The "Project" reference above is a "Redevelopment Project" as defined by S.C. Code Section 31-10-20(14),

101. The Partnership Agreement defines the "PRIVATE IMPROVEMENTS" portion of the Project as "privately-owned improvements" consisting of the following: (a) a "hotel of approximately 74,000 square feet, containing no less than 65 rooms . . . retail and restaurant space . . . and a rooftop bar" and (b) "approximately 34 residential condominium units and shared common space." Partnership Agreement, at 2. The Request for Proposal ("RFP") by the Town did not include a request for condominium or residential housing units ("condominiums" or "residential units").

102. The Partnership Agreement defines the "PUBLIC IMPROVEMENTS" portion of the Project as "publicly-owned improvements," with the PROJECT SITE consisting of the following: (a) "Conference Center," with at least 10,000 square feet of conference/event space; (b) "Parking facilities and parking garage," with at least 179 spaces. Partnership Agreement, at 2-3.

103. The Partnership Agreement requires that the Town of Summerville do the following: "[s]ubject to approval of its Bond Counsel and closing on bond financing": (a) convey to the RDC the TOWN PROPERTY by deed for use for the PROJECT; and (b) gift to the RDC a grant of \$8,950,000 "for purposes of participation in the PROJECT . . ." Partnership Agreement at 3.

104. The Partnership Agreement requires that the RDC do the following:

A. "Subject to approval of the TOWN's Bond Counsel and closing on bond financing" provide "GAP FINANCING" consisting of "an unsecured loan to the Developer or the SPE with a limited, subordinate personal guarantee of Arthur H. Applegate . . . ending upon completion of construction of the Hotel, Parking Garage, and Conference Center" in the amount of \$3,750,000 to be repaid by the Developer as follows:

(1) "[A]t no interest for a period of 24 months to assist in financing the PRIVATE IMPROVEMENTS;"

(2) Making interest payments of 3.75% to the RDC at the end of 24 months "until the DEVELOPER or the SPE obtains permanent financing for the PROJECT;" and

(3) "[B]ased on the terms of the construction loan for the PROJECT, with final payoff of the GAP LOAN no later than final maturity of the Developer's construction loan . . ." (emphasis added);

B. Make a "PUBLIC IMPROVEMENTS INVESTMENT" in the PROJECT by:

(1) Conveying a portion of the TOWN PROPERTY to the Developer or the SPE;

(2) Funding up to \$5,200,000 to pay costs of the PUBLIC IMPROVEMENTS; and

C. Lease up to 55 parking spaces to the Developer or the SPE for twenty years "to support the residential portion of the project," with the Developer or the SPE purchasing those parking spaces within twenty years. Partnership Agreement, at 3-4.

105. The Partnership Agreement states that regarding the repayment of the \$3,750,000 loaned by the RDC to the Developer or the SPE, with required interest, the "RDC agrees to maintain a subordinate position to the Construction Lender and the Equity Investors with respect to the" PRIVATE IMPROVEMENTS; and that "this [Partnership] Agreement and its exhibits may be collaterally assigned to the construction lender." Partnership Agreement, at 7 (emphasis added).

106. The Agreement requires a "PROPERTY SWAP" by the Town, the RDC and the Developer, as follows: ". . . the PARTIES shall [exchange] title to certain property within the PROJECT SITE. . . The DEVELOPER will form a special purpose entity ("SPE") to acquire and transfer title and own and operate the PROJECT SITE . . . resulting in the RDC owning the parcel that will contain the parking garage and the parcel that will contain the conference center, and the SPE owning the remaining parcel(s)." Partnership Agreement, at 5.

107. The Partnership Agreement states in part the following regarding "site and architectural design":

"The project site and architectural design will be based on the conceptual [sic] provided in Exhibit F . . . Prior to submission for review and approval to any required public agency for permitting or certificate of appropriateness, DEVELOPER will submit a final design for both the PRIVATE and PUBLIC IMPROVEMENTS to the RDC for review and approval.

DEVELOPER agrees that all development, construction, operation and leasing of the PROJECT will be done in accordance with all applicable laws, rules, orders, ordinances, regulations and legal requirements of all governmental or quasi-governmental entities, agencies or instrumentalities relating to the development, use or condition of the PROJECT . . ."
Partnership Agreement, at 5-6 (emphasis added).

108. The Partnership Agreement requires that "should the PROJECT not proceed to construction as a result of default of this [Partnership] Agreement by the TOWN or RDC, the RDC agrees to pay the DEVELOPER for those preconstruction costs incurred for the PUBLIC IMPROVEMENTS and for PRIVATE IMPROVEMENTS by the DEVELOPER or the SPE . . . up to . . . \$400,000) . . ." Partnership Agreement, at 7 (emphasis added).

109. Paragraph 11 of the Partnership Agreement states in part as follows:

"ISSUANCE OF LIMITED OBLIGATION BONDS. . . . "[T]he PARTIES acknowledge that the obligations of the Town and the RDC hereinafter are contingent upon the TOWN's ability to issue, upon

reasonable terms and conditions and at reasonable rates of interest, hospitality fee revenue bonds in an amount, sufficient, together with other funds (if any) of the TOWN identified by the TOWN for such purpose, to fund the GAP LOAN and the costs of the PUBLIC IMPROVEMENTS, all of which shall be of a nature which satisfies the criteria set forth in Section 6-1-730 of the Code of Laws of South Carolina 1976, as amended." (Emphasis added.)

110. Paragraph 15b of the Partnership Agreement states in part that the "RDC represents to the TOWN and the DEVELOPER that it has full power and authority to do business in the State of South Carolina and to perform its obligations under, as and when required by this [Partnership] Agreement and shall . . . continue to have such power and authority throughout the term of this [Partnership] Agreement." Partnership Agreement, at 8-9 (emphasis added).

111. Paragraph 15h of the Partnership Agreement states that the "DEVELOPER may not assign its rights in this [Partnership] Agreement without the prior written consent of the TOWN and the RDC." Partnership Agreement, at 9. The Partnership Agreement does not prevent, restrict or limit the ability of the Developer or the SPE to sell ownership or control of itself to any third party without the consent of the Town or the RDC. The Partnership Agreement exposes the Town of Summerville and the RDC to liability, potentially unlimited, for wrongful acts by the Developer and/or the SPE, and does not require the Developer or the SPE to indemnify the Town or the RDC for damages caused them by the wrongful acts of the Developer.

112. The Partnership Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC. Partnership Agreement, at 10.

113. Exhibit "A" to the Partnership Agreement consists of a "Project Site Illustration," which defines the land area of the PROJECT SITE referenced above.

**(2) "PARKING GARAGE/CONFERENCE CENTER
OPERATION AGREEMENT"**

114. Exhibit "B" to the Partnership Agreement consists of a "PARKING GARAGE/CONFERENCE CENTER OPERATION AGREEMENT" ("Operation Agreement") dated July 9, 2014, between the RDC and THE DORCHESTER, LLC ("Manager").

115. At the time The Dorchester, LLC signed the Operation Agreement, the Dorchester, LLC did not exist. It was incorporated on October 16, 2014.

116. The Operation Agreement states that:

- A. The Town owns 1.58 acres of property ("TOWN PROPERTY") in downtown Summerville and solicited a "Request-for-Proposals ("RFP") for private development of the TOWN PROPERTY";
- B. The Town received a proposal from the Developer "for a mixed-use development that includes a hotel, residential units and retail space";
- C. The Developer has entered into a contract to purchase .65 acres adjacent to the TOWN PROPERTY; and
- D. The Town "established the RDC to facilitate financing and funding for various . . . development projects . . . and to create a partnership to provide for the efficient and timely development of the project" (emphasis added). Operation Agreement, at 1-2.

117. Section 1 of the Operation Agreement states that the "RDC hereby appoints the Manager as its exclusive independent contractor for the management of the Conference Center and the Parking Garage, and the Manager accepts such appointment . . ." Operation Agreement, at 2.

118. The Operation Agreement states in part that:

- A. "The Manager shall prepare a marketing program for the Conference Center and the Parking Garage and shall supervise the

marketing activities for the Conference Center and the Parking Garage including all advertising layouts, brochures, and campaigns. Advertising expenses shall be paid as operating expenses of the Conference Center and the Parking Garage." (Emphasis added.) Section 3(c), at 3.

B. "... The RDC understands that the Manager may offer discounts of up to 50% off of the published rates and charges to patrons of the hotel located on the Project Site for use of the Conference Center or spaces in the Parking Garage." (Emphasis added.) Section 3(d)(ii), at 3.

C. "The Manager shall contract on behalf of the RDC . . . for the maintenance and repair of heating and air conditioning systems and for other extraordinary repairs In the event that repairs of an emergency nature are required at a time when it is impractical to consult with the RDC as to cost, the Manager is hereby authorized to contract on behalf of the RDC to undertake such repairs and shall promptly notify the RDC of such action." Section 3(g)(ii), at 4-5 (emphasis added).

D. "The Manager is hereby authorized to purchase all materials, equipment, tools, appliances, supplies, and services reasonably necessary for proper maintenance and repair of the Conference Center or the Parking Garage." Section 3(g)(iv), at 4 (emphasis added).

E. "... The Manager is hereby authorized at the reasonable expense of the Conference Center or the Parking Garage, as applicable, to make contracts for all necessary renovations, repairs, additions, or improvements falling under the category of Capital Improvements and outlined in the Capital Budget Plan." Section 3(h)(i), at 4 (emphasis added).

F. "The Manager shall make arrangements and execute any necessary agreements for water, electricity, gas, telephone, data, CATV, internet, sewage and trash disposal, vermin extermination, snow removal, landscape care and related utilities and services for the Conference Center and the Parking Garage. The Manager is hereby authorized to make such contracts on behalf of the RDC as may be necessary to secure such utilities and services. The expenses incurred for such utilities and services, if any, shall be paid as operating expenses of the Conference Center and the Parking Garage." Section 3(i), at 4-5 (emphasis added).

G. All staffing to manage and operate the Conference Center and Parking Garage "shall be employees of the Manager, its Affiliates, or Subcontractors. "The compensation, including fringe benefits, of the employees performing on-site functions shall be within the Manager's sole discretion. . . The Manager shall be reimbursed for reasonable

compensation, including fringe benefits, payable to all employees performing on-site functions,” and for all taxes and other reasonable expenses regarding personnel. “Such reimbursements shall be paid as operating expenses of the Conference Center and the Parking Garage.” Section 3(j), at 5 (emphasis added).

119. The Operation Agreement states that “It is the expectation of the RDC that the Manager shall . . . provide a high level of customer service to the users of the Conference Center and the Parking Garage.” Section 3(l), at 5. This provision is illusory because it imposes no duty on and contains no covenant by the Manager.

120. The Operation Agreement provides that “certain functions and services” of the public conference center and garage shall be shared with the Private Improvements . . .” Section 5, at 6.

121. Section 7 of the Operation Agreement states that “RDC has agreed to lease up to 55 spaces in the Parking Garage to the Manager on a long-term basis to support the residential portion of the Project per the terms of the Parking Lease Agreement attached hereto as Exhibit A.” Operation Agreement, at 6.

122. Section 9(a) of the Operation Agreement states as follows:

“During the initial one (1) year term of this Agreement, the Manager shall be compensated for its services hereunder by the RDC by payment of a management fee in the amount of \$3,000.00 per month . . .” Section 9(a), at 7.

This Operation Agreement went into effect on July 1, 2014, the date it was executed.

123. Section 10 of the Operation Agreement states in part as follows:

“If the Conference Center or the Parking Garage is damaged, the RDC will promptly commence and expeditiously complete . . . any necessary restoration. The RDC will restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC will complete the restoration as soon as reasonably possible after the date of such damage or destruction. . . . In the event that the RDC fails promptly to

commence and expeditiously complete any necessary restoration, the Manager may proceed to restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC bears the entire costs of such restoration, which the RDC shall promptly pay, upon written demand, to the Manager. . . ." Section 10, at 7 (emphasis added).

124. Section 12 of the Operation Agreement states that the "Manager may not transfer, assign, pledge, or hypothecate . . . its rights, duties, or obligations under this Agreement without the prior written consent of the RDC except to an Affiliate or to its lender. The RDC shall not assign or pledge its rights under this Agreement without the prior written consent of the Manager." Section 12, at 7-8. This Operation Agreement does not prevent, restrict or limit the ability of the Manager to sell or give ownership or control of itself to any third party and thereby transfer its duties and obligations under this Operation Agreement to whomever or whatever gains control or ownership of the Manager, without the consent of the RDC. Further, these statements in Section 12 are illusory, because there is no restriction in the Operation Agreement on the ability of any person or entity to become an Affiliate of the Manager.

125. Section 13 of the Operation Agreement states in part as follows:

"(a) This Agreement shall be in effect for an initial term of one (1) year, beginning on the date of execution and delivery hereof and ending one year later. The Manager and the RDC may extend the term of this Agreement for an additional one year period up to fifteen (15) years by their mutual agreement on the Manager's compensation under Section 9 for such renewal term." Section 13, at 8 (emphasis added).

126. The Operation Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC. Operation Agreement, at 12.

(3) "PARKING LEASE AGREEMENT AND PURCHASE OBLIGATION"

127. Attachment "A" to the Operation Agreement consists of a "PARKING LEASE AGREEMENT AND PURCHASE OBLIGATION" ("Parking Lease Agreement") dated July 9, 2014, between the RDC and THE DORCHESTER, LLC ("Manager").

128. At the time The Dorchester, LLC signed the Parking Lease Agreement, The Dorchester, LLC did not exist as a corporate entity recognized by the Secretary of State of South Carolina.

129. The Parking Lease Agreement states in part that the RDC is a 501(c)(4) organization. It is not.

130. The Parking Lease Agreement states in part that:

A. "The Town of Summerville . . . created the RDC . . . to create a partnership to provide for the efficient and timely development of a mixed-use development that includes a hotel, residential units, and retail space . . .;"

B. "Applegate & Co. . . . agreed in the Public-Private Partnership Agreement . . . to construct Private Improvements . . . including approximately 34 residential condominium units . . . and to construct Public Improvements . . . including the Parking Garage . . . and further to manage and operate, or cause the management and operation [sic] the public Parking Garage . . . as detailed in the PPP Agreement by means of [The Dorchester, LLC] pursuant to the terms of the Parking Garage/Conference Center Operation Agreement . . .;" and

C. The "RDC has agreed . . . to lease 55 spaces in the Parking Garage to the [The Dorchester, LLC] for a twenty (20) year term to support the Residential Units per the terms of this Lease;" and

D. The "RDC has agreed to sell and the Tenant has agreed to purchase 55 spaces in the Parking Garage . . .;" Parking Lease Agreement, at 1.

131. The Parking Lease Agreement states in part that:

A. The "RDC leases to [The Dorchester, LLC] and [The Dorchester, LLC] hereby leases from the RDC . . . fifty-five (55) parking spaces . . . for a period of twenty (20) years commencing on [date not stated]; Parking Lease Agreement, at 1.

- B. "... [T]he RDC hereby agrees to sell to [The Dorchester, LLC], and [The Dorchester, LLC] hereby agrees to purchase from the RDC ... all or any portion of the [55 parking spaces] ...;"
- C. "... Tenant shall have the exclusive use of the [55 parking spaces] for the operation and maintenance by Tenant of automobile parking spaces to be sublet to owners of the Residential Units and for any other associated lawful purposes;" and
- D. The RDC shall maintain Commercial Property insurance, Commercial General Liability insurance and other insurance for the benefit of the RDC and The Dorchester, LLC. (Emphasis added.) Parking Lease Agreement, at 1-4.

132. The Parking Lease Agreement requires the RDC to indemnify and save harmless The Dorchester, LLC from losses, by stating as follows:

- A. "The RDC shall indemnify and save harmless [The Dorchester, LLC] from all direct loss or damage for personal and bodily injury and tangible property damage (including reasonable attorneys' fees) arising out of negligence or willful misconduct of the RDC, its officers, agents, employees, independent contractors or invitees, or the failure by the RDC to perform its obligations under this Lease ... " Paragraph 13, at 5 (emphasis added);
- B. "ENVIRONMENTAL MATTERS. . . The RDC shall and hereby does indemnify [The Dorchester, LLC] and hold [The Dorchester, LLC] harmless from and against any and all expense, loss, and liability (including, without limitation, any and all legal and professional fees and costs incurred by [The Dorchester, LLC] in connection therewith) suffered by [The Dorchester, LLC] by reason of historic site operations and/or conditions occurring prior to the Effective Date of this Lease, or by reason of contamination on, at or emanating from the Property by reason of the storage, generation, release, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Materials (whether accidental, intentional, or negligent) by the RDC or the RDC's employees, agents or contractors" Paragraph 15, at 6-7 (emphasis added); and
- C. "... [E]ach party agrees to defend, indemnify and hold the other harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with the indemnitor with regard to this Lease." Paragraph 28, at 9 (emphasis added).

133. The Parking Lease Agreement requires the RDC to pay costs and expenses associated with the parking garage, including for taxes; insurance; debt service; repair, maintenance and operation expenses related to the Premises; and "any other costs" paragraphs 15-16, at 7; and that the RDC "provide all routine repairs and maintenance to the Premises including, without limitation, painting, cleaning, removal of trash and debris, and routine repairs to the parking surface of the Premises." In contrast, The Dorchester, LLC's "costs and expenses . . . shall be strictly limited to obtaining and maintaining such insurance policies as are required pursuant to" the Parking Lease Agreement. Paragraph 15, at 7.

134. The Parking Lease Agreement provides that The Dorchester, LLC "may terminate this Lease, in whole or in part, with 30 days' notice to the RDC at any time during the Term of this lease upon payment to the RDC or one month's rent as an early termination fee." Paragraph 20, at 8 (emphasis added). In contrast, the "RDC may not terminate this Lease prior to its stated expiration except upon a Tenant Default [after a ten day opportunity to cure any Tenant default] and upon ninety (90) days written notice to the Tenant." Paragraphs 18, 20, at 8.

135. The Parking Lease Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC.

(4) "GRANT AND PROPERTY CONVEYANCE AGREEMENT"

136. Exhibit "C" to the Partnership Agreement consists of a "GRANT AND PROPERTY CONVEYANCE AGREEMENT FOR TOURISM AND OTHER ECONOMIC DEVELOPMENT PROJECTS" ("Property Conveyance Agreement"), dated July 9, 2014, between the Town of Summerville and the RDC.

137. This Property Conveyance Agreement states in part as follows:

A. The "TOWN and the RDC determined that the development of [sic] mixed-use project that includes a hotel, retail space, a conference center, residential units, and a parking garage . . . ("PROJECT") would provide tourism related and other economic development benefits vital to the continued revitalization of downtown, improving services to residents, enhancing the economic development of the Town of Summerville, and providing facilities that will host conferences and special events that will attract visitors from outside of the Summerville community;"

B. The "TOWN owns approximately 1.58 acres of property . . . that is necessary for the development of the PROJECT;"

C. On July 9, 2014, the "TOWN passed Ordinance No. _____ [sic], approving actions necessary to support the PROJECT, including the execution of a Public-Private Partnership Agreement between the TOWN, the RDC and Applegate & Co. (. . . "PPP AGREEMENT") to leverage and maximize private investment, the construction of public improvements, and the granting of funds to the RDC for the PROJECT;"

D. "The TOWN agrees to convey by deed fee simple title of the TOWN PROPERTY to the RDC for purposes of developing the PROJECT;"

E. "The TOWN agrees to provide a grant to the RDC in the total amount of . . . \$5,200,000 for the purpose of funding the development of the Public Improvements of the PROJECT, including a conference center, parking garage and associated streetscape as further defined in the PPP AGREEMENT;"

F. "The TOWN agrees to provide a grant to the RDC in the total amount of . . . \$3,750,000 for the purpose of downtown economic development activities, as further defined in the PPP AGREEMENT; and

G. "The RDC agrees to utilize the PROPERTY and grant funds provided in this Agreement for the purposes of the PROJECT."

138. The Property Conveyance Agreement was signed on behalf of the RDC by its Chairman but not by any other person or entity on behalf of the RDC.

(5) "PROMISSORY NOTE/LOAN AGREEMENT"

139. Exhibit "D" to the Partnership Agreement consists of a "PROMISSORY NOTE/LOAN AGREEMENT" ("Promissory Note Loan Agreement"), undated and unsigned, to be signed by The Dorchester, LLC for the benefit of the RDC.

140. This Promissory Note Loan Agreement states in part as follows:

A. The Dorchester, LLC promises to pay the RDC \$3,750,000, "together with any interest due on the unpaid balance on the following terms";

B. "The payment obligation hereof by [The Dorchester, LLC] is subordinate in all respects to the payment obligations of [The Dorchester, LLC] to the Construction Lender . . . and to the Equity Investors . . .;"

C. "No interest shall be due for 24 months from the date of the funding by [the RDC]. Interest on this note shall begin the day following 24 months from the funding by [the RDC] at the rate of 3.75% per annum. . . . [T]he Note shall be due and payable in full with all accrued interest on or before forty-eight (48) months from the date of funding by the [RDC];" and

D. "Collateral: The Note is unsecured." (Emphasis added.)

141. One of the "Equity Investors" referenced in the paragraph above will be the Defendant Developer and/or Defendant Arthur H. Applegate personally.

(6) "GUARANTEE OF PROMISSORY NOTE"

142. Attached to the "Promissory Note Loan Agreement" is a "GUARANTEE OF PROMISSORY NOTE" ("Promissory Note Guarantee"), undated and unsigned, to be signed by Arthur H. Applegate personally for the benefit of the RDC.

143. The Promissory Note Guarantee states in part as follows:

A. "In consideration of . . . \$3,750,000 . . . and in consideration of the extension of credit to The Dorchester, LLC . . . [Arthur H. Applegate] does hereby . . . guarantee to [the RDC] . . . payment of the principal and interest due on the" Promissory Note Loan

Agreement "and any penalties for late payment with a personal guarantee by Arthur H. Applegate; subject . . . to the following limitations:

1. This guarantee shall be effective . . . only for the period of time beginning with the first disbursement of funds . . . and shall terminate in full upon completion of construction of the Hotel, the Parking Garage, and the Conference Center . . .;" [and]
2. The obligation of the guarantor . . . is junior and subordinate to the obligations of the guarantor to the Construction Lender and the Equity Investors . . . which obligations shall be, and shall remain, prior and superior to the obligation of the guarantor hereunder." (Emphasis added.)

(7) "The Dorchester Estimated Public Improvements Budget"

144. Exhibit "E" to the Partnership Agreement consists of an "Estimated Public Improvements Budget" showing, inter alia, that the RDC would pay \$260,000 to a private entity as a "Development Fee."

(8) "Conceptual Site and Architectural Illustrations"

145. Exhibit "F" to the Partnership Agreement consists of eight "Conceptual Site and Architectural Illustrations."

B. CHRONOLOGICAL HISTORY OF EVENTS

146. While a candidate for Mayor of Summerville in 2011, Defendant Collins announced that as Mayor he would build a boutique hotel in downtown Summerville (the "boutique hotel project" or "Hotel project"). After his election in 2011, Defendant Collins orchestrated and contrived actions, some unlawful and some shams, to accomplish that campaign pledge, in conspiracy with other Defendants and for the special benefit of private parties, including real estate developers and others. These actions included, but were not limited to,

unlawfully diverting, using and expending public funds for private purposes; pledging the Town's full faith and credit for private purposes; conducting private, secret meetings that by law were required to be public; holding meetings confidentially and without proper notice; appointing and using the services of an advisory committee that met, deliberated, provided recommendations and advice to the Town and its consultants, and otherwise conducted Town business, in secret; obscuring and withholding information from the public, including the fact that the costs of the public portion of the Hotel project had more than doubled; misleading, defaming, intimidating and bullying citizens to prevent or impede their ability to exercise their rights, influence public opinion and oppose Defendants' actions; purporting to cause the Town of Summerville to enter into a "partnership" with private parties; executing invalid contracts on behalf of governmental entities; making unlawful pledges of public assets and indemnification by government entities to private interests in purported contracts; unlawfully delegating authority; exerting and attempting to exert improper influence on governmental decision makers; failing to follow required substantive and procedural laws; engaging in dual office holding; and exposing taxpayers to excessive, unnecessary, unlawful and unjustified risks.

147. During 2012 and through the present, members of the Summerville Town Council and its governmental subdivisions frequently and excessively have excused themselves from public meetings to confer "behind closed doors" in "executive sessions," to discuss and reach consensus on issues pertaining to the boutique hotel project. The only information provided to the Plaintiffs and the rest of the public regarding these executive session discussions was that they pertained to an "economic development or redevelopment project," the leasing of properties, the sale of real estate or a proposed master plan. Despite statements made for the record upon returning from executive sessions that no actions had been taken, ordinances,

motions and resolutions pertaining to an "economic development or redevelopment plan" invariably followed. For example, on December 18, 2013, the Town Council held a Special Meeting during which members excused themselves into executive session. Upon re-adjoornment of the public special meeting from the executive session, Town Council authorized the Mayor "to enter into non-binding negotiations with the company that recently submitted an economic development proposal." The minutes of the meeting state that "Council returned to public session . . . and announced that no action was taken" during the executive session. Plaintiffs now know that the words "economic development proposal" meant the boutique hotel project proposed by Defendant Applegate in response to the Town's Request for Proposal published on November 10, 2013, and the "company" meant Defendant Applegate & Co.

148. On information and belief, during 2012 through November 10, 2013, Defendant Collins asked three or more experienced hotel developers, including Defendant Applegate, who has participated in many real estate development projects in the Town of Summerville, to build a privately financed boutique hotel on 1.58 acres of land owned by the Town of Summerville near the intersection of West Richardson Avenue and Cedar Street in Summerville. Each developer consulted declined to build a boutique hotel at that location because it was not economically feasible to do so.

149. Unable to get a private developer to finance the boutique hotel at that location, on October 7, 2013, Defendant Town of Summerville contracted with the Lawrence Group, headquartered in Charlotte, North Carolina, "for the development of a master plan for the Town of Summerville." On information and belief, the Lawrence Group is a "redevelopment specialist" and was hired to develop a "master plan" for the following purposes, in whole or in part: (a) instructing the Town with respect to the steps necessary to create a "redevelopment

commission,” as defined in the South Carolina Community Development Law, that would take advantage of state laws granting extraordinary powers to these organizations with respect to areas the Town desires to designate as “blighted” or “conservation areas;” (b) instructing the Town with respect to creating a “Vision Plan,” that contains all of the development projects desired to be undertaken by the Town Council without public hearings in areas that the Town desires to designate as “blighted” or as “conservation areas;” (c) instructing the Town how to take the steps necessary to enable the Town to participate in financing the boutique hotel project and other projects with a private developer on lands the Town desires to designate as “blighted” or as “conservation areas;” and (d) enabling the Town to rezone areas it desires to designate as “blighted” or as “conservation areas” from mixed-residential to commercial, all with little or no prior public awareness, input or scrutiny.

150. The Town’s only authorized procurement method relevant to the Hotel project is the “Invitation for Bid” method. The “Request for Proposal” (“RFP”) method of procurement, commonly used by governments for capital improvements, is not mentioned or authorized in the Town’s Purchasing Ordinance. Nevertheless, and despite the Town’s lack of authority to do so, on November 10, 2013, the Town of Summerville published in the *Charleston Post and Courier* newspaper a Request for Proposal, in Ad # 1065489, stating as follows:

“REQUEST FOR PROPOSAL The Town of Summerville owns a 1.58 acre tract of land in the downtown historic district. We are seeking developers with hotel experience interested in building a boutique hotel on this property as a private-public partnership with the town. Interested developers should outline the size and design of the hotel they would build, number of rooms, on-site restaurant/lounge, and number of parking spaces they could provide. Proposal should also consider the possibility of a conference center on that site that could accommodate 300 people for a seated dinner. Interested parties should outline their plan for financing the venture.” Interested parties were instructed to submit their qualifications, references and proposals to Lisa Wallace, Director of Administrative Services no later than 5:00 p.m. on Friday, December 6, 2013.”

151. S.C. Code Sec. 11-35-50 requires political subdivisions such as the Town of Summerville to adopt and utilize "procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983." The Purchasing Ordinance adopted by the Town did not authorize the Request for Proposal method of procurement. Therefore, any procurement by the RFP method, including the publication of the RFP quoted above and the award of the development contract to Applegate, is unlawful and ultra vires. Moreover, the Partnership Agreement and all other contracts and agreements emanating from the unauthorized award are illegal, invalid and void *ab initio*. See *Sloan v. Greenville Hospital System, et al.*, Case No. 03-CP-23-3785 (May 12, 2008) (unpublished opinion).

152. The RFP was published only once, in violation of S.C. Code Ann. § 31-10-110(c). The RFP did not mention or request a proposal for any condominiums or any other residential units even though Town officials, including Collins, knew Applegate wanted and intended to build condominiums and would respond to the RFP with a proposal to build condominiums, in order to enable Applegate to be awarded the Hotel project by being the only responder to the RFP who proposed condominiums. The Request for Proposal was published on Sunday, November 10, 2013, which was 18 days before the Thanksgiving holiday on November 28, 2013. Interested developers were given only 26 calendar days (18 business days), until December 6, 2013, to respond to the RFP, with Veterans' Day, Thanksgiving and Hanukkah holidays intervening.

153. The Town of Summerville received only one proposal pursuant to the RFP, from Applegate & Co. That response was a comprehensive 18-page document that included references to discussions with two prospective construction lenders, a named general contractor, a "development team," "equity partners," 11 pages of pro forma projected costs and revenues for

each component of the complex (hotel, parking garage, etc.) as well as drawings and renderings of the proposed development, and that states in part as follows:

“Enclosed . . . is a proposal . . . to develop a mixed use project on a 1.58 acre tract of land owned by the Town and an adjacent .658 acre tract of land that Applegate & Co. has under contract in the downtown historic district. The project consists of a 66 room boutique hotel, a restaurant, a roof top bar, a roof top terrace, retail space, a conference center with seating capacity for a three hundred person seated dinner, thirty-four high end residential units, a one hundred and fifty-seven space parking deck and twenty-nine surface spaces.” (Emphasis added.)

154. The 1.58-acre tract of land owned by the Town and the .658-acre tract of land purchased or to be purchased by Defendant Applegate & Co. are adjacent properties in the official historical district of Summerville.

155. Applegate’s proposal, dated December 6, 2013, included, in addition to all of the requirements of the RFP, “thirty-four high end residential units” (i.e., condominiums). Residential units were not included in the RFP. The proposal also stated that Applegate & Co. “has under contract” an “adjacent .658 acre tract of land in the downtown historic district.” That tract of land is Applegate’s proposed site for the condominiums.

156. The inclusion in Applegate’s response to the RFP of 34 high-end residential units rendered Applegate’s proposal non-responsive, according to, inter alia, S.C. Code Ann. Sec. 11-35-1520 (13) (Competitive Sealed Bidding — Minor Informalities and Irregularities in Bids) and S.C. Regulation 19-445.2070(A) thereunder, which provides as follows: “Rejection of Individual Bids. A. General Application. Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.” (Emphasis added.) The addition of 34 condominium units in Applegate’s proposal caused it to fail to conform to the essential elements of the Town’s RFP.

157. The award to Applegate also violated Section 2-323(c) (12) of the Town's Purchasing Ordinance, which provides that "[t]he bid shall be awarded with reasonable promptness by notice to the most responsive, responsible bidder whose bid meets the requirements and specifications and any other award criteria set forth in the invitation for bids, and in the best interests of the town." (Emphasis added).

158. If "residential units" (i.e., condominiums) were desired by the Town or necessary to make the boutique hotel project viable and to procure competing bids, the Town should have issued a new RFP that included residential units. By failing to do so, the Town deprived itself, the Plaintiffs, other citizens and taxpayers and other bidders, including qualified minority bidders, of the benefits of free and open competition, and deliberately enabled and facilitated Applegate being awarded the Hotel project by helping to ensure that only Applegate responded to the RFP with a proposal to build condominiums.

159. By depriving itself, the Plaintiffs and other citizens and taxpayers, as well as other bidders, of the benefits of free and open competition, the Town violated Sections 2-321(e), 2-322(c) and 2-323(c) (17) of its own Purchasing Ordinance which require competitive procurement.

160. Because the Town's acceptance of Applegate's non-responsive proposal violated the Summerville's Purchasing Ordinance, the PPPA and all other contracts and agreements emanating from the unlawful award are illegal, invalid, *ultra vires* and void *ab initio*.

161. On information and belief and based in part on the following factors, the Town and/or one or more of the other Defendants gave Applegate information about the RFP before the issuance of the RFP; unfairly, uncompetitively, discriminatorily and illegally helped Applegate be awarded the Hotel project; and assured Applegate that he and it would win the bid in advance

of the submission of Applegate's proposal: (a) the Town limited the time for submission of bids when there was no need to do so, thereby creating a situation where only those with advance information had adequate time to prepare bids or proposals; (b) the Town failed to assure that a sufficient number of potential competitors was aware of the solicitation by publishing the RFP on a Sunday and during a holiday season which included Veterans' Day, Thanksgiving and Hanukkah; (c) the Town received only one proposal pursuant to its RFP, and that proposal was non-responsive; (d) the Town accepted the non-responsive proposal, in violation of its own Purchasing Ordinance which requires competitive bidding; (e) the extensive work evident in the comprehensive proposal submitted by Applegate could not have been completed in the time allowed without advance information about the RFP; and (f) Applegate's hiring of an architect and others to prepare a proposal for the Hotel project including condominiums several weeks before the Town's issuance of the RFP, and Applegate's purchase in advance of submission of its proposal of a contract to buy the tract of land on which the condominiums were to be built show advance knowledge that the Town would accept a non-responsive proposal that included condominiums.

162. On information and belief, based on the foregoing factors, the award of the development contract to Applegate for the Hotel project resulted from anti-competitive collusion, bid rigging and/or fraud between the Developer and one or more other Defendants.

163. Anti-competitive collusion, bid rigging and/or fraud in the procurement process violate Summerville's Purchasing Ordinance Section 2-321(e), Section 2-322 and subsection (c) thereof, and Section 2-323(c) (17), which require competitive procurement, and inure to the detriment of taxpayers, for whose benefit the competitive bidding requirements of the Purchasing Ordinance were enacted.

164. Because the anti-competitive conduct described above violates Summerville's Purchasing Ordinance, the Partnership Agreement and all other contracts and agreements emanating from that conduct are illegal, invalid, *ultra vires* and void *ab initio*.

165. This case demonstrates why procurement laws are essential to good government and how much can go wrong when government officials fail to enact procurement laws or fail to comply with the laws they have enacted. The only proposal Summerville ended up with was materially non-responsive and non-competitive, and, as described below, was followed by a contract and other agreements that were negotiated in secret, decidedly adverse to the Town's best interests, based on an illegal RFP and otherwise in violation of law. None of the goals of the Purchasing Ordinance were achieved, and other bidders were not given an opportunity to bid on the project, due to the Defendants' unlawful conduct.

166. On July 9, 2014, the Summerville Town Council authorized Defendant Collins to sign the Partnership Agreement with Defendant Applegate and the Town of Summerville Redevelopment Corporation, providing for a \$30 million hotel/condominium complex, financed in part with \$10 million in Town revenue bonds. This Partnership Agreement and its exhibits were based on and emanated from the Town's illegal RFP and acceptance of Defendant Applegate's non-responsive proposal submitted pursuant to the RFP.

167. There were no public hearings regarding the Hotel project or the Partnership Agreement.

168. The response to the RFP by Applegate & Co. included in part the following "financing and transactional structure" proposal:

" . . . Without limited guarantees from the Town of Summerville and firm lease commitments, the ability to finance the project would be extremely remote. Because what is being proposed for the site has no precedent, there are no available comps to be used to appraise the project. While the

development team is extremely bullish on the probability of success, the bullish stance is based upon intuitive intangibles that come from many years of development experience and numerous successful projects. Unfortunately, commercial banks do not make loans based upon a developer's intuition and past success. The project is ideally suited to be a model private-public partnership.

Applegate & Co. is attempting to structure the deal in such a way that the base case would, at worst, result in a revenue neutral outcome for the Town . . . and, at best, would result in substantial economic benefits to the Town. . . . All net revenue produced from the garage and the conference center would be paid to the Town on a monthly basis. . . . The Pro forma rebate to the town is currently projected to be \$12,917 per month from the garage and \$18,750 per month from the conference center. The Town's portion of the property taxes is projected to be \$9,672 annually for the garage and \$11,160 annually for the conference center. . . . The sponsor/developer would look to the Town to contribute the 1.58 acre tract owned by the Town in exchange for an ownership interest in the Hotel. . . .

. . . Based upon hard costs the total annual tax on the Hotel would be \$368,628. It should be noted that a significantly lower property tax has been used for the Hotel operating Pro forma. It was based upon a lower assessed value and some type of tax relief. If the Hotel, in fact, had to pay taxes of \$368,628, it would significantly reduce the viability of the project. It would further be proposed that the Town would provide a limited guaranty for that portion of the construction loan pertaining to the Hotel. . . ."

It is anticipated that the bank providing the construction financing will do so based upon equity in the amount of 20% of the total project cost (\$6,056,725) and the bank making a loan for 80% of the total project cost (\$24,226,901). Applegate & Co., the Town's land, and local partners will provide the required equity." (Emphasis added.)

169. Upon information and belief, Defendant Applegate & Co. contracted to acquire the .658-acre tract adjacent to the location of the proposed boutique hotel project prior to its submission to the Town of a response to the RFP on December 6, 2013, because Defendant Applegate had received assurances from one or more of the Defendants in advance of the RFP or submission of Defendant Applegate's response to the RFP that Defendant Applegate & Co. would win the bid. In addition, Defendant Collins stated in August, 2014, that he had named the

boutique hotel "The Dorchester," which is the name Defendant Applegate & Co. had used for the boutique hotel project in its bid submission in response to the Town's RFP on December 6, 2013. In addition, upon information and belief, the submission included a picture of a complex boutique hotel project design at the corner of South Cedar Street and Richardson Avenue in Summerville that was enabled by Defendant Applegate's having been informed about the content, location and timing of the RFP before the RFP was advertised, thereby causing Defendant Applegate to have started creating that design before the publication of the RFP. Therefore, the award of the bid to Defendant Applegate & Co. resulted from anticompetitive collusion, bid rigging and/or fraud between the Developer and the Town.

170. On May 14, 2014, the Town of Summerville did the following to advance the boutique hotel project:

- A. Introduced as a first reading an ordinance to create a "redevelopment commission" called the "Town of Summerville Redevelopment Commission," pursuant to SC Code Section 31-10-30;
- B. Discussed a "proposed economic development project," which was "code" for the boutique hotel project, in an executive session that lasted 51 minutes; those discussions are unknown to the public; and
- C. Passed a second and final reading of an ordinance to change the zoning of property on West Richardson Avenue in Summerville owned by the Town, from B2 "Neighborhood Business Center" to B3 "General Business."

These actions were taken without the public being aware that their purpose was to arrange, advance and finance the boutique hotel project and other projects Town Council may decide to implement in the future through the mechanism of a redevelopment corporation. Upon information and belief, this first reading of the ordinance to create the RDC was taken without the Town having published notice as required by law.

171. On May 28, 2014, the Town held a Special Council Meeting, at which it passed the "second and final reading of an ordinance to create the" RDC. In Ordinance #14-0502, the Town Council also made the following findings, which are required by Section 31-10-30 of the SC Community Development Law to be made before a redevelopment commission can be created. The Town Council found: "(1) that one or more blighted areas or conservation areas exists in whole or in part in the town and [the Town Council] has begun to identify additional blighted areas and/or conservation areas, and (2) that the redevelopment of such areas is necessary in the interest of the public health, safety or general welfare of the residents of the Town." Section 31-10-20 of the Community Development Law contains precise definitions of the terms "blighted area" and "conservation area." "Blighted areas," if improved, must be found to be detrimental to the public safety, health, morals, or welfare, and if vacant, must be found to suffer from specified factors that impair sound growth. "Conservation areas" in general refer to areas that are about to become blighted and are detrimental to the public safety, health, morals, or welfare. The Town Council did not advise the public that these findings had been made. Although there may be areas within the Town limits that could be defined as blighted or about to become blighted, Council's findings with respect to the area selected for construction of the boutique hotel project are not supported by the facts. The area is a highly desirable mixed residential and commercial site in the heart of Summerville's Historic District which is not blighted or about to become blighted. Moreover, one small parcel of the area is owned by the Town and deliberately was allowed by the Town to become overgrown to try to justify the selection of that area as the hotel development site.

172. Immediately after the Council meeting on May 28, 2014, creating the RDC, the RDC held its first meeting, at which the RDC adopted its by-laws; elected its officers, including

Mayor Collins as Chairman and Lisa Wallace as Secretary, and elected each member of the Town Council as a member of the RDC. This meeting of the RDC was held illegally, and its actions therefore are invalid, because notice of the meeting had not been provided as required by law, after the RDC had come into existence, and the RDC had not been lawfully created. When these actions by the Town and the RDC were taken on May 28, 2014, Summerville residents, including all the Plaintiffs, were unaware, and reasonably could not have been aware, of the nature, purpose, function and existence of a "redevelopment commission", and that it would in any way finance or otherwise promote or facilitate the transfer of public funds to a private developer for the purpose of building a privately owned boutique hotel project in Summerville and other projects the Town Council may decide to implement in the future.

173. On June 4, 2014, Town Council held a Special Meeting at which the Lawrence Group presented only a partially completed version of its proposed "Vision Plan" for the Town of Summerville to a combined meeting of the Summerville Town Council, the Summerville Planning Commission and the Master/Vision Plan Advisory Committee. This meeting was not properly held or noticed. At this Special Council Meeting, the Lawrence Group "advised that the revised documents [Vision Plan] will be provided to the town next week and the town will make them available to the public via the town website."

174. On June 9, 2014, the Summerville Planning Commission published a notice of a public hearing purporting to advise the public of a Public Hearing to be held on June 16, 2014, using the following language: "Request to amend the Town's [sic] current Comprehensive Plan 2009-2011 with the prepared Vision Plan as an update and exhibit that further details the potential implementation strategies for the Comprehensive Plan." This notice was confusing, inarticulate, insufficient and inadequate to inform the public of the true nature, scope and

significance of the hearing, and it should be declared inadequate as a matter of law. The meeting held on June 16, 2014, was effectively held without notice, and therefore all actions taken by the Planning Commission at the meeting are invalid. There was no mention of a boutique hotel project in the notice.

175. At this meeting held on June 16, 2014, several members of the public spoke about the need for more time to study the Vision Plan and felt that it was being rushed, among other concerns. During discussion by the members, Planning Commission member Marc Hehn suggested that any decision be postponed until the July meeting so that staff could address some of the public comments and concerns and errors in the Vision Plan that Mr. Hehn had noted. Planning Commission member Charles Cuzzell assured those in attendance that no changes to zoning would occur because of the Vision Plan. Planning Commission member Travis Williams stated that there was no reason to wait, that concerns could be addressed but it was important to get started on the Vision Plan. Planning Commission member Jim Reaves agreed with Mr. Williams and said that the Vision Plan needs to move forward and that the Vision Plan can be amended as the Town goes along, so there was no reason to wait. Other commissioners expressed concern that the Vision Plan would "wither on the vine," if action were not taken immediately. This was a key public meeting at which the Planning Commission members were to decide whether to recommend that Town Council amend the Town's 60-page Comprehensive Plan with the 300-plus page Vision Plan, essentially replacing the existing Comprehensive Plan with the new Vision Plan. The reasons given for ignoring the public's comments were either erroneous or superficial. First, the statement that no zoning changes would be made because of the Vision Plan was erroneous; zoning decisions most certainly can be made and are recommended in the Vision Plan, and in fact had already been made by Town Council on the

land designated for the Hotel project. A motion to rezone the Hotel block from B2 "Neighborhood Business Center" to B3 "General Business" passed unanimously at meetings held on April 9, 2014 and May 14, 2014. As for amendments to the Plan, they cannot easily be made once the Vision Plan is adopted as the Town's Comprehensive Plan. In fact, changes to the Vision Plan then become extremely difficult and require public hearings. The many comments about moving this matter forward reflect a tension about causing a delay in the process of getting the Vision Plan elevated to a quasi-legal status as the Town's Comprehensive Plan. The minutes of the public hearing before the Planning Commission also reflect a panel of commissioners who were uninformed about the Vision Plan and the consequences of the action they were about to take.

176. On June 9, 2014, at approximately 5 p.m., a "draft" of the Lawrence Group's "Vision Plan," also sometimes called a "Master Plan," consisting of approximately 375 pages, first appeared on the Town's website. This was the first publication of the Vision Plan and the first opportunity for Summerville citizens to read the Vision Plan. The publication of the Vision Plan afforded no effective opportunity for Summerville residents who do not use the internet to review the Vision Plan. Among the Vision Plan's recommendations was one to create a Redevelopment Commission and a Redevelopment Fund to "organize a public/private partnership" to act as an agent for the Town in getting development contracts financed with public and private funds. Vision Plan, Code and Policy Report, Sec. 6.1 and Sec. 6.5, at 38. The Vision Plan also mentions a boutique hotel at the corner of South Cedar Street and West Richardson Avenue as a "development opportunity," see Vision Plan, Infrastructure and Development Plan, at 72, but not as a top ten priority, see Vision Plan, Infrastructure and

Development Plan, at 109 and Vision Plan, Reconnaissance Report, at 36. The Vision Plan posted on the Town's website is still referred to as a "draft" of June 9, 2014.

177. The Vision Plan is extremely long and difficult to read and navigate as there are no hyperlinks that enable readers to access remote sections referred to in the text. The document is written in three separate parts that must be read separately. Each part depends on the other two parts to be comprehensible, and it is necessary to read all three parts in order to understand the goals and how to implement the goals.

178. The content of the Vision Plan substantially consisted of recommendations and advice from the Master Plan Advisory Committee to the Town and its consultants, generated illegally in violation of the South Carolina Freedom of Information Act and other laws. In addition, the unlawful actions of the Town and the other Defendants complained of herein resulted substantially from the secretive recommendations, advice and promotional efforts of the MPAC.

179. At a meeting of the Summerville Town Council on June 11, 2014 (two days after the draft Vision Plan was posted on the Town's website), the Summerville Town Council passed the "[I]ntroduction and first reading of an ordinance (by title only) to amend the Town of Summerville Comprehensive Plan as amended by adopting the Town of Summerville Vision Plan and appending the Vision Plan as an update to the Comprehensive Plan." (Emphasis added.) This notice is confusing, inarticulate, insufficient and inadequate to inform the public of the true nature, scope and significance of the hearing and it should be declared inadequate as a matter of law. This meeting was, therefore, held without notice, and all actions taken by the Town Council at the meeting should be declared invalid. There was no mention of a boutique hotel project in the notice of the meeting or at the meeting.

180. Prior to June 11, 2014, there was inadequate notice and no public hearing as required by law regarding Council's intention to update, amend and essentially replace the Town's Comprehensive Plan (60 pages) with the new Vision Plan (375 pages). Prior to the first reading on June 11, 2014, the public had inadequate opportunity to review and understand the Lawrence Group's Vision Plan and to be aware of and understand that the Town would amend or update the Town's Comprehensive Plan with the Vision Plan. Moreover, there was no disclosure of the consequences of amending the Town's Comprehensive Plan with the Vision Plan, which included enabling Town Council to implement future projects through the RDC, enter into partnerships with and pay money to private developers, issue bonds and take other actions materially affecting the citizens of Summerville with no public hearings.

181. On June 13, 2014, the Secretary of State of the State of South Carolina issued a Certificate of Incorporation for the "Summerville Redevelopment Corporation." The Summerville Redevelopment Corporation was not validly created, and its purported meetings and activities were not validly noticed and held, in part because notices were not timely made and pertained to a "Summerville Redevelopment Commission" rather than to the "Summerville Redevelopment Corporation." (Emphasis added.)

182. On June 16, 2014, the Town published notice of a meeting of the "Summerville Redevelopment Corporation" to be held on June 25, 2014, having in part the following agenda:

"II. . . . Public hearing on the Summerville Redevelopment Commission's Proposed Redevelopment Plan (Town's Vision Plan)" and

III. . . . Adoption of Summerville Redevelopment Plan (Town's Vision Plan) and recommendation for approval by Summerville Town Council."

This notice was insufficient and unlawful, in part because: (1) the notice was not timely published; (2) the notice was published by the Town but was not published by the RDC, which did not yet validly exist; (3) the notice was inadequate and confusing as it was published regarding a "Proposed Redevelopment Plan" of the Summerville Redevelopment Commission when the meeting was to be held by the Summerville Redevelopment Corporation; (4) the notice was for a meeting of the Summerville Redevelopment Corporation, but S.C. Code Section 31-10-100(d) requires that the "commission [not the corporation] shall hold a public hearing prior to adoption of a redevelopment plan;" and (5) the public did not know and could not reasonably have known timely the final content of the Town's Vision Plan or the meaning of the phrase "Adoption of Summerville Redevelopment Plan." Thus, the notice of this meeting is inadequate as a matter of law. The meeting was therefore held without notice, and all actions taken by the Redevelopment Corporation at the meeting are invalid.

183. Section 31-10-100(d) of the Community Development Law requires that a redevelopment commission must hold a public hearing prior to its final adoption of a redevelopment plan, and that notice of such hearing must be published 15 days prior thereto in a newspaper of general circulation. On June 25, 2014, a public meeting was held on the adoption of the Vision Plan as the Redevelopment Corporation's redevelopment plan, and thereafter a resolution to that effect was unanimously adopted. However, the hearing was conducted and the resolution was adopted by the Summerville Redevelopment Corporation, not the Summerville Redevelopment Commission, as required by law. Therefore, the adoption of the Vision Plan as a redevelopment plan was invalid. Further, the notice of this meeting was not published by the Summerville Redevelopment Commission, as required by law. Therefore, the notice is also invalid.

184. On July 9, 2014, the Town Council passed a resolution approving the Vision Plan as the Town's Redevelopment Plan. The resolution recited that it was based on the recommendation of the Redevelopment Corporation at a public hearing. However, Section 31-10-100(e) of the Community Development Law requires that the recommendation to the Town Council to approve a redevelopment plan must come from the Redevelopment Commission, not the Redevelopment Corporation. The Town's Redevelopment Commission did not give notice of a meeting, did not conduct a public hearing and did not recommend to the Town Council adoption of the Vision Plan as the Town's Redevelopment Plan.

185. Thus, the requirements of the Community Development Law were not satisfied, and Council's adoption of the Vision Plan as the Town's redevelopment plan was invalid. Further, Council's authorization to Mayor Collins to sign the Partnership Agreement, which implements the redevelopment plan, was invalid because the Town has no redevelopment plan.

186. The Summerville Redevelopment Commission and the Summerville Redevelopment Corporation could adopt a redevelopment plan only by following the requirements of the South Carolina Community Development Law, which were circumvented and not followed when the Town adopted its Vision Plan; when the Town, rather than the RDC, published a Request for Proposal; and when the RDC adopted as its Redevelopment Plan the Town's Vision Plan, rather than going through the procedure specified in the statute for creation and adoption of a Redevelopment Plan, which requires, inter alia, public hearings and public input. Therefore, any purported adoption of the Town's Vision Plan as the Redevelopment Plan of the Summerville Redevelopment Commission or the Summerville Redevelopment Corporation was and is void and unlawful.

187. On Wednesday, June 25, 2014, beginning at 5:30 p.m., the Summerville Redevelopment Corporation purported to hold a meeting and a public hearing regarding its proposed adoption of the Town's Vision Plan as the Redevelopment Plan of the Summerville Redevelopment Corporation. The public meeting and hearing were unlawful because, inter alia, notice of the meeting was insufficient; the RDC had not been lawfully created; and the RDC had not followed other provisions of the Community Development Law prior to adopting a Redevelopment Plan. It is likely that there was no participation by the public at this public meeting, because the public was not adequately notified of the meaning and significance of the actions to be discussed at the public hearing, due to the failure of the Town and the RDC to follow the Community Development Act, the open meetings law under FOIA and the rapidity of Defendants' actions and Defendants' repeated use of confusing, misleading and undefined terminology interchangeably and inconsistently in their public notices, including "Vision Plan," "Master Plan," "Comprehensive Plan," "economic development plan," "Redevelopment Plan," "Summerville Redevelopment Commission" and "Summerville Redevelopment Corporation."

188. According to the minutes of the June 25, 2014, meeting referenced above, after approving prior meeting minutes, the Chairman "announced the next item was a public hearing on the Redevelopment Corporation's proposed Redevelopment Plan and called for any comments from the public. There being no comments offered, Chairman Collins declared the public meeting closed." There was no mention at this meeting of a boutique hotel. Immediately after closing the public hearing portion of the meeting, the RDC passed a resolution adopting the Town's Vision Plan as the RDC's Redevelopment Plan. This resolution was unlawful because, inter alia, notice of the meeting was insufficient and unlawful; the RDC had not been lawfully created; the RDC had not created a Redevelopment Plan as required by the Community

Development Law; and the RDC had not followed other provisions of the Community Development Law prior to adopting a Redevelopment Plan.

189. On June 30, 2014, the RDC applied to the United States Internal Revenue Service ("IRS") for an Employer Identification Number ("EIN"). The RDC has applied to the IRS for a 501(c)(4) tax-exempt status, which is inconsistent with the RDC's contractual obligations it has assumed to make interest-free loans to private developers and to be a partner with a private developer in a for-profit venture. The 501(c)(4) tax exempt status is inconsistent with the RDC being in a profit-making partnership with the for-profit Developer and other private for-profit party Defendants.

190. On July 7, 2014, the Town's Finance Committee held a meeting at which Defendant Collins announced that he had removed language about 880 residential homes from the Town's Vision Plan. This statement was made after the purported adoption of the Town's Vision Plan as the RDC's Redevelopment Plan, on June 25, 2014. Moreover, the reference to the 880 residential units has not been removed from the Vision Plan appearing on the Town's website.

191. At a date unknown to the Plaintiffs, the RDC may have published notice of a meeting to be held on July 9, 2014, having in part the following new business on the meeting's agenda: "Authorize Chairman [Collins] to finalize negotiations and execute a Public/Private Partnership Agreement between the Town of Summerville, the Summerville Redevelopment Corporation and Applegate & Co." This notice, if published, was untimely, unclear, confusing, insufficient, unlawful and invalid. Neither the notice, the minutes, nor any other communication published by the Defendants informed the public that the purpose of the "Public/Private

Partnership" would be the construction of a boutique hotel project and its financing, including interest-free, unsecured and subordinate loans to the Developer, the issuance of bonds and the use of other Town funds from unspecified sources. Moreover, the RDC's authorization of Chairman Collins to negotiate and execute the Partnership Agreement on behalf of the RDC containing provisions unknown to the RDC is ultra vires and constitutes an unlawful delegation of authority by the RDC.

192. On July 9, 2014, the Town held a meeting (not a public hearing) at which (a) a second reading of an ordinance was given by Town Council to update and amend the Town's Comprehensive Plan with the Town's Vision Plan; (b) the Town Council passed a resolution approving the adoption by the RDC on June 25, 2014, of the Vision Plan as the RDC's Redevelopment Plan; and (c) Town Council passed a motion to allow Defendant Collins to finalize negotiations and execute a Public-Private Partnership Agreement between the Town, the RDC and Defendant Applegate & Co. At this meeting, Town Council also voted "to amend the Town's Comprehensive Plan by adopting the Town of Summerville Vision Plan and appending the Vision Plan as an update to the Comprehensive Plan," according to minutes of the meeting. The motion allowing Defendant Collins to sign a contract on behalf of the Town containing provisions to be negotiated by him constituted an unlawful delegation of authority by the Town.

193. As a result of the above, Defendants believed that the Vision Plan officially had become the Town's Comprehensive Plan; that the RDC was in place, through which the Town could funnel money and property to Defendant Applegate and to other developers who are engaged in the future to develop other projects for the Town; and that Council therefore could proceed to inform the public, for the first time, that the "economic development project" or

redevelopment the Town repeatedly had been discussing in executive sessions was the boutique hotel project; that it would consist of a hotel, parking garage, events facility, fitness center, swimming pool, restaurants, rooftop bar and condominiums; that it would involve a Public-Private Partnership between the Town, the RDC and a private real estate developer as well as a bond offering, forgiveness of real estate taxes, interest-free, unsecured and subordinate loans and other financial concessions to Defendant Applegate & Co.

194. The Mayor, Applegate & Co., Applegate and other Defendants had been negotiating in secret at least since December 18, 2013, when, at a Special Council Meeting, after an Executive Session, the Mayor was authorized to enter into non-binding negotiations with "the company that recently submitted an economic development proposal." The Defendants did everything they could to avoid public awareness and scrutiny of, and to keep secret, as long as possible, the plans for the boutique hotel project and the Public-Private Partnership Agreement, in part by discussing those matters without public knowledge and obscuring them in the fine print and hundreds of pages of the Vision Plan. As late as July 4, 2014, Defendant Collins was quoted in the Summerville Journal Scene newspaper saying that "no Vision Plan project in particular is at 'the top of the list' for the town. If the costs of all the proposed ideas were to be added up the total would accumulate to billions of dollars. We have to do what we can pay for." Five days later, on July 9, 2014, Defendant Collins signed the Partnership Agreement with Defendant Applegate to develop the hotel project, after the Council finally had spent eight months developing the Vision Plan, attempting to form the RDC and causing the Town and the RDC to adopt the Vision Plan as an amendment and update to the Town's Comprehensive Plan, the Defendants finally disclosed to the public their plans for a boutique hotel project.

195. Despite it being pursued as a Redevelopment Project under the Community Development Law, the boutique hotel project has never been the subject of a public hearing before the Summerville Town Council, the Town Finance Committee, the Town Planning Commission, the Redevelopment Commission or the Redevelopment Corporation.

196. The Vision Plan contains over 300 pages, does not recommend that a boutique hotel project be built in Summerville and does not list the boutique hotel project as one of the 10 priority recommendations of the Vision Plan to be implemented during the next five years. The Vision Plan is not a Redevelopment Plan created and adopted according to South Carolina law, and the boutique hotel project was neither created nor adopted as a Redevelopment Plan under state law.

197. Two public hearings were held concerning the Vision Plan, one by the Town's Planning Commission on June 16, 2014, and one by the Town's Redevelopment Commission on June 25, 2014. The boutique hotel project was not discussed during these hearings.

198. On October 6, 2014, the Town's Board of Architectural Review held a meeting at which Defendant Applegate was allowed to present to the BAR, for over thirty minutes, his plans for the boutique hotel project. At that meeting BAR Chairman Phillip Dixon intimidated and denied the statutory and constitutional speech rights of citizens attending the meeting by prohibiting or unreasonably limiting comments and questions by the attendees. Dixon repeatedly stated that the public could address only the appearance of the Developer's drawings but make no other comment, and warned that, if any member of the public spoke in opposition to the project, he or she would be gaveled out of order and escorted from the room by the two policemen standing at the back of the meeting room. These actions by the BAR and this consideration by the BAR of the Developer's plans for a boutique hotel project violated the free

speech, due process and equal protection rights of the Plaintiffs and others, under the United States and the South Carolina Constitutions; and the Developer's plans were reviewed without, as required by law, the Developer previously having submitted to the BAR a completed application available for review by the public and without those plans previously having been approved by the RDC and the Town as required by Section 8a of the Partnership Agreement.

199. On October 27, 2014, the Town sent Defendant Faye Croft a written "courtesy notice" of a meeting of the Defendant BAR to be held on November 3, 2014, regarding the boutique Hotel project. Characterizing this notice as a "courtesy" was misleading because that notice was required by law. In violation of law, this notice did not inform Croft that she was entitled to speak at this BAR meeting at which demolition would be considered, in violation of Town Ordinance, Sec 32-182(b).

200. On November 3, 2014, the BAR held a second meeting at which Defendant Applegate was allowed to present to the BAR, for over thirty minutes, his plans for the boutique Hotel project. At this meeting BAR Chairman Phillip Dixon again limited public input, in violation of the United States and South Carolina constitutions requirements for free speech, due process and equal protection of the laws, as described above regarding the previous BAR meeting held on October 6, 2014. These actions by the BAR and this consideration by the BAR of the Developer's plans for a boutique hotel project were illegal because they violated the United States and South Carolina Constitutions, including the free speech, due process and equal protection rights of Plaintiffs and others; because attendees at the meeting were not informed by public notice that they had a right to speak at the meeting, as required by law; because the Developer's plans were reviewed without, as required by law, the Developer having previously submitted to the BAR a completed application available for review by the public; and because

the developer's plans had not previously been approved by the RDC and the Town. Plaintiff Hutson read to the BAR the following statements in Paragraph 8a of the Partnership Agreement to demonstrate to the BAR that its review of Defendant Applegate's plans was unlawful:

"The project site and architectural design will be based on the conceptual provided in Exhibit F . . . Prior to submission for review and approval to any required public agency for permitting or certificate of appropriateness, DEVELOPER will submit a final design for both the PRIVATE and PUBLIC IMPROVEMENTS to the RDC for review and approval.
(Emphasis added.)

Notwithstanding the foregoing, the BAR did consider Defendant Applegate's plans for the boutique hotel project and advised him to return with revised drawings for further consideration by the BAR.

201. Because Defendant Mayor Collins and Defendant Town Council members failed and refused to hold public hearings regarding the boutique hotel project, on November 6, 2014, the Summerville Preservation Society held a public meeting at Dorchester County Council Chambers at which citizens discussed and expressed their concerns about, and opposition to, the boutique hotel project. Mayor Collins and all Defendant Town Council members were invited to attend this meeting. Only Council members Walter Bailey and Robert Jackson attended part of the meeting. On information and belief, Defendants failed and refused to hold public hearings to avoid a public demonstration and airing of opposition to the boutique hotel project and its attendant financial risks.

202. In response to learning that the Summerville Preservation Society would sponsor and hold a public hearing about the Hotel project on November 6, 2014, Defendant Collins and the Town scheduled and held in response an "informational meeting" (not a public hearing) on November 12, 2014. That meeting was tightly controlled by the Mayor and was allowed to last

only one hour, most of which time was used by proponents of the project selected by Mayor Collins, who controlled who would speak and when. Mayor Collins began the meeting by allowing Defendant Applegate about thirty minutes to promote and explain his latest design of the project, followed by a succession of several proponents of the project being allowed by the Mayor to speak, often about sports history and other irrelevancies, to orchestrate and control the information provided at the meeting to avoid or minimize negative comments against the project.

203. On November 12, 2014, immediately after the Town's "informational meeting," the RDC held a meeting "to review for approval conceptual plans for The Dorchester Project," which is the name given to the boutique hotel project.

204. On November 12, 2014, Plaintiffs Hutson and Gorman were allowed by Lisa Wallace to inspect, and photograph certain records of the RDC. However, Lisa Wallace had removed from the file, withheld and refused to allow Plaintiffs Hutson and Gorman to inspect certain other RDC records described by Wallace as records pertaining to insurance and banking matters. Wallace thereby violated S.C. Code Section 31-10-160(a), which states in part that "[t]he books and records of a [redevelopment] commission are at all times open and subject to inspection by the public." SC Code Section 31-10-160(a) (emphasis added).

205. On November 19, 2014, one or more of the Defendants placed, and authorized the placement of, a full-page advertisement on page 8B of the *Summerville Journal Scene* newspaper stating that the "Residences at the Dorchester," which are the condominiums of the boutique to be built as part of the Hotel project, are "Now Available For Sale!" and soliciting buyers to "reserve your Condominium Home" now. That advertisement also states in part:

"The Residences at the Dorchester are part of Summerville's new Boutique Hotel Complex and offer residents all of the Hotel Amenities including a fine dining Restaurant, Roof-top Bar, Pool, Fitness Center, Garage Parking, Conference Rooms, and Business Center.

Sales Office Hours are Tuesday-Saturday from 10-6 . . .
ResidencesatDorchester.com"

This advertisement contains false and misleading representations and information because the Hotel project had not been approved, and may never be approved validly, by the BAR and other required authorities; the Partnership Agreement and other actions by the Defendants are unlawful; and the condominium units displayed and offered for sale in the advertisement had not been approved by the BAR after two previous BAR meetings and had not been approved by other required authorities.

206. On January 5, 2015, the BAR held a public meeting to consider demolition for and the design of the Hotel project. The BAR deliberately and unnecessarily held that meeting in a room that was much smaller than the Town Council chambers where previous BAR meetings addressing the Hotel project had been held because of large citizen attendance. Chairman Dixon's and the BAR's purpose was to limit the number of citizens who could attend, view, hear, speak at and participate in the meeting; they refused all entreaties to move the meeting to the Council chambers which had much more space for attendees at a meeting and was not in use. As a result, there was insufficient room for most citizens desiring to attend the meeting to attend the meeting; and many citizens, including many who were elderly, were forced to stand or sit on the floor in the hallway outside of the room where the BAR meeting was held, and were unable to hear or see what occurred at the meeting or to participate in the meeting. Further, at that BAR meeting Mayor Collins and Town Councilman Jenkins positioned themselves sitting directly in front of the members of the BAR, for the purpose and with the effect of intimidating the BAR members and members of the public at the meeting and of taking up limited space thereby depriving other citizens of the opportunity to attend the meeting. In contrast, Town Councilman

McIntosh refused to attend BAR meetings to avoid, as stated by him, intimidation of BAR members and conflicts of interest, or the appearance thereof. As a result of the conduct of Chairman Dixon and the other members of the BAR, the BAR meeting on January 5, 2015 was not "open to the public" as required by Section 30-4-60 of the South Carolina Freedom of Information Act. Moreover, attendees at the meeting were not allowed to speak at the meeting even though they were entitled by law to speak at the meeting because the BAR was considering demolition. As a result of all of this, all actions taken at the meeting should be declared invalid.

207. At the beginning of this BAR meeting on January 5, 2015, Chairman Dixon announced that citizens would be allowed to speak about the Hotel project at this BAR meeting. Numerous citizens attended that BAR meeting prepared to speak and for the purpose of speaking against the Hotel project, including against demolitions the BAR was considering as part of the Hotel project. Despite these representations by the BAR and Chairman Dixon, despite these legitimate expectations by the attendees and despite the fact that the BAR was required by law to allow attendees to speak at a BAR meeting considering demolition, no attendee was allowed to speak at the meeting. However, Defendant Applegate was allowed as much time as he desired to discuss and promote the Hotel project.

208. Peter Gorman was prepared to speak against the Hotel project, but after public testimony was prohibited by Chairman Dixon, Gorman submitted a written copy of his planned oral testimony to BAR Secretary Lucy Dreyer after adjournment of the meeting, and two days later mailed a letter to Chairman Dixon stating that the BAR had no authority to rule on the Applegate application prior to final approval of that application by the RDC.

209. Notwithstanding Gorman's letter, and Plaintiff Hutson's statements before the BAR on November 3, 2014, regarding the requirement that the RDC approve Applegate's application

before the BAR had authority to do so, the BAR proceeded at its next meeting on January 12, 2015, to approve the Applegate proposal, moving it to the next stage of approval from "conceptual" to "preliminary."

210. Citizens desiring to express their opinions about the Hotel project and hoping to have some influence on the BAR's decision at the meeting on January 5, 2015, were unaware that most BAR members had already discussed the Hotel project with Applegate and among themselves, and had decided how they would vote, as the result of their private meetings with Applegate in December, 2014. On December 15, 2014, several BAR members attended secret "workshop" meetings, arranged by Defendants Dreyer and/or Robinson, with Applegate to discuss the Hotel project. This first secret "workshop" meeting was attended by BAR members Phil Dixon, Rachel Burton and Cecile Cothran; developer Arthur Applegate; and Town staff member Madelyn Robinson. This second secret "workshop" meeting was attended by BAR members David Price, Beth Huggins and John Kwist; developer Arthur Applegate; and Town staff member Madelyn Robinson. The BAR and the Town deliberately did not have a quorum of the BAR members attend either of these meetings in an effort to circumvent the public notice and public meeting requirements of the Freedom of Information Act. The public deliberately was not noticed, informed about or allowed to attend, observe, hear or participate in either of these secret "workshop" meetings, at which BAR members and Defendant Applegate privately discussed, negotiated, considered and made decisions about Applegate's Hotel project, a matter of great controversy, public interest and public importance. By holding these private "workshop" meetings the BAR, Robinson, Dreyer and the Town willfully, knowingly and deliberately circumvented and violated the Freedom of Information Act, in numerous respects, including, inter alia, S.C. Code Ann. § 30-4-70(c), which states:

"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.)

211. At these secret "workshop" meetings BAR member David Price boasted that the Hotel project personally would benefit his bed and breakfast property and BAR member Beth Huggins boasted that the Hotel project personally would benefit her events planning business, personally and uniquely, and that they therefore supported the Hotel project. Thus, Price and Huggins have direct or indirect conflicts of interest that render their decisions and actions regarding the Hotel project as members of the BAR inappropriate, violations of a Town ordinance prohibiting conflicts of interest by BAR members, breaches of their fiduciary duties and of the public trust, and tainted by conflicts of interest. These Defendants and other BAR members similarly situated should have recused themselves from voting on or participating in discussions about the Applegate Hotel project design proposals and any votes cast at meetings attended by these members should be voided and re-counted.

212. After a meeting of the BAR on February 1, 2017 had adjourned and members of the public who had attended that meeting had left that meeting, all members of the BAR convened a second, non-public BAR meeting, at the same location of the first meeting, without complying with any of the requirements of the Freedom of Information Act regarding a public body conducting a public meeting. The sole purpose, business and agenda of this second "meeting after the meeting" was for BAR members to complain to and about BAR member John Kwist having taken written notes about the secret, illegal "workshop" meeting Kwist and other BAR members attended on December 15, 2014, referenced above; about the content of those notes; and about Kwist's having produced those notes to the Plaintiffs' attorneys in response to a

subpoena. At this second meeting BAR members, especially Dr. David Price, severely criticized, denigrated and intimidated Kwist for having taken and produced the notes, and for the content of the notes, which Price and Huggins disputed.

213. On information and belief, the BAR has not promulgated, created or published any rules, regulations, policies, procedures or guidelines regarding the conduct of its meetings and its process of decision making. As a result, the BAR follows no consistent and fair procedure or process in its deliberations and conducts its meetings on an *ad hoc* and arbitrary basis, leaving its members exposed to political pressure.

214. The BAR has engaged in numerous violations of law regarding the Hotel project, including those stated by the Appellants in Faye P. Croft, et al. v. Town of Summerville, et al., Appellate Case No.: 2015-002199 PTW No.: 7754.001 (South Carolina Court of Appeals).

215. Certain Defendants have harassed and attempted to intimidate certain Plaintiffs in retaliation for having brought this lawsuit and in an attempt to discourage the Plaintiffs from continuing this lawsuit. For example, recently Defendant Aaron Brown warned that Plaintiffs should be aware that when they sue the Town, those Plaintiffs can be sued in return by the Town. Further, on February 3, 2015 Lucy Dreyer sent, as Secretary to the BAR, an intimidating demand letter to Plaintiff Hutson claiming that “[i]t has come to the Planning Department’s attention that the paint color of [Plaintiff Hutson’s] house at 200 S. Pine Street has been changed.” That letter informed Plaintiff Hutson that “[s]ince this house is part of the Historic District all paint color changes must be approved by the” BAR; cited Section 32-175 as containing requirements regarding the color of his house with which he must comply; sent Plaintiff Hutson an “application” to submit to the BAR seeking BAR approval for the changes to the color of Plaintiff Hutson’s house; and demanded that Plaintiff Hutson submit that “application along with

color samples for the Board's review" to the BAR by February 20, 2015, and appear before the BAR on March 2, 2015 where the BAR would consider these allegations against him.

216. On February 12, 2015, Plaintiff Hutson notified Dreyer in writing that there had been no change in the color of paint on his house. Plaintiff Hutson also asked in writing that the BAR provide him "[a]ll evidence the BAR has indicating that the color of the paint on my house was changed, including the name and contact information for anyone who told you the color of the paint on my house was changed" and "[a]ll guidelines developed by the BAR as required by Section 32-175." Dreyer replied to these requests by informing Plaintiff Hutson that the only information the BAR had supporting the allegation against him was from an anonymous telephone caller in December, 2014; that neither the BAR nor Dreyer knew who made the call or had a record thereof; and that the BAR and Dreyer sent the demand letter to Plaintiff Hutson based on nothing more than the accusation made in the call. In addition, Dreyer informed Plaintiff Hutson that the BAR had not developed any guidelines as required by Section 32-175, referenced above. Thus, Dreyer and the BAR purported to require Plaintiff Hutson to submit color samples to and to appear before the BAR based on false and unfounded representations that Plaintiff Hutson had violated color guidelines established by the BAR in accordance with Section 32-175, when in fact those guidelines did not exist.

217. Upon receipt of the complaint about Plaintiff Hutson in an anonymous telephone call in December, 2014, referenced above, Dreyer caused a Town employee to inspect the property Plaintiff Hutson was alleged to have painted unlawfully. The Town employee who performed that inspection reported to Dreyer that based on the inspection, the inspector found insufficient evidence of a violation by Hutson. Based on that report, Dreyer decided not to issue Plaintiff Hutson any kind of summons or complaint that he had painted a house improperly.

However, after Dreyer had dropped this matter by deciding not to complain to Plaintiff Hutson about the alleged violation and despite the exoneration of Plaintiff Hutson of wrongdoing by the Town employee inspector, Dr. David Price called Dreyer and instructed her to issue Hutson a letter summoning Hutson to appear before the BAR due to the anonymous complaint that Hutson painted his house illegally. As a result, Dreyer sent Plaintiff Hutson the letter dated February 3, 2015, referenced above.

218. In addition, a Summerville building code inspector ("code inspector") repeatedly drove his official Town vehicle in front of the homes of Plaintiffs Greene and Harbeson on Laurel Street. The code inspector unexpectedly knocked on the front door of the home of Gary and Carol Lee Brewer located on Laurel Street next door to the home of Plaintiff Greene and across the street from the home of Plaintiff Harbeson. After Carol Lee Brewer opened her door, the code inspector falsely accused Mrs. Brewer of doing electrical and plumbing work on her house without a required Town permit, and demanded that she immediately allow the code inspector to enter her house to inspect whether electrical and plumbing work was being illegally performed. After the code inspector asked in an intimidating tone of voice if Mrs. Brewer was refusing to grant him access, Mrs. Brewer allowed the code inspector to enter her home. The code inspector saw that Mr. and Mrs. Brewer were remodeling their ceilings and cabinets, which required no Town approval, and were not doing any electrical or plumbing work. When the code inspector went into the bathroom of the house and to the electrical box for the house, Mrs. Brewer told the code inspector "I don't know why you are doing this; you do not need to do that" and demanded that he leave, whereupon the code inspector left the house. Upon returning home and learning that the code inspector had falsely accused the Brewers of doing illegal plumbing and electrical work and gained entry to the interior of their home by means of accusations and

intimidation, Gary Brewer called Town officials and told them they should not harass the Brewers as they were not parties to the lawsuit. Upon information and belief, this harassment by the code inspector was directed to the Brewers because the code inspector mistakenly believed the Brewers' house belonged either to Plaintiff Greene or to Plaintiff Harbeson, as an attempt to intimidate and with the intention of intimidating the Plaintiffs into not prosecuting this lawsuit.

219. On February 11, 2015, Town Council gave second reading to a new Town noise ordinance that repealed the Town's previous, more stringent noise ordinances and replaced them with a less stringent noise ordinance offering less public protection, for the purpose and with the effect of facilitating the building and operation of the Hotel project. Sec. 12-31(f) of this new noise ordinance states in part:

"[I]t shall be unlawful for any person or entity to conduct any construction operations between the hours of 11:00 p.m. and 7:00 a.m. The Mayor or his designee may grant a written variation to allow construction between the hours of 11:00p.m and 7:00a.m. on a public or private project on a case by case basis." (Emphasis added.)

This provision is unconstitutional and violates the liberty and property rights of the Plaintiffs, especially Plaintiffs Croft, Croft Trust, Harbeson, Greene, Klinger, Beck and Hutson, by depriving them of due process of law and the equal protection of the laws, in part because this provision enables the Mayor to arbitrarily allow excessive noise creating a nuisance and damaging the Defendants without reasonable and fair criteria, standards or procedures. In addition, this ordinance is unconstitutionally vague and enables the Town to confiscate property without due process of law and without just compensation.

220. This 66-room hotel/rooftop bar/restaurant/garage '34 condo/convention center/swimming pool project complex on two acres of land in the heart of the Historic District at one of the town's busiest intersections appeared to be the highest priority of Mayor Collins and

the Town Council. Construction would take two years and require the destruction of several historic houses and the oldest pine in the "Flowertown in the Pines." (The town motto is "The Pine is Sacred.") The anticipated and highly touted 60 new jobs created by the project would be mostly low-paid room cleaners and garage attendants.

221. Previous "boutique" hotels in Summerville have failed because, unlike Charleston, Summerville is not an overnight destination for tourists or business travelers necessary to sustain an expensive hotel and convention center. Moreover, the Summerville market has become more competitive with two new hotels, Courtyard by Marriott and Residence Inn, in Summerville near Interstate-26. If the boutique hotel project fails, the town-owned convention center and garage will also fail, leaving taxpayers with a staggering \$12 million debt and a two-acre "white elephant" in the heart of downtown Summerville.

222. Most of the traffic from developments in newly annexed areas is channeled through the Historic District, where the main railroad crossings leading to I-26 are located. Traffic is the No. 1 complaint of Summerville residents, and the hotel/condo complex will greatly aggravate the congestion.

223. The boutique hotel project is too massive for the selected location.

224. The boutique hotel project as provided in the Partnership Agreement will use taxpayer money to subsidize a private development that may not be and probably is not feasible.

225. The boutique hotel project as provided in the Partnership Agreement will use taxpayer money to compete with other Summerville businesses that collect the taxes that will be used to finance the boutique hotel project.

226. The Town has been failing, and will continue to fail, in violation of its Comprehensive Plan, to fix dangerous sidewalks; add or replace antiquated street lights; put

electrical lines and wires underground; prevent continued flooding of water and flooding of homes; fix dangerous and decaying roads; and create and maintain other necessities for public health and safety, opting instead to finance and promote the commercialization of the Town of Summerville and the boutique hotel project. Many of these infrastructure repairs not being implemented by the Town are recommended in the Town's Comprehensive Plan and in the Vision Plan.

227. Plaintiffs' and other Summerville residents' requests to Defendants to review feasibility, market assessment and traffic studies have been ignored or thwarted. Defendant Mayor Collins repeatedly replied to requests for information and review of the project by claiming and exclaiming, "It is a done deal!"

228. Defendants that are governmental entities have responded to Plaintiffs' requests for documents pertaining to the boutique hotel project pursuant to FOIA either by not responding at all or with prohibitive fees and unreasonable delays, instead of producing the public documents requested and doing so free-of-charge due to the public importance of the documents requested.

229. Defendant Collins and other Defendants promoted the boutique hotel project using, under the color of state law, deceptive, intimidating, bullying and other unlawful actions and tactics that violate Plaintiffs' rights under the United States and South Carolina Constitutions to free speech and association, due process and equal protection of the laws, and other laws and customs, causing injury to their protected property and liberty interests, including but not limited to each of the following:

- A. Sending Plaintiff Hutson an intimidating letter falsely accusing him of having painted his house contrary to law and requiring him to provide information to and attend a meeting of the BAR, based

on nothing more than false hearsay in an anonymous telephone call; despite a Town employed inspector having concluded after inspecting Plaintiff Hutson's property that there was insufficient evidence to warrant accusing Plaintiff Hutson of this violation; and in retaliation for Plaintiff Hutson's having filed this lawsuit;

- B. Falsely accusing a Town citizen residing next to the homes of two Plaintiffs of violating Town code laws, and obtaining by abusive intimidating demands entry into that citizen's home without a warrant or just cause;
- C. Warning a Town resident that whoever sues the Town may be counter-sued back by the Town;
- D. Orchestrating an "informational meeting" (not a public hearing) on November 12, 2013, at which Defendant Collins arranged for individuals, including members of the MPAC and those whose organizations receive monetary benefits from the Town, to speak for the project, and determining who would speak and when about the project, so as to maximize comments favorable to the project and minimize comments opposing the project, as described above;
- E. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;
- F. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- G. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, excessively charging for Town responses to FOIA requests and conducting business in secret and non-transparently;
- H. Hosting and lobbying members of the BAR, whom the Mayor, with the approval of Town Council, appoints and can remove and replace, at his home where he serves them food and drinks, to curry favor with them and to influence and attempt to influence them to make decisions favorable to the boutique hotel project;
- I. Withholding information from the Plaintiffs and the public, including but not limited to charging citizens large sums of money to obtain information about the boutique hotel project pursuant to FOIA, while simultaneously signing a contract to pay the

Developer up to \$400,000 to finance the costs of advancing the project about which citizens sought information pursuant to FOIA;

- J. Misleading Plaintiffs and the public, including but not limited to using misnomers; failing to provide timely, clear and understandable notices of proposed zoning changes, scheduled meetings, hearings and other events and actions; and obfuscating the true nature of the project by calling it, first, an economic development project and, later, a "boutique hotel," both of which are misnomers;
- K. Pushing the project to fulfill a campaign promise to and for Defendant Collins' real estate developer friends and supporters, instead of following the priorities established by the Town's Comprehensive Plan or necessary to ensure the public health and safety;
- L. Violating numerous State and Town laws, ordinances and customs, as stated herein; and
- M. Publishing or allowing to be published unauthorized, false and misleading statements in the newspaper about the availability of condominiums that have not been approved by the BAR and other governmental entities.

230. Defendants have violated, and have conspired to violate, the Constitution of the United States, the Constitution of the State of South Carolina, due process of law, the equal protection of the laws, the prohibition against taking property without just compensation and various State and Town statutes, ordinances, regulations and customs, in numerous respects, including but not limited to the following:

A. The Partnership Agreement violates Article I, Article VIII and Article X, §§ 5, 11, 13 and 14 of the South Carolina Constitution in numerous respects, including but not limited to the following:

- 1. The Town of Summerville and the RDC purport to be in, and are in, a "partnership" with private persons and entities and to indemnify or pledge to indemnify private persons and entities;

2. The Partnership Agreement purports to make, and makes, the Town and the RDC "partners" with a private Developer, thereby making the Town, the RDC and the Developer fiduciaries with each other in conflict with the Town's and the RDC's fiduciary obligations to the taxpayers; thereby making a private Developer an agent of the Town and the RDC with the actual, implied and apparent authority to act for and bind in contract the Town and the RDC; and potentially exposing the Town and the RDC to unlimited liability for unlawful acts of private parties;
3. The Partnership Agreement requires the Town and the RDC to indemnify private parties for losses that may be suffered by the Developer, thereby potentially exposing the Town and the RDC to great and unlimited liability and requiring the RDC to compensate private parties for any environmental damage, which could be astronomical, given that the project will be located on or near where one or more gas stations existed for decades and from which petroleum may have leaked and may leak causing contamination;
4. The Partnership Agreement does not require the private Developer to indemnify the Town or the RDC for damages caused them by the wrongful acts of the private Developer;
5. The Partnership Agreement purports to require, and requires, the Town and the RDC to pay attorney's fees and costs to the private Developer;
6. The Partnership Agreement purports to require, and requires, the Town and the RDC to be a "partner" with a private Developer owned and controlled, and which may become owned and controlled, in whole or in part, by parties unknown and unacceptable to the Town or RDC and who may be irresponsible and undesirable as partners of the Town and RDC;
7. The Partnership Agreement does not prevent, restrict or limit the ability of the Developer or of the special purpose entity ("SPE") formed or to be formed by the Developer to acquire and transfer title and own and operate property to sell ownership or control of themselves to any third party without the consent of the Town or the RDC;
8. The Partnership Agreement requires the RDC and the Town to pledge or loan its credit for the benefit of the private Developer, which is an individual, company, association or corporation;

9. The Partnership Agreement requires that the Town and the RDC become joint owners in an association or joint venture among the Town, the RDC and the private Developer;
10. The Partnership Agreement provides that \$3,750,000 be loaned to the private Developer by the RDC using proceeds which may be obtained by bond indebtedness of the Town, and which will or may be general obligation debt;
11. The Partnership Agreement provides that the \$3,750,000 loaned to the private Developer by the RDC, interest free, subordinated and unsecured, will be used for development of private facilities, including the hotel;
12. The Partnership Agreement provides that \$5,200,000 will be granted to the private Developer by the RDC using proceeds obtained by bonded indebtedness of the Town, which will or may be general obligation debt "together with other funds (if any) of the Town identified by the Town for such purpose;" Partnership Agreement, Para 11, at 7;
13. The Partnership Agreement provides that the \$5,200,000 granted to the private developer will be used to develop public buildings, including a conference center and a garage, which will benefit substantially the private developer, give little or no benefit to the public as they are not needed by the Town or recommended by or listed as a priority in the Town's Comprehensive Plan or Vision Plan;
14. The existence of a partnership including the Town and the RDC with a private Developer creates impermissible conflicts of interest between the partnership and the Town, obligated by law to regulate the boutique hotel project that is the subject of the partnership;
15. The Partnership Agreement requires the Town and the RDC to spend monies and to incur potential liabilities that could or would drain and prevent tax monies from being spent on infrastructure improvements and other greater priorities, including those stated as greater priorities in the Town's Comprehensive Plan and Vision Plan;
16. The Partnership Agreement requires the Town and the RDC to use tax-dollars collected from certain businesses to finance the creation and operation of businesses that will compete directly with the businesses from which those tax dollars were collected;

17. The Partnership Agreement provides that the Manager who would operate the private hotel and condominiums is the same as the Manager who would operate the public convention center and garage, and that the public convention center and garage would be operated in certain respects for the benefit of the private hotel and condominiums, thereby creating conflicts of interest and comingling of functions, property, costs and profits among private and public parties; and
18. There is no effective remedy for the RDC and the Town if the Developer does not repay the \$3,750,000 loan.

B. The Partnership Agreement and all agreements attached thereto are unlawful, invalid and void ab initio for many reasons, including but not limited to the following:

1. Defendants have not complied with the provisions of the Community Development Law required before the RDC can enter into a contract or promote a Redevelopment Plan and the Redevelopment Project that are the subjects of the Partnership Agreement;
2. The RDC was required but failed to publish a Request for Proposal; instead, the Town published the Request for Proposal;
3. Defendants have not complied with the provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and with other applicable laws, ordinances, rules and regulations, including but not limited to having violated S.C. Code Ann. § 6-29-540 , in part because Defendants have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
4. The Agreements have not been signed by the Secretary of the RDC, as required by SC Code Section 31-10-90(14);
5. When the Partnership Agreement and the contracts attached as exhibits thereto were signed, the Dorchester, LLC did not exist as a legal entity;

6. The Partnership Agreement was made before all regulatory approvals were given and which may never be given; in fact, the BAR has not approved the conceptual illustrations attached as Exhibit F to the Partnership Agreement, which is the only project allowed by and that is the subject matter of the Partnership Agreement;
7. The RDC did not validly exist at the time the Partnership Agreement was signed by the RDC;
8. The RDC did not validly have officers at the time the Partnership Agreement was signed by the Chairman of the RDC;
9. The agreements require the Town and the RDC to spend tax money in violation of S.C. Code Ann. § 6-1-530;
10. Upon information and belief, Defendant Town of Summerville (not the RDC) selected Defendant Applegate & Co. as the Redeveloper through a seemingly competitive bid process for the boutique hotel project but as a result of anti-competitive collusion;
11. The Partnership between the Town, the RDC and Defendant Applegate & Co. was created as the result of illegal anti-competitive collusion between those parties and other Defendants with respect to the bidding pursuant to the RFP;
12. The Town's Purchasing Ordinance did not authorize the use of an RFP method of procurement; therefore, the award of the development contract to Defendant Applegate and all contracts and agreements that emanated from the unauthorized RFP and award were and are ultra vires, illegal, invalid and void ab initio;
13. The Town accepted a non-responsive bid from Defendant Applegate and failed to republish the Request for Proposal after receiving a non-responsive bid from Defendant Applegate, thereby depriving the Town, the Plaintiffs and other taxpayers of Summerville of the benefits of free and open competition;
14. The Town failed to promulgate an ordinance authorizing and regarding Requests for Proposals and, despite that failure, issued a Request for Proposal regarding the Hotel project;
15. The Town violated its procurement laws;
16. Essential terms of the agreements were missing at the time each respective agreement was executed, and in some cases, continue to

be missing; the parties did not have a meeting of the minds by agreeing on essential terms of the contract; and

17. The RDC has refused and failed to allow inspection and copies of records of the RDC.

C. The Defendants have violated the Community Development Law in numerous respects, including but not limited to the following:

1. The RDC has issued no Request for Proposals to redevelop the Town's property with the boutique hotel project, and the other requirements of S.C. Code Section 31-10-110, including the requirement to advertise for bids by public notice published once a week for two consecutive weeks, have not been followed; the RFP issued by the Town is not a valid substitute for the RFP required of the RDC by the Community Development Law; the RDC cannot participate in the project until and unless the RDC has issued a valid RFP for the project and otherwise has complied with SC Code Section 31-10-110;
2. If a valid RFP was issued for the project, the RFP intentionally did not include a request for condominiums and, therefore, allowing condominiums would violate the RFP and the Community Development Law;
3. The RDC has not prepared or caused to be prepared, and has not recommended, Redevelopment Plans for a Redevelopment Project to the Town of Summerville; instead, the Town has prepared Redevelopment Plans, and the RDC has purported to adopt and implement the Town's Redevelopment Plans and Project, in violation of SC Code Section 31-10-90(4) and other provisions of the Community Development Act;
4. The RDC has not entered into contracts "in accordance with the Redevelopment Plan" created by the RDC as required by S.C. Code Section 31-10-90(6) and other provisions of the Community Development Act;
5. The location of the boutique hotel project is not a blighted area or a conservation area within the meaning of the Community Development Law; Defendants deliberately caused, and conspired to cause, property owned by the Town at the location of the project not to be maintained to contrive a false claim that the area was "blighted" or a "conservation area," in order to attempt to justify creating the RDC and the boutique hotel project as being necessary and permissible;

6. The officers and by-laws of the RDC have never been chosen or adopted by the RDC at a properly noticed meeting or at a valid meeting of the RDC;
7. The RDC has purported to enter into the Partnership Agreement and other agreements in an invalid manner, due to the agreements not being signed by the Secretary or the Assistant Secretary of the RDC;
8. The Town did not publish a notice of intent to consider passage of an ordinance to create a Redevelopment Commission, as required by SC Code Section 31-10-30(a);
9. Required public notice was not published by the RDC before the RDC met and conducted business;
10. The RDC did not follow the proper procedures for creating a Redevelopment Plan, as defined by S.C. Code Section 31-10-20(15);
11. The Defendants who are commissioners of the RDC have failed to exercise proper control and supervision over contracts signed for the RDC by Defendant Collins as chairman of the RDC; instead, the commissioners have unlawfully delegated "blank check" authority to Defendant Collins to negotiate the terms of and to execute contracts for the RDC, in violation of the South Carolina Constitution and S.C. Code Ann. § 31-10-60, just as those commissioners gave Defendant Collins "blank check" authority to negotiate the terms and to execute contracts for the Town in Defendant Collin's capacity as Mayor of Summerville;
12. Upon information and belief, the chairman and some commissioners of the RDC have direct or indirect interests in violation of SC Code Section 31-10-70;
13. Upon information and belief, the RDC has not made or caused to be made any surveys, studies or plans necessary to carry out the purposes of the Community Development Law or made or caused to be made a contract with anyone to make those surveys, studies or plans, as required by SC Code Section 31-10-90(9);
14. The RDC unlawfully has obligated itself in the Partnership Agreement to acquire property from the Town for the boutique hotel project, when the Town has not "approved the Redevelopment Plan as hereinafter prescribed," as required by S.C. Code Section 31-10-100(b), because the RDC has not created a Redevelopment Plan as required by the Community Development Law that could be approved by the Town;

15. The RDC has not created a Redevelopment Plan as required by the Community Development Law that contains any of the requirements in S.C. Code Section 31-10-100(c); instead, the Town hired third parties to create a "Vision Plan" and the RDC purported to adopt that "Vision Plan" as the Town's redevelopment plan;
16. The RDC did not hold a valid public hearing prior to its final adoption of the RDC's Redevelopment Plan, and did not properly notice that public hearing, in violation of SC Code Section 31-10-100(d); instead, the RDC purported to adopt the Town's "Vision Plan," in violation of the Community Development Law;
17. The RDC violated all of the provisions of SC Code Section 31-10-100(e), including but not limited to the RDC's not submitting to the Town a redevelopment plan; the RDC's not doing the following: "[p]rior to recommending a redevelopment plan to the [Town] for approval:" "utilize the local private planning, financing, and financial services to the greatest extent possible . . . ;" and the RDC's not considering whether adequate provision for traffic and vehicular parking had been made;
18. The Town did not "approve, amend or reject the redevelopment plan as submitted" to the Town by the RDC, as required by SC Code Section 31-10-100(f), because the RDC did not submit a Redevelopment Plan to the Town;
19. The RDC has obligated itself in the Partnership Agreement to acquire property, has executed contracts and "has taken other actions necessary to carry out the" boutique hotel plan, without having first created a Redevelopment Plan and having obtained Town approval of the RDC's development plan, in violation of SC Code Section 31-10-100(g);
20. The RDC has contracted for it to transfer real property to the Developer in violation of the requirements in SC Code Section 31-10-110(b) that any sale or transfer of real property to the Developer from the RDC be "in accordance with the Redevelopment Plan" and that any "sale, exchange, or other transfer, and any agreement relating thereto, be made only after the approval of the Redevelopment Plan by the Town and after public notice and award as specified in subsection (c) of this section"; the RDC has not created a Redevelopment Plan, has not obtained the Town's approval of a Redevelopment Plan and has not complied with any of the request for proposal and notice of request for proposal requirements of SC Code Section 31-10-110(b) and (c);
21. The Partnership Agreement requires that the Town issue bonds to generate proceeds to finance the boutique hotel project after passing those proceeds through the RDC; that scheme violates the intention and requirements of the Community Development Law that redevelopment pursuant to the

Community Development Law be financed by bonds issued by the RDC in accordance with the requirements of the Community Development Law, including that the bonds be repaid and the expenses of a redevelopment project be paid only from the profits of the project financed by the RDC;

22. The Commission and the Corporation have not adopted rules of organizational procedure; kept a record of its resolutions, findings and determinations; and treated those resolutions, findings and determinations as a public record; and
23. The RDC wrongfully declared the site of the proposed hotel project to be a "blighted area" or a "conservation area," as defined in section 31-10-20 of the Community Development Law.

D. The Defendants have violated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 in numerous respects, including but not limited to the following:

1. Plaintiff Faye Croft was not provided adequate or required notice of the Town's intention to rezone property at the location where the boutique hotel project is intended to be built, in violation of SC Code Section 6-29-760;
2. Defendants have violated S.C. Code Ann. § 6-29-540, in part because the Town and the RDC have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
3. Opponents of the boutique hotel project have not been allowed to participate in mediation or other good faith negotiations with the Defendants to attempt to resolve their differences regarding the boutique hotel project; and
4. The Town violated S.C. Code Sec. 6-29-530 by failing to notice and hold a public hearing on the amendment and update of the Comprehensive Plan.

E. The Defendants have violated the Town's ordinances in numerous respects, including but not limited to the following:

1. The Town and the RDC have failed to appear before the BAR as required by Sec. 32-176 of the Town of Summerville's ordinances, which states in part as follows:

"Sec. 32-176. - Meetings, rules and records.

All governmental agencies . . . shall be required to go before the board of architectural review in accordance with this article prior to initiating any changes covered by this article." (Emphasis added.)

2. The Developer, the RDC and the Town have never submitted an application to the BAR, including never having submitted the required completed form, required as a prerequisite to the BAR's considering the boutique hotel project; and
3. The Town has issued an RFP and awarded a contract based on that RFP, in violation of state and Town procurement laws, including but not limited to the Summerville Purchasing Ordinance Sec. 2-320 - Sec. 2-326.

F. Defendants BAR and Planning Commission have exhibited bias in favor of the developer and the project and violated applicable laws, including State statutes; Town ordinances, rules, regulations and customs; due process, equal protection, free speech and other provisions of the United States and South Carolina Constitutions, resulting in the BAR and the Planning Commission not performing their fiduciary duties to safeguard the public interests, in numerous respects, including but not limited to, the following:

1. In violation of Town Ordinance, Sec 32-182(b), the BAR failed to publicly notice that people had a right to speak at BAR meetings about demolitions being considered by the BAR regarding the Hotel project, and to let people speak at BAR meetings regarding those demolitions;
2. As stated in Faye P. Croft, et al. v. Town of Summerville, et al., Appellate Case No.: 2015-002199 PTW No.: 7754.001;

3. The BAR gave the developer much more time to promote than the BAR gave to Summerville residents to oppose the boutique hotel project; members of the public were restricted to 3 minutes but the developer was given more than 30 minutes to speak; citizens opposing the project, but not the developer and others supporting the project, were rudely interrupted, prohibited from continuing to speak after 3 minutes and told by the BAR that their time to speak was expired and was repetitive;
4. The BAR restricted what opponents of the Hotel project were allowed to say; the BAR limited public comments to design elements only; discussion of environmental, feasibility and traffic comments was delivered in the second BAR meeting about the boutique hotel project despite the Chairman's admonitions; comments about architectural context (e.g., the project is totally unrelated to the surrounding buildings), an important consideration in the conceptual state, were dismissed by the BAR Chairman;
5. The BAR threatened opponents of the project with removal from the BAR's proceeding by the police, who, project opponents were told by the BAR, were standing at the back of the BAR meeting room available to remove BAR opponents upon request by the BAR Chairman;
6. BAR members wine and dined with the Mayor at the Mayor's home and otherwise engaged in impermissible conflicts of interest;
7. The BAR posted a sketch of the proposed design of the boutique hotel project only 24 hours in advance of meetings, publishing inadequate information and allowing insufficient time for the public to analyze and to be able to respond to the design at BAR meetings;
8. The BAR did not require and did not publish applications of developers prior to allowing a developer to present a project to the BAR;
9. The BAR failed to have and to publish clear and adequate procedures;
10. The public has not been allowed an opportunity to examine BAR minutes and to listen to BAR recordings to verify their scope and content;
11. The BAR has failed to inform members of the public of the BAR's rights to lower the height and to reduce the scale and mass of the

boutique hotel project, and to deny the developers a permit for the boutique hotel project;

12. BAR members do not understand and have not received sufficient training about their duties, options and rights; one BAR member incorrectly has informed the public that he believes the BAR has an obligation to approve the boutique hotel project eventually;
13. The BAR has not informed the public of its right to appeal BAR decisions;
14. The BAR misled the public;
15. The BAR prevented the public from speaking at its meetings;
16. The BAR held secret, unlawful meetings with developer Applegate at which BAR business was discussed and decided;
17. Members of the BAR have direct and indirect conflicts of interest;
18. Members of the Planning Commission have direct and indirect conflicts of interest;
19. The Planning Commission refused and failed to consider errors in the Vision Plan before making recommendations about the Vision Plan and amending the Comprehensive Plan;
20. Members of the Planning Commission made false statements and misled the public before making recommendations about the Vision Plan and amending the Comprehensive Plan;
21. Members of the BAR and of the Planning Commission have failed to do research, to avoid conflicts of interest and the appearance of impropriety and to maintain independence necessary to make sound and reasonable decisions in the public interest;
22. The Town and members of the Planning Commission and the BAR have pressured and retaliated against members of the Planning Commission and the BAR; and
23. Meetings of the Planning Commission and BAR are shams.

G. Required notices were not provided to required parties, the public or the Plaintiffs, and, if they were provided, they were so deficient as to be meaningless, invalid and unlawful;

H. On information and belief, persons involved in the boutique hotel project may have impermissible conflicts of interest; and

I. Various meetings, including alleged public hearings, regarding the boutique hotel project were invalid and sham proceedings.

III. CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

VIOLATIONS OF SOUTH CAROLINA CONSTITUTION

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

232. The Public-Private Partnership Agreement and other agreements referenced herein among and between the Town, the RDC and Applegate & Co., and other agreements and actions referenced herein, violate and will continue to violate provisions of the South Carolina Constitution, including but not limited to Article I §§ 2, 3, 8, 13, 22, and 23, Article VIII and Article X §§ 5, 11, 13 and 14 in numerous respects, including but not limited to the following:

- A. They allow and require the spending of public funds for private purposes and for the primary benefit of private parties;
- B. They allow and require the pledging or loaning of the credit of the Town of Summerville and/or the State of South Carolina for the benefit of an individual, company, association or corporation;
- C. They allow and require that the Town of Summerville become a joint owner in a company, association, or corporation;
- D. Plaintiffs have been deprived of liberty and property without due process of law;
- E. Plaintiffs have been deprived of liberty and property without the equal protection of the laws;

- F. Plaintiffs have been deprived of private liberty and property rights without due notice and an opportunity to be heard; contrary to statutes, ordinances and regulations; and not by a mode of procedure prescribed by the General Assembly;
- G. Plaintiffs' private property has been taken and will be taken for private uses without the consent of the owner and without just compensation;
- H. Plaintiffs' rights to freedom of speech and assembly have been violated;
- I. Plaintiffs' rights to petition the government or any department thereof for a redress of grievances have been violated;
- J. The Town's new noise ordinance is unconstitutional;
- K. The state law limiting the ability to contest rezoning is unconstitutional;
- L. The Town sent Plaintiff Hutson an intimidating letter falsely accusing him of having painted his house contrary to law and requiring him to provide information to and attend a meeting of the BAR, based on nothing more than false hearsay in an anonymous telephone call;
- M. The Town falsely accused a Town citizen residing next to the homes of two Plaintiffs of violating Town code laws, and obtaining by abusive intimidating demands entry into that citizen's home without a warrant or just cause;
- N. A Town Councilman warning a Town resident that whoever sues the Town may be counter-sued back by the Town; and
- O. The actions of the governmental Defendants described in Paragraphs 224-225 above are unconstitutional.

232. The Community Development Law, and all other statutes, ordinances, regulations, rules and customs in South Carolina, violate the South Carolina Constitution to the extent that they:

- A. Allow or require the spending of public funds for private purposes or for the primary benefit of private parties;
- B. Allow or require the pledging or loaning of the credit of the Town of Summerville and/or the State of South Carolina for the benefit of an individual, company, association or corporation; and/or

- C. Allow or require that the Town of Summerville become a joint owner in a company, association, or corporation.

233. As a direct and proximate result of the Defendants' actions and entering into and implementing the above-referenced agreements, the Plaintiffs have been damaged and will continue to be damaged in numerous respects, including, but not limited to, by being deprived of the rights stated above; having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; and suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR A SECOND CAUSE OF ACTION

ULTRA VIRES; VOID AB INITIO

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

235. The Public-Private Partnership Agreement and other agreements referenced herein among and between the Town, the RDC and Applegate & Co., and other agreements and actions referenced herein, are ultra vires, invalid and void ab initio.

236. As a direct and proximate result of the Defendants entering into and implementing the above-referenced invalid agreements, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR A THIRD CAUSE OF ACTION

VIOLATIONS OF SOUTH CAROLINA COMMUNITY DEVELOPMENT LAW

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

238. Actions by the Defendants referenced herein violate provisions of the South Carolina Community Development Law.

239. As a direct and proximate result of the Defendants violating the South Carolina Community Development Law, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR A FOURTH CAUSE OF ACTION

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

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

241. Actions by the Defendants referenced herein violate provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.

242. As a direct and proximate result of the Defendants violating the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR A FIFTH CAUSE OF ACTION

VIOLATIONS OF SOUTH CAROLINA FREEDOM OF INFORMATION ACT

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

244. 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. Failing and refusing to disclose and produce the fiscal impact and the cost-benefit analysis of the Hotel project required by S.C. Code Ann. § 30-4-55;
- B. Giving no notice or inadequate notice of meetings of public bodies;
- C. Excessive and unjustified use of executive sessions;
- D. Failing to provide minutes of meetings within a reasonable time;
- E. Failing to create and implement a FOIA research and copying cost-charging formula that is fair and not for profit;
- F. Failing without justification to produce documents for inspection and copies of documents;
- G. Holding secret "workshops" and meetings for the purpose of evading public knowledge, viewing and hearing of, and participation in, meetings required to be open to the public;
- H. Making and implementing procedures for meetings in violation of the general laws of South Carolina with regard to freedom of information, in violation of Section 5-7-520(c);
- I. Failing to adopt rules of organizational procedure for the RDC and to keep a public record of its resolutions, findings and determinations, as required by S.C. Code Ann. § 6-29-360(B);
- J. Denying public access to meetings, meeting minutes and meeting agendas;
- K. Charging excessive reproduction fees, for the purpose and with the effect of discouraging production of documents;

- L. Refusing to identify redacted information and withheld documents in response to FOIA requests denied;
- M. Failing to respond within 15 working days, or at all, to FOIA requests;
- N. Polling of Town Council members during executive sessions to determine their vote or how they would vote, resulting in quick and prearranged votes following executive sessions;
- O. Removing RDC records prior to public inspection of those records;
- P. Failure and refusal to allow inspection of public records and requiring, instead, that a written FOIA request be submitted followed by a fifteen-day delay in answering the FOIA request and the requirement that excessive and unjustified costs be charged for copies of documents that should be allowed to be inspected without charge or delay;
- Q. Holding a secret, non-public meeting of all BAR members on February 2, 2017, without having provided prior notice or an agenda of the meeting, allowing the public to attend the meeting, or proper minutes of the meeting;
- R. Holding secret, non-public meetings of the Master Plan Advisory Committee and of other committees without having provided prior notice or an agenda of the meetings, allowing the public to attend the meetings, or minutes of the meetings; and
- S. Writing and approving minutes of meetings containing false and erroneous statements and that are incomplete.

245. As a direct and proximate result of the Defendants violating S.C. Code Ann. § 30-4-10, *et seq.*, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, for an improper purpose; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR A SIXTH CAUSE OF ACTION
VIOLATIONS OF S.C. CODE ANN. § 6-1-730

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

247. Actions by the Defendants referenced herein violate S.C. Code Ann. § 6-1-730.

248. As a direct and proximate result of the Defendants violating S.C. Code Ann. § 6-1-570, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, for an improper purpose; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above

**FOR A SEVENTH CAUSE OF ACTION
VIOLATIONS OF STATE AND TOWN PROCUREMENT LAWS**

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

250. The Town of Summerville violated S.C. Code Sec. 11-35-5 by failing to adopt procedures embodying sound principles of appropriately competitive procurement by means of the Request for Proposal method.

251. The Town of Summerville violated its own Purchasing Ordinance by using a procurement method, the Request for Proposal method, that was not authorized in the Purchasing Ordinance.

252. Because the use of the RFP method of procurement was not authorized in the Purchasing Ordinance, the PPPA, dated as of July 9, 2014, is contrary to the Purchasing Ordinance, illegal, invalid, *ultra vires* and void *ab initio*.

253. The Town's acceptance of a non-responsive bid from Applegate & Co. violated Section 2-323(c) (12) of its Purchasing Ordinance and Sec 2-323 (c)(8) of its Purchasing

Ordinance, which states "The invitation for bids shall set for the evaluation criteria to be used.

No criteria may be used in the bid evaluation that is not set forth in the invitation for bids."

(Emphasis added.)

254. The Town's failure to have rejected the proposal submitted by Applegate & Co. because it was non-responsive to the RFP violated Section 2-323(c)(8), (c) (12) of the Town's Purchasing Ordinance; S.C. Code Ann. Sec. 11-35-1520(13); and Regulation 19-445.2070(A) thereunder.

255. By depriving itself, the Plaintiffs and other citizens and taxpayers, as well as other bidders, of the benefits of free and open competition, the Town violated Sections 2-321(e), 2-322(c), 2323(c) (12) and (17) of Summerville's Purchasing Ordinance which require competitive procurement.

256. Because the Town's acceptance of Applegate's non-responsive proposal violated Summerville's Purchasing Ordinance, the PPPA is contrary to the Purchasing Ordinance, illegal, invalid, *ultra vires* and void *ab initio*.

257. The anti-competitive, collusive, bid-rigging and/or fraudulent conduct described above violates Summerville's Purchasing Ordinance Section 2-321(e), Section 2-322 and subsection (c) thereof, and Section 2-323(c) (17) which require competitive procurement.

258. Because the anti-competitive conduct described above violates Summerville's Purchasing Ordinance, the PPPA is contrary to the Ordinance, illegal, invalid, *ultra vires* and void *ab initio*.

259. As a direct and proximate result of the Defendants violations described above, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, for an improper purpose; by suffering nominal and

actual damages, as proven at trial; and by having to incur additional harm and losses, as described herein.

FOR AN EIGHTH CAUSE OF ACTION
VIOLATIONS OF SUMMERVILLE'S
ORDINANCES, RULES, REGULATIONS AND CUSTOMS

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

261. Actions by the Defendants referenced herein violate ordinances, rules, regulations and customs of the Town of Summerville, including but not limited to the Summerville Historic Preservation Ordinance, Article IV, Sec. 32-171, *et. seq.*; the Summerville Planning Commission Ordinance, Article II, Sec. 20-31, *et. seq.*; and the Summerville Tree Protection Ordinance, Article VIII, Sec. 32-324.

262. As a direct and proximate result of the Defendants violating ordinances, rules, regulations and customs of the Town of Summerville, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR AN NINTH CAUSE OF ACTION
VIOLATIONS OF FIRST AMENDMENT RIGHTS

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

264. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, the Plaintiffs and other taxpayers and members of the public, of their rights of free association, to petition for redress of grievances, and of speech and expression protected by the First Amendment of the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;
- B. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- C. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, charging excessively for Town responses to the Freedom of Information Act and conducting business in secret and non-transparently;
- D. The BAR gave the developer much more time to promote than the BAR gave to Summerville residents to oppose the boutique hotel project; members of the public were restricted to 3 minutes but the developer was given more than 30 minutes to speak; citizens opposing the project, but not the developer and others supporting the project, were rudely interrupted, prohibited from continuing to speak after 3 minutes and told by the BAR that their time to speak was expired and was repetitive;
- E. The BAR restricted what opponents of the project were allowed to say; the BAR limited public comments to design elements only; comments about architectural context (e.g., the project is totally unrelated to the surrounding buildings), an important consideration in the conceptual state, were dismissed by the BAR Chairman;
- F. The BAR intimidated opponents of the project with threats of removal from the BAR's proceeding by the police, who, project opponents were told by the BAR, were standing at the back of the BAR meeting room available to remove BAR opponents upon request by the BAR Chairman;
- G. As described in the First Cause of Action above;

- H. Sending Plaintiff Hutson an intimidating letter falsely accusing him of having painted his house contrary to law and requiring him to provide information to and attend a meeting of the BAR, based on nothing more than false hearsay in an anonymous telephone call and after a Town inspection had determined there was insufficient evidence of a violation;
- I. Falsely accusing a Town citizen residing next to the homes of two Plaintiffs of violating Town code laws, and obtaining by abusive intimidating demands entry into that citizen's home without a warrant or just cause;
- J. Warning a Town resident that whoever sues the Town may be counter-sued back by the Town; and
- K. Committing the acts described in Paragraphs 229-230 above.

265. As a direct and proximate result of the Defendants violating the First Amendment rights of Plaintiffs, and others, those Plaintiffs have been damaged and will continue to be damaged by having their First Amendment rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR A TENTH CAUSE OF ACTION

VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT

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

267. Plaintiffs have liberty interests and property interests in the properties they own at or near the location of the boutique hotel project or in the Town of Summerville, and in keeping their taxes as low as possible. Defendants violated S.C. Code Ann. § 6-29-760(D) by rezoning the property of Defendant Croft as described above. S.C. Code Ann. § 6-29-760(D) and the new Town noise ordinance are arbitrary, unreasonable, capricious and irrational, and violate substantive due process, in violation of the United States Constitution. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, Plaintiffs, and other taxpayers and members of the public, of their rights to substantive and procedural due process under the Fifth and Fourteenth Amendment to the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Orchestrating an "informational meeting" (not a public hearing) on November 12, 2013, at which Defendant Collins arranged for individuals, including those whose organizations receive monetary benefits from the Town, to speak for the project, and determined who would speak and when about the project, so as to maximize comments favorable to the project and minimize comments opposing the project, as described above;
- B. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;
- C. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- D. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, charging for Town responses to the Freedom of Information Act and conducting business in secret and non-transparently;
- E. Hosting and lobbying members of the BAR, whom the Mayor, with the approval of Town Council, appoints and can remove and replace, at his home where he serves them food and drinks, to curry favor with them and to influence and attempt to influence them to make decisions favorable to the boutique hotel project;

- F. Withholding information from the Plaintiffs and the public, including but not limited to charging citizens large sums of money to obtain information about the boutique hotel project pursuant to FOIA, while simultaneously signing a contract to pay the Developer up to \$400,000 to finance the costs of advancing the project about which citizens sought information pursuant to FOIA;
- G. Misleading Plaintiffs and the public, including but not limited to using misnomers; failing to provide timely, clear and understandable rules, notices of proposed zoning changes, scheduled meetings, hearings and other events and actions; and obfuscating the true nature of the project by calling it, first, an economic development project and, later, a "boutique hotel," both of which are misnomers;
- H. Pushing the project to fulfill a campaign promise to and for Defendant Collins' real estate developer friends and supporters, instead of following the priorities established by the Town's Comprehensive Plan or necessary to ensure the public health and safety;
- I. Violating numerous State Constitutional provisions and statutes, and numerous Town laws, ordinances and customs, as stated herein;
- J. Publishing or allowing to be published unauthorized, false and misleading statements in the newspaper about the availability of condominiums that have not been approved by the BAR and other governmental entities;
- K. Illegally using the Master Plan Advisory Committee to recommend, advise, help create and promote the Town's Master Plan or Vision Plan, which became the Town's new Comprehensive Plan and the RDC's Redevelopment Plan;
- L. Defendants have not complied with the provisions of the Community Development Law required before the RDC can enter into a contract or promote a redevelopment plan and the redevelopment project that are the subjects of the Partnership Agreement;
- M. The RDC was required but failed to publish a Request for Proposal; instead, the Town published the Request for Proposal;
- N. Defendants have not complied with the provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and with other applicable laws, ordinances, rules and regulations, including but not limited to having violated S.C. Code Ann. § 6-29-540, in part because Defendants have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the

Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;

- O. The Agreements have not been signed by the Secretary of the RDC, as required by SC Code Section 31-10-90(14);
- P. When the Partnership Agreement and the contracts attached as exhibits thereto were signed, the Dorchester, LLC did not exist;
- Q. The Partnership Agreement was made before all regulatory approvals were given and which may never be given; in fact, the BAR has rejected the conceptual illustrations attached as Exhibit F to the Partnership Agreement, which is the only project allowed by and that is the subject matter of the Partnership Agreement;
- R. The RDC did not validly exist at the time the Partnership Agreement was signed by the RDC;
- S. The RDC did not validly have officers and by-laws at the time the Partnership Agreement was signed by the Chairman of the RDC;
- T. The agreements require the Town and the RDC to spend tax money in violation of S.C. Code Ann. § 6-1-530;
- U. Upon information and belief, Defendant Town of Summerville selected Defendant Applegate & Co. as the winning bid for the boutique hotel project as a result of anti-competitive collusion, bid-rigging and fraud;
- V. The Partnership between the Town, the RDC and Defendant Applegate & Co. was created as the result of illegal anti-competitive collusion between those parties and other Defendants with respect to the bidding pursuant to the RFP;
- W. The Town's failure to republish the Request for Proposal after receiving a non-responsive bid from Defendant Applegate & Co. deprived the Town, Plaintiffs and other taxpayers of Summerville of the benefits of free and open competition; and
- X. Essential terms of the agreements were missing at the time each respective agreement was executed, and in some cases, continue to be missing; the parties did not have a meeting of the minds by agreeing on essential terms of the contract.
- Y. The RDC has issued no Request for Proposals to redevelop the Town's property with the boutique hotel project, and the other requirements of S.C. Code Section 31-10-110, including the requirement to advertise for bids by public notice published once a week for two consecutive weeks, have not been followed; the RFP issued by the Town is not a valid substitute for the RFP required of the RDC by the Community Development Law; the RDC cannot participate in the project

until and unless the RDC has issued a valid RFP for the project and otherwise has complied with SC Code Section 31-10-110;

- Z. If a valid RFP was issued for the project, the RFP intentionally did not include a request for condominiums and, therefore, allowing condominiums would violate the RFP and the Community Development Law;
- AA. The RDC has not prepared or caused to be prepared, and has not recommended, redevelopment plans for a redevelopment project to the Town of Summerville; instead, the Town has prepared redevelopment plans, and the RDC has purported to adopt and implement the Town's redevelopment plans and project, in violation of SC Code Section 31-10-90(4) and other provisions of the Community Development Act;
- BB. The RDC has not entered into contracts "in accordance with the redevelopment plan" created by the RDC as required by SC Code Section 31-10-90(6) and other provisions of the Community Development Act;
- CC. The location of the boutique hotel project is not a blighted area or a conservation area within the meaning of the Community Development Law; Defendants deliberately caused, and conspired to cause, property owned by the Town at the location of the project to not be maintained to contrive a false claim that the area was blighted or a conservation area, in order to attempt to justify creating the RDC and the boutique hotel project as being necessary and permissible;
- DD. The officers and by-laws of the RDC have never been chosen or adopted by the RDC at a properly noticed meeting or at a valid meeting of the RDC;
- EE. The RDC has purported to enter into the Partnership Agreement and other agreements in an invalid manner, due to the agreements not being signed by anyone as the Secretary or the Assistant Secretary of the RDC;
- FF. The Town did not publish a notice of intent to consider passage of an ordinance to create a Redevelopment commission, as required by SC Code Section 31-10-30(a);
- GG. Required public notice was not published by the RDC before the RDC met and conducted business;
- HH. The RDC did not follow the proper procedures for creating a redevelopment plan, as defined by SC Code Section 31-10-20(15);
- II. The Defendants who are commissioners of the RDC have failed to exercise proper control and supervision over contracts signed for the RDC by Defendant Collins as chairman of the RDC; instead, the commissioners have unlawfully delegated "blank check" authority to Defendant Collins to negotiate the terms of and to

execute contracts for the RDC, in violation of the South Carolina Constitution and S.C. Code Ann. § 31-10-60, just as those commissioners gave Defendant Collins "blank check" authority to negotiate the terms and to execute contracts for the Town in Defendant Collin's capacity as Mayor of Summerville;

- JJ. Upon information and belief, the chairman and some commissioners of the RDC have direct or indirect interests in violation of SC Code Section 31-10-70;
- KK. The RDC has not made or caused to be made any surveys, studies or plans necessary to carry out the purposes of the Community Development Law or made or caused to be made a contract with anyone to make those surveys, studies or plans, as required by SC Code Section 31-10-90(9);
- LL. The RDC unlawfully has obligated itself in the Partnership Agreement to acquire property from the Town for the boutique hotel project, when the Town has not "approved the redevelopment plan as hereinafter prescribed," as required by SC Code Section 31-10-100(b), because the RDC has not created a redevelopment plan as required by the Community Development Law that could be approved by the Town;
- MM. The RDC has not created a redevelopment plan as required by the Community Development Law that contains any of the requirements in SC Code Section 31-10-100(c); instead, the Town hired third parties to create a "Vision Plan" and the RDC purported to adopt that "Vision Plan" as the Town's redevelopment plan;
- NN. The RDC did not hold a valid public hearing prior to its final adoption of the RDC's Redevelopment Plan, and did not properly notice that public hearing, in violation of SC Code Section 31-10-100(d); instead, the RDC purported to adopt the Town's "Vision Plan," in violation of the Community Development Law;
- OO. The RDC violated all of the provisions of SC Code Section 31-10-100(e), including but not limited to the RDC's not submitting to the Town a redevelopment plan; the RDC's not doing the following: "[p]rior to recommending a redevelopment plan to the [Town] for approval:" "utilize the local private planning, financing, and financial services to the greatest extent possible . . . ;" and the RDC's not considering whether adequate provision for traffic and vehicular parking had been made;
- PP. The Town did not "approve, amend or reject the redevelopment plan as submitted" to the Town by the RDC, as required by SC Code Section 31-10-100(f), because the RDC did not submit a redevelopment plan to the Town;
- QQ. The RDC has obligated itself in the Partnership Agreement to acquire property, has executed contracts and "has taken other actions necessary to carry out the" boutique hotel plan, without having first created a redevelopment plan and having

obtained Town approval of the RDC's development plan, in violation of SC Code Section 31-10-100(g);

- RR. The RDC has contracted for it to transfer real property to the Developer in violation of the requirements in SC Code Section 31-10-110(b) that any sale or transfer of real property to the Developer from the RDC be "in accordance with the redevelopment plan" and that any "sale, exchange, or other transfer, and any agreement relating thereto, be made only after the approval of the redevelopment plan by the Town and after public notice and award as specified in subsection (c) of this section"; the RDC has not created a redevelopment plan, has not obtained the Town's approval of a redevelopment plan and has not complied with any of the request for proposal and notice of request for proposal requirements of SC Code Section 31-10-110(b) and (c);
- SS. The Partnership Agreement requires that the Town issue bonds to generate proceeds to finance the boutique hotel project after passing those proceeds through the RDC; that scheme violates the intention and requirements of the Community Development Law that redevelopment pursuant to the Community Development Law be financed by bonds issued by the RDC in accordance with the requirements of the Community Development Law, including that the bonds be repaid and the expenses of a redevelopment project be paid only from the profits of the project financed by the RDC;
- TT. Plaintiff Faye Croft was not provided sufficient or required notice of the Town's intention to rezone property at the location where the boutique hotel project is intended to be built, in violation of SC Code Section 6-29-760;
- UU. Defendants have violated S.C. Code Ann. § 6-29-540, in part because the Town and the RDC have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
- VV. Opponents of the boutique hotel project have not been allowed to participate in mediation or other good faith negotiations with the Defendants to attempt to resolve their differences regarding the boutique hotel project;
- WW. The Town and the RDC have failed to appear before the BAR as required by Sec. 32-176 of the Town of Summerville's ordinances, which states in part as follows:

"Sec. 32-176. - Meetings, rules and records.

All governmental agencies . . . shall be required to go before the board of architectural review in accordance with this article prior to initiating any changes covered by this article.” (Emphasis added.)

- XX.. The Developer, the RDC and the Town have never submitted an application to the BAR, including never having submitted the required completed application form, required as a prerequisite to the BAR’s considering the boutique hotel project;
- YY. Defendant BAR has exhibited bias in favor of the developer and the project and violated applicable laws, including State statutes; Town ordinances, rules, regulations and customs; due process, equal protection and other provisions of the United States and South Carolina Constitutions, resulting in the BAR not performing its duties to safeguard the public interests, in numerous respects, including but not limited to, the following:
- ZZ. BAR members wine and dine with the Mayor at the Mayor’s home and otherwise engaged in impermissible conflicts of interest;
- AAA. The BAR posted a sketch of the proposed design of the boutique hotel project only 24 hours in advance of meetings, publishing inadequate information and allowing insufficient time for the public to analyze and to be able to respond to the design at BAR meetings;
- BBB. The BAR did not require and did not publish applications of developers prior to allowing a developer to present a project to the BAR;
- CCC. The BAR failed to have and to publish clear and adequate procedures;
- DDD. The public has not been allowed an opportunity to examine BAR minutes timely to verify their scope and content and to correct any errors in those minutes;
- EEE. The BAR has failed to inform members of the public of the BAR’s rights to lower the height and to reduce the scale and mass of the boutique hotel project, and to deny the developers a permit for the boutique hotel project;
- FFF. BAR members do not understand and have not received sufficient training about their duties, options and rights; one BAR member incorrectly has informed the public that he believes the BAR has an obligation to approve the boutique hotel project eventually;
- GGG. The BAR has not informed the public of its right to appeal BAR decisions;
- HHH. Required notices were not provided to required parties, the public or the Plaintiffs, and, if they were provided, they were so insufficient and deficient as to be meaningless, invalid and unlawful;

- III. On information and belief, persons involved in the boutique hotel project may have impermissible conflicts of interest;
- III. Various meetings, including alleged public hearings, regarding the boutique hotel project were invalid and sham proceedings;
- KKK. As described in the First Cause of Action above; and
- LLL. As described in Paragraphs 229-230 above.

268. As a direct and proximate result of the Defendants' violations of the substantive and procedural due process rights of Plaintiffs, and others, and other actions described herein, those Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened; and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay taxes for an unlawful purpose; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR ELEVENTH CAUSE OF ACTION
VIOLATIONS OF EQUAL PROTECTION
RIGHTS UNDER THE FOURTEENTH AMENDMENT

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

270. Plaintiffs have property and liberty interests in the properties they own at or near the location of the boutique Hotel project or in the Town of Summerville, and in keeping their taxes as low as possible. Actions by certain governmental Defendants referenced herein have

deprived, and will continue to deprive, Plaintiffs and other taxpayers and members of the public, of their rights to the equal protection of the laws under the Fourteenth Amendment to the United States Constitution, in numerous respects, including but not limited to the following:

A. Giving Applegate & Co., Arthur F. Applegate and others insider information not provided to the Plaintiffs helping Defendants Applegate & Co., Arthur F. Applegate and others to advance the boutique hotel project to the detriment of the Defendants;

B. Giving Applegate & Co., Arthur F. Applegate and others more time and latitude to speak for the boutique hotel project that Defendants Croft, Croft Trust, Greene and Harbeson, and others, were given to speak against the boutique Hotel project;

C. Unreasonably discriminating against the Plaintiffs by giving Applegate & Co., Arthur F. Applegate and others more favorable treatments under the law than the Plaintiffs and others were given;

D. As described in the First Cause of Action above; and

E. As described in Paragraphs 229-230 above.

271. As a direct and proximate result of the Defendants' violations of the equal protection rights of Plaintiffs and others, and other actions described herein, the Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and

actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR A TWELFTH CAUSE OF ACTION

TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION IN VIOLATION OF THE FIFTH AMENDMENT

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

273. Plaintiffs have suffered and will suffer a taking of their private property without just compensation by, *inter alia*, rezoning, having the area on or near which their property is located declared to be a blighted or a conservation area, allowing construction noise to disturb the quiet enjoyment of their property and other actions by Defendants.

274. As a direct and proximate result of the Defendants' violations of the rights of Plaintiffs and others, and other actions described herein, the Plaintiffs have been damaged and will continue to be damaged by having their Fifth Amendment property and liberty rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

IV. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

A. Grant a Declaratory Judgment declaring that:

- (1) The Town of Summerville violated Article X, §§ 5 and 11 of the South Carolina Constitution when it authorized the spending of public funds, and spent public funds, for a privately-owned hotel project;
- (2) The Town of Summerville violated Article X, §§ 5 and 11 of the South Carolina Constitution when it entered into a contract indemnifying private interests against pecuniary losses;
- (3) The Town of Summerville expended public funds for private purposes and pledged the State's full faith and credit for private purposes in violation of the South Carolina Constitution, when it entered into and implemented the PPPA with Applegate;
- (4) The entire Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the Constitution of the State of South Carolina;
- (5) The entire Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, are and always have been ultra vires, unlawful, null and void ab initio, having no and never having had any force or effect;
- (6) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the South Carolina Community Development Law;
- (7) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the South Carolina Local Government Comprehensive Planning Enabling Act of 1994;
- (8) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate procurement and other ordinances, rules, regulations and customs of the Town of Summerville;
- (9) The Request for Proposal published by the Town regarding the boutique hotel project, referenced above, violates state and Town procurement and other laws and, therefore, is null, void ab initio and unenforceable;
- (10) The award by the Town and other Defendants of a contract in response to the Request for Proposal regarding the boutique hotel project, referenced above, is illegal, null, void and unenforceable;
- (11) Defendants have violated the South Carolina Constitution;

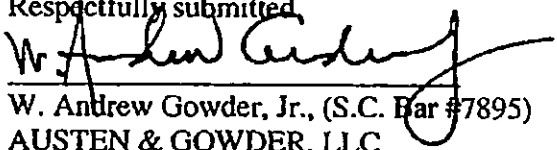
- (12) Defendants have violated the United States Constitution;
- (13) Defendants have violated the South Carolina Freedom of Information Act;
- (14) Defendants have violated the Community Development Law;
- (15) Defendants have violated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994;
- (16) Defendants have violated state and Town procurement laws; and
- (17) No blight or conservation area exists at the location of the Hotel project.

B. Grant a Permanent Injunction Order immediately 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:

- (1) Implementing in any way, including paying, directly or indirectly, any money pursuant to, the Public-Private Partnership Agreement, any provision thereof, and any agreement attached thereto or associated therewith;
- (2) Implementing in any way, directly or indirectly, the award by the Town of Summerville and other Defendants of a contract in response to the Request for Proposal regarding the boutique hotel project, referenced above;
- (3) Violating the South Carolina Community Development Law;
- (4) Violating the South Carolina Government Comprehensive Planning Enabling Act of 1994;
- (5) Violating the South Carolina Freedom of Information Act;
- (6) Violating procurement and ordinances, rules, regulations and customs of the Town of Summerville applicable to development;
- (7) Violating the First Amendment rights of the Plaintiffs;
- (8) Violating the substantive and procedural due process rights of the Plaintiffs guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution;

- (9) Violating the equal protection rights of the Plaintiffs guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution; and
 - (10) Any and all other such acts as this Court deems appropriate for injunctive relief.
- D. Grant a writ of mandamus requiring:
- (1) That the RDC allow the public to inspect all books and records of the RDC, as required by Sections 31-10-160 and 30-4-55 of the Code of Laws of South Carolina; and
 - (2) That the Town and all its subdivisions, agencies and organizations promulgate and implement rules and regulations as required by law, and otherwise to perform mandatory duties required by law;
- E. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff, the Freedom of Information Act and any other applicable law; and
- F. To grant such other and further relief as the Court deems just and proper.

Respectfully submitted,


W. Andrew Gowder, Jr., (S.C. Bar #7895)
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Counsel for Plaintiffs

JURY TRIAL DEMANDED

Certificate of Service

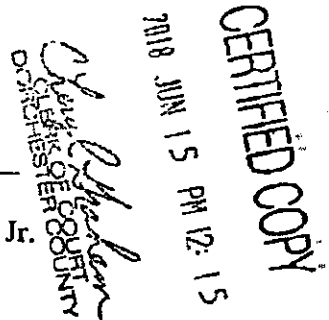
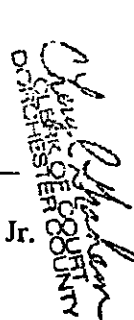
The undersigned hereby certifies that a true copy of the Second Amended Complaint has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 14th day of June, 2018 to:

Tim Domin
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-8144

G.W. Parker
200 S. Main Street
Summerville, SC 29483



Rachel Fete
Assistant to W. Andrew Gowder, Jr.


CERTIFIED COPY
2018 JUN 15 PM 12:15

W. Andrew Gowder, Jr.
CLERK OF COURT
CHARLESTON COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; Peter M. Gorman; James Stephen Greene, Jr.; Brian Peachey; Summerville Preservation Society; and Dorchester County Taxpayers Association,

Plaintiffs,

vs.

Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; Town of Summerville Board of Architectural Review; Applegate & Co.; The Dorchester, LLC; and Arthur H. Applegate,

Defendants.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-10-7739

DEFENDANTS', TOWN OF SUMMERVILLE, WILLIAM C. COLLINS, TERRY JENKINS, AARON BROWN, WALTER BAILEY, WILLIAM MCINTOSH, KIMA GARTEN-SCHMIDT, ROBERT JACKSON, TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION, TOWN OF SUMMERVILLE PLANNING COMMISSION AND TOWN OF SUMMERVILLE BOARD OF ARCHITECTURAL REVIEW, ANSWER TO PLAINTIFFS' COMPLAINT

FILED
2015 JAN 29 PM 3:09
JULIE L. HESTER
CLERK OF COURT
BY

On behalf of the Town of Summerville, its duly elected Mayor and City Council, its Board of Architectural Review, its Planning Commission, and the Summerville Redevelopment Corporation, the Defendants responding to the Complaint of the Plaintiffs would state as follows collectively as indicated and separately as indicated respond as follows:

1. That the allegations of paragraph 1 of the Complaint are conclusions of law, which need not be admitted or denied. However, the Defendants deny that the Plaintiffs have brought forth any proper reasons to halt the project.

2. That the allegations of paragraph 2 of the Complaint are conclusions of law, which need not be admitted or denied. However, the Defendants deny that the Plaintiffs have brought forth any proper reasons to halt the project.

3. That the allegations of paragraph 3 of the Complaint are conclusions of law, which need not be admitted or denied. However, the Defendants deny that the Plaintiffs have brought forth any proper reasons to halt the project.

4. The Defendants deny the allegations contained in paragraph 4 of the Complaint.

5. In response to paragraph 5 of the Complaint and upon information and belief, Croft may have some connection to a trust which owns a rental property at 214 West Richardson Avenue which is across the street from a portion of the project. However, she does not live at the location and upon information and belief, lives outside of the Town of Summerville.

6. The Defendants lack sufficient information to form a belief as to the allegations of paragraph 6 of the Complaint and accordingly denies the same.

7. In response to paragraph 7 of the Complaint and upon information and belief, the Summerville Preservation Society is a non profit entity comprised of members, including one or more of the defendants, upon information and belief, the Summerville Preservation Society members have not voted to undertake this legal action.

8. In response to paragraph 8 of the Complaint and upon information and belief, the
Dorchester County Taxpayers Association is a non-profit corporation. That these
Defendants lack sufficient information as to the remaining allegations of paragraph 8.

9. The Defendants admit this Plaintiff lives in the Town, but deny the remaining
allegations contained in paragraph 9 of the Complaint.

10. The Defendants admit this Plaintiff lives in the Town, but deny the remaining
allegations contained in paragraph 10 of the Complaint.

11. That the Defendants, upon information and belief, admit that Mr. Gorman is a
resident and taxpayer of the Town of Summerville, but denies that there is any entity
called the East Historic District Civic Association filed with the South Carolina Secretary
of State or known to possess any status from the Internal Revenue Service.

12. The Defendants, upon information and belief, admit this Plaintiff is a resident of
the Town, but deny the remaining allegations contained in paragraph 12 of the
Complaint.

13. In response to paragraph 13 of the Complaint and upon information and belief,
Preacher is a resident of Summerville, but these Defendants deny he has standing to
pursue one or more causes of action alleged.

14. The Defendants deny the allegations contained in paragraph 14 of the
Complaint.

15. The Defendants deny the allegations contained in paragraph 15 of the
Complaint.

16. The Defendants deny the allegations contained in paragraph 16 of the
Complaint.

17. The Defendants deny the allegations contained in paragraph 17 of the Complaint.

18. The Defendants admit the allegations contained in paragraph 18 of the Complaint.

19. In response to paragraph 19 of the Complaint, the Town of Summerville Redevelopment Corporation admits it is an entity recognized by the South Carolina Secretary of State and formed pursuant to South Carolina Code § 31-10-10 et seq.

20. The Defendants admit the allegations contained in paragraph 20 of the Complaint.

21. The Defendants admit the allegations contained in paragraph 21 of the Complaint.

22. The Defendants admit the allegations contained in paragraph 22 of the Complaint.

23. The Defendants admit the allegations contained in paragraph 23 of the Complaint.

24. The Defendants admit the allegations contained in paragraph 24 of the Complaint.

25. The Defendants admit the allegations contained in paragraph 25 of the Complaint.

26. The Defendants admit the allegations contained in paragraph 26 of the Complaint.

27. The Defendants admit the allegations contained in paragraph 27 of the Complaint.

28. That the allegations of paragraph 28 of the Complaint are conclusions of law which need not be admitted or denied. If said response is required, the same are denied.

29. The Defendants admit the allegations contained in paragraph 29 of the Complaint.

30. The Defendants admit the allegations contained in paragraph 30 of the Complaint.

31. In response to paragraph 31 of the Complaint, these Defendants admit the Planning Commission is an organization created pursuant to state law and Town ordinance.

32. In response to paragraph 32 of the Complaint, these Defendants admit the Board of Architectural Review was created pursuant to state law and Town ordinance.

33. That these Defendants admit that their activities are governed by state, federal and local law, but denies paragraph 33 as stated.

34. That the allegations of paragraphs 34-70 are allegations of law which need not be admitted or denied. To the extent a response is required, the Defendants would crave reference to the full text of the various provisions of the South Carolina Constitutional and statutes.

35. The Defendants deny the allegations contained in paragraph 71 of the Complaint.

36. In response to paragraph 72 of the Complaint, the Defendants admit that a "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT" was signed on July 9, 2014, after an appropriate and lawful vote by the elected City Council and the newly created

Summerville Redevelopment Corporation. The agreement sets for reasonable terms which will facilitate a boutique hotel with a town-owned conference/meeting space and town-owned parking garage.

37. In response to paragraph 73 of the Complaint, the Defendants would crave reference to the terms of the "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT" and attachment in responding to allegations 73-100.

38. In response to paragraph 101 of the Complaint and upon information and belief, The Dorchester, LLC had filed its paperwork with the Secretary of State and was, at a minimum a defacto corporation at the time the paperwork was signed.

39. In response to paragraph 102 of the Complaint, the Defendants deny the allegations of paragraph 102 as stated because the RDC has filed for 501(c)(4) with the IRS and is merely awaiting paperwork.

40. That the defendants would crave reference to the terms of the "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT" and attachment in responding to allegations 103-118 of the Complaint.

41. In response to paragraph 119 of the Complaint, Defendant Collins admits that when he ran for Mayor in 2011, he ran on a platform which included, among other ideas, encouraging a boutique hotel to open in downtown Summerville. Since that time, he admits he has worked as Mayor to encourage construction of such a hotel as well as to meet the need for rentable meeting space suitable for business events as well as social event such as weddings, anniversaries and the like. He denies the remaining allegations of paragraph 119.

42. That the Defendants admit only that they have participated in lawful executive sessions and any further allegations of paragraph 120 are denied.

43. In response to paragraph 121 of the Complaint, Defendant Collins admits that he consulted with several different developers in an effort to fulfill a campaign promise to encourage the establishment of a boutique hotel in downtown Summerville. That these discussions included the land owned by the Town of Summerville near the intersection of West Richardson and Cedar.

44. That the Defendants deny the allegations to paragraph 122. The Lawrence Group was hired to assist gathering public input and to help prepare a "Vision Plan" to assist in making wise planning decisions in many areas of the Town of Summerville. The work of the Lawrence Group included planning ideas related to infrastructure, recreation, bike and pedestrian access, and included ideas for numerous areas including the new Sheep Island Parkway area, the Oakbrook area, Hutchinson Square, the Sawmill Branch Trail, and downtown. The Vision Plan would later win the "Outstanding Planning Project" award for a large jurisdiction from the South Carolina Chapter of the American Planning Association (SCAPA).

45. In response to paragraph 123 of the Complaint, the Town of Summerville admits that it did publish a request for proposals in the Post and Courier soliciting proposals from developers. The Town craves reference to the exact language of the RFP which did not expressly request nor prohibit residential units in conjunction with a boutique hotel.

46. That the Town of Summerville admits that only one proposal was submitted and it was by Defendant Applegate & Co. That all remaining allegations of paragraph 124 are denied.

47. In response to paragraph 125 of the Complaint, these Defendants lack sufficient information to admit or deny the mental impressions of Applegate. However, it denies that there was any illegal activity in regards to the solicitation of bids.

48. In response to paragraph 126 of the Complaint, the terms of the Applegate & Co. submission speak for themselves and reference is made to the provisions of that document.

49. That the defendants deny the allegations of paragraph 127 of the Complaint.

50. That the Town of Summerville admits that it undertook various efforts to include introducing the first reading of certain ordinances and to lawfully receive legal advice. Any remaining allegation of paragraph 128 is denied.

51. That the Town of Summerville did have a properly noticed City Council meeting on May 28, 2014 at which the Summerville Redevelopment Corporation was created. Any remaining allegations of paragraph 129 are denied.

52. In response to paragraph 130 of the Complaint, the Town of Summerville held a properly noticed meeting to discuss the Vision Plan. A large group of citizens attended and the document was made available on the Town's website www.summerville.sc.us.

53. In response to paragraph 131 of the Complaint, the Planning Commission's notice of public hearing was on June 1, 2014 and provided notice to the public that the Town would hold a hearing on the Vision Plan and the proposal to adopt the Vision Plan as an amendment to the Comprehensive Plan. The Vision Plan dealt with a variety of

areas and concerns including transportation, infra-structure, economic development in a variety of areas of the Town including Sheep Island Road, Oakbrook and Downtown. The Vision Plan did contain numerous references to a boutique hotel as an advantageous development opportunity for downtown Summerville and covered several maps showing a "Boutique Hotel" and "Mixed Use Boutique Hotel Project" for this site.

54. In response to paragraph 132 of the Complaint, the Vision Plan was posted to the Town's website as a draft. The Vision Plan was listed as a draft until it was accepted by City Council by way of an ordinance adopting the Vision Plan. It was also available for inspection at Town Hall as specified in the notice.

55. The notice indicated the documents were available for inspection at Town Hall. That Defendants admit that on June 11, 2014 Town Council gave first reading to an ordinance to adopt the Vision Plan as an update to the Comprehensive Plan. The Defendants deny this was confusing, inarticulate, insufficient, or inadequate to inform the public. That the Defendants deny that there was an inadequate opportunity to review and understand the Vision Plan. That Defendants deny the remaining allegations of paragraph 133.

56. In response to paragraph 134 of the Complaint, the defendants admit the South Carolina Secretary of State accepted the paperwork submitted to create the Summerville Redevelopment Corporation and that the existence and validity of the entity is conclusive upon the issuance of such certificate per state law.

57. The Defendants deny the allegations contained in paragraph 135 of the Complaint.

58. The Defendants deny the allegations contained in paragraph 136 of the Complaint.

59. The Defendants deny the allegations contained in paragraph 137 of the Complaint.

60. The Defendants admit what is stated in the minutes of the City Council meeting and that RDC passed a resolution adopting a redevelopment plan which includes the Vision Plan. Defendants deny the remaining allegations of paragraph 138.

61. The Defendants deny the allegations contained in paragraph 139 of the Complaint.

62. That in response to paragraph 140 of the Complaint, language relating to the residential homes was removed from the Vision Plan. This referenced housing allowed by zoning, not any new units. Therefore, the deletion of this language did not alter the Comprehensive Plan.

63. The Defendants deny the allegations contained in paragraph 141 of the Complaint.

64. The Defendants admit that the Town Council on July 9, 2014 gave second reading to the ordinance updating the Comprehensive Plan, approved the RDC's action adopting the Vision Plan, and authorized the Mayor to finalize and sign the Public-Private Partnership Agreement which was done by the Mayor without modification of the documents. Any remaining allegation of paragraph 142 is denied.

65. The Defendants deny the allegations contained in paragraph 143 of the Complaint.

obtained Town approval of the RDC's development plan, in violation of SC Code Section 31-10-100(g);

- RR. The RDC has contracted for it to transfer real property to the Developer in violation of the requirements in SC Code Section 31-10-110(b) that any sale or transfer of real property to the Developer from the RDC be "in accordance with the redevelopment plan" and that any "sale, exchange, or other transfer, and any agreement relating thereto, be made only after the approval of the redevelopment plan by the Town and after public notice and award as specified in subsection (c) of this section"; the RDC has not created a redevelopment plan, has not obtained the Town's approval of a redevelopment plan and has not complied with any of the request for proposal and notice of request for proposal requirements of SC Code Section 31-10-110(b) and (c);
- SS. The Partnership Agreement requires that the Town issue bonds to generate proceeds to finance the boutique hotel project after passing those proceeds through the RDC; that scheme violates the intention and requirements of the Community Development Law that redevelopment pursuant to the Community Development Law be financed by bonds issued by the RDC in accordance with the requirements of the Community Development Law, including that the bonds be repaid and the expenses of a redevelopment project be paid only from the profits of the project financed by the RDC;
- TT. Plaintiff Faye Croft was not provided sufficient or required notice of the Town's intention to rezone property at the location where the boutique hotel project is intended to be built, in violation of SC Code Section 6-29-760;
- UU. Defendants have violated S.C. Code Ann. § 6-29-540, in part because the Town and the RDC have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
- VV. Opponents of the boutique hotel project have not been allowed to participate in mediation or other good faith negotiations with the Defendants to attempt to resolve their differences regarding the boutique hotel project;
- WW. The Town and the RDC have failed to appear before the BAR as required by Sec. 32-176 of the Town of Summerville's ordinances, which states in part as follows:

"Sec. 32-176. - Meetings, rules and records.

All governmental agencies . . . shall be required to go before the board of architectural review in accordance with this article prior to initiating any changes covered by this article. (Emphasis added.)

- XX. The Developer, the RDC and the Town have never submitted an application to the BAR, including never having submitted the required completed application form, required as a prerequisite to the BAR's considering the boutique hotel project;
- YY. Defendant BAR has exhibited bias in favor of the developer and the project and violated applicable laws, including State statutes; Town ordinances, rules, regulations and customs; due process, equal protection and other provisions of the United States and South Carolina Constitutions, resulting in the BAR not performing its duties to safeguard the public interests, in numerous respects, including but not limited to, the following:
- ZZ. BAR members wine and dine with the Mayor at the Mayor's home and otherwise engaged in impermissible conflicts of interest;
- AAA. The BAR posted a sketch of the proposed design of the boutique hotel project only 24 hours in advance of meetings, publishing inadequate information and allowing insufficient time for the public to analyze and to be able to respond to the design at BAR meetings;
- BBB. The BAR did not require and did not publish applications of developers prior to allowing a developer to present a project to the BAR;
- CCC. The BAR failed to have and to publish clear and adequate procedures;
- DDD. The public has not been allowed an opportunity to examine BAR minutes timely to verify their scope and content and to correct any errors in those minutes;
- EEE. The BAR has failed to inform members of the public of the BAR's rights to lower the height and to reduce the scale and mass of the boutique hotel project, and to deny the developers a permit for the boutique hotel project;
- FFF. BAR members do not understand and have not received sufficient training about their duties, options and rights; one BAR member incorrectly has informed the public that he believes the BAR has an obligation to approve the boutique hotel project eventually;
- GGG. The BAR has not informed the public of its right to appeal BAR decisions;
- HHH. Required notices were not provided to required parties, the public or the Plaintiffs, and, if they were provided, they were so insufficient and deficient as to be meaningless, invalid and unlawful;

III. On information and belief, persons involved in the boutique hotel project may have impermissible conflicts of interest;

III. Various meetings, including alleged public hearings, regarding the boutique hotel project were invalid and sham proceedings;

KKK. As described in the First Cause of Action above; and

LLL. As described in Paragraphs 229-230 above.

268. As a direct and proximate result of the Defendants' violations of the substantive and procedural due process rights of Plaintiffs, and others, and other actions described herein, those Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened; and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay taxes for an unlawful purpose; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR ELEVENTH CAUSE OF ACTION

VIOLATIONS OF EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT

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

270. Plaintiffs have property and liberty interests in the properties they own at or near the location of the boutique Hotel project or in the Town of Summerville, and in keeping their taxes as low as possible. Actions by certain governmental Defendants referenced herein have

deprived, and will continue to deprive, Plaintiffs and other taxpayers and members of the public, of their rights to the equal protection of the laws under the Fourteenth Amendment to the United States Constitution, in numerous respects, including but not limited to the following:

A. Giving Applegate & Co., Arthur F. Applegate and others insider information not provided to the Plaintiffs helping Defendants Applegate & Co., Arthur F. Applegate and others to advance the boutique hotel project to the detriment of the Defendants;

B. Giving Applegate & Co., Arthur F. Applegate and others more time and latitude to speak for the boutique hotel project that Defendants Croft, Croft Trust, Greene and Harbeson, and others, were given to speak against the boutique Hotel project;

C. Unreasonably discriminating against the Plaintiffs by giving Applegate & Co., Arthur F. Applegate and others more favorable treatments under the law than the Plaintiffs and others were given;

D. As described in the First Cause of Action above; and

E. As described in Paragraphs 229-230 above.

271. As a direct and proximate result of the Defendants' violations of the equal protection rights of Plaintiffs and others, and other actions described herein, the Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and

actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR A TWELFTH CAUSE OF ACTION

TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION IN VIOLATION OF THE FIFTH AMENDMENT

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

273. Plaintiffs have suffered and will suffer a taking of their private property without just compensation by, *inter alia*, rezoning, having the area on or near which their property is located declared to be a blighted or a conservation area, allowing construction noise to disturb the quiet enjoyment of their property and other actions by Defendants.

274. As a direct and proximate result of the Defendants' violations of the rights of Plaintiffs and others, and other actions described herein, the Plaintiffs have been damaged and will continue to be damaged by having their Fifth Amendment property and liberty rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

IV. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

A. Grant a Declaratory Judgment declaring that:

- (1) The Town of Summerville violated Article X, §§ 5 and 11 of the South Carolina Constitution when it authorized the spending of public funds, and spent public funds, for a privately-owned hotel project;
- (2) The Town of Summerville violated Article X, §§ 5 and 11 of the South Carolina Constitution when it entered into a contract indemnifying private interests against pecuniary losses;
- (3) The Town of Summerville expended public funds for private purposes and pledged the State's full faith and credit for private purposes in violation of the South Carolina Constitution, when it entered into and implemented the PPPA with Applegate;
- (4) The entire Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the Constitution of the State of South Carolina;
- (5) The entire Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, are and always have been ultra vires, unlawful, null and void ab initio, having no and never having had any force or effect;
- (6) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the South Carolina Community Development Law;
- (7) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the South Carolina Local Government Comprehensive Planning Enabling Act of 1994;
- (8) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate procurement and other ordinances, rules, regulations and customs of the Town of Summerville;
- (9) The Request for Proposal published by the Town regarding the boutique hotel project, referenced above, violates state and Town procurement and other laws and, therefore, is null, void ab initio and unenforceable;
- (10) The award by the Town and other Defendants of a contract in response to the Request for Proposal regarding the boutique hotel project, referenced above, is illegal, null, void and unenforceable;
- (11) Defendants have violated the South Carolina Constitution;

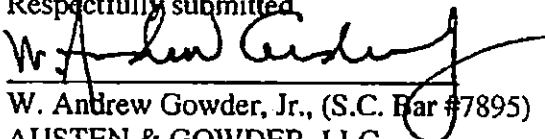
- (12) Defendants have violated the United States Constitution;
- (13) Defendants have violated the South Carolina Freedom of Information Act;
- (14) Defendants have violated the Community Development Law;
- (15) Defendants have violated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994;
- (16) Defendants have violated state and Town procurement laws; and
- (17) No blight or conservation area exists at the location of the Hotel project.

B. Grant a Permanent Injunction Order immediately 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:

- (1) Implementing in any way, including paying, directly or indirectly, any money pursuant to, the Public-Private Partnership Agreement, any provision thereof, and any agreement attached thereto or associated therewith;
- (2) Implementing in any way, directly or indirectly, the award by the Town of Summerville and other Defendants of a contract in response to the Request for Proposal regarding the boutique hotel project, referenced above;
- (3) Violating the South Carolina Community Development Law;
- (4) Violating the South Carolina Government Comprehensive Planning Enabling Act of 1994;
- (5) Violating the South Carolina Freedom of Information Act;
- (6) Violating procurement and ordinances, rules, regulations and customs of the Town of Summerville applicable to development;
- (7) Violating the First Amendment rights of the Plaintiffs;
- (8) Violating the substantive and procedural due process rights of the Plaintiffs guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution;

- (9) Violating the equal protection rights of the Plaintiffs guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution; and
 - (10) Any and all other such acts as this Court deems appropriate for injunctive relief.
- D. Grant a writ of mandamus requiring:
- (1) That the RDC allow the public to inspect all books and records of the RDC, as required by Sections 31-10-160 and 30-4-55 of the Code of Laws of South Carolina; and
 - (2) That the Town and all its subdivisions, agencies and organizations promulgate and implement rules and regulations as required by law, and otherwise to perform mandatory duties required by law;
- E. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff, the Freedom of Information Act and any other applicable law; and
- F. To grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



W. Andrew Gowder, Jr., (S.C. Bar #7895)
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Phone: 843-727-2229
andy@austengowder.com
Counsel for Plaintiffs.

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406 Central Ave.
Summerville, SC 29483
Phone: 843-871-1821
mike@mikeroselawfirm.com
Counsel for Plaintiffs

JURY TRIAL DEMANDED

Certificate of Service

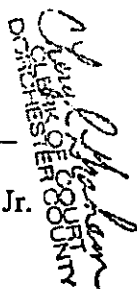
The undersigned hereby certifies that a true copy of the Second Amended Complaint has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 14th day of June, 2018 to:

Tim Domin
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-8144

G.W. Parker
200 S. Main Street
Summerville, SC 29483



Rachel Fete
Assistant to W. Andrew Gowder, Jr.



W. Andrew Gowder, Jr.
CLERK OF COURT
DISTRICT OF COLUMBIA

2018 JUN 15 PM 12:15

CERTIFIED COPY

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COUNTY OF CHARLESTON

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20. The Defendants admit the allegations contained in paragraph 20 of the Complaint.

21. The Defendants admit the allegations contained in paragraph 21 of the Complaint.

22. The Defendants admit the allegations contained in paragraph 22 of the Complaint.

23. The Defendants admit the allegations contained in paragraph 23 of the Complaint.

24. The Defendants admit the allegations contained in paragraph 24 of the Complaint.

25. The Defendants admit the allegations contained in paragraph 25 of the Complaint.

26. The Defendants admit the allegations contained in paragraph 26 of the Complaint.

27. The Defendants admit the allegations contained in paragraph 27 of the Complaint.

28. That the allegations of paragraph 28 of the Complaint are conclusions of law which need not be admitted or denied. If said response is required, the same are denied.

29. The Defendants admit the allegations contained in paragraph 29 of the Complaint.

30. The Defendants admit the allegations contained in paragraph 30 of the Complaint.

31. In response to paragraph 31 of the Complaint, these Defendants admit the Planning Commission is an organization created pursuant to state law and Town ordinance.

32. In response to paragraph 32 of the Complaint, these Defendants admit the Board of Architectural Review was created pursuant to state law and Town ordinance.

33. That these Defendants admit that their activities are governed by state, federal and local law, but denies paragraph 33 as stated.

34. That the allegations of paragraphs 34-70 are allegations of law which need not be admitted or denied. To the extent a response is required, the Defendants would crave reference to the full text of the various provisions of the South Carolina Constitutional and statutes.

35. The Defendants deny the allegations contained in paragraph 71 of the Complaint.

36. In response to paragraph 72 of the Complaint, the Defendants admit that a "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT" was signed on July 9, 2014 after an appropriate and lawful vote by the elected City Council and the newly created

Summerville Redevelopment Corporation. The agreement sets for reasonable terms which will facilitate a boutique hotel with a town-owned conference/meeting space and town-owned parking garage.

37. In response to paragraph 73 of the Complaint, the Defendants would crave reference to the terms of the "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT" and attachment in responding to allegations 73-100.

38. In response to paragraph 101 of the Complaint and upon information and belief, The Dorchester, LLC had filed its paperwork with the Secretary of State and was, at a minimum a defacto corporation at the time the paperwork was signed.

39. In response to paragraph 102 of the Complaint, the Defendants deny the allegations of paragraph 102 as stated because the RDC has filed for 501(c)(4) with the IRS and is merely awaiting paperwork.

40. That the defendants would crave reference to the terms of the "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT" and attachment in responding to allegations 103-118 of the Complaint.

41. In response to paragraph 119 of the Complaint, Defendant Collins admits that when he ran for Mayor in 2011, he ran on a platform which included, among other ideas, encouraging a boutique hotel to open in downtown Summerville. Since that time, he admits he has worked as Mayor to encourage construction of such a hotel as well as to meet the need for rentable meeting space suitable for business events as well as social event such as weddings, anniversaries and the like. He denies the remaining allegations of paragraph 119.

42. That the Defendants admit only that they have participated in lawful executive sessions and any further allegations of paragraph 120 are denied.

43. In response to paragraph 121 of the Complaint, Defendant Collins admits that he consulted with several different developers in an effort to fulfill a campaign promise to encourage the establishment of a boutique hotel in downtown Summerville. That these discussions included the land owned by the Town of Summerville near the intersection of West Richardson and Cedar.

44. That the Defendants deny the allegations to paragraph 122. The Lawrence Group was hired to assist gathering public input and to help prepare a "Vision Plan" to assist in making wise planning decisions in many areas of the Town of Summerville. The work of the Lawrence Group included planning ideas related to infrastructure, recreation, bike and pedestrian access, and included ideas for numerous areas including the new Sheep Island Parkway area, the Oakbrook area, Hutchinson Square, the Sawmill Branch Trail, and downtown. The Vision Plan would later win the "Outstanding Planning Project" award for a large jurisdiction from the South Carolina Chapter of the American Planning Association (SCAPA).

45. In response to paragraph 123 of the Complaint, the Town of Summerville admits that it did publish a request for proposals in the Post and Courier soliciting proposals from developers. The Town craves reference to the exact language of the RFP which did not expressly request nor prohibit residential units in conjunction with a boutique hotel.

46. That the Town of Summerville admits that only one proposal was submitted and it was by Defendant Applegate & Co. That all remaining allegations of paragraph 124 are denied:

47. In response to paragraph 125 of the Complaint, these Defendants lack sufficient information to admit or deny the mental impressions of Applegate. However, it denies that there was any illegal activity in regards to the solicitation of bids.

48. In response to paragraph 126 of the Complaint, the terms of the Applegate & Co. submission speak for themselves and reference is made to the provisions of that document.

49. That the defendants deny the allegations of paragraph 127 of the Complaint.

50. That the Town of Summerville admits that it undertook various efforts to include introducing the first reading of certain ordinances and to lawfully receive legal advice. Any remaining allegation of paragraph 128 is denied.

51. That the Town of Summerville did have a properly noticed City Council meeting on May 28, 2014 at which the Summerville Redevelopment Corporation was created. Any remaining allegations of paragraph 129 are denied.

52. In response to paragraph 130 of the Complaint, the Town of Summerville held a properly noticed meeting to discuss the Vision Plan. A large group of citizens attended and the document was made available on the Town's website www.summerville.sc.us.

53. In response to paragraph 131 of the Complaint, the Planning Commission's notice of public hearing was on June 1, 2014 and provided notice to the public that the Town would hold a hearing on the Vision Plan and the proposal to adopt the Vision Plan as an amendment to the Comprehensive Plan. The Vision Plan dealt with a variety of

areas and concerns including transportation, infra-structure, economic development in a variety of areas of the Town including Sheep Island Road, Oakbrook and Downtown. The Vision Plan did contain numerous references to a boutique hotel as an advantageous development opportunity for downtown Summerville and covered several maps showing a "Boutique Hotel" and "Mixed Use Boutique Hotel Project" for this site.

54. In response to paragraph 132 of the Complaint, the Vision Plan was posted to the Town's website as a draft. The Vision Plan was listed as a draft until it was accepted by City Council by way of an ordinance adopting the Vision Plan. It was also available for inspection at Town Hall as specified in the notice.

55. The notice indicated the documents were available for inspection at Town Hall. That Defendants admit that on June 11, 2014 Town Council gave first reading to an ordinance to adopt the Vision Plan as an update to the Comprehensive Plan. The Defendants deny this was confusing, inarticulate, insufficient, or inadequate to inform the public. That the Defendants deny that there was an inadequate opportunity to review and understand the Vision Plan. That Defendants deny the remaining allegations of paragraph 133.

56. In response to paragraph 134 of the Complaint, the defendants admit the South Carolina Secretary of State accepted the paperwork submitted to create the Summerville Redevelopment Corporation and that the existence and validity of the entity is conclusive upon the issuance of such certificate per state law.

57. The Defendants deny the allegations contained in paragraph 135 of the Complaint.

58. The Defendants deny the allegations contained in paragraph 136 of the Complaint.

59. The Defendants deny the allegations contained in paragraph 137 of the Complaint.

60. The Defendants admit what is stated in the minutes of the City Council meeting and that RDC passed a resolution adopting a redevelopment plan which includes the Vision Plan. Defendants deny the remaining allegations of paragraph 138.

61. The Defendants deny the allegations contained in paragraph 139 of the Complaint.

62. That in response to paragraph 140 of the Complaint, language relating to the residential homes was removed from the Vision Plan. This referenced housing allowed by zoning, not any new units. Therefore, the deletion of this language did not alter the Comprehensive Plan.

63. The Defendants deny the allegations contained in paragraph 141 of the Complaint.

64. The Defendants admit that the Town Council on July 9, 2014 gave second reading to the ordinance updating the Comprehensive Plan, approved the RDC's action adopting the Vision Plan, and authorized the Mayor to finalize and sign the Public-Private Partnership Agreement which was done by the Mayor without modification of the documents. Any remaining allegation of paragraph 142 is denied.

65. The Defendants deny the allegations contained in paragraph 143 of the Complaint.

66. The Defendants deny the allegations contained in paragraph 144 of the Complaint.

67. The Defendants deny the allegations contained in paragraph 145 of the Complaint.

68. The Defendants deny the allegations contained in paragraph 146 of the Complaint. The Vision Plan contained numerous references to a boutique hotel as an advantageous development opportunity for downtown Summerville and numerous maps showing a "Boutique Hotel" and "Mixed Use Boutique Hotel Project" on this very site. The Vision Plan was modified to meet the requirements of a redevelopment plan which was then adopted pursuant to state law.

69. The Defendants deny the allegations contained in paragraph 147 of the Complaint.

70. That the Defendants deny the allegations of paragraph 148 as stated. Chairman Dixon read remarks similar to those made at BAR meetings in jurisdictions across the state reminding the public that the role of the BAR concerns the aesthetics of the project.

71. In response to paragraph 149 of the Complaint, the Defendants admit Croft was issued notice of the November 3, 2014 meeting of the BAR.

72. The Defendants admit the BAR held a second meeting at which time the applicant is given an opportunity to present their application and the public was given an opportunity to comment. Any remaining allegations of paragraph 150 are denied.

73. The Defendants deny the allegations contained in paragraph 151 of the Complaint.

74. That the Defendant Collins and Town admit they arranged for a meeting to be held to discuss the hotel project. That both proponents and opponents of the project spoke at the meeting. Any remaining allegations of paragraph 152 are denied.

75. In response to paragraph 153 of the Complaint, it is admitted that the RDC held a meeting to review the conceptual plans for the Dorchester Project as was appropriate.

76. In response to paragraph 154 of the Complaint, the Defendants admit upon information and belief that Applegate & Co. and/or The Dorchester, LLC took out an ad soliciting buyers. Upon information and belief, it is not improper for a developer to advertise for and secure commitments for a project in advance of construction and in advance of final BAR approval.

77. The Defendants deny the allegations contained in paragraph 155 of the Complaint.

78. The Defendants deny the allegations contained in paragraph 156 of the Complaint.

79. The Defendants deny the allegations contained in paragraph 157 of the Complaint.

80. The Defendants deny the allegations contained in paragraph 158 of the Complaint.

81. The Defendants deny the allegations contained in paragraph 159 of the Complaint.

82. The Defendants deny the allegations contained in paragraph 160 of the Complaint.

83. The Defendants deny the allegations contained in paragraph 161 of the Complaint.

84. The Defendants deny the allegations contained in paragraph 162 of the Complaint.

85. The Defendants deny the allegations contained in paragraph 163 of the Complaint.

86. The Defendants deny the allegations contained in paragraph 164 of the Complaint.

87. The Defendants deny the allegations contained in paragraph 165 of the Complaint.

88. The Defendants deny the allegations contained in paragraph 166 of the Complaint.

89. The Defendants deny the allegations contained in paragraphs 168 through 194 of the Complaint.

90. That the Defendants each deny each and every allegation or portion thereof which is not specifically admitted by them.

FOR A FIRST AFFIRMATIVE DEFENSE
(Improper Venue)

91. That the plaintiffs have filed this case in the County of Charleston which is an improper and unusual selection considering the project itself is located in Dorchester County and state law provides that matters relating to "the determination in any form of the right or interest, and for injuries to real property" be filed in the county where the real estate is located. S.C. Code § 15-7-10. In addition, state law provides for venue in the

County where the case arose in any case involving public officials. See S.C. Code § 15-7-20.

FOR A SECOND AFFIRMATIVE DEFENSE
(12(b)(6))

92. That the Complaint fails to state a cause of action upon which relief may be granted and should be dismissed.

FOR A THIRD AFFIRMATIVE DEFENSE
(Certificate of Incorporation)

93. That any challenge to the existence of the Summerville Redevelopment Corporation is barred by S.C. Code § 31-10-30(d) as the Secretary of State considered the paperwork and issued a Certificate of Incorporation which is conclusive as to the issue under state law.

FOR A FOURTH AFFIRMATIVE DEFENSE
(State of Limitations/Untimely)

94. That portions of this action are untimely as they were not initiated within 60 days pursuant to S.C. Code § 6-29-760.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Failure to Properly Appeal)

95. That state law provides a method to timely appeal decisions of the BAR and that is the Plaintiffs' exclusive remedy for any alleged improper action of the BAR. That the Plaintiffs have failed to take proper steps to appeal the decision of the BAR and accordingly, matters concerning the BAR are not properly before the Court.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Lack of Standing)

96. That the Plaintiffs lack standing to pursue one or more causes of action claimed.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Laches)

97. That the Plaintiffs' relief should be barred by the legal doctrine of Laches.



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McIntosh, Kima Garten-Schmidt and Robert
Jackson, in their capacities as members of Town
Council; Town of Summerville Redevelopment
Corporation; Town of Summerville Planning
Commission; Town of Summerville Board of
Architectural Review

Charleston, South Carolina

January 29, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading(s) has been served upon opposing counsel on the 29th day of January, 2015 via:

☒	United States Postal Service
☐	Facsimile
☐	Electronic Email

Patricia A. Anderson

BY _____

JULIE J. ANDERSON
CLERK OF COURT

2015 JAN 29 PM 3:09

FILE

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; Peter M. Gorman; James Stephen Greene, Jr.; Brian Peachner; Robert Klinger; Mary Becker; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; Town of Summerville Board of Architectural Review; Applegate & Co.; The Dorchester, LLC; and Arthur H. Applegate,

Defendants.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

C.A. NO.: 2014-CP-10-7739.

DEFENDANTS', TOWN OF SUMMERVILLE, WILLIAM C. COLLINS, TERRY JENKINS, AARON BROWN, WALTER BAILEY, WILLIAM MCINTOSH, KIMA GARTEN-SCHMIDT, ROBERT JACKSON, TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION, TOWN OF SUMMERVILLE PLANNING COMMISSION AND TOWN OF SUMMERVILLE BOARD OF ARCHITECTURAL REVIEW, ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

On behalf of the Town of Summerville, its duly elected Mayor and City Council, its Board of Architectural Review, its Planning Commission, and the Summerville Redevelopment Corporation (collectively "Defendants"), responding to the Amended Complaint of the Plaintiffs, collectively as indicated and separately as indicated, would allege and state as follows:

1. The allegations of paragraph 1. of the Amended Complaint are conclusions of law, which need not be admitted or denied. However, Defendants deny that Plaintiffs have brought forth any proper reasons to halt the project.

2. The allegations of paragraph 2 of the Amended Complaint are conclusions of law, which need not be admitted or denied. However, Defendants deny that Plaintiffs have brought forth any proper reasons to halt the project.

3. The allegations of paragraph 3 of the Amended Complaint are conclusions of law, which need not be admitted or denied. However, Defendants deny that Plaintiffs have brought forth any proper reasons to halt the project.

4. Defendants deny the allegations of paragraph 4 of the Amended Complaint.

5. Defendants admit, upon information and belief, the allegations of paragraph 5 of the Amended Complaint only insofar as they allege that Croft may have some connection to a trust which owns a rental property at 214 West Richardson Avenue, which is across the street from a portion of the project. However, she does not live at the location and upon information and belief, lives outside of the Town of Summerville. The remaining allegations of paragraph 5 are denied.

6. Defendants lack sufficient information to form a belief as to the allegations of paragraph 6 of the Amended Complaint insofar as they pertain to the existence of a trust, and accordingly deny the same. Defendants deny the remaining allegations of paragraph 6.

7. In response to paragraph 7 of the Amended Complaint and upon information and belief, the Summerville Preservation Society is a non-profit entity comprised of members, including one or more of the defendants. Upon information and belief, the Summerville Preservation Society members have not voted to undertake this legal action.

8. In response to paragraph 8 of the Amended Complaint and upon information and belief, the Dorchester County Taxpayers Association is a non-profit corporation. Defendants lack sufficient information as to the remaining allegations of paragraph 8 and therefore deny same.

9. In response to paragraph 9 of the Amended Complaint and upon information and belief, the South Carolina Public Interest Foundation is a non-profit corporation. Defendants lack sufficient information as to the remaining allegations of paragraph 9 and therefore deny same.

10. Defendants admit, upon information and belief, that Mr. Harbeson lives in the Town, but deny the remaining allegations of paragraph 10 of the Amended Complaint.

11. Defendants admit, upon information and belief, that Mr. Hutson lives in the Town, but deny the remaining allegations of paragraph 11 of the Amended Complaint.

12. Defendants admit, upon information and belief, that Mr. Gorman lives in the Town, but denies that there is any entity called the East Historic District Civic Association filed with the South Carolina Secretary of State or known to possess any status from the Internal Revenue Service. Defendants deny the remaining allegations of paragraph 12.

13. Defendants admit, upon information and belief, that Mr. Greene lives in the Town, but deny the remaining allegations of paragraph 13 of the Amended Complaint.

14. In response to paragraph 14 of the Amended Complaint and upon information and belief, Mr. Preacher is a resident of Summerville, but these Defendants deny he has standing to pursue one or more causes of action alleged.

15. In response to paragraph 15 of the Amended Complaint and upon information and belief, Mr. Klinger is a resident of Summerville, but these Defendants deny he has standing to pursue one or more causes of action alleged.

16. In response to paragraph 16 of the Amended Complaint and upon information and belief, Ms. Becker is a resident of Summerville, but these Defendants deny she has standing to pursue one or more causes of action alleged.

17. Defendants deny the allegations of paragraph 17 of the Amended Complaint.

18. Defendants deny the allegations of paragraph 18 of the Amended Complaint.

19. Defendants deny the allegations of paragraph 19 of the Amended Complaint.
20. Defendants deny the allegations of paragraph 20 of the Amended Complaint.
21. Defendants deny the allegations of paragraph 21 of the Amended Complaint.
22. Defendants admit the allegations of paragraph 22 of the Amended Complaint.
23. In response to the allegations of paragraph 23 of the Amended Complaint, Defendants crave reference to the full text of the applicable Town ordinance. Defendants deny any allegations inconsistent therewith.
24. The Town of Summerville Redevelopment Corporation admits only so much of the allegations of paragraph 24 of the Amended Complaint as allege it is an entity recognized by the South Carolina Secretary of State and formed pursuant to South Carolina Code § 31-10-10 et seq.
25. The Town of Summerville Redevelopment Corporation admits only so much of the allegations of paragraph 25 of the Amended Complaint as allege it is an entity recognized by the South Carolina Secretary of State and formed pursuant to South Carolina Code § 31-10-10 et seq.
26. Defendants admit the allegations of paragraph 26 of the Amended Complaint.
27. Defendants admit the allegations of paragraph 27 of the Amended Complaint.
28. Defendants admit the allegations of paragraph 28 of the Amended Complaint.
29. Defendants admit the allegations of paragraph 29 of the Amended Complaint.
30. Defendants admit the allegations of paragraph 30 of the Amended Complaint.
31. Defendants admit the allegations of paragraph 31 of the Amended Complaint.
32. Defendants admit the allegations of paragraph 32 of the Amended Complaint.
33. Defendants admit the allegations of paragraph 33 of the Amended Complaint.
34. The allegations of paragraph 34 of the Amended Complaint are conclusions of law which need not be admitted or denied. If a response is required, the allegations are denied.

35. Defendants admit the allegations of paragraph 35 of the Amended Complaint.
36. Defendants admit the allegations of paragraph 36 of the Amended Complaint.
37. In response to paragraph 37 of the Amended Complaint, these Defendants admit the Planning Commission is an organization created pursuant to state law and Town ordinance.
38. In response to paragraph 38 of the Amended Complaint, these Defendants admit the Board of Architectural Review was created pursuant to state law and Town ordinance.
39. Defendants admit the allegations of paragraph 39 of the Amended Complaint.
40. Defendants admit only so much of the allegations of paragraph 40 of the Amended Complaint as allege that Price is a member of the BAR. The remaining allegations of paragraph 40 are denied.
41. Defendants admit only so much of the allegations of paragraph 41 of the Amended Complaint as allege that Huggins is a member of the BAR. The remaining allegations of paragraph 41 are denied.
42. Defendants admit only so much of the allegations of paragraph 42 of the Amended Complaint as allege that Robinson is the Town's Director of Planning & Economic Development. The remaining allegations of paragraph 42 are denied.
43. Defendants admit the allegations of paragraph 43 of the Amended Complaint.
44. Defendants admit the allegations of paragraph 44 of the Amended Complaint except she is not the purchasing agent except for temporarily handling those duties from November 21, 2014 until the new purchasing agent was trained to start.
45. These Defendants admit that their activities are governed by state, federal and local law, but deny the allegations of paragraph 45 as stated.
46. The allegations of paragraphs 46 through 97 are allegations of law which need not be admitted or denied. To the extent a response is required, these Defendants would crave

reference to the full text of the various provisions of the South Carolina Constitution, South Carolina Code, Regulation, and Ordinance cited therein.

47. Defendants deny the allegations of paragraph 98 of the Amended Complaint.

48. In response to paragraph 99 of the Amended Complaint, the Defendants admit that a "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT" was signed on July 9, 2014 after an appropriate and lawful vote by the elected City Council and the newly created Summerville Redevelopment Corporation. The agreement sets forth reasonable terms which will facilitate a boutique hotel with a town-owned conference/meeting space and town-owned parking garage.

49. In response to the allegations of paragraphs 100 through 127 of the Amended Complaint, the Defendants would crave reference to the terms of the "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT" and attachments thereto.

50. In response to paragraph 128 of the Amended Complaint and upon information and belief, The Dorchester, LLC had filed its paperwork with the Secretary of State and was at a minimum a defacto corporation at the time the paperwork was signed.

51. Defendants deny the allegations of paragraph 129 of the Amended Complaint as stated because the RDC has filed for 501(c)(4) with the IRS and is merely awaiting paperwork.

52. Defendants would crave reference to the terms of the "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT" and attachments thereto in responding to the allegations of paragraphs 130 through 145 of the Amended Complaint.

53. In response to paragraph 146 of the Amended Complaint, Defendant Collins admits that when he ran for Mayor in 2011, he ran on a platform which included, among other ideas, encouraging a boutique hotel to open in downtown Summerville. He admits that since that time, he has worked as Mayor to encourage construction of such a hotel as well as to

meet the need for rentable meeting space suitable for business events as well as social events such as weddings, anniversaries and the like. He denies the remaining allegations of paragraph 146.

54. Defendants admit only that they have participated in lawful executive sessions and any further allegations of paragraph 147 are denied.

55. In response to paragraph 148 of the Amended Complaint, Defendant Collins admits that he consulted with several different developers in an effort to fulfill a campaign promise to encourage the establishment of a boutique hotel in downtown Summerville. Defendant admits that these discussions included the land owned by the Town of Summerville near the intersection of West Richardson and Cedar.

56. Defendants deny the allegations of paragraph 149 as written. Further answering, Defendants state that the Lawrence Group was hired to assist gathering public input and to help prepare a "Vision Plan" to assist in making wise planning decisions in many areas of the Town of Summerville. The work of the Lawrence Group included planning ideas related to infrastructure, recreation, bike and pedestrian access, and included ideas for numerous areas including the new Sheep Island Parkway area, the Oakbrook area, Hutchinson Square, the Sawmill Branch Trail, and downtown. The Vision Plan would later win the "Outstanding Planning Project" award for a large jurisdiction from the South Carolina Chapter of the American Planning Association (SCAPA).

57. In response to paragraph 150 of the Amended Complaint, the Town of Summerville admits only so much of the allegations that it published a request for proposals in the Post and Courier soliciting proposals from developers. The Town craves reference to the exact language of the RFP which neither expressly requested nor prohibited residential units in conjunction with a boutique hotel.

58. The allegations of paragraph 151 of the Amended Complaint are conclusions of law, which need not be admitted or denied. To the extent a response is deemed required, Defendants deny the allegations of paragraph 151.

59. In response to paragraph 152 of the Amended Complaint, the Town of Summerville admits only so much of the allegations that it published a request for proposals in the Post and Courier soliciting proposals from developers. The Town craves reference to the exact language of the RFP.

60. In response to the allegations of paragraph 153 of the Amended Complaint, the Town of Summerville admits that only one proposal was submitted and it was by Defendant Applegate & Co. Defendants crave reference to the full language of the proposal.

61. Defendants admit so much of the allegations of paragraph 154 of the Amended Complaint as allege that the Town owns approximately 1.58 acres of property located in downtown Summerville along West Richardson Avenue, specifically known as TMS # 137-07-4-002 and TMS # 137-07-04-005.

62. In response to the allegations of paragraph 155 of the Amended Complaint, Defendants crave reference to the full language of the proposal.

63. The allegations of paragraph 156 of the Amended Complaint are conclusions of law, which need not be admitted or denied. To the extent a response is deemed required, Defendants deny the allegations of paragraph 156.

64. The allegations of paragraph 157 of the Amended Complaint are conclusions of law, which need not be admitted or denied. To the extent a response is deemed required, Defendants deny the allegations of paragraph 157.

65. Defendants deny the allegations of paragraph 158 of the Amended Complaint.

66. The allegations of paragraphs 159 and 160 of the Amended Complaint are conclusions of law, which need not be admitted or denied. To the extent a response is deemed required, Defendants deny the allegations of paragraphs 159 and 160.

67. Defendants deny the allegations of paragraph 161 of the Amended Complaint and specifically deny there was any illegal activity in regards to the solicitation of bids.

68. Defendants deny the allegations of paragraph 162 of the Amended Complaint.

69. The allegations of paragraph 163 of the Amended Complaint are conclusions of law, which need not be admitted or denied. Defendants crave reference to the full Ordinances cited therein.

70. Defendants deny the allegations of paragraph 164 of the Amended Complaint.

71. Defendants deny the allegations of paragraph 165 of the Amended Complaint.

72. Defendants admit so much of the allegations of paragraph 166 of the Amended Complaint as allege that Defendant Collins was authorized to sign the Partnership Agreement, to which Defendants crave reference. The remaining allegations of paragraph 166 are denied.

73. Defendants deny the allegations of paragraph 167 of the Amended Complaint.

74. In response to paragraph 168 of the Amended Complaint, the terms of the Applegate & Co. submission speak for themselves and reference is made to the provisions of that document.

75. In response to paragraph 169 of the Amended Complaint, these Defendants lack sufficient information to admit or deny the mental impressions of Applegate. However, they deny that there was any illegal activity in regards to the solicitation of bids.

76. The Town of Summerville admits that it undertook various efforts to include introducing the first reading of certain ordinances and to lawfully receive legal advice. Any remaining allegations of paragraph 170 are denied.

77. The Town of Summerville admits so much of the allegations of paragraph 171 of the Amended Complaint as allege that it had a properly noticed City Council meeting on May 28, 2014, at which the Summerville Redevelopment Corporation was created. The remaining allegations of paragraph 171 state legal conclusions or otherwise do not require a response from these Defendants. To the extent a response is deemed required, the remaining allegations of paragraph 171 are denied.

78. The Town of Summerville did have a properly noticed City Council meeting on May 28, 2014, at which the Summerville Redevelopment Corporation was created. Any remaining allegations of paragraph 172 are denied.

79. In response to paragraph 173 of the Amended Complaint, the Town of Summerville held a properly noticed meeting to discuss the Vision Plan. A large group of citizens attended the meeting and the document was made available on the Town's website at www.summerville.sc.us.

80. In response to paragraph 174 of the Amended Complaint, Defendants state that the Planning Commission's notice of public hearing was on June 1, 2014, and provided notice to the public that the Town would hold a hearing on the Vision Plan and the proposal to adopt the Vision Plan as an amendment to the Comprehensive Plan. The Vision Plan dealt with a variety of areas and concerns including transportation, infrastructure, economic development in a variety of areas of the Town including Sheep Island Road, Oakbrook and Downtown. The Vision Plan did contain numerous references to a boutique hotel as an advantageous development opportunity for downtown Summerville and covered several maps showing a "Boutique Hotel" and "Mixed Use Boutique Hotel Project" for this site. Any allegations of paragraph 174 inconsistent with this response are denied.

81. Insofar as the allegations of paragraph 175 of the Amended Complaint purport to paraphrase, interpret or characterize conversations that were had at public hearings,

Defendants would crave reference to the full context of minutes of those meetings. Defendants deny allegations of paragraph 175 inconsistent therewith, and deny any remaining allegations of paragraph 175.

82. In response to paragraph 176 of the Amended Complaint, Defendants state the Vision Plan was posted to the Town's website as a draft. The Vision Plan was listed as a draft until it was accepted by City Council by way of an ordinance adopting the Vision Plan. It was also available for inspection at Town Hall as specified in the notice.

83. Defendants deny the allegations of paragraph 177 of the Amended Complaint.

84. In response to paragraph 178 of the Amended Complaint, Defendants state that the notice indicated the documents were available for inspection at Town Hall. Defendants admit that on June 11, 2014, Town Council gave first reading to an ordinance to adopt the Vision Plan as an update to the Comprehensive Plan. Defendants deny this was confusing, inarticulate, insufficient, or inadequate to inform the public. Defendants deny the remaining allegations of paragraph 178.

85. Defendants deny that there was an inadequate opportunity to review and understand the Vision Plan and deny the remaining allegations of paragraph 179 of the Amended Complaint.

86. In response to paragraph 180 of the Amended Complaint, Defendants admit the South Carolina Secretary of State accepted the paperwork submitted to create the Summerville Redevelopment Corporation and that the existence and validity of the entity is conclusive upon the issuance of such certificate per state law.

87. Defendants deny the allegations of paragraph 181 of the Amended Complaint.

88. The allegations of paragraph 182 of the Amended Complaint state conclusions of law or otherwise do not require a response from Defendants. To the extent a response is deemed required, Defendants deny the allegations of paragraph 182.

89. Defendants admit that the Town Council on July 9, 2014 gave second reading to the ordinance updating the Comprehensive Plan, approved the RDC's action adopting the Vision Plan, and authorized the Mayor to finalize and sign the Public-Private Partnership Agreement, which was done by the Mayor without modification of the documents. Any remaining allegations of paragraph 183 are denied.

90. Defendants deny the allegations of paragraph 184 of the Amended Complaint.

91. Defendants deny the allegations of paragraph 185 of the Amended Complaint.

92. Defendants deny the allegations of paragraph 186 of the Amended Complaint.

93. Defendants admit what is stated in the minutes of the City Council meeting and that RDC passed a resolution adopting a redevelopment plan which includes the Vision Plan. Defendants deny the remaining allegations of paragraph 187.

94. Defendants deny the allegations of paragraph 188 of the Amended Complaint.

95. In response to paragraph 189 of the Amended Complaint, Defendants state that language relating to the residential homes was removed from the Vision Plan. This referenced housing allowed by zoning, not any new units. Therefore, the deletion of this language did not alter the Comprehensive Plan.

96. Defendants deny the allegations of paragraph 190 of the Amended Complaint.

97. Defendants admit that the Town Council on July 9, 2014 gave second reading to the ordinance updating the Comprehensive Plan, approved the RDC's action adopting the Vision Plan, and authorized the Mayor to finalize and sign the Public-Private Partnership Agreement, which was done by the Mayor without modification of the documents. Any remaining allegations of paragraph 191 are denied.

98. Defendants deny the allegations of paragraph 192 of the Amended Complaint.

99. Defendants deny the allegations of paragraph 193 of the Amended Complaint.

100. Defendants deny the allegations of paragraph 194 of the Amended Complaint.

101. Defendants deny the allegations of paragraph 195 of the Amended Complaint. The Vision Plan contained numerous references to a boutique hotel as an advantageous development opportunity for downtown Summerville and numerous maps showing a "Boutique Hotel" and "Mixed Use Boutique Hotel Project" on this very site. The Vision Plan was modified to meet the requirements of a redevelopment plan which was then adopted pursuant to state law.

102. Defendants deny the allegations of paragraph 196 of the Amended Complaint.

103. Defendants deny the allegations of paragraph 197 as stated. Chairman Dixon read remarks similar to those made at BAR meetings in jurisdictions across the state reminding the public that the role of the BAR concerns the aesthetics of the project.

104. In response to paragraph 198 of the Amended Complaint, Defendants admit Croft was issued notice of the November 3, 2014 meeting of the BAR.

105. Defendants admit the BAR held a second meeting at which time the applicant is given an opportunity to present its application and the public was given an opportunity to comment. Any remaining allegations of paragraph 199 are denied.

106. Defendants deny the allegations of paragraph 200 of the Amended Complaint.

107. Defendants Collins and Town admit they arranged for a meeting to be held to discuss the hotel project. They admit that both proponents and opponents of the project spoke at the meeting. Any remaining allegations of paragraph 201 are denied.

108. In response to paragraph 202 of the Amended Complaint, it is admitted that the RDC held a meeting to review the conceptual plans for the Dorchester Project as was appropriate.

109. Defendants admit so much of the allegations of paragraph 203 of the Amended Complaint as allege that Plaintiffs were allowed access to records of the RDC. The remaining allegations of paragraph 203 are denied.

110. In response to paragraph 204 of the Amended Complaint, Defendants admit upon information and belief that Applegate & Co. and/or The Dorchester, LLC took out an ad soliciting buyers. Upon information and belief, it is not improper for a developer to advertise for and secure commitments for a project in advance of construction and in advance of final BAR approval.

111. Defendants admit only so much of the allegations of paragraphs 205 through 208 of the Amended Complaint as allege that BAR meetings, which were open to the public, were held on January 5, 2015 and January 12, 2015. Defendants deny the remaining allegations of paragraphs 205 through 208.

112. Defendants deny the allegations of paragraph 209 of the Amended Complaint and specifically deny any "secret" meetings were held to circumvent legal requirements.

113. Defendants deny the allegations of paragraph 210 of the Amended Complaint.

114. Defendants deny the allegations of paragraph 211 of the Amended Complaint.

115. Defendants deny the allegations of paragraph 212 of the Amended Complaint.

116. In response to the allegations of paragraph 213 of the Amended Complaint, Defendants would crave reference to the written correspondence referenced therein and deny any allegations inconsistent therewith. The remaining allegations of paragraph 213 are denied.

117. Defendants deny the allegations of paragraph 214 of the Amended Complaint.

118. Defendants admit so much of the allegations of paragraph 215 of the Amended Complaint as allege that on February 11, 2015, Town Council gave second and final reading to an ordinance to amend the code of laws of the Town relating to noise, and Defendants crave reference to the full text of that ordinance. Defendants deny all remaining allegations of paragraph 215 of the Amended Complaint.

119. Defendants deny the allegations of paragraph 216 of the Amended Complaint.

120. Defendants deny the allegations of paragraph 217 of the Amended Complaint.
121. Defendants deny the allegations of paragraph 218 of the Amended Complaint.
122. Defendants deny the allegations of paragraph 219 of the Amended Complaint.
123. Defendants deny the allegations of paragraph 220 of the Amended Complaint.
124. Defendants deny the allegations of paragraph 221 of the Amended Complaint.
125. Defendants deny the allegations of paragraph 222 of the Amended Complaint.
126. Defendants deny the allegations of paragraph 223 of the Amended Complaint.
127. Defendants deny the allegations of paragraph 224 of the Amended Complaint.
128. Defendants deny the allegations of paragraph 225 of the Amended Complaint.
129. Defendants deny the allegations of paragraph 226 of the Amended Complaint.
130. Defendants deny the allegations of paragraphs 227 through 271 of the Amended Complaint.
131. Defendants deny each and every allegation or portion thereof of the Amended Complaint which is not specifically admitted herein.

FOR A FIRST AFFIRMATIVE DEFENSE
(Improper Venue)

132. That the plaintiffs have filed this case in the County of Charleston which is an improper and unusual selection considering the project itself is located in Dorchester County and state law provides that matters relating to "the determination in any form of the right or interest, and for injuries to real property" be filed in the county where the real estate is located. S.C. Code § 15-7-10. In addition, state law provides for venue in the County where the case arose in any case involving public officials. See S.C. Code § 15-7-20. That these Defendants incorporate by reference the venue change motion previously filed,

FOR A SECOND AFFIRMATIVE DEFENSE
(12(b)(6))

133. That the Amended Complaint fails to state a cause of action upon which relief may be granted and should be dismissed.

FOR A THIRD AFFIRMATIVE DEFENSE
(Certificate of Incorporation)

134. That any challenge to the existence of the Summerville Redevelopment Corporation is barred by S.C. Code § 31-10-30(d) as the Secretary of State considered the paperwork and issued a Certificate of Incorporation which is conclusive as to the issue under state law.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Statute of Limitations/Untimely)

135. That portions of this action are untimely as they were not initiated within 60 days pursuant to S.C. Code § 6-29-760.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Failure to Properly Appeal)

136. That state law provides a method to timely appeal decisions of the BAR and that is the Plaintiffs' exclusive remedy for any alleged improper action of the BAR. That the Plaintiffs have failed to take proper steps to appeal the decision of the BAR and accordingly, matters concerning the BAR are not properly before the Court.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Lack of Standing)

137. That the Plaintiffs lack standing to pursue one or more causes of action claimed.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Laches)

138. That the Plaintiffs' relief should be barred by the legal doctrine of Laches.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Waiver)

139. That the Plaintiffs' relief should be barred by the legal doctrine of waiver.

FOR A NINTH AFFIRMATIVE DEFENSE
(Untimely Bid Protest)

140. That to the extent Plaintiffs' Amended Complaint may be construed as a challenge to a bid, then said action is untimely pursuant to law including §2-327 of the Town of Summerville Ordinance 12-301.

FOR A TENTH AFFIRMATIVE DEFENSE
(Failure to Exhaust Administrative Remedies)

141. That Plaintiffs' claims for relief are barred in whole or in part by their failure to exhaust administrative remedies.

FOR A ELEVENTH AFFIRMATIVE DEFENSE
(South Carolina Tort Claims Act/Immunity)

142. That to the extent Plaintiff seeks any recovery for alleged actual damages, then this action may be barred or Plaintiffs recovery may otherwise be limited by the doctrine of sovereign immunity and the retained immunities of the South Carolina Tort Claims Act including any limitation on damages as provided therein.

FOR A TWELFTH AFFIRMATIVE DEFENSE
(Qualified Immunity)

143. That this case or some portion of it may be barred by the doctrine of qualified immunity.

[signature on following page]



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Attorneys for Defendants, Town of Summerville;
William C. Collins, in his capacity as Mayor; Terry
Jenkins, Aaron Brown, Walter Bailey, William
McIntosh, Kima Garten-Schmidt and Robert Jackson,
in their capacities as members of Town Council; Town
of Summerville Redevelopment Corporation; Town of
Summerville Planning Commission; Town of
Summerville Board of Architectural Review

Charleston, South Carolina

March 10, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Defendants', Town of Summerville, William C. Collins, Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt, Robert Jackson, Town of Summerville Redevelopment Corporation, Town of Summerville Planning Commission and Town of Summerville Board of Architectural Review, Answer to Plaintiffs' Amended Complaint was served upon the following parties on the 10th day of March, 2015, via:

☒	United States Postal Service
☐	Facsimile
☐	Electronic Email

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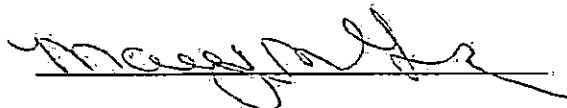
Attorney For: Faye P. Croft, personally and as Trustee of the James A. Croft Trust

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Attorney For: Faye P. Croft, personally and as Trustee of the James A. Croft Trust



STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2015-CP-18-0713

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Croft; Heyward G. Hutson; Peter M. Gorman; James Stephen Greene, Jr.; Brian Peachier; Robert Klinger; Mary Becker; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; and Town of Summerville Board of Architectural Review,

Defendants.

ANSWER
(Jury Trial Demanded)

On behalf of the Town of Summerville, its duly elected Mayor and City Council, its Board of Architectural Review, its Planning Commission, and the Summerville Redevelopment Corporation (collectively "Defendants"), responding to the Second Amended Complaint of the Plaintiffs, collectively as indicated and separately as indicated, would allege and state as follows:

1. The allegations of paragraph 1 of the Second Amended Complaint are conclusions of law which need not be admitted or denied. If said response is required, the same are denied.

2. The allegations of paragraph 2 of the Second Amended Complaint are conclusions of law which need not be admitted or denied. If said response is required, the same are denied.

3. The allegations of paragraph 3 of the Second Amended Complaint are conclusions of law which need not be admitted or denied. If said response is required, the same are denied.

4. In response to paragraph 4 of the Second Amended Complaint, the Defendants admit this is a court of equal jurisdiction and denies Plaintiffs have study for all or some of claimed causes of action.

5. In response to paragraph 5 of the Second Amended Complaint, Plaintiffs admit Faye P. Croft is a tax payer and owner of property. Defendants deny any remaining allegations.

6. The Defendants lack sufficient information to form a belief as to the allegations of paragraph 6 of the Second Amended Complaint and denies same.

7. In response to paragraph 7 of the Second Amended Complaint, Defendants admit Summerville Preservation Society is a 501(c)(3). Any remaining allegations are denied.

8. The Defendants lack sufficient information to form a belief as to the allegations of paragraph 8 of the Second Amended Complaint.

9. In response to paragraph 9 of the Second Amended Complaint, Defendants admit William A. Harbeson is a resident and citizen of the Town of Summerville and denies any remaining allegations.

10. In response to paragraph 10 of the Second Amended Complaint, Defendants admit Heyward G. Hutson is a resident and citizen of the Town of Summerville and denies any remaining allegations.

11. In response to paragraph 11 of the Second Amended Complaint, Defendants admit James Stephen Green, Jr. is a resident and citizen of the Town of Summerville and denies any remaining allegations.

12. In response to paragraph 12 of the Second Amended Complaint, Defendants admit Brian Peacher is a resident and citizen of the Town of Summerville and denies any remaining allegations.

13. In response to paragraph 13 of the Second Amended Complaint, Defendants admit Robert Klinger is a resident and citizen of the Town of Summerville and denies any remaining allegations.

14. In response to paragraph 14 of the Second Amended Complaint, Defendants admit Mary Becker is a resident and citizen of the Town of Summerville and denies any remaining allegations.

15. The Defendants deny the allegations contained in paragraph 15 of the Second Amended Complaint.

16. The Defendants deny the allegations contained in paragraph 16 of the Second Amended Complaint.

17. The Defendants deny the allegations contained in paragraph 17 of the Second Amended Complaint.

18. The Defendants deny the allegations contained in paragraph 18 of the Second Amended Complaint.

19. The Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. The Defendants admit the allegations contained in paragraph 20 of the Second Amended Complaint.

21. In response to paragraph 21 of the Second Amended Complaint, Defendants admit Summerville Redevelopment Commission, which is a corporation, is a public body created under S. C. law and denies any remaining allegations.

22. In response to paragraph 22 of the Second Amended Complaint, Defendants admit Summerville Redevelopment Commission, which is a corporation, is a public body created under S. C. law and denies any remaining allegations.

23. The Defendants admit the allegations contained in paragraph 23 of the Second Amended Complaint.

24. In response to paragraph 24 of the Second Amended Complaint, Defendants admit Summerville Board of Architectural Review was created by the Town pursuant to State law and admits conflicts of interest are governed by the Sate Ethics Act and denies any remaining allegations.

25. The Defendants admit the allegations contained in paragraph 25 of the Second Amended Complaint.

26. The Defendants admit the allegations contained in paragraph 26 of the Second Amended Complaint.

27. The Defendants admit the allegations contained in paragraph 27 of the Second Amended Complaint.

28. The Defendants admit the allegations contained in paragraph 28 of the Second Amended Complaint.

29. The Defendants admit the allegations contained in paragraph 29 of the Second Amended Complaint.

30. The Defendants admit the allegations contained in paragraph 30 of the Second Amended Complaint.

31. The Defendants admit the allegations contained in paragraph 31 of the Second Amended Complaint.

32. The Defendants admit the allegations contained in paragraph 32 of the Second Amended Complaint.

33. The Defendants deny the allegations contained in paragraph 33 of the Second Amended Complaint.

34. The Defendants admit the allegations contained in paragraph 34 of the Second Amended Complaint.

35. The Defendants admit the allegations contained in paragraph 35 of the Second Amended Complaint.

36. In response to paragraph 36 of the Second Amended Complaint, Defendants admit the Finance Committee is a committee of City Council and the remaining allegations are denied.

37. The Defendants deny the allegations contained in paragraph 37 of the Complaint.

38. In response to paragraph 38 of the Second Amended Complaint, upon information and belief, Defendants admit the Peter M. Gorman is a citizens and taxpayer of Summerville.

39. The Defendants deny the allegations contained in paragraph 39 of the Second Amended Complaint.

40. The Defendants deny the allegations contained in paragraph 40 of the Second Amended Complaint.

41. The Defendants deny the allegations contained in paragraph 41 of the Second Amended Complaint.

42. The Defendants admit the allegations contained in paragraph 42 of the Second Amended Complaint.

43. Defendants admit the allegations contained in paragraph 43 of the Second Amended Complaint except Lisa Wallace was not the Purchasing Agent at all times.

44. There is no allegation No. 44.

45. The Defendants admit the allegations contained in paragraph 45 of the Second Amended Complaint.

46. The Defendants admit the allegations contained in paragraph 46 of the Second Amended Complaint.

47. That the Defendants admit paragraphs 47-97 of the Second Amended Complaint generally quote various provisions of the State Constitution, State law and City ordinances. The descendants would crave reference to the entire text of such laws and would deny any remaining provisions of paragraphs 47-97 of the Second Amended Complaint.

48. The Defendants admit the allegations contained in paragraph 98 of the Second Amended Complaint.

49. In response to paragraph 99 of the Second Amended Complaint, Defendants admit the Town entered into the Public Private Partnership Agreement on July 6, 2014, as attached. Any remaining allegations are denied.

50. The Defendants admit the allegations contained in paragraph 100 of the Second Amended Complaint.

51. The Defendants admit the allegations contained in paragraph 101 of the Second Amended Complaint.

52. The Defendants admit the allegations contained in paragraph 102 of the Second Amended Complaint.

53. The Defendants admit the allegations contained in paragraph 103 of the Second Amended Complaint.

54. The Defendants admit the allegations contained in paragraph 104 of the Second Amended Complaint.

55. The Defendants admit the allegations contained in paragraph 105 of the Second Amended Complaint.

56. In response to paragraphs 106-145 of the Second Amended Complaint, generally quote various documents related to the Public Private Partnership Agreement (PPPA), but Defendants would crave reference to the entire document and deny any remaining allegations of paragraphs 106-145 except as specifically admitted.

57. In response to paragraph 146 of the Second Amended Complaint, Defendant Collins admits he ran on a platform which included brining a boutique hotel with space to hold weddings and other functions to Summerville. Any remaining allegations are denied.

58. In response to paragraph 147 of the Second Amended Complaint, Defendants deny acting improperly and would state the minutes of the City Council speak for themselves as to the action ad taken by council.

59. In response to paragraph 148 of the Second Amended Complaint, Defendants admit Summerville officials reached out to three or more developers for discussion options to build a boutique hotel in Summerville. Any remaining allegation is denied.

60. In response to paragraph 149 of the Second Amended Complaint, Defendants admit the Lawrence Group was hired to assist with a possible amendment to the Master Plan but the work of the Lawrence Group was not principally directed to hotel-related matters. Any remaining allegations are denied.

61. In response to paragraph 150 of the Second Amended Complaint, Town of Summerville admits it published a request for proposals as quoted. Any remaining allegations are denied.

62. The Defendants deny the allegations contained in paragraph 151 of the Second Amended Complaint.

63. In response to paragraph 152 of the Second Amended Complaint, the Town admits the dates of publication schedule and the number of days available, but denies the remaining allegations.

64. The Defendants admit the allegations contained in paragraph 153 of the Second Amended Complaint.

65. The Defendants admit the allegations contained in paragraph 154 of the Second Amended Complaint.

66. The Defendants admit the allegations contained in paragraph 155 of the Second Amended Complaint except for the allegations that the adjacent tract would include only condominiums.

67. The Defendant denies the allegations contained in paragraph 156 of the Second Amended Complaint.

68. The Defendants deny the allegations contained in paragraph 157 of the Second Amended Complaint.

69. The Defendants deny the allegations contained in paragraph 158 of the Second Amended Complaint.

70. The Defendants deny the allegations contained in paragraph 159 of the Second Amended Complaint.

71. The Defendants deny the allegations contained in paragraph 160 of the Second Amended Complaint.

72. The Defendants deny the allegations contained in paragraph 161 of the Second Amended Complaint.

73. The Defendants deny the allegations contained in paragraph 162 of the Second Amended Complaint.

74. In response to paragraph 163 of the Second Amended Complaint, Defendants deny any knowledge of any fraud, bid rigging or collusion.

75. The Defendants deny the allegations contained in paragraph 164 of the Second Amended Complaint.

76. The Defendants deny the allegations contained in paragraph 165 of the Second Amended Complaint.

77. In response to paragraph 166 of the Second Amended Complaint, Defendants admit an agreement was authorized July 9, 2014, but denies any remaining allegations.

78. The Defendants admit the allegations contained in paragraph 167 of the Second Amended Complaint.

79. In response to paragraph 168 of the Second Amended Complaint, Defendants admit that Plaintiffs quote portions of Applegate's proposal and craves reference to the entire document.

80. In response to paragraph 169 of the Second Amended Complaint, Defendants lack knowledge as to any collusion or assurances that Applegate would win the votes necessary to enter into any proposal with his company and denies any remaining allegations.

81. The Defendants deny the allegations contained in paragraph 170 of the Second Amended Complaint.

82. The Defendants deny the allegations contained in paragraph 171 of the Second Amended Complaint.

83. The Defendants deny the allegations contained in paragraph 172 of the Second Amended Complaint.

84. The Defendants deny the allegations contained in paragraph 173 of the Second Amended Complaint.

85. The Defendants deny the allegations contained in paragraph 174 of the Second Amended Complaint.

86. The Defendants deny the allegations contained in paragraph 175 of the Second Amended Complaint as stated.

87. The Defendants deny the allegations contained in paragraph 176 of the Second Amended Complaint as stated.

88. The Defendants deny the allegations contained in paragraph 177 of the Second Amended Complaint.

89. The Defendants deny the allegations contained in paragraph 178 of the Second Amended Complaint.

90. The Defendants deny the allegations contained in paragraph 179 of the Second Amended Complaint.

91. The Defendants deny the allegations contained in paragraph 180 of the Second Amended Complaint.

92. The Defendants deny the allegations contained in paragraph 181 of the Second Amended Complaint.

93. The Defendants deny the allegations contained in paragraph 182 of the Second Amended Complaint.

94. The Defendants deny the allegations contained in paragraph 183 of the Second Amended Complaint as stated.

95. The Defendants deny the allegations contained in paragraph 184 of the Second Amended Complaint.

96. The Defendants deny the allegations contained in paragraph 185 of the Second Amended Complaint.

97. The Defendants deny the allegations contained in paragraph 186 of the Second Amended Complaint.

98. The Defendants deny the allegations contained in paragraph 187 of the Second Amended Complaint.

99. The Defendants deny the allegations contained in paragraph 188 of the Second Amended Complaint.

100. The Defendants deny the allegations contained in paragraph 189 of the Second Amended Complaint.

101. The Defendants deny the allegations contained in paragraph 190 of the Second Amended Complaint.

102. The Defendants deny the allegations contained in paragraph 191 of the Second Amended Complaint.

103. The Defendants deny the allegations contained in paragraph 192 of the Second Amended Complaint.

104. The Defendants deny the allegations contained in paragraph 193 of the Second Amended Complaint.

105. The Defendants deny the allegations contained in paragraph 194 of the Second Amended Complaint.

106. The Defendants admit the allegations contained in paragraph 195 of the Second Amended Complaint.

107. The Defendants deny the allegations contained in paragraph 196 of the Second Amended Complaint.

108. The Defendants admit the allegations contained in paragraph 197 of the Second Amended Complaint.

109. The Defendants deny the allegations contained in paragraph 198 of the Second Amended Complaint.

110. The Defendants deny the allegations contained in paragraph 199 of the Second Amended Complaint.

111. The Defendants deny the allegations contained in paragraph 200 of the Second Amended Complaint.

112. The Defendants deny the allegations contained in paragraph 201 of the Second Amended Complaint as stated.

113. The Defendants deny the allegations contained in paragraph 202 of the Second Amended Complaint.

114. The Defendants admit the allegations contained in paragraph 203 of the Second Amended Complaint.

115. The Defendants deny the allegations contained in paragraph 204 of the Second Amended Complaint.

116. The Defendants deny the allegations contained in paragraph 205 of the Second Amended Complaint.

117. The Defendants deny the allegations contained in paragraph 206 of the Second Amended Complaint.

118. The Defendants deny the allegations contained in paragraph 207 of the Second Amended Complaint as stated.

119. In response to paragraph 208 of the Second Amended Complaint, Defendants admit Peter Gorman took the position BAR had no authority and denies the remaining allegations.

120. The Defendants deny the allegations contained in paragraph 209 of the Second Amended Complaint as stated.

121. The Defendants deny the allegations contained in paragraph 210 of the Second Amended Complaint as stated and deny any violation of FOIA.

122. The Defendants deny the allegations contained in paragraph 211 of the Second Amended Complaint.

123. The Defendants deny the allegations contained in paragraph 212 of the Second Amended Complaint as stated.

124. The Defendants deny the allegations contained in paragraph 213 of the Second Amended Complaint as stated.

125. The Defendants deny the allegations contained in paragraph 214 of the Second Amended Complaint as stated.

126. The Defendants deny the allegations contained in paragraph 215 of the Second Amended Complaint as stated and the BAR would specifically note that it's staff member, Lucy Dreyer, sent notice to Hutson because his house color in fact appeared changed and dismissed any further inquiry when Hutson claimed the color did not change. Photos taken from Google show the house color did change from a shade of white to yellow.

127. In response to paragraph 216 of the Second Amended Complaint, BAR admits its staff member, Lucy Dreyer, sent a letter because it appeared the color of Hutson's house had changed.

128. In response to paragraph 217 of the Second Amended Complaint, Lucy Dreyer has testified that initially an inspector stated he could not tell if the color had changed, and she believes that Dr. Price did in fact confirm it had changed.

129. The Defendants deny the allegations contained in paragraph 218 of the Complaint.

130. The Defendants deny the allegations contained in paragraph 219 of the Complaint.

131. The Defendants deny the allegations contained in paragraph 220 of the Complaint.

132. The Defendants deny the allegations contained in paragraph 221 of the Complaint.

133. The Defendants deny the allegations contained in paragraph 222 of the Complaint.

134. The Defendants deny the allegations contained in paragraph 223 of the Complaint.

135. The Defendants deny the allegations contained in paragraph 224 of the Complaint.

136. The Defendants deny the allegations contained in paragraph 225 of the Complaint.

137. The Defendants deny the allegations contained in paragraph 226 of the Complaint.

138. The Defendants deny the allegations contained in paragraph 227 of the Complaint.

139. The Defendants deny the allegations contained in paragraph 228 of the Complaint.

140. The Defendants deny the allegations contained in paragraph 229 of the Complaint.

141. The Defendants deny the allegations contained in paragraph 230 of the Complaint.

142. The Defendants deny the allegations contained in paragraph 231 of the Complaint.

143. The Defendants deny the allegations contained in paragraphs 232-274 of the Complaint.

FOR A FIRST AFFIRMATIVE DEFENSE
(12(b)(6))

144. That the Amended Complaint fails to state a cause of action upon which relief may be granted and should be dismissed.

FOR A SECOND AFFIRMATIVE DEFENSE
(Certificate of Incorporation)

145. That any challenge to the existence of the Summerville Redevelopment Corporation is barred by S.C. Code § 31-10-30(d) as the Secretary of State considered the paperwork and issued a Certificate of Incorporation which is conclusive as to the issue under state law.

FOR A THIRD AFFIRMATIVE DEFENSE
(Statute of Limitations/Untimely)

146. That portions of this action are untimely as they were not initiated within 60 days pursuant to S.C. Code § 6-29-760.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Lack of Standing)

147. That the Plaintiffs lack standing to pursue one or more causes of action claimed.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Laches)

148. That the Plaintiffs' relief should be barred by the legal doctrine of Laches.

FOR AN SIXTH AFFIRMATIVE DEFENSE
(Waiver)

149. That the Plaintiffs' relief should be barred by the legal doctrine of waiver.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Untimely Bid Protest)

150. That to the extent Plaintiffs' Amended Complaint may be construed as a challenge to a bid, then said action is untimely pursuant to law including §2-327 of the Town of Summerville Ordinance 12-301.

FOR A EIGHTH AFFIRMATIVE DEFENSE
(Failure to Exhaust Administrative Remedies)

151. That Plaintiffs' claims for relief are barred in whole or in part by their failure to exhaust administrative remedies.

FOR A NINTH AFFIRMATIVE DEFENSE
(South Carolina Tort Claims Act/Immunity)

152. That to the extent Plaintiff seeks any recovery for alleged actual damages, then this action may be barred or Plaintiffs recovery may otherwise be limited by the doctrine of sovereign immunity and the retained immunities including subparts 1, 2, 3, 4, 5, 7 and 12 of the South Carolina Tort Claims Act including any limitation on damages as provided therein.

FOR A TENTH AFFIRMATIVE DEFENSE
(Qualified Immunity)

153. That this case or some portion of it may be barred by the doctrine of qualified immunity.

FOR A ELEVENTH AFFIRMATIVE DEFENSE
(MOOTNESS)

154. That the Plaintiffs' complaints and allegations are most likely moot. As Applegate and Co. submitted a budget offer of \$9 million dollars for the "Public Improvements" which exceeded the maximum contribution set forth in the agreement of \$5.2 million. The developer has never provided a projected cost within the contract price

and City Council and the RDC have never voted to increase the contract price. With no votes to increase the contract maximum, Applegate & Co. refunded deposits and walked away from the project.

FOR A TWELFTH AFFIRMATIVE DEFENSE
(Immunity)

155. That Defendants are entitled to legislative immunity for any conduct within their official capacities.

CLAWSON and STAUBES, LLC

/s/ Timothy A. Domin

Timothy A. Domin

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Attorney for Town of Summerville

Charleston, South Carolina

July 13, 2018

RECEIVED

Mar 18 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2022-CP-18-01494

Faye P. Croft, Personally and as
Trustee of the James A. Croft
Trust; James A. Croft Trust;
William A. Harbeson; Heyward
G. Hutson; James Stephen
Greene, Jr., Brian Peacher;
Robert Klinger; Mary Becker;
Summerville Preservation
Society; and Dorchester County
Taxpayers Association,

Appellants,

v.

Town of Summerville; Town of
Summerville Redevelopment
Corporation; Town of
Summerville Planning
Commission; and Town of
Summerville Board of
Architectural Review,

Respondents.

NOTICE OF APPEAL

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust, James A. Croft Trust, William A. Harbeson, Heyward G. Hutson, James Stephen Greene, Jr., Brian Peacher, Robert Klinger, Mary Becker, Summerville Preservation Society, and Dorchester County Taxpayers Association appeal the order of the Honorable Jennifer B. McCoy dated February 23, 2024. Appellants received written notice of entry of the Order Granting Defendants' Motion to Dismiss as

Moot on February 24, 2024.

/s/ W. Andrew Gowder, Jr.
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Counsel for Respondents

RECEIVED

Mar 18 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2022-CP-18-01494

Faye P. Croft, Personally and as
Trustee of the James A. Croft
Trust; James A. Croft Trust;
William A. Harbeson; Heyward
G. Hutson; James Stephen
Greene, Jr.; Brian Peachey;
Robert Klinger; Mary Becker;
Summerville Preservation
Society; and Dorchester County
Taxpayers Association,

Appellants,

v.

Town of Summerville; Town of
Summerville Redevelopment
Corporation; Town of
Summerville Planning
Commission; and Town of
Summerville Board of
Architectural Review,

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 18th day of March, 2024 to:

Timothy A. Domin
Clawson and Staubes, LLC
126 Seven Farms Dr, Ste 200
Charleston, SC 29492
(843)577-2026
tdomin@clawsonandstaubes.com

G. Waring Parker
Town of Summerville
200 S Main St
Summerville, SC 29483
(843)695-6510
gparker@summervillesc.gov

Counsel for Respondents

/s/ Bailey L. Pope
Bailey L. Pope
Assistant to W. Andrew Gowder, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; Peter M. Gorman; James Stephen Greene, Jr.; Brian Peacher; Summerville Preservation Society; and Dorchester County Taxpayers Association,

Plaintiffs,

vs.

Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; Town of Summerville Board of Architectural Review; Applegate & Co.; The Dorchester, LLC; and Arthur H. Applegate,

Defendants.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-10-7739

NOTICE OF MOTION AND MOTION TO
CHANGE VENUE

BY

JULIE J. GOWDER
CLERK OF COURT

2015 JAN 29 PM 3:09

FILED

TO: W. Andrew Gowder, Jr. Esq. and Michael T. Rose, Esq., Attorneys for Plaintiffs

PLEASE TAKE NOTE that the undersigned attorneys for the, Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; Town of Summerville Board of Architectural Review, will move before the presiding judge in the Court of Common Pleas for the Ninth Judicial Circuit for Charleston County for an Order changing the

venue of this action from Charleston County to Dorchester County, South Carolina, on the grounds the Plaintiffs have filed this case in the County of Charleston which is an improper selection considering the project itself is located in Dorchester County and state law provide that matters relating to "the determination in any form of the right or interest, and for injuries to real property" be filed in the county where the real estate is located. S. C. Code § 15-7-10. In addition, state law provides for venue in the County where the case arose in any case involving public officials. See S. C. Code § 15-7-20.

This Motion will be supported by the Affidavits which will be served subsequently, as well as a brief which will be served prior to the hearing on this Motion.



Timothy A. Domin
CLAWSON and STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
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Attorneys for Defendants, Town of Summerville;
William C. Collins, in his capacity as Mayor; Terry
Jenkins, Aaron Brown, Walter Bailey, William
McIntosh, Kima Garten-Schmidt and Robert
Jackson, in their capacities as members of Town
Council; Town of Summerville Redevelopment
Corporation; Town of Summerville Planning
Commission; Town of Summerville Board of
Architectural Review

Charleston, South Carolina
January 29, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading(s) has been served upon opposing counsel on the 29th day of January, 2015 via:

☒	United States Postal Service
☐	Facsimile
☐	Electronic Email

Patricia M. Aldona

BY _____

JULIE Y. CHANG
CLERK OF COURT

2015 JAN 29 PM 3:09

FILE

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-10-7739.

Faye P. Croft, Personally and as Trustee of the
James A. Croft Trust; et al.

Plaintiffs,

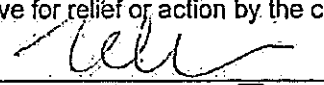
Vs.

Town of Summerville

Defendants.

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney: W. Andrew Gowder, Jr. Esq., Bar No. _____ Address: Pratt-Thomas Walker, P.A. PO Box 22247 Charleston, SC 29413-2247 Phone: (843) 727-2200 Fax (843) 727-2238 E-mail: wag@p-tw.com Other: _____		Defendant's Attorney: Timothy A. Domin Bar No. 65264 Address: CLAWSON and STAUBES, LLC 126 Seven Farms Drive, Suite 200 Charleston, South Carolina 29492- 8144 Phone: (843) 577-2026 Fax: (843) 722-2867 E-mail: tdomin@clawsonandstaubes.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Change Venue Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant January 29, 2015 Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)			
JUDGE'S SECTION		JUDGE CODE _____	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2015-CP- 18-713

MOTION AND ORDER INFORMATION

Faye P. Croft, personally and as Trustee of the
James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson;
Peter M. Gorman; James Stephen Greene, Jr.;
Brian Peacher; Robert Klinger; Mary Becker;
South Carolina Public Interest Foundation;
Summerville Preservation Society; and
Dorchester County Taxpayers Association,
individually, and on behalf of all others
similarly situated

Plaintiff,)

vs.)

Town of Summerville; William C. Collins, in
his capacity as Mayor; Terry Jenkins, Aaron
Brown, Walter Bailey, William McIntosh,
Kima Garten-Schmidt and Robert Jackson, in
their capacities as members of Town Council;
Town of Summerville Redevelopment
Corporation; Town of Summerville Planning
Commission; Town of Summerville Board of
Architectural Review; Applegate & Co.; The
Dorchester, LLC; and Arthur H. Applegate

Defendant:)

FORM AND COVERSHEET

CERTIFIED COPY
2015 APR 13 PM 5:12
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff's Attorney:

W. Andrew Gowder, Jr.
, Bar No. 7895

Address:

Post Office Drawer 22247
Charleston, SC 29413
Phone: 843-727-2229
Fax 843-727-2231

E-mail: wag@p-tw.com Other: _____

Defendant's Attorney:

J. Rutledge Young, Jr., Bar No. 5737

Address:

96 Broad Street
Charleston, SC 29401
Phone: 843-720-2044 Fax 843-720-2047
E-mail: jry@duffyandyoung.com Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information	
Nature of Motion: Notice and Motion for Partial Summary Judgment	
Estimated Time Needed: 20 mins	Court Reporter Needed: ☒ YES / ☐ NO
SECTION II: Motion/Order Type	
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☐ Defendant _____ Date submitted _____	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Faye P. Croft, personally and as Trustee of the
James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson;
Peter M. Gorman; James Stephen Greene, Jr.;
Brian Peachey; Robert Klinger; Mary Becker;
South Carolina Public Interest Foundation;
Summerville Preservation Society; and
Dorchester County Taxpayers Association,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in
his capacity as Mayor; Terry Jenkins, Aaron
Brown, Walter Bailey, William McIntosh,
Kima Garten-Schmidt and Robert Jackson, in
their capacities as members of Town Council;
Town of Summerville Redevelopment
Corporation; Town of Summerville Planning
Commission; Town of Summerville Board of
Architectural Review; Applegate & Co.; The
Dorchester, LLC; and Arthur H. Applegate,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-~~18~~-713

CERTIFIED COPY
2015 APR 13 PM 5:12
CLERK OF COURT
DORCHESTER COUNTY

**PLAINTIFF'S NOTICE OF MOTION AND MOTION
FOR PARTIAL SUMMARY JUDGMENT**

TO: DUFFY & YOUNG, LLC and CLAWSON & STAUBES, LLC, ATTORNEYS FOR
DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, through their undersigned
attorneys, will move, ten days after the service of this motion or as soon thereafter as counsel
may be heard, before the presiding judge for the Court of Common Pleas for Dorchester
County for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure

granting Plaintiffs summary judgment on Plaintiffs' causes of action on the grounds that the Plaintiffs are entitled to judgement as a matter of law on the issues raised by this motion.

- The Town of Summerville violated its own Procurement Code in entering into a contract with the defendant Applegate & Co. following a Request for Proposal process, rather than requesting sealed bids as provided in its ordinance.
- Even if the Town were able to proceed under its Procurement Code through a Request for Proposal procedure, it failed to follow the terms of that request and failed to follow its ordinance by accepting a proposal that was not responsive to the published request.
- As a result of both of these deficiencies, the entry into that contract by the Town was *ultra vires*, and is void and unenforceable as a matter of law.

This motion is based on the pleadings, the discovery, and the applicable law.

BY: 
W. Andrew Gowder, Jr. (S.C. Bar #7895)
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Post Office Drawer 22247
Charleston, South Carolina 29413-2247
Phone: 843-727-2208
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wag@p-tw.com

Michael T. Rose (S.C. Bar #4910)
MIKE ROSE LAW FIRM, PC
406 Central Ave.
Summerville, SC 29483
Phone: 843-871-1821
Fax: 843-478-7595
mrose5@sc.rr.com

ATTORNEYS FOR PLAINTIFFS

April 6, 2015

Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 10 day of April, ~~2012~~ 2015 in Charleston, South Carolina.

Amanda J. Smith

CERTIFIED COPY
2015 APR 13 PM 5:12
Clayton H. Hester
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Faye P. Croft, personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; Peter M. Gorman; James Stephen Greene, Jr.; Brian Peacher; Robert Klinger; Mary Becker; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; Town of Summerville Board of Architectural Review; Applegate & Co.; The Dorchester, LLC; and Arthur H. Applegate,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-18-713

CERTIFIED COPY
2016 APR 13 PM 5:12
CLERK OF COURT
DORCHESTER COUNTY

**MEMORANDUM OF LAW
IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs, through their undersigned counsel Pratt-Thomas, Walker, P.A. and Mike Rose Law Firm, PC, submit this memorandum of law in support of Plaintiffs' Motion for Partial Summary Judgment.

BACKGROUND

On May 9, 2012, the Town Council of the Town of Summerville (the "Town") enacted its existing Purchasing Ordinance, a copy of which is attached hereto as Exhibit A, SUMMERVILLE, S.C., CODE § 2-320, *et. seq.* (2012). It provides, among other things, that contracts and purchases valued at \$25,000 or more must be awarded by means of "competitive sealed bids," subject to certain exceptions not relevant here. SUMMERVILLE, S.C., CODE § 2-322(c). Any departure from that use of competitive sealed bids for projects over \$25,000 requires a written rationale. SUMMERVILLE, S.C. CODE § 2-323(c)(17). There is no provision in the Purchasing Ordinance authorizing the Town to contract using a Request for Proposal ("RFP") method of procurement.

Defendant Collins, the Mayor of Summerville, ran for election on a platform that included encouraging construction of a boutique hotel in downtown Summerville, and after his election he pursued that project. To that end, on November 10, 2013, the Town published an RFP in the *Post and Courier* newspaper for the design and construction of a "boutique" hotel complex. (A copy of the RFP is attached as Exhibit B.)

The RFP's "Statement of Requirements" included the following: (i) a boutique hotel; (ii) an on-site restaurant/lounge; (iii) parking spaces; (iv) possibly a conference center that could accommodate 300 people for a seated dinner; and (v) an outline of a plan for financing the venture.

Only one proposal was submitted, by developer Applegate & Co. ("Applegate"). Applegate's lengthy proposal (attached as Exhibit C) included all of the above but, significantly, added 34 high-end residential units (i.e., condominiums) as an integral component of the project, presumably to make the project financially feasible for Applegate.

Following the award of the design and construction contract to Applegate, the Town spent eight months negotiating a Public/Private Partnership Agreement ("PPPA") with Applegate which, together with several attachments and exhibits, provided for a \$30,000,000, 65-room hotel,

approximately 34 condominiums (later reduced to 27), and common areas, retail and restaurant space, a swimming pool, a fitness center and a rooftop bar, all to be owned by Applegate, together with an adjacent Town-owned conference center and parking garage. Public financing to pay for this "partnership" project includes a \$9,500,000 hospitality fee revenue bond offering by the Town, plus a two-year interest-free, unsecured and subordinate loan of \$3,750,000 by the Town to Applegate, property tax and other financial concessions to Applegate, as well as the Town's gift to Applegate of valuable real property.

The Plaintiffs have filed this action, requesting declaratory and injunctive relief, on the basis that the PPPA and the process leading to its adoption are *ultra vires* and in violation of state and local law.

Though the parties have exchanged pleadings and only just begun discovery, the facts surrounding the method of procurement that led to the entry of this contract between the Town and Applegate are not in dispute, and based on the Town's own ordinance, the Plaintiffs are entitled to partial summary judgment that the publication of the RFP and the award of the design and development contract to Applegate following on the RFP were *ultra vires* and invalid, for the following reasons:

- The Town's publication of the RFP and award of the design and development contract to Applegate violate the Town's Purchasing Ordinance, which requires competitive sealed bids;
- The publication and the award are consequently unlawful and *ultra vires*;
- These actions deprived the Town, its citizens, taxpayers and other potential bidders of free and open competition; and

- These actions constitute or will constitute an unlawful commitment or expenditure of public funds.

As a consequence, all actions taken by the Town pursuant to, in furtherance of and in implementation of the development contract awarded to Applegate should be adjudged invalid and void *ab initio*. These actions include, but are not limited to, the rezoning of the development site from B2 "Neighborhood Business Center" to B3 "General Business," on April 9 and May 14, 2014; execution of the PPPA and other agreements and contracts with Applegate on July 9, 2014; preliminary approvals of the design of the boutique hotel project by the Summerville Board of Architectural Review ("BAR") on January 12, 2015; transfers of funds for the purpose of financing the boutique hotel project; purchases of or contracts to purchase real or personal property for use in the project; payments to consultants for site design of the project; and appropriation of funds for related infrastructure and streetscape improvements.

As a result, the court should permanently enjoin the Defendants from taking any further actions pursuant to, in furtherance of, or to implement the unlawful design and development contract awarded to Applegate, including, but not limited to, performance of the PPPA and its attachments and exhibits; commitments and expenditures of public funds in furtherance of the project; approvals of the design of the boutique hotel property by the Summerville BAR; transfers of funds for the purpose of financing the project; purchases of real or personal property for the project; payments to consultants for site design or other services related to the project; appropriation of funds for infrastructure or street improvements; the destruction or moving of trees and buildings on the site of the project; and the expenditure of money and the issuance of Hospitality Fee Revenue bonds or any other municipal bonds, the proceeds of which are meant to fund the unlawful project.

SUMMARY JUDGMENT STANDARD

"In ruling on motions for summary judgment, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party." Johnston v. Bowen, 313 S.C. 61, 64, 437 S.E.2d 45 (1993). "Summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ." Shuler v. Tuomey Reg'l Medical. Ctr., 313 S.C. 225, 227, 437 S.E.2d 128, 130 (Ct. App. 1993). "It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." Id. "Summary judgment is appropriate only when the pleadings, depositions, interrogatory answers, admissions, and affidavits show that there is no genuine issue of material fact" Id.

DISCUSSION

- 1. The Town violated its own Purchasing Ordinance by publishing an unauthorized Request for Proposal and awarding the contract to Applegate & Co., rather than soliciting competitive sealed bids as required by the Purchasing Ordinance.**

The Town's Purchasing Ordinance does not authorize the RFP method of procurement. The only method authorized for projects valued at \$25,000 or more is by means of "competitive sealed bids," subject to specified exceptions, none of which include RFPs or apply in this case. Moreover, SUMMERVILLE, S.C., CODE § 2-323(c)(17) requires that any departure from the use of competitive sealed bids for projects over \$25,000 requires a written rationale. Defendants have produced no such rationale, and, in any event, there could be no valid rationale for using an unauthorized procurement method.

In 2005, the South Carolina Supreme Court decided a case presenting facts and issues directly on point with those presented in this case. Anticipating our kind of case, the Court in Sloan v. DOT, 365 S.C.299, 618 S.E. 2d 876 (2005)("Sloan (2005)") took jurisdiction despite the

fact that the case was moot: "[I]f a decision by the trial court may affect future events, an appeal from that decision is not moot even though the appellate court cannot give effective relief in the present case (citation omitted). Clearly, this issue is capable of repetition, yet will usually evade review. Accordingly, despite mootness, we will address the merits." Sloan (2005), 365 S.C. at 303 (citation omitted). The Court also addressed the plaintiff's standing, finding that "the issues involved 'are of such wide concern' that this declaratory judgment action should be decided for future guidance in the expenditure of public funds pursuant to competitive sealed bidding requirements." Id. at 304, citing Sloan v. School Dist. of Greenville Cty., 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct.App.2000).

In Sloan (2005), Sloan had challenged, in three separate lawsuits, the DOT's use in three separate highway construction projects of RFPs rather than competitive sealed bidding. Sloan (2005), 365 S.C. at 302. The applicable procurement statute required that awards of contracts of \$10,000 or more be made only after the work to be awarded had been advertised for at least two weeks and that awards be made to the lowest, qualified bidder. Id., at 306. The DOT contended that it had the authority to use the RFP method of procurement, and, that in any event, it did not matter because the DOT had awarded the contracts to the lowest bidder. Id. The Supreme Court disagreed, holding that the DOT did not have the authority to use RFPs and that "[the] fact that these three contracts were awarded to the lowest bidder is irrelevant." Id. The Court based its decision on the material differences between the RFP method of procurement and the competitive sealed bidding method. Id., at 305.

In explaining the differences between the use of RFPs and competitive sealed bidding, the Sloan (2005) Court cited an earlier discussion of the difference between competitive bidding and RFP or design/ build contracts in Sloan v. Greenville Cty., 356 S.C. 531, 540, 590 S.E.2d 338, 343

(Ct. App. 2003)(*Sloan (2003)*): "... [C]ontracts awarded by the competitive sealed bidding proceed in multiple stages. An architect or other design professional is hired to prepare initial plans and specifications for the project and after approval of these initial plans a bid package is developed to publicly solicit bids from contractors to perform the work. The lowest bidder is awarded the project." *Sloan (2003)*, 356 S.C. at 540.

As stated by the South Carolina Court of Appeals¹:

"Under the Code, the County must use the competitive sealed bidding method to procure construction services over \$ 15,000 unless one of several specific exceptions applies. See G.C.C. §§ 7-212 - 7-242.5. One of these exceptions--the focal point of this case--is known as the "design-build" procurement method. See § 7-242.5.

The design-build method differs from traditional competitive sealed bidding in two important ways. First, under the design-build method, the County enters into a single contract for design and construction of the project. This arrangement condenses the two-step process of competitive sealed bidding in which the County procures design services and then contracts separately for the actual construction. Design-build's single source procurement also enables design and construction to proceed concurrently, thereby shortening project duration. Once a design "footprint" for a structure has been prepared, a contractor may begin work such as grading and excavating a site, while a designer continues to design the structure.

Second, the design-build method allows comparative subjective evaluations to be made when determining acceptable proposals for negotiation and award of the contract. Price need not be the sole or primary criterion for evaluating competing proposals--it may be only one of several factors considered. The County may select the design-build team based on other factors such as experience, project team members, and expertise.

It is design-build's lack of objective, bright-line criteria that raises concerns about its use. Critics espouse that design-build vests too much discretion with the governing body regarding when and to whom public contracts are awarded. Because price is not a controlling factor in design-build source selection, the public entity may not always receive the lowest, most competitive price possible. See e.g., *Sloan v. Sch. Dist. of Greenville County*, 342 S.C. 515, 521, 537 S.E.2d 299, 302 (Ct. App. 2000) (opining that "this court has long maintained that 'municipal competitive bidding laws are enacted to guard against such evils as favoritism,

¹ The *Sloan (2005)* opinion uses RFPs and the Design/Build process interchangeably. *Sloan (2005)*, 365 S.C. at 305.

fraud or corruption in the award of contracts, to secure the best product at the lowest price"). Without proper guidelines and oversight, design-build may foster the impression that the government is somehow less accountable for its decisions as to how it spends taxpayer money."

Sloan (2003), 356 S.C. 540-542.

In fact, in that case, the plaintiff, Sloan, contended that using the design/build [here, RFP] method also limits the number of potential vendors who can submit proposals because construction companies without design capability cannot make proposals. Indeed, in this case, the Town of Summerville received only one proposal and, as discussed below, that proposal was non-responsive.

Plaintiffs in this case bring their motion precisely for the reasons set forth above and submit that the guidance provided by the Supreme Court in Sloan (2005) must be followed in this case.

In Sloan v. DOT, 379 S.C. 160, 666 S.E.2d 236 (2008), plaintiff challenged the DOT's decision to authorize an emergency procurement on a construction project. Emergency procurements by the DOT do not require competitive bidding. Sloan (2008), 379 S.C. at 165-166. The plaintiff alleged there was no "emergency" and sought an injunction prohibiting the DOT from paying for the construction and a declaratory judgment that the procurement was illegal, invalid and *ultra vires*. Id.

After addressing the issues of standing and mootness, the Court analyzed the relevant procurement code, which required contracts of \$10,000 or more to be advertised for at least two weeks and awarded to the lowest qualified bidder. The only exception was in cases of emergencies as determined by the Secretary of the DOT. Because there was no definition of "emergency" in the procurement code, the Court looked for guidance to the definition of the word in the S.C. Consolidated Procurement Code, S.C. Code Ann. Sec. 11-35-710, 1570 (Supp. 2007) and the Regulations thereunder, S.C. Code Ann. Reg. Sec. 19-445.2110 (2007). Based on that definition

and on the plain meaning of the word, the Court found that there was no “emergency.” Sloan (2008), 379 S.C. at 174. Thus, the Supreme Court held that the DOT’s procurement on an emergency basis was invalid under the applicable statute. Id.

In the case cited above, the alternative procurement methods used instead of competitive bidding were in fact **authorized** in the defendants’ procurement policies; however, the determinations to deviate from the preferred methods were found to be insufficient to justify using the alternate method.

Our case is one step removed from this case. Rather than soliciting competitive sealed bids for development of the boutique hotel project, the required procurement method in Summerville’s Purchasing Ordinance, the Town used a method that was **not authorized** in its Purchasing Ordinance. Summerville’s Purchasing Ordinance does not mention Requests for Proposals as an alternative method of procurement and does not provide any guidelines, definitions, procedures, policies, standards or rules with respect to the use of RFPs. As a matter of law, the RFP published in the *Post and Courier* newspaper on November 10, 2013, was contrary to the Town’s Purchasing Ordinance. Accordingly, the award of the contract to developer Applegate, all actions taken by the Town to implement that contract and all contracts, actions and agreements emanating from that award, including the PPPA and its exhibits and attachments, are invalid, *ultra vires* and void *ab initio*.

2. Even if the Town’s Purchasing Ordinance authorized use of RFPs, the Town violated its Ordinance by accepting a proposal from Defendant Applegate & Co. that was not responsive to the RFP.

Even if use of the RFP method had been authorized in the Town’s Purchasing Ordinance, which it was not, the Town’s acceptance of the proposal from Applegate violated Sections 2-

321(e), 2-322(c) and 2-323(c)(1) and (12) of the Purchasing Ordinance because the proposal was not responsive.

The Town's RFP, published on November 10, 2013, in the *Post and Courier* newspaper included a "Statement of Requirements" that called for the following elements: (i) a boutique hotel; (ii) an on-site restaurant/lounge; (iii) parking spaces; (iv) possibly a conference center that could accommodate 300 people for a seated dinner; and (v) an outline of a plan for financing the venture.

Applegate's lengthy proposal, which was the only proposal submitted to the Town, included the above, but added a significant additional element: 34 high-end residential condominium units (later reduced to 27), presumably to ensure a profit for the developer.

The addition of the residential units rendered Applegate's proposal non-responsive as a matter of law. The Town's Purchasing Ordinance (pertaining only to Bids, not Proposals, as explained above) states in Section 2.323(c) (12) that "[t]he bid shall be awarded with reasonable promptness by notice to the most **responsive**, responsible bidder **whose bid meets the requirements and specifications** and any other award criteria set forth in the invitation for bids, and in the best interest of the town." (Emphasis added.)

The word "responsive" is a term of art in procurement law. Because the Town's Purchasing Ordinance does not define "responsive," except generally as quoted above, definitions provided in the S.C. Consolidated Procurement Code and the Regulations thereunder are instructive, as noted by the Supreme Court in Sloan (2008), 379 S.C. at 173 (In the absence of a definition of the word "emergency" in the relevant ordinance, the definitions in the S.C. Procurement Code and its Regulations "provide useful guidance, in a procurement setting, as to what constitutes an emergency.") Similarly, in our case, state law provides the following useful guidance, in a procurement setting, as to what constitutes a "responsive" bid.

The S.C. Consolidated Procurement Code, S.C. Code Ann. Sec. 11-35-1530(1), unlike Summerville's Ordinance, authorizes the use of RFPs. S.C. Code Ann. Sec. 11-35-1410(7) defines a "responsive bidder" (in the case of an invitation for bids) or a "responsive offeror" (in the case of a request for proposals) as "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals" (Emphasis added.)

The S.C. Consolidated Procurement Code prohibits procuring agencies from waiving variations from bid requirements that have more than a trivial or negligible effect on total price, quality, quantity or delivery. S.C. Code Ann. Sec. 11-35-1520(13). The statute refers to "minor informalities or irregularities," which are "merely a matter of form or are immaterial variations from the **exact requirements** of the invitation for bids having no effect or merely a trivial or negligible effect on **total bid price, quality, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders.**" (Emphasis added). Id. Procurement officers who either give a bidder an opportunity to cure such minor deficiencies or waive them must do so in writing, Id. Although this section refers only to bids, it also applies to proposals pursuant to S.C. Code Ann. Sec. 11-35-1530(1).

Regulations promulgated under the S.C. Consolidated Procurement Code state: "Any bid which **fails to conform to the essential requirements** of the invitation for bids **shall be rejected.**" S.C. Regulation 19-445.2070(A) (Emphasis added.) This Regulation also applies to requests for proposals pursuant to S.C. Code Ann. Sec. 11-35-1530(1).

The addition of 34 condominium units in Applegate's proposal caused it to fail to conform to the essential requirements of the Town's RFP. By analogy, a proposal to provide a fleet of police cars and 10 fire engines is not responsive to a request for proposals or an invitation for bids

to provide a fleet of police cars. Moreover, the addition of 34 condominiums is not a variation that has no effect or merely a trivial or negligible effect on total price, quality, delivery or performance of the project. The statute also provides that variations from bids and proposals that would have a prejudicial effect on other bidders cannot be waived. Most certainly, permitting Applegate to construct and sell 34 high-end condominiums prejudiced potential bidders who were not given an opportunity to bid on the project with such a financial incentive.

The Town should have rejected Applegate's proposal because it was non-responsive to the RFP, the variation was material and it rendered the procurement non-competitive. See Section 2-323(c)(12) of Summerville's Purchasing Ordinance.

Moreover, if the Town determined that condominiums were necessary to attract the interest of developers, the Town should have rejected Applegate's proposal and solicited bids for the design of the project, including condominiums, followed by competitive sealed bidding for construction of the project. By failing to do so, the Town deprived itself, the Plaintiffs and other citizens and taxpayers, as well as other bidders, including qualified minority bidders, of the benefits of free and open competition. The Town thereby violated Sections 2-321(c), 2-322(c), 2-323(c)(12) and (17) of Summerville's Purchasing Ordinance which require competitive procurement and resulted in an unlawful commitment and expenditure of public funds.

Because the Town's acceptance of Applegate's non-responsive proposal violates Summerville's Purchasing Ordinance, all actions taken pursuant to, in furtherance of or to implement that proposal and all contracts and agreements emanating from the award, including the PPPA and its exhibits and attachments, are contrary to the Purchasing Ordinance, unlawful, invalid, *ultra vires* and void *ab initio* and constitute an unlawful commitment and expenditure of

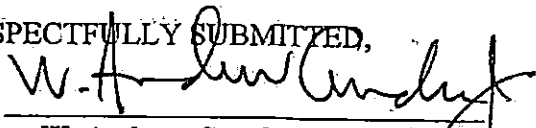
public funds. Additionally, all future actions taken pursuant to, in furtherance of or to implement said contracts must be enjoined.

WHEREFORE, Plaintiffs pray the Court:

1. To declare that the Town of Summerville violated its Purchasing Ordinance when it published a Request for Proposal on November 10, 2013, for the boutique hotel project and awarded the design and development contract to Defendant Applegate because the Purchasing Ordinance did not authorize the RFP method of procurement;
2. To declare the Request for Proposal and the award of the design and development contract to Applegate & Co. invalid, unlawful and *ultra vires*;
3. To declare that all actions taken by the Town pursuant to, in furtherance of or to implement the design and development contract awarded to Applegate & Co. are invalid, null and void *ab initio* and constitute an unlawful commitment and expenditure of public funds;
4. To declare that said actions include, but are not limited to, rezoning of the development site from B2, "Neighborhood Business Center," to B3, "General Business," on April 9, 2014; execution of the PPPA and other agreements and contracts with Defendant Applegate on July 9, 2014; preliminary approvals of the design of the boutique hotel project by the Summerville Board of Architectural Review on January 12, 2015; transfers of funds for the purpose of financing the boutique hotel project; purchases of or contracts to purchase real or personal property for use in the project; payments to consultants for site design; the destruction or moving of trees and buildings on the site of the project; and appropriation of funds for infrastructure and streetscape improvements;

5. To permanently enjoin the Defendants from taking any further actions pursuant to, in furtherance of or to implement the unlawful design and development contract awarded to Defendant Applegate, including, but not limited to, performance of the PPPA and its attachments and exhibits; commitments or expenditures of public funds in furtherance of the boutique hotel project; approvals of the design of the boutique hotel property by the Summerville BAR; transfers of funds for the purpose of financing the boutique hotel project; purchases of real or personal property for use in the project; payments to consultants for site design or other consulting services related to the project; appropriations of funds for infrastructure and streetscape improvements; the destruction or moving of trees and buildings on the site of the project; and issuance of Hospitality Fee Revenue bonds or any other bonds the proceeds of which would fund the unlawful development;
6. To declare Applegate & Co.'s proposal non-responsive to Summerville's Request for Proposal as a matter of law;
7. To declare that the Town of Summerville violated its Purchasing Ordinance when it accepted the non-responsive proposal from Applegate & Co.;
8. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann Sec. 15-77-300; and
9. To grant such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

BY: 

W. Andrew Gowder, Jr. (S.C. Bar #7895)
PRATT-THOMAS WALKER, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
Phone: 843-727-2208
Fax: 843-727-2231

wag@p-tw.com

Michael T. Rose (S.C. Bar #4910)
MIKE ROSE LAW FIRM, PC
406 Central Ave.
Summerville, SC 29483
Phone: 843-871-1821
Fax: 843-478-7595
mrose5@sc.rr.com

ATTORNEYS FOR PLAINTIFFS

April 6, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 6 day of April, 2015, in Charleston, South Carolina.



EXHIBIT A

TOWN OF SUMMERVILLE PURCHASING ORDINANCE

David H. Williams
2015 APR 13 PM 5:12
CERTIFIED COPY
CLERK OF COURT
DORCHESTER COUNTY

AN ORDINANCE

TO AMEND ARTICLE V, DIVISION 2 OF THE CODE OF LAWS OF THE TOWN OF SUMMERVILLE ENTITLED "PURCHASING"

BE IT ORDAINED, by the Mayor and Council members of the Town of Summerville, in Council assembled, that the Code of Ordinances of the Town of Summerville Article V, Division 2 entitled "Purchasing" be repealed in its entirety and replaced with the following:

DIVISION 2. PURCHASING

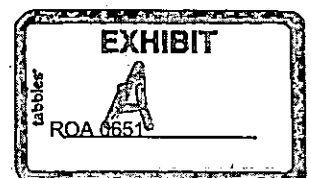
Sec. 2-320. - Equal opportunity.

The town recognizes its responsibility to extend equal opportunity in purchasing decisions and encompasses all qualified individuals and companies in protected groups regardless of race, color, creed, religion, association, national origin, sex, age or disability. The town makes all purchasing decisions in full compliance with the laws and regulations of both the United States and the State of South Carolina. The town makes qualifying purchasing decisions in a genuine, open, and competitive selection process which complies with equal opportunity regulations. Qualifying purchasing decisions made by the town shall be fair and neutral, provide opportunities to all persons or businesses applying, and strive to prevent and eliminate discriminatory behavior and practices by encouraging and utilizing nondiscriminatory practices in all aspects of its decision making.

Sec. 2-321. - Purchasing agent designated; specified duties.

There shall be an employee of the town designated as the purchasing agent. The purchasing agent shall be responsible for:

- (a) The purchase of supplies, materials, equipment, and contractual services required by any office, department or agency of the town government.
- (b) Providing for the storage and distribution of supplies, materials and equipment purchased by the town and maintaining a perpetual inventory of appropriate items.
- (c) Establishing specifications, where deemed necessary and practical, for such supplies, materials, equipment and services. Such specifications shall be as definite and clear as possible and shall encourage competition wherever practical.
- (d) Developing and maintaining an up-to-date list of qualified suppliers, vendors and service providers, including those who have requested that their names be placed on a bidders list. The purchasing agent shall have the authority to remove the names of vendors who have defaulted on their quotations, attempted to defraud or mislead the town or who have failed to meet established requirements, including, but not limited to, established quotations or delivery dates.
- (e) Obtaining the most competitive prices on all purchases, contracts and services.



Sec. 2-322. – Purchasing limitations and authorizations.

To maximize the purchasing value of public funds, all procurements should be competitive where practicable and serve the best interest of the town. Upon verification of adequate funds, all supplies, equipment and contractual services, except as otherwise provided herein, shall be purchased by the following methods:

- (a) \$0.00 - \$2,499 – Requires no formal procurement, but the purchaser will ensure that the lowest cost is sought when possible. Purchases up to \$2,499 must be approved by the department head, or his designee, provided adequate budgeted funds are available for the purchase.
- (b) \$2,500 - \$24,999 – Requires that a minimum of three written competitive quotes be obtained with the award given to the lowest qualified bidder. A written quote or informal bid can consist of a fax, email, mailings or any similar means. Purchases up to \$24,999 must be approved by the department head and division head, or their designees, provided adequate budgeted funds are available for the purchase.
- (c) \$25,000 and over – Requires that purchases be made through competitive sealed bids and advertised through local press publications, the town's website, and/or the South Carolina Business Opportunities (SCBO) publication or other similar publications. Purchases over \$25,000 must be approved by the finance committee of town council.
- (d) Nothing in this section shall prohibit a higher level, more stringent procurement method being used if it is determined by the purchaser that the town's best interest would be better served.
- (e) Formal contracts shall be executed by the town administrator, finance director or mayor.

Sec. 2-323. – Procurement levels and process.

- (a) Small Procurements (\$0.00 - \$2,499)
 - 1. Small purchases may be made by the department head or his designee or a request may be submitted to the purchasing agent for procurement.
 - 2. Competition is encouraged and recommended to ensure fair and reasonable pricing. Each purchasing authority shall use professional discretion and good judgment in an effort to maximize the purchasing value of public funds.
 - 3. Small procurements of less than \$2,500 shall be accomplished by purchase orders in accordance with departmental procedures and forwarded to the finance department, who shall from time to time audit small procurements to validate that small purchases have been executed in accordance with this chapter and entered into the town's purchasing system.
- (b) Competitive Quotes (\$2,500 - \$24,999)
 - 1. Competitive quotes may be obtained by the purchasing agent, department head or his designee.

2. Offers shall be requested and obtained from at least three sources whenever possible for purchases costing \$2,500 or more but less than \$25,000.
3. All suppliers solicited shall be afforded a complete description and requirements of the goods and services being sought, including any special conditions of the expected procurement.
4. All suppliers solicited shall be afforded time considered reasonable by the purchaser to provide written quotes. Written responses shall be accepted by fax, email, mailings or other similar means.
5. All responses received shall be evaluated for price, quality, acceptability as specified, availability of goods or services, past performance, transportation or any other special cost or factors which may apply, including any special conditions or exceptions which the vendor may have stipulated.
6. In all cases, any discussions with vendors after responses have been received shall be limited to clarification purposes. No discussion or disclosure is permissible with any vendors in regard to offers received from others.
7. Negotiation is generally not applicable to competitive quotes although negotiations may be conducted; however, should any negotiations result in the change of the vendor's ranking, then like negotiations shall be afforded other vendors that have submitted a quote.
8. Award shall be made to the most responsive, responsible vendor whose response has been evaluated and determined to meet the requirements and to be in the best interest of the town. The town shall reserve the right to award to the most responsive, responsible vendor by units or projects, whichever is in the best interest of the town.
9. All such information received shall be considered confidential and shall not be disclosed to any vendor prior to an award decision. If all offers exceed the acceptable limits and it is determined that the goods or services shall be reprocessed, then all offers shall be rejected and no cost or pricing information shall be disclosed to any vendor for any reason.
10. Procurements \$2,500 or more but less than \$25,000 shall be accomplished by purchase orders in accordance with departmental procedures with supporting quote documents and source justification and/or written rationale as to why the procurement may be considered under other procurement methods as provided elsewhere within this chapter, or more specifically, considered as a sole source procurement, sensitive procurement, emergency procurement, procurement through the State of South Carolina or one of its agencies or procurement through an existing town contract. Supporting documentation should include written quotes submitted by vendors and contain a clear, concise statement as to the services and/or goods offered for the town's consideration. As a minimum, comparative pricing should be obtained from three sources whenever possible.

which provide like or similar goods and/or services. Purchase orders \$2,500 or more but less than \$25,000 must be approved by the division head or his designee.

(c) Competitive Sealed Bids (\$25,000 and over)

1. Purchases and/or contracts valued at \$25,000 or greater shall be awarded by competitive, sealed bidding, except as may be provided elsewhere in this chapter.
2. Full specifications and proposed vendors shall be provided to the purchasing agent by the purchasing department to solicit competitive sealed bids.
3. An invitation for bid shall be advertised through local press publications, the town's website, and/or the South Carolina Business Opportunities (SCBO) publication or other similar publications, not less than 10 days prior to the date set forth therein for the opening of bids.
4. If necessary, all prospective bidders will be invited to a pre-bid meeting with the purchasing agent and department head(s) to discuss the bid.
5. All bids received prior to the opening shall be kept secure and unopened. All bids, hand delivered, shall be initialed, indicating date and time received. Any bids not properly identified and opened in error by the town shall be resealed immediately and initialed by the recipient.
6. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified in the invitation, together with the name of each bidder, shall be tabulated. The tabulation shall be open to public inspection at that time.
7. It shall be the responsibility of all bidders to provide adequate means whereby their bids, whether mailed or hand carried, shall be received by the town no later than the day and time, as stated in the invitation. Late bids will not be accepted.
8. Bids shall be accepted unconditionally without alteration or correction, except as may be otherwise authorized in this chapter. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in the bid evaluation that is not set forth in the invitation for bids.
9. The town shall evaluate the bids solely using the information as supplied by the bidder. However, it is sometimes determined that, for clarification and more professional evaluation, additional information is desirable and often necessary. Therefore, the town reserves the right to hold discussions, review the specifications as believed offered, and request clarification or any additional technical information which may provide a fair and impartial evaluation by the town. All discussions shall be limited to the bidder's products, goods or services, and no discussion shall be permitted regarding bids by others.
10. Corrections or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation of awards

or contracts based on such bid mistakes may be permitted by the town where appropriate.

11. Any bidder may, by requesting in writing, withdraw his or her bid for any reason prior to the scheduled bid opening.
12. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the town or fair competition shall be permitted.
13. Properly worded and directed changes or corrections which do not disclose the total amount bid may be made by any bidder if submitted to the town in writing and received prior to bid opening. These changes or corrections may be hand carried, mailed, emailed, or sent via fax transmission as follows:
 - i. To increase or decrease a previously submitted lump sum amount, the bidder shall instruct the town in the amount that his or her bid is to be increased or decreased by.
 - ii. In case of a bid which contains multi-items, the bidder shall instruct the town in the amount that he or she desires a given item to be increased or reduced, thereby requesting that his or her total bid be increased or decreased in an equal amount. Changes shall only reflect the amount of adjustment. Changes received which indicate or divulge openly the total amount bid shall not be accepted.
12. The bid shall be awarded with reasonable promptness by notice to the most responsive, responsible bidder whose bid meets the requirements and specifications and any other award criteria set forth in the invitation for bids, and in the best interest of the town.
13. The finance committee of town council may authorize the purchasing agent, in situations where the town's best interest precludes re-solicitation of work, goods, or services of a reduced scope, to negotiate an adjustment in the bid price, including change in the requirements, with the low, responsive and responsible bidder.
14. In the event that negotiations are unsuccessful in reaching a price or scope of work or services which would be agreeable, the town, at its discretion, may terminate all negotiations with the lowest bidder, and enter new negotiations with the next lowest bidder and likewise the third and sequential bidder should negotiations not be productive with the second lowest offerer.
15. Should subsequent negotiations be conducted, all negotiations shall be conducted in like manner as with the first bidder. No changes or reductions in scope of work or services shall be permitted during negotiations with sequential bidders that was not permitted or offered with the negotiations with previous responsive bidders.
16. In conducting negotiations, there must be no disclosure of any information derived from bids submitted by competing bidders.
17. Procurements costing more than \$25,000 shall be accomplished by purchase orders in accordance with departmental procedures with supporting bid award documents and source justification and/or written rationale as to why the

procurement may be considered under other procurement methods as provided elsewhere within this chapter, or more specifically, considered as a sole source procurement, sensitive procurement, emergency procurement, procurement through the State of South Carolina or one of its agencies or procurement through an existing town contract. Supporting bid award documents should include bid tabulation and a concise statement as to the reasons for the bid award recommendation. Purchase orders more than \$25,000 must be approved by the finance committee of town council.

Sec. 2-324. — Competitive bidding; exceptions.

Competitive bidding is required on all purchases exceeding \$2,500 with the following exceptions:

(a) **Emergency Procurement.** In the event of an emergency affecting the public welfare, health or safety, the provisions of this section may be suspended upon the approval of the mayor, finance director or town council. A full, written report of the circumstances of any emergency purchase shall be filed with the clerk and treasurer to the council and incorporated in the minutes of the next council meeting.

(b) **Procurement without Competitive Bidding.** The State of South Carolina and its agencies, including South Carolina counties and municipalities write numerous indefinite-delivery-type contracts yearly with manufacturers, service providers and contractors for regional and/or nationwide items or services. In all cases, town procurement of equipment, goods or services may be made from suppliers which have contracts in place through the State of South Carolina or one of its agencies, including South Carolina counties or municipalities, without seeking competitive bids or proposals.

(c) **Sole Source Procurement.** The purchase has been classified as sole source procurement and documentation, approved by the division head, filed with any quote received by the vendor. As much competition amongst providers shall be sought when possible. A purchase may be classified as sole source for one of the following reasons:

1. There is only one vendor that can provide a specific product or service.
2. A brand or make has been established for conformity, to standardize equipment, improve maintenance, or other similar reasons.
3. A specific brand has been established based on reviews, testing, availability, ability to work with other owned products, or other similar reasons.

(d) **Sensitive Procurement.** When it is determined that unlimited solicitation may jeopardize sensitive operations, a limited solicitation shall be authorized, with such competition as practicable under the circumstances. Unless otherwise authorized by the mayor or finance director, sensitive procurement shall be limited to legal services, financial services to include financial advisors and rate consultants, or services for the police department or administrative services. In all such cases, the appropriate department head or division head must seek the approval of the mayor or finance director prior to ordering.

- (e) Professional Services.

Sec. 2-325. – Bid security deposits and performance bonds.

Bid security deposits and/or performance bonds may be required as described in the invitation to bid as determined by the town.

Sec. 2-326. – Award to other than low bidder.

When the award is not given to the lowest responsive bidder, a full and complete statement of the reasons therefore shall be filed with the purchase order. Local vendor preference shall be given to those vendors who maintain a principal place of business (owned or rented) within the town, as registered in official documents filed with the Secretary of State, the Internal Revenue Service, or state Tax Commission and hold a valid town business license.

In evaluating the price of eligible local vendor bids, the bids shall be evaluated as though the prices proposed by local bidders were either 5%, 2% or 1% lower than actually proposed in accordance with the following schedule:

- (a) If the local bidder submits a bid costing less than \$10,000, the business or individual shall be evaluated on a 5% reduction basis;
- (b) If the local bidder submits a bid costing \$10,000 or more, the business or individual shall be evaluated on a 2% reduction basis;
- (c) For bids \$50,000 or more, the evaluation shall be based on a 1% reduction basis, but will not exceed a total reduction of more than \$2,000.
- (d) Nothing herein shall be construed as increasing or decreasing the actual price of a bid and the resulting contract; this section is intended only to be used for the purposes of comparing and evaluating bids and proposals for products and services. Nothing within this section shall be construed to create any private rights claims, or cause of action on behalf of any person, including, but not limited to bidders.
- (e) The requirements of this section may be waived by the finance committee of town council upon a formal finding that the best interest of the town would not be served by adhering to the provisions of this section.
- (f) This section shall not apply in emergency or sensitive procurement situations.
- (g) The town reserves the right to specify brand names based on its experience; current inventory, and other qualifications specified by the user department.

Sec. 2-327. – Protest procedures and remedies

Any bidder who is aggrieved in connection with the solicitation or award of a bid shall protest to the purchasing agent within five (5) days from the time of award of the goods or services being grieved. Such protest must be in writing, and must set forth all specific grounds for the protest in detail and explain the factual and legal basis for each issue raised. No additional issues may be raised or will be considered thereafter. The purchasing agent shall conduct all inquiries deemed necessary, and a hearing may be held at the discretion of the purchasing agent. The purchasing agent shall issue a decision in writing within ten (10) days. The bid award or contract shall not

be stayed pending any such protest. Any protestant aggrieved by the decision of the purchasing agent may appeal to the finance committee of town council within five (5) days of the purchasing agent's decision. No new issues may be raised on such appeal. The mayor shall issue the decision of finance committee of town council within fifteen (15) days of the finance committee hearing. The decision shall state the reason for the action taken. A decision rendered under this section shall be final and conclusive unless fraudulent. The appeal decision of the mayor and the finance committee of town council is the final administrative review and the decision of the town, and such decision can be appealed by the circuit courts of the state.

First Reading: _____

Second Reading: _____

William C. Collins, Mayor

ATTEST:

Lisa Wallace, Clerk/Treasurer

EXHIBIT B
POST & COURIER RFP ADVERTISEMENT

[Signature]
CLERK OF COURT
DORCHESTER COUNTY
2015 APR 13 PM 5:12
CERTIFIED COPY

TOWN OF SUMMERVILLE
200 S. MAIN ST
SUMMERVILLE SC 29483
Attn: Bonnie VanEtten

CERTIFIED COPY
2015 APR 13 PM 5:12
Cheryl L. [Signature]
CLERK OF COURT
BERKELEY COUNTY

AFFIDAVIT OF PUBLICATION

The Post and Courier

State of South Carolina

County of Charleston

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Charleston, county and state aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

appeared in the issues of said newspaper on the following day(s):

11/10/13 Sun PC
11/10/13 Sun CNW

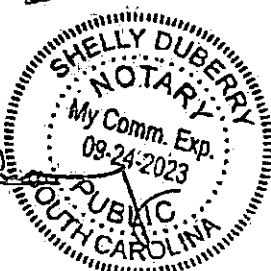
at a cost of: \$199.83
account# 108296
order# 1065489
O. Number:

subscribed and sworn to before
me this 12th day

November
D. 2013

B. Edwards
advertising clerk

Shelly Dubery
NOTARY PUBLIC, SC
commission expires



REQUEST FOR PROPOSAL

The Town of Summerville owns a 1.58 acre tract of land in the downtown historic district. We are seeking developers with hotel experience interested in building a boutique hotel on this property as a private-public partnership with the town. Interested developers should outline the site and design of the hotel, they would build, number of rooms, on-site restaurant/lounge, and number of parking spaces they could provide. Proposals should also consider the possibility of a conference center on that site that could accommodate 200 people for a social dinner. Interested parties should outline their plan for financing the venture.

Respondents should submit their qualifications including past experience with hotel development, descriptions of similar projects and any sub-leasehold partnerships in which they have participated. Responses should also be included.

For additional information about the project, please contact: Michaela Robinson, Director of Planning and Economic Development, at 843-671-6000 or email: mrobinson@summerville-sc.gov. Any other questions about the RFP should be submitted in writing to Lisa Watson, Director of Administrative Services, at lwatson@summerville-sc.gov. Questions and answers will be posted on the town's website.

Proposals must be submitted no later than 5:00 p.m. on Friday, December 6, 2013 to Lisa Watson, Director of Administrative Services, Summerville Town Hall, 200 S. Main Street, Summerville, S.C. 29483.

No questions or submissions will be accepted after 5:00 p.m. on Friday, December 6, 2013. All submissions received by deadline will be conducted without regard to age, race, creed, color, gender, disability, or national origin. All costs associated with the preparation of the submission will be the responsibility of the prospective developer and will not be reimbursed.

ADD 105479



EXHIBIT C
APPLEGATE & CO. RESPONSE TO RFP

2013 APR 13 PM 5:12
CLERK OF COURT
DORCHESTER COUNTY
Christy [Signature]

2015 APR 13 PM 5:12
CERTIFIED COPY
Christy R. Robinson
CLERK OF COURT
DORCHESTER COUNTY

To Be Supplemented

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2015-CP-18-713

Faye P. Croft, personally and as Trustee of the
James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson;
Peter M. Gorman; James Stephen Greene, Jr.;
Brian Peacher; Summerville Preservation
Society; and Dorchester County Taxpayers
Association

Plaintiff,

vs.

Town of Summerville; William C. Collins, in
his capacity as Mayor; Terry Jenkins, Aaron
Brown, Walter Bailey, William McIntosh,
Kima Garten-Schmidt and Robert Jackson, in
their capacities as members of Town Council;
Town of Summerville Redevelopment
Corporation; Town of Summerville Planning
Commission; Town of Summerville Board of
Architectural Review; Applegate & Co.; The
Dorchester, LLC; and Arthur H. Applegate

Defendant.

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Clayton H. Hester
CLERK OF COURT
DORCHESTER COUNTY

2015 OCT 21 PM 12:06

CERTIFIED COPY

Plaintiff's Attorney:

W. Andrew Gowder, Jr., Bar No. 7895.

Address:

Post Office Drawer 22247

Charleston, SC 29413

Phone: 843-727-2229 Fax 843-727-2231

E-mail: wag@p-tw.com Other: _____

Defendant's Attorney:

Timothy A. Domin, Bar No. _____

Address:

126 Seven Farms Drive, Suite 200

Charleston, SC 29492

Phone: 843-577-2026 Fax 843-722-2867

E-mail: tdomin@clawsonandstaubes.com Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information	
Nature of Motion: Plaintiffs' Motion for Partial Summary Judgment and Memorandum of Law	
Estimated Time Needed: <u>20 mins.</u> Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☒ Plaintiff / ☐ Defendant	August 10, 2015 Date submitted
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Faye P. Croft, personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Croft; Heyward G. Hutson; Peter M. Gorman; James Stephen Greene, Jr.; Brian Peacher; Robert Klinger; Mary Becker; South Carolina Public Interest Foundation; Summer-ville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Ki-ma Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corpora-tion; Town of Summerville Planning Com-mission; Town of Summerville Board of Ar-chitectural Review; ,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-18-00713

CERTIFIED COPY
2015 OCT 21 PM 12:06
Clerk of Court
DORCHESTER COUNTY

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AND MEMORANDUM OF LAW**

Plaintiffs, by their undersigned counsel, move the Court, pursuant to Rule 56, SCRCP, for Partial Summary Judgment, and in support of the motion, incorporate this memorandum of law demonstrating that there are no genuine issues of material fact on these issues, and that the Plaintiffs are entitled to judgment as a matter of law.

STATEMENT OF FACTS

On July 9, 2014, the Town of Summerville ("Town") and the Summerville Redevelopment Corporation ("RDC") signed a Public-Private Partnership Agreement Between [sic] Town of Summerville, Town of Summerville Redevelopment Corporation and Applegate & Co. ("PPPA") regarding the building of a mixed use development ("hotel project") within the Town.¹ On November 10, 2013, the Town published a Request for Proposal ("RFP") in the Charleston Post and Courier newspaper seeking proposals from developers to design and build the hotel project.² Only one developer responded to the RFP with a proposal and the Town awarded the hotel project to that developer.³ The RDC was created on May 28, 2014.⁴ The RDC has never invited proposals, by public notice or otherwise, or made available to pertinent persons information about purchasing property or redeveloping the area where the hotel project will be built according to the terms of the PPPA, all in violation of the mandatory requirements of S.C. Code Ann. § 31-10-10(b) and (c).⁵

LEGAL DISCUSSION

In response to Plaintiffs' interrogatories and requests for production, Defendants produced a copy of a series of emails between Defendants and persons associated with the municipal planning consultants⁶ hired by the Town regarding the hotel project. In the emails, reprinted in part below and attached as Exhibit #1, Defendants reveal that the RDC did not comply with S.

¹ Answer, Amended Complaint §48; PPPA at 1, attached to Amended Complaint as Exhibit A.

² Answer Amended Complaint §57; PPPA at 1; PPPA Exhibit B at 1.

³ Answer Amended Complaint §60; PPPA Exhibit B at 1.

⁴ Answer Amended Complaint, §§77, 78, 86.

⁵ See pages 3-9 *infra*.

⁶ Those consultants were from the Lawrence Group. See Answer Amended Complaint §56.

C. Code Section 31-10-110(c) of the Community Development Law⁷ and that the Town and the RDC signed the PPPA even though they knew the RDC had failed to comply with that statutory requirement as they had been advised by their two attorneys.⁸ Compliance with this statute is a prerequisite for the exercise of certain powers by the RDC, including the power to sell, exchange, or otherwise transfer real property or any interest therein and to enter into any agreement related thereto.⁹

1. The South Carolina Community Development Law Grants Extraordinary Powers to Redevelopment Commissions to Eradicate Blight.

The hotel project at issue here is purported¹⁰ to be a "redevelopment project" to be created pursuant to a "redevelopment plan" in a "redevelopment area," as those terms are defined in the Community Development Law¹¹. The sole purpose of this law is to eradicate blight. Under S.C. Code Section 31-10-30(b) a municipality may create a redevelopment commission if and only if it finds "(1) that a blighted area or conservation area [an area about to become blighted] exists in whole or in part in such municipality" and "(2) the redevelopment of such areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality."¹²

To entice developers to participate in such projects, the Community Development Law gives redevelopment commissions extraordinary powers to subsidize and enter into agreements with

⁷ S.C. Code Ann. § 31-10-10 *et. seq.*

⁸ See pages 5-8 *infra* and Exhibit #1 attached.

⁹ S.C. Code Ann. § 31-10-10(b) and (c).

¹⁰ The word "purported" is used here because the Defendants make these claims to justify the RDC entering into the PPPA. The RDC's participation in the PPPA is not allowed by the Community Development Law unless these claims are true. However, these claims cannot be true because the RDC has failed to comply with the Community Development Law, as stated herein.

¹¹ See S.C. Code Ann. §31-10-20 (11)-(16); Order Dismissing Defendants Applegate & Co., The Dorchester LLC, and Arthur H. Applegate (The Applegate Defendants) As Defendants in this case, September 25, 2015, at 3 §9.

¹² Section 31-10-30(b).

private developers and to do so without public hearings. In fact, many of such acts, if undertaken by municipalities instead of redevelopment commissions, would be unconstitutional. See Article X, Section 11 of the South Carolina Constitution (prohibits the State and its political subdivisions, including municipalities, from pledging or lending their "credit" for the benefit of any individual, company, association, corporation or religious or private education institution) and Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967) (construing "credit" as any "pecuniary liability" or "pecuniary involvement").

2. The RDC Violated Section 31-10-110 of the Community Development Law and Is Therefore Not Authorized To Execute and Implement the PPPA and to Exercise the Powers Specified Therein.

S.C. Code Section 31-10-110 states:

"Contracting by commission for certain services; advertisement for bids from persons interested in purchasing or developing property; commission's real estate transactions under redevelopment plan.

(a) A commission may contract for engineering, legal, surveying, professional, or other similar services.

(b) A commission may sell, exchange, or otherwise transfer real property or any interest therein in a redevelopment area to any redeveloper for residential, recreational, commercial, industrial, or other uses or for public use in accordance with the redevelopment plan . . . **provided, that such sale, exchange, or other transfer, and any agreement relating thereto, may be made . . . only after . . . public notice and award as specified in subsection (c).**

(c) The commission shall, by public notice, published 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." (Emphasis added.)

The Summerville RDC never has published any invitation for proposals. Rather, the Town of Summerville published the Request for Proposal on November 10, 2013. In fact, the

RDC was not even in existence on November 10, 2013, but was formed more than seven months later when on May 28, 2014 the Town of Summerville adopted Ordinance No 14-0502 authorizing the creation of the RDC and when on June 13, 2014, the South Carolina Secretary of State issued a certification of incorporation for the RDC. See Exhibit #2, attached.

3. Because the RDC Did Not Comply with the Mandatory Public Notice and Award Requirements of Section 31-10-110(b), (c) of the Community Development Law, the RDC Was Not and Is Not Authorized To Convey Any Real Property to Applegate & Co. or to Enter Into Any Related Agreement.

The PPPA requires the RDC to “convey a portion of the Town Property [as defined therein] to the Developer [Applegate & Co.] or the SPE [a Special Purpose Entity to be formed by the Developer].¹³ Sections 4 and 6 of the PPPA additionally contemplate conveyances of title to land by the RDC to the SPE pursuant to a “Property Swap,” as defined in those sections.¹⁴ The Purchase Lease Agreement and Purchase Obligation Agreement between the RDC and The Dorchester, LLC, attached to the PPPA as Exhibit A, requires the RDC to lease and to sell to The Dorchester, LLC spaces in the parking garage to be built pursuant to the PPPA.¹⁵ Exhibit C of the PPPA requires the RDC to use 1.58 acres of property conveyed to the RDC by the Town “for the purposes of the [hotel] project.”¹⁶ The RDC represented to the Town and the Developer that it had “full power and authority to . . . perform its obligations under, as and when required by” the PPPA.¹⁷

¹³ E.g., PPPA, Section 3(b)(i), at 4. See also Section 10c, at 7, regarding collateral on RDC owned property to be provided by the RDC to the developer.

¹⁴ See PPPA, Sections 4 and 6, at 4-5.

¹⁵ These spaces are real property interests. See Parking Lease Agreement and Purchase Obligation [by and between the] Town of Summerville Redevelopment Corporation [and] The Dorchester, LLC, dated July 9, 2014, at 1-2.

¹⁶ Grant and Property Conveyance Agreement for Tourism and Other Economic Development Projects, at 1-2.

¹⁷ See PPPA, Section 15, at 8.

Notwithstanding these representations, the RDC is prohibited from performing these real property conveyances as required by these sections of the PPPA, since the RDC did not issue and make an award under a Request for Proposal or take any of the other actions necessary under the Community Development Law¹⁸ for the RDC to enter into and implement the PPPA.

4. The RDC and the Town knew they were violating Section 31-10-110.

The following emails show that the RDC knew it had failed to comply with Section 31-10-110(c) and proceeded to contract with the developer, nevertheless. These emails demonstrate that two of the Town's attorneys warned the Town about the RDC's failure to comply with Section 31-10-110 on at least two separate occasions, one on May 29, 2014, and the other on July 9, 2014, and their counsel was rejected and ridiculed.

The July 9, 2014 date is significant. Mayor Collins had been in secret negotiations with the developer for nearly eight months prior to July 9, 2014. At the Town Council meeting scheduled for that evening, Council planned to "go public" with the news about the hotel project and the agreement with the developer and to authorize the Mayor to sign the PPPA. The Town had known about the violation of Section 31-10-110 at least since May 29, 2014. Rather than taking the time and steps to comply with it, the Town chose to keep to its schedule and proceed, despite the requirements of the statute.

Consider the following e-mails, attached as Exhibit #1:

¹⁸ In violation of the Community Development Law, the RDC failed to create a redevelopment plan for a redevelopment area and a redevelopment project pursuant to a redevelopment plan, and to afterwards obtain approval of that redevelopment plan, area and project from the Town. Instead, the Town created what it calls a redevelopment plan for what it calls a redevelopment area involving the hotel as what it calls a redevelopment project, and afterwards created the RDC and got the RDC to approve the Town's purported redevelopment plan, area and project.

May 29, 2014, at 9:15 a.m.: Madelyn Robinson, Summerville's Director of Planning and Economic Development, wrote to representatives at The Lawrence Group, the Town's consultants:

"Hi, The Town's attorney has asked me to ask you about Sec. 31-10-110(c) language — "... invite proposals. . . ." [statute is quoted]. "I'm wondering if the RDC can simply accept the Town's work on the downtown project based on the advertised RFP last year — in other words, the Town pass [sic] this project to the RDC for completion? Frank Cureton [Town Council from Haynsworth Sinkler Boyd in Columbia, SC] will be filing the incorporation documents [for the RDC] with the Secretary of State of [sic] us and I'll probably need to ask him about this as well. Thanks!"

May 29, 2014, at 10:17 a.m.: Craig Lewis of The Lawrence Group responded:

"It seems to me that so long as you can document that a similar approved [sic] process occurred you should be fine. At least, that's been my experience with other retroactive-type processes that I have been a part of. Ultimately it's all about whether your attorney is comfortable with it though I don't see an issue."

May 29, 2014, at 10:34 a.m.: Julie Franklin of The Lawrence Group wrote:

"I would concur with Craig. It appears to me that the intent of the legislation — a public process to allow for open solicitations before selling the property — has been followed by the town. I believe the legislation would apply to property owned by the RDC. The town is the owner of the property upon execution of PPP, and the town followed the due process, and now is simply entering into the PPP to engage the RDC in the project. We could add some additional verbiage within the Whereas section to further document/clarify. Maybe GW [Town Attorney] has some suggestions on that."

July 9, 2014, at 9:22 a.m.: Madelyn Robinson wrote to Julie Franklin:

"We are now removing the first right of refusal language - can't do that with the tax exempt bonds AND get this - - town attorney still had issues with the whole section in the state statute that says the RDC must advertise for two consecutive weeks, etc. etc. and he talked with frank [sic] who agreed (sounds like he only

contacted Frank within the past week or so) - town attorney sends us this yesterday in an email yesterday at 4:02! The mayor, lisa [sic] and I were crushed that this was not finalized back at the first of June when I had asked for y'all's opinion at the last of May and shared that with him. All seemed fine (at least as far as we knew) but evidently he was still not happy. The Mayor called Frank yesterday evening and went over everything - how this was originally started by the Town speaking with another hotel developer, then that fell through, spoke with the current developer who showed interest, the Town advertised a [sic] RFP (we pulled a copy and confirmed that is [sic] was in print and on the newspaper's online ads for a couple of weeks), Town even sent [sic] RFP to several developers to make sure they had the information, current developer only one to submit, Council authorized Mayor in public meeting to negotiate, Town went through Vision Process, Town established RDC to implement this project - - - not sure he got all this from the town attorney. He is supposed to be sending us additional language for the PPPA for us to insert anytime now....Lisa and I thought that one of the WHEREAS's handled this but I guess not - not enough verbiage I suppose. The Mayor asked him if he could defend this and he said that we have our defense argument if needed and the language should go above in establishing that the intent of the statute was met - I mean, really?! We're still pushing through ——"

July 9, 2014, at 10:52 a.m.: Julie Franklin responded:

"Wow. It's like the guy who sleeps all the way on the road trip, wakes up as you are pulling into the destination, and then wants to go back to redo what he missed! Hopefully, the new language will get GW comfortable with things. Again, attorneys sure do know how to complicate matters. I thought everyone was on the same page on that one as well. Sounds like the developer's attorney forgot about that one."

5. **RDC and Town Knowingly Misrepresented RDC's Non-Compliance With Community Development Law**

As shown above, the Town and RDC clearly knew the RDC had not complied with S.C. Code Section 31-10-110 because the RDC had failed to comply with the public notice and award requirements of Section 31-10-110(b) and (c). Nevertheless, they stated in a written contract the following factual misrepresentation:

"WHEREAS, the Town of Summerville . . . openly solicited a Request-for-Proposals for private development of the Town Property in accordance with Title

31, Chapter 10 Community Development Law of the South Carolina Code of Laws (1976), et. seq., as amended;” (Emphasis added.)

The Community Development Law clearly does not provide that the *Town* can solicit a Request-for-Proposals. It obviously provides only that the *RDC*, an entity legally separate from the Town, must do so. Town and RDC officials were well aware of these facts on July 9, 2014, the date they signed this agreement, as shown above. For the Town and the RDC to claim in this agreement as quoted above that the Town’s Request-for-Proposal complies with the Community Development Law when they knew those claims factually were not true is a fraudulent misrepresentation.

6. The Community Development Law Is a Mandate.

Section 31-10-110(c) of the Community Development Law is not a mere “suggestion” or “recommendation.” It is not permissive, as are subsections (a) and (b). Subsection (c) is a mandate, compliance with which is a prerequisite to exercise of the powers enumerated in subsection (b). Redevelopment commissions are given extraordinary powers to subsidize, enter into development agreements with and convey real property to private developers, without public hearings — all in the interest of eliminating blight. These are powers that municipalities do not otherwise have.

7. The Community Development Law is Not Ambiguous.

“If a statute’s language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation.” Piedmont Public Service Dist. v. Coward, 319 S.C. 124, 459 S.E. 2d 876 (Ct. App. 1995), *aff’d* 324 S.C. 239, 478 S.E.2d 836 (1996). In such circumstances, “the Court simply lacks the authority to look for or impose

another meaning and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope." Tilley v. Pacesetter Corp., 355 S.C. 361, 373, 585 S.E. 2d 292 (2003).

8. The Violation of the Community Development Law Is Not Merely "Technical."

The original rationale for redevelopment statutes such as the Community Development Law was to eliminate blight. A finding of blight or imminent blight is an absolute prerequisite to use of the redevelopment laws; they are not intended for building hotels and condos in Summerville's Historic District. Although the issue of blight is not presented in this motion, the underlying rationale of the Community Development Law informs the question whether the violation of Section 31-10-110 is merely technical. Compliance with that section is mandatory before a redevelopment commission can exercise the extraordinary powers authorized therein and enter into a multimillion dollar contract for the redevelopment of land in an historic district that involves use of taxpayer funds without a public hearing.

9. The Town of Summerville and the Summerville RDC Are Not Identical Entities Such That One Could Substitute for the Other.

The actions taken by the Town in publishing the Request for Proposal on November 10, 2013, cannot be assumed by, ratified by or attributed to the RDC. The RDC and the Town are not one and the same; the Town of Summerville and the Summerville RDC are separate and distinct legal entities. This is shown by the Narrative Description of Activities of Summerville Redevelopment Corporation, Attachment 1 to IRS Form 1024, page 2, submitted by the Summerville RDC to the Internal Revenue Service, attached as Exhibit #3, which states in part as follows:

"The Community Development Law plainly recognizes that a redevelopment commission is incorporated as a separate entity apart from the local municipality. The Act expressly recognizes that a redevelopment commission is a 'separate and distinct bod[y] corporate and politic.' South Carolina Code Sec. 33-31-30(a) [sic]. The Act requires that the Secretary of State issue a certificate of incorporation to the redevelopment commission. Each redevelopment corporation is governed by a governing body and exercises its own separate powers (including the power to issue bonds) in its own name. See South Carolina Code Secs. 33-31-40 through -70 -90. ([sic].

* * * *

A redevelopment commission may make 'recommendations affecting any area in its field of operation or property therein, which it may deem likely to promote the public health, morals, safety, or welfare,' but has no power to enforce any of such recommendations. Given that a redevelopment commission does not have such powers, a redevelopment commission would not be treated as a political subdivision.

In sum, a redevelopment commission may qualify for an exemption from federal income taxation under Section 501(c) so long as it meets the requirements of the applicable subsection (in this instance, Section 501(c)(4))."

Thus, any argument by Defendants suggesting the RDC and the Town are identical entities such that one could substitute for the other or that one could assume, ratify or nullify the acts of the other is contrary to law and to the representations the RDC made to the IRS.

10. The End Does Not Justify the Means.

The Town's consultants opined that as long as the "intent" of Section 31-10-110 was followed, its violation should be disregarded. The Town's attorneys apparently did not agree, but the Town and the RDC proceeded to sign and begin implementing the PPPA, nevertheless.

The South Carolina Supreme Court does not agree that the end justifies the means in procurement cases. For example, in Sloan v. DOT, 365 S.C. 299, 618 S.E. 2d 876 (2005), the issue was whether the DOT's procurement of three construction contracts using a Request for Proposals method of procurement rather than competitive sealed bidding was authorized. The Cir-

cuit Court had found that even if there were "technical" differences between the two methods, it did not matter because the contracts were in fact awarded to the lowest bidder (which is the goal of competitive sealed bidding but not necessarily of RFPs). The Supreme Court reversed the Circuit Court on the merits, saying, "The fact that these three contracts were awarded to the lowest bidder is irrelevant." Even though the case was moot, the Court went to great lengths to explain the differences between the two methods, finding the DOT was not authorized to use the RFP method, stressing the importance of compliance with applicable law in government contracting and holding, essentially, that the end does not justify the means.

Similarly, here, the fact that the Town published the RFP does not relieve the RDC from performing its own statutory obligations. The Community Development Law does not authorize the municipality to invite proposals from redevelopers; only the RDC may issue such RFPs under the Community Development Law.¹⁹

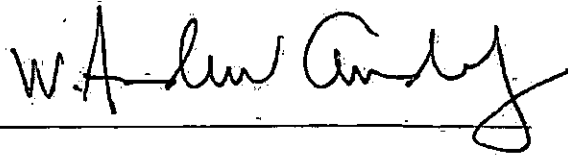
WHEREFORE, Plaintiffs pray the Court:

1. To declare that the Summerville RDC violated Section 31-10-1.10 of the Community Development Law by failing to comply with the requirements of subsections (b) and (c) thereof;
2. To declare that the Summerville RDC is not authorized to exercise the powers enumerated in Section 31-10-1.10(b) and in the PPPA;
3. To declare that Sections 3(b)(i), 4, 6 and 10c of the PPPA, and any and all other provisions thereof, relating to the sale, exchange or other transfer of real property or any interest therein in a redevelopment area by the RDC, and any agreement relating thereto, including the PPPA and the agreements attached as exhibits to the PPPA, are unlawful, ultra vires, void ab

¹⁹ Indeed, the Town's Purchasing Ordinance does not even authorize the Town to use the RFP method of procurement. See Memorandum of Law In Support of Plaintiffs' Motion for Partial Summary Judgment, dated April 6, 2015. Thus, allowing the Town's unauthorized publication of the RFP to satisfy the requirements of Section 31-10-110(c) would bestow upon the Town powers it does not grant to itself in its own Purchasing Ordinance.

initio and unenforceable due to violating the Community Development Act and being against public policy;

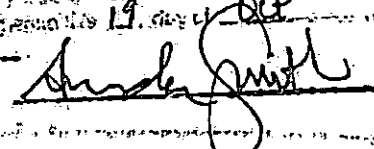
4. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. Sec. 15-77-300ff; and
5. To grant such other and further relief as the Court deems just and proper.



W. Andrew Gowder, Jr., Esquire (S.C. Bar #7895)
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Counsel for Plaintiffs

October 19, 2015

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FOR THE DISTRICT COURT OF THE
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Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

Exhibit #1
Email from Madelyn Robinson

From: Franklin, Julie <julie.franklin@thelawrencegroup.com>
Sent: Friday, May 30, 2014 3:25 PM
To: Robinson, Madelyn
Cc: Lewis, Craig; Holmes, Monica; Wallace, Lisa
Subject: RE: RDC question - Code

No problem. Sounds like you are working through it. Call whenever it works for you. Enjoy your weekend – don't work too hard.

From: Robinson, Madelyn [mailto:MRobinson@summerville.sc.gov]
Sent: Friday, May 30, 2014 3:26 PM
To: Franklin, Julie
Cc: Lewis, Craig; Holmes, Monica; Wallace, Lisa
Subject: RE: RDC question - Code

Thank you!

Julie I will most likely not get to call until Monday –

But, Lisa and I really think (we are doing more research on this) that the Redevelopment Plan to be approved by Town Council can be done through a Resolution as the Redevelopment Plan will be implemented by the RDC and the Vision Plan will be implemented by the Town because it will be an amendment to the Comp Plan (as an exhibit at least, perhaps it might be better to be an update – will roll this thought around) put into place by an ordinance as required.

Yes, taking stuff home again to think about and notate ----

Trying to finish up comments to the drafts for Monica and I believe Lisa and the Mayor are trying to settle some concerns with the Agreement with GW and the bonding attorneys.

Madelyn H. Robinson, AICP
Director of Planning & Economic Development
Town of Summerville
200 S. Main St.
Summerville, SC 29483
843.851.4223 (office)
843.871.6954 (fax)

From: Franklin, Julie [mailto:julie.franklin@thelawrencegroup.com]
Sent: Friday, May 30, 2014 9:31 AM
To: Robinson, Madelyn
Cc: Lewis, Craig; Holmes, Monica
Subject: RE: RDC question - Code

I agree with Craig on keeping them separate – and let them build off each other. In regards to the approval of the redevelopment plan by council, the statute doesn't appear to specify ordinance or resolution.

Also – a couple of thoughts looking over the draft ordinance –

- Is the Vision Plan serving as the update for the Comp Plan or simply being added to the Comp Plan as an amendment? The ordinance is not clear on that. I would recommend adding some language to clarify – and reference the last adopted Comp Plan as part of that language.

- Let's chat further about how we reference the RDC's recommendation – depending on what comes first, we may not include any reference here, but, instead, reference the adoption of the Vision Plan/Amendment of the Comp Plan in the resolutions for the RDC and Council regarding the redevelopment plan. (Have I got us both completely confused now?)

Left you a voicemail this morning. Give me a call when you have a moment and we can chat further to make sure we are clear on steps. :)

From: Lewis, Craig
Sent: Friday, May 30, 2014 8:52 AM
To: 'Robinson, Madelyn'; Franklin, Julie
Subject: RE: RDC question - Code

I would recommend that they be separated as they address two different issues and statutory elements. Sorry: (Of course, they can run in parallel.

I need to defer to Julie but it's my understanding that the Redevelopment Plan is adopted by the Council, so yes – they would each need two readings.

Craig Lewis, AICP, LEED AP, CNU-A | Principal
Lawrence Group | Town Planning + Architecture
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Beaufort, SC | 1911 Boundary Street Beaufort, SC 29902
St. Louis, MO | 319 N. 4th Street – Suite 1000, St. Louis, MO 63102
main (704) 896-1696
mobile (704) 609-9841
craig.lewis@thelawrencegroup.com
www.thelawrencegroup.com

From: Robinson, Madelyn [mailto:MRobinson@summervillesc.gov]
Sent: Thursday, May 29, 2014 2:17 PM
To: Franklin, Julie; Lewis, Craig
Subject: RE: RDC question - Code

Thank you both! Lisa and I both like your thoughts and agree – I've sent them to GW but we haven't heard back yet...

Can I beg another request....I've attached a very rough draft of the ordinance to amend the Comp Plan with the Vision Plan. My thoughts are to perhaps go ahead and mention the Vision Plan in the same ordinance, so that come July 9 after the PC's public hearing on this AND the RDC's public hearing on the redevelopment plan, the same ordinance can be used. Or should there be a separate resolution? Uh oh, here I go again getting all jumbled up....or, do they have to have two readings as the RDC would only be asking them to approve the plan for the RDC to implement –

I apologize if these questions are getting too basic and I should know the answers, but please know I, we, greatly appreciate your patience, feedback and guidance!

Madelyn H. Robinson, AICP
Director of Planning & Economic Development
Town of Summerville

200 S. Main St.
Summerville, SC 29483
843.851.4223 (office)
843.871.6954 (fax)

From: Franklin, Julie [mailto:julie.franklin@thelawrencegroup.com]
Sent: Thursday, May 29, 2014 10:34 AM
To: Lewis, Craig; Robinson, Madelyn
Subject: RE: RDC question - Code

I would concur with Craig. It appears to me that the intent of the legislation – a public process to allow for open solicitations before selling the property – has been followed by the town. I believe the legislation would apply to property owned by the RDC. The town is the owner of the property upon execution of PPP, and the town followed the due process, and now is simply entering into the PPP to engage the RDC in the project. We could add some additional verbiage within the Whereas section to further document/clarify. Maybe GW has some suggestions on that.

From: Lewis, Craig
Sent: Thursday, May 29, 2014 10:17 AM
To: Robinson, Madelyn
Cc: Franklin, Julie
Subject: Re: RDC question - Code

It seems to me that so long as you can document that a similar approved process occurred you should be fine. At least that's been my experience with other retroactive type processes that I have been a part of. Ultimately it's all about whether your attorney is comfortable with it though I don't see an issue.

Craig Lewis, AICP, LEED AP, CNU-A | Principal
Lawrence Group | Town Planning + Architecture
Davidson, NC | PO Box 1836 Davidson, NC 28036
Beaufort, SC | 1911 Boundary Street Beaufort, SC 29902
St. Louis, MO | 319 N. 4th Street – Suite 1000, St. Louis, MO 63102
main (704) 896-1696
direct (704) 237-2200
mobile (704) 609-9841
craig.lewis@thelawrencegroup.com
www.thelawrencegroup.com

On May 29, 2014, at 9:15 AM, "Robinson, Madelyn" <MRobinson@summervillesc.gov> wrote:
Hi,

The Town's attorney has asked me to ask you about §31-10-110 (c) language –“....invite proposals....”

“(c) The commission shall, by public notice, published 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. The commission may require such bid bonds as it deems appropriate. 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. Nothing herein,

however, shall prevent the sale at private sale without advertisement and bids to the municipality or other public body, or to a nonprofit association or corporation operated exclusively for educational, scientific, literary, cultural, charitable, or religious purposes, of such property as is specified in items (1), (2), (3), or (4) of subsection (d) of this section; provided, that such sale is in accordance with the provisions of the item."

I'm wondering if the RDC can simply accept the Town's work on the downtown project based on the advertised RFP last year – in other words, the Town pass this project to the RDC for completion?

Frank Cureton will be filing the incorporation documents with the Secretary of State of us and I'll probably need to ask him about this as well.

Thanks!

Madelyn H. Robinson, AICP
Director of Planning & Economic Development
Town of Summerville
200 S. Main St.
Summerville, SC 29483
843.851.4223 (office)
843.871.6954 (fax)

<image001.jpg>

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From: Franklin, Julie <julie.franklin@thelawrencegroup.com>
Sent: Wednesday, July 9, 2014 10:52 AM
To: Robinson, Madelyn
Subject: RE: The Dorchester: PPP Agreement
Attachments: image001.jpg

Wow. It's like the guy who sleeps all the way on the road trip, wakes up as you are pulling into the destination, and then wants to go back to redo what he missed!

Hopefully, the new language will get GW comfortable with things. Again, attorneys sure do know how to complicate matters.

Doesn't surprise me on the revised text on the first right of refusal. I thought everyone was on the same page on that one as well. Sounds like the developer's attorney forgot about that one.

-----Original Message-----

From: Robinson, Madelyn [mailto:MRobinson@summerville.sc.gov]
Sent: Wed 7/9/2014 9:22 AM
To: Franklin, Julie
Subject: RE: The Dorchester: PPP Agreement

Hi, yes - thank you for the reminder - I'm not seeing the blanks anymore.

We are now removing the first right of refusal language - can't do that with the tax exempt bonds AND get this-----
--town attorney still had issues with the whole section in the state statute that says the RDC must advertise for two consecutive weeks, etc. etc. and he talked with Frank who agreed (sounds like he only contacted Frank within the past week or so) - town attorney sends us this yesterday in an email yesterday at 4:02! The mayor, Lisa and I were crushed that this was not finalized back at the first of June when I had asked for y'all's opinion at the last of May and shared that with him. All seemed fine (at least as far as we knew) but evidently he was still not happy. The Mayor called Frank yesterday evening and went over everything - how this was originally started by the Town speaking with another hotel developer, then that fell through, spoke with the current developer who showed interest, the Town advertised a RFP (we pulled a copy and confirmed that it was in print and on the newspaper's online ads for a couple of weeks), Town even sent RFP to several different developers to make sure they had the information, current developer only one to submit, Council authorized Mayor in public meeting to negotiate, Town went through Vision Process, Town established RDC to implement this project -----not sure he got all this from the town attorney. He is supposed to be sending additional language for the PPPA for us to insert anytime now..... Lisa and I thought that one of the WHEREAS's handled this but I guess not - not enough verbiage I suppose. The Mayor asked him if he could defend this and he said that we have our defense argument if needed and the language should go above in establishing that the intent of the statute was met -

I mean, really?!

We're still pushing through ----

Madelyn H. Robinson, AICP
Director of Planning & Economic Development
Town of Summerville
200 S. Main St.
Summerville, SC 29483
843.851.4223 (office)
843.871.6954 (fax)

[SV-logo-Final-1]<<http://www.visitsummerville.com/index.html>>

From: Franklin, Julie [mailto:julie.franklin@thelawrencegroup.com]
Sent: Tuesday, July 08, 2014 1:19 PM
To: Robinson, Madelyn
Subject: FW: The Dorchester: PPP Agreement

I assume this is in response to Council discussion yesterday?
Side note - I see that the contact information hasn't been provided in paragraph 14 (or at least in this copy).

Great spending time with you yesterday. Thanks for making time for lunch. :)

From: Samuel W. Howell [mailto:samhowell@bond-law.com]
Sent: Monday, July 07, 2014 4:30 PM
To: Madelyn Robinson (mrobinson@summervillesc.gov<<mailto:mrobinson@summervillesc.gov>>); Franklin, Julie
Cc: Arthur Applegate (arthur@applegatenco.net<<mailto:arthur@applegatenco.net>>)
Subject: The Dorchester: PPP Agreement

Madelyn & Julie

Please see the revisions to the PPP Agreement, marked in sections 3.b and 3.c, for the issues that Arthur discussed with me. I will provide greater detail in the Parking Lease Agreement and a Right of Sale and Right of First Refusal Agreement which I should be able to get to you tomorrow morning.

Thanks.

Sam

Samuel W. Howell
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina
29401
843.266.3801
www.bond-law.com<<http://www.bond-law.com>>

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CERTIFIED COPY
2015 OCT 21 PM 12:06

Christy Graham
CLERK OF COURT
DORCHESTER COUNTY

Exhibit #2
Certificate of Incorporation

The State of South Carolina



Office of Secretary of State Mark Hammond

CERTIFICATE OF INCORPORATION Summerville Redevelopment Corporation

WHEREAS, Section 31-10-30 of the South Carolina Code of Laws provides that each municipality is authorized to create one or more distinct bodies corporate and politic to be known as a redevelopment commission of the municipality, by the passage of an ordinance creating a commission to function within the territorial limits of the municipality or portion of the municipality; and

WHEREAS, the Town Council of the Town of Summerville has found that one or more blighted areas or conservation areas exist in whole or in part in the Town, and has found that the redevelopment of such areas is necessary in the interest of the public health, safety, or general welfare of the residents of the Town; and

WHEREAS, on May 28, 2014, the Town Council of the Town of Summerville passed an ordinance establishing the Summerville Redevelopment Commission, a public body and body corporate and politic created and organized in accordance with Title 31, Chapter 10 of the South Carolina Code of Laws; and, on June 13, 2014, the Town Council of the Town of Summerville filed a certified copy of this ordinance with the Secretary of State.

NOW, therefore, I, Mark Hammond, Secretary of State of South Carolina, by virtue of the authority vested in me by Section 31-10-30 of the South Carolina Code of Laws, do hereby issue this certificate of incorporation of the Summerville Redevelopment Corporation, a corporation organized for the purpose of effectuating the purposes and provisions of the South Carolina Code of Laws Section 31-10-10 et seq., with all the privileges, powers and immunities granted thereof.

FILED

JUN 13 2014

Mark Hammond
SECRETARY OF STATE

Given under my Hand and the Great
Seal of the State of South Carolina this
Thirteenth day of June, 2014.

Mark Hammond
Mark Hammond, Secretary of State

CERTIFIED COPY

2015 OCT 21 PM 12:06

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

Exhibit #3

Narrative Description of Activities

Summerville Redevelopment Corporation
EIN 47-1219951
Attachments to Form 1024

Narrative Description of Activities

Part II Line 1 (Page 2 of Form 1024)

Attachment 1

Summerville Redevelopment Corporation (the "Corporation") was incorporated under the South Carolina Community Development Law on June 13, 2014. A copy of the ordinance adopted by the Town of Summerville, South Carolina (the "Town") to form the Corporation and the Certificate of Incorporation issued by the Secretary of State are attached as Attachment 6. A copy of the Bylaws of the Corporation is attached as Attachment 7.

The Corporation was formed for the purpose of promoting social welfare within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, and Treasury Regulation § 1.501(c)(4)-1(a)(2). More specifically, the Corporation is organized, and will operate, exclusively to make municipal redevelopment plans, implement municipal redevelopment projects and conduct such other functions as may be conducted by a redevelopment commission and carry out such developments, programs and plans as are conducive to the social welfare of the Town.

The Corporation was incorporated as a redevelopment commission under the South Carolina Community Development Law, South Carolina Code Sections 31-10-10 *et seq.* (copy attached as Attachment 8). The Community Development Law empowers a municipality to form a redevelopment commission to conduct rehabilitation of any "blighted area," which is defined as:

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.

South Carolina Code § 33-31-20(2).

Incorporation

The Corporation was incorporated as a redevelopment commission under the South Carolina Community Development Law, rather than the State's general Nonprofit Corporation Act of 1994. The governing body of the local municipality may form a redevelopment commission by

Summerville Redevelopment Corporation
EIN 47-1219951
Attachments to Form 1024

Narrative Description of Activities

Part II Line 1 (Page 2 of Form 1024)

Attachment 1

the adoption of an ordinance creating a commission to function within the territorial limits of such municipality. Following adoption of the ordinance, a certified copy of that ordinance is filed with the South Carolina Secretary of State, and the Secretary of State then issues a certificate of incorporation. See Attachment 6.

The Town Council adopted Ordinance No. 14-0502 on May 28, 2014, to form the Corporation. The Corporation was formed by filing a certified copy of the ordinance with the South Carolina Secretary of State on June 13, 2014.

The Service has recognized that even an authority or commission that is wholly owned by a political subdivision may nonetheless qualify for exemption under Internal Revenue Code § 501(c) as long as such association or commission (a) is a separate entity and (b) is otherwise a counterpart of an organization exempt from federal income tax under section 501(c), that is, it does not possess, to a substantial degree, the sovereign powers of a political subdivision. Rev. Rul. 74-14, 1973-1 C.B. 125; see also Rev. Rul. 67-290, 1967-2 C.B. 183; Rev. Rul. 77-165, 1977-1 C.B. 21; Rev. Rul. 74-15, 1974-1 C.B. 126.

The Community Development Law plainly recognizes that a redevelopment commission is incorporated as a separate entity apart from the local municipality. The Act expressly recognizes that a redevelopment commission is a "separate and distinct bod[y] corporate and politic." South Carolina Code § 33-31-30(a). The Act requires that the Secretary of State issue a certificate of incorporation to the redevelopment commission. Each redevelopment corporation is governed by a governing body and exercises its own separate powers (including the power to issue bonds) in its own name. See South Carolina Code §§ 33-31-40 through -70, -90.

A redevelopment commission, however, has none of the sovereign powers of the municipality. See South Carolina Code § 33-31-90. The generally acknowledged sovereign powers of states and political subdivisions are the power to tax, the power of eminent domain, and the police power (or the power to regulate and enforce). See Rev. Rul. 77-165, 1977-1 C.B. 21. A redevelopment commission may make "recommendations affecting any area in its field of operation or property therein, which it may deem likely to promote the public health, morals, safety, or welfare," but has no power to enforce any of such recommendations. Given that a redevelopment commission does not have such powers, a redevelopment commission would not be treated as a political subdivision.

In sum, a redevelopment commission may qualify for an exemption from federal income taxation under Section 501(c) so long as it meets the requirements of the applicable subsection (in this instance, Section 501(c)(4)).

Summerville Redevelopment Corporation
EIN 47-1219951
Attachments to Form 1024

Narrative Description of Activities

Part II Line 1 (Page 2 of Form 1024)

Attachment 1

Activities

The Summerville Redevelopment Corporation was created to further economic development within the Town's jurisdiction. This Corporation serves as the redevelopment commission for the Town under the South Carolina Community Development Law.

Through a series of public meetings, a Vision Plan for the Town was drafted and adopted by the Town Council on July 9, 2014. See Attachment 9. This public process identified blighted and/or conservation areas within the Town's jurisdiction and determined that redevelopment was appropriate to continue to ensure the interest of public health, safety and general welfare of the residents of the Town.

In order to effectively facilitate economic development, the Town Council determined that the establishment of a redevelopment commission pursuant to the South Carolina Community Development Law would be the appropriate course of action. The redevelopment commission would develop recommended public infrastructure projects and work with the private sector to ensure development of recommended plan elements.

The Corporation then recommended that the Town Council adopt a Redevelopment Plan. See Attachment 10. The Town Council approved the Redevelopment Plan on July 9, 2014. Following this approval, the Corporation adopted the Redevelopment Plan.

The initial Project (the "Project," as further defined below) of the Corporation will be undertaken with the Town and Applegate & Co. (the "Developer"), a private developer. The arrangement is described in detail in the Public-Private Partnership Agreement Between Town of Summerville, Town Of Summerville Redevelopment Corporation and Applegate & Co. (the "Agreement"). See Attachment 11. The following is a summary of some of the key aspects of the arrangement.

The Town owns approximately 1.58 acres of property located in downtown Summerville along West Richardson Avenue (together, "Town Property"). When the Town initially conceived of this Project, the Town openly solicited a Request-for-Proposals for private development of the Town Property. The Town received a high-quality proposal from the Developer for a mixed-use development that includes a hotel, residential units and retail space that the Town considers beneficial to the economic growth of the Town.

In connection with the Project, the Developer has entered into a contract to purchase approximately 0.65 acres of property adjacent to the Town Property (the "Developer Property" and together with the Town Property, the "Project Site").

1. Developer Obligations.

Summerville Redevelopment Corporation
EIN 47-1219951
Attachments to Form 1024

Narrative Description of Activities

Part II Line 1 (Page 2 of Form 1024)

Attachment 1

(i) The Developer will procure all necessary easements or property rights and construct a new mixed-use Project on the Project Site along West Richardson Avenue, South Cedar Street and West 2nd South Street, that will include both private and public improvements as defined in Sections 1(iv) and 1(v) (together referred to as "Project"). The parties expect that the Project will result in a total private capital investment of approximately \$20,000,000. The Developer will use its best effort to complete the Project within 24 months of execution of the Agreement.

(ii) The Developer agrees, as part of the Project, to construct public improvements (see paragraph 1(v)), and further to manage and operate the public parking garage and conference center upon completion of the Project.

(iii) The Developer will be responsible for all things directly related, as well as incidental, to the construction of the Project. This includes, but not limited to, planning, engineering, administration, managing, promotion, marketing, site work, and vertical construction.

(iv) The "Private Improvements" include the following:

(a) A hotel of approximately 74,000 square feet, containing no less than 65 rooms, active lower level retail and restaurant space that engages the streets and a rooftop bar/restaurant.

(b) Approximately 34 residential condominium units and associated shared common space.

(v) The "Public Improvements" include the following:

(a) Conference center with no less than 10,000 square feet of conference/event space.

(b) Parking facilities and parking garage with no less than a total combined of 179 spaces (22 surface spaces and 157 garage spaces).

(c) Associated streetscape improvements along West Richardson Avenue, South Cedar and West 2nd South Streets, including: Demolition, relocation, construction, widening and paving of sidewalks, streets and roads; undergrounding of stormwater, sewer and water utilities; lighting; and landscaping.

(d) Improvements located outside the boundaries of the Project Site which confer a benefit on property located within the Project Site, limited to sidewalks, streets, roads,

Summerville Redevelopment Corporation
EIN 47-1219951
Attachments to Form 1024

Narrative Description of Activities

Part II Line 1 (Page 2 of Form 1024)

Attachment 1

streetscapes, landscaping, street lights, traffic signals, grading and paving for streets, roads, sidewalks, crosswalks, curb-cuts and ramps.

(vi) For purposes of procuring contractors and vendors to construct, operate and lease the Public Improvements, the Developer agrees to use procurement practices which seek to secure the greatest value for the public good with the most efficient means available in accordance with reasonable business standards.

2. Town Obligations.

(i) The Town will convey to the Corporation the Town Property by deed. The Town Property will be used solely for the development of the Project.

(ii) The Town will contribute to the Corporation a grant in the amount of \$8,950,000 for purposes of participation in the Project.

3. Corporation Obligations.

(i) The Corporation will provide an unsecured loan in the amount of \$3,750,000 (the "Gap Loan") to the Developer with a limited, subordinate personal guarantee of the principal of the Developer, at no interest for a period of 24 months to assist in financing the Private Improvements. At end of 24 months the Developer will begin to make monthly interest payments to the Corporation at the rate of 3.75% until the Developer obtains permanent financing for the Project. The Gap Loan will be repaid no later than final maturity of the Developer's construction loan.

(ii) The Corporation will convey a portion of the Town Property to the Developer.

(iii) The Corporation will fund up to \$5,200,000 ("Public Improvements Investment") to cover costs associated with the construction of the Public Improvements. The Corporation will make payments monthly for such Public Improvement as expenses are incurred by the Developer.

(iv) The Corporation will lease 55 parking spaces to Developer for a term of 20 years per the terms of the Parking Garage/Conference Center Operation Agreement attached as Exhibit B to the Agreement. The Developer will be obligated to purchase such parking spaces no later than the end of such 20-year term.

The Town proposes to issue, upon reasonable terms and conditions and at reasonable rates of interest, hospitality fee revenue bonds in an amount sufficient to fund the Gap Loan and the costs of the Public Improvements.

Summerville Redevelopment Corporation
EIN 47-1219951
Attachments to Form 1024

Narrative Description of Activities

Part II Line 1 (Page 2 of Form 1024)

Attachment 1

The Corporation may also become involved in additional municipal redevelopment projects in the future. Although the Corporation does not know the precise scope of any such future projects, pursuant to the Community Development Law, the area of operations of the Corporation is limited to the territorial boundaries of the Town. Any such future projects would be conducted in a manner that is consistent with the Community Development Law.

1/25.00 REL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER)

CASE NO.: 2015-CP-18-713

✓ Faye P. Croft, personally and as Trustee of the
James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson;
Peter M. Gorman; James Stephen Greene, Jr.;
Brian Peacher; Summerville Preservation
Society; and Dorchester County Taxpayers
Association

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

Town of Summerville; William C. Collins, in
his capacity as Mayor; Terry Jenkins, Aaron
Brown, Walter Bailey, William McIntosh,
Kima Garten-Schmidt and Robert Jackson, in
their capacities as members of Town Council;
Town of Summerville Redevelopment
Corporation; Town of Summerville Planning
Commission; Town of Summerville Board of
Architectural Review; Applegate & Co.; The
Dorchester, LLC; and Arthur H. Applegate

Defendant.)

2015 DEC -1 AM 11:03
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff's Attorney:
W. Andrew Gowder, Jr., Bar No. 7895
Address:
Post Office Drawer 22247
Charleston, SC 29413
Phone: 843-727-2229 Fax 843-727-2231
E-mail: wag@p-tw.com Other: _____

Defendant's Attorney:
Timothy A. Domin, Bar No. _____
Address:
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
Phone: 843-577-2026 Fax 843-722-2867
E-mail: tdomin@clawsonandstaubes.com Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information	
Nature of Motion: Motion for Partial Summary Judgment	
Estimated Time Needed: 20	Court Reporter Needed: ☒ YES / ☐ NO
SECTION II: Motion/Order Type	
☐ Written motion attached ☐ Form Motion/Order	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☐ Defendant	Date submitted
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Faye P. Croft, personally and as Trustee of the
James A. Croft Trust; James A. Croft Trust;
William A. Croft; Heyward G. Hutson; Peter
M. Gorman; James Stephen Greene, Jr.; Brian
Peachar; Robert Klinger; Mary Becker; South
Carolina Public Interest Foundation; Summer-
ville Preservation Society; and Dorchester
County Taxpayers Association, individually,
and on behalf of all others similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in
his capacity as Mayor; Terry Jenkins, Aaron
Brown, Walter Bailey, William McIntosh,
Kima Garten-Schmidt and Robert Jackson, in
their capacities as members of Town Council;
Town of Summerville Redevelopment Corpo-
ration; Town of Summerville Planning Com-
mission; Town of Summerville Board of Ar-
chitectural Review;

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-18-00713

2015 DEC -1 AM 11:03
CLERK OF COURT
DORCHESTER COUNTY

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AND MEMORANDUM OF LAW**

Plaintiffs, by their undersigned counsel, move the Court, pursuant to Rule 56, SCRCP, for Partial Summary Judgment, and in support of this motion, incorporate this memorandum of law and Plaintiffs' Motion for Partial Summary Judgment and Memorandum of Law filed with this Court on or about October 19, 2015 ("Motion Partial Summary Judgment, October 19, 2015"),

demonstrating that there are no genuine issues of material fact on these issues, and that the Plaintiffs are entitled to judgment as a matter of law. This Motion and the Motion for Partial Summary Judgment, October 19, 2015, are incorporated into each other by reference as if restated verbatim therein.

STATEMENT OF FACTS

On July 9, 2014, the Town of Summerville ("Town") and the Summerville Redevelopment Corporation ("RDC") signed a Public-Private Partnership Agreement Between [*sic*] Town of Summerville, Town of Summerville Redevelopment Corporation and Applegate & Co. ("PPPA") regarding the building of a mixed use development ("Hotel project") within the Town.¹

The RDC has never prepared or caused to be prepared a "redevelopment plan" submitted by the RDC to the Town for the Town's approval, and the Town has never approved a "redevelopment plan" prepared or caused to be prepared by the RDC, as required by S.C. Code Ann. § 31-10-20(15)² and S.C. Code Ann. § 31-10-100, both of which are prerequisites to the RDC's entering into the PPPA. As a result, and as discussed below, the RDC is not a valid party to the PPPA and cannot implement the PPPA, and the PPPA is invalid and *ultra vires*.

The Town created the RDC on May 28, 2014.³ During the eight month period prior to the creation of the RDC the Town (but not the RDC⁴) developed a "Vision Plan,"⁵ which the RDC

¹ Answer, Amended Complaint §48; PPPA at 1, attached to Amended Complaint as Exhibit A.

² "'Redevelopment plan' means a plan for the redevelopment of a redevelopment area made by a commission in accordance with the provisions of this chapter." S.C. Code Ann. § 31-10-20(15). (emphasis added).

³ Answer Amended Complaint, §§77, 78, 86. On June 13, 2014, the South Carolina Secretary of State issued a certification of incorporation for the RDC. See Motion Partial Summary Judgment, October 19, 2015, Exhibit #2.

⁴ It is critical to understand that the RDC did not develop the "redevelopment plan" the RDC adopted. Rather, the Town developed what it called a "Vision Plan," mostly before the RDC was created, and the RDC adopted that "Vision Plan" as its purported "redevelopment plan." As explained herein, that violated the South Carolina Community Development Law, S.C. Code Ann. § 31-10-10 *et. seq.*, which required the RDC to develop its "redevelopment plan" containing "redevelopment projects," including the Hotel project, following the specified procedures and criteria stated in the Community Development Law. See *infra*.

⁵ See fn 4 *supra* and fn 6 and 7 *infra*.

adopted on June 25, 2014 as the RDC's Redevelopment Plan.⁶ On July 9, 2014, the Town Council voted to approve the adoption by the RDC on June 25, 2014, of the Town's Vision Plan as the RDC's Redevelopment Plan.⁷

The Town began the process of creating its "Vision Plan" that the RDC eventually adopted as its "redevelopment plan" when on July 13, 2013 the Town published a "Request for Qualifications" in the *Post and Courier* newspaper seeking the services of a consultant to develop a master plan for the Town.⁸ On October 7, 2013 the Town Council authorized a contract with the Lawrence Group, consultants based in Davidson, North Carolina, for it to develop a master plan for the Town.⁹ The Contract for Planning Services hiring the Lawrence Group ("Lawrence Group Contract") for this purpose was signed by the Town and the Lawrence Group on or about November 4, 2013.¹⁰

Section 3.3 of this Lawrence Group Contract states that the Lawrence Group "will be responsible for all researching, designing, writing, illustrating, and editing the manuscript and provide all graphic design and layout [of the Master Plan]."¹¹ During the following eight months, the Lawrence Group and the Town created a new Master Plan, which it called the "Vision Plan,"¹² which was adopted by the Town Council as an amendment to the Town's existing Comprehensive Plan on July 9, 2014.¹³ This Vision Plan, a three part document consisting of 245 pages, appears on the Town's website.¹⁴

LEGAL ANALYSIS

⁶ Answer, Amended Complaint §93 ("Defendants admit what is stated in the minutes of the City Council meeting and that RDC passed a resolution adopting a redevelopment plan which includes the Vision Plan"); Minutes of RDC Meeting, June 25, 2014, at 1 (RDC passed a "Resolution to adopt the Town of Summerville Vision Plan as the Summerville Redevelopment Plan"), attached as Exhibit #1; see fn 7 and fn 22 *infra*; but see Answer, Amended Complaint §101 ("The Vision Plan was modified to meet the requirements of a redevelopment plan which was then adopted pursuant to state law.")

⁷ Answer, Amended Complaint §89 ("Defendants admit that the Town Council on July 9, 2014 . . . approved the RDC's action adopting the Vision Plan . . ."), 97; Minutes of Meeting of Summerville Town Council, July 9, 2015, at 3, attached as Exhibit #2.

⁸ See Request of Qualifications with Affidavit of Publication of *Post and Courier*, dated July 13, 2013, attached as Exhibit #3.

⁹ Minutes of Finance Committee Meeting, October 7, 2015, attached as Exhibit #4.

¹⁰ Contract for Planning Services Between Town of Summerville and the Lawrence Group, November 4, 2013, attached as Exhibit #5.

¹¹ *Id.* Section 3.3, at 5.

¹² See Summerville Vision Plan; Answer, Amended Complaint § 56, 80.

¹³ Answer, Amended Complaint § 78, 82, 84, 89.

¹⁴ Answer, Amended Complaint § 79, 82.

The South Carolina Community Development Law ("Community Development Law"), S.C. Code Ann. § 31-10-10 *et. seq.*, requires that all redevelopment commissions,¹⁵ including the RDC, exercise their powers solely by creating and implementing a "redevelopment plan"¹⁶ in accordance with the criteria and procedures prescribed by the Community Development Law. The RDC failed to develop and implement a "redevelopment plan" as required by the Community Development Law and, instead, adopted as the RDC's "redevelopment plan" a "Vision Plan," or update to the Town's Comprehensive Plan that had been created by the Town using criteria and procedures not authorized by and contrary to the Community Development Law. Due to this non-compliance with the Community Development Law, the RDC's signing of the PPPA and attempts to implement the PPPA are invalid and *ultra vires*.

STATEMENT OF THE ISSUE

The issue in this Motion is similar to the issue presented in the Plaintiffs' Motion filed on October 19, 2015, referenced above. As stated in that October Motion, the RDC failed to comply with the specific public notice and award mandates imposed on the RDC by S.C. Code Ann. § 31-10-100(b),(c) regarding the Hotel project that is the subject of this litigation. Instead, the Town of Summerville published an RFP six months before the RDC was even formed. The Defendants apparently now claim, in hindsight, that the RDC assumed, approved, adopted or ratified, retroactively, the Town's procurement using the Town's RFP, and that the RDC itself did not have to give public notice and make an award as specifically required of the RDC by S.C. Code Ann. § 31-10-100(b),(c).

¹⁵ "'Commission' means a public body and a body corporate and politic created and organized in accordance with the provisions of this chapter." S.C. Code Section 31-10-20(4).

¹⁶ "'Redevelopment plan' means a plan for the redevelopment of a redevelopment area made by a commission in accordance with the provisions of this chapter." S.C. Code Section 31-10-20(15).

In this Motion, the Plaintiffs assert that the RDC failed to comply with the statutory requirements that the RDC itself prepare a "redevelopment plan" as a prerequisite to the RDC's implementing and entering into contracts to implement a "redevelopment plan" involving the Hotel project. Instead, once again, the Town acted ahead of and instead of the RDC when the RDC itself was required to do so. And, once again, the Town asks the Court to turn a blind eye to its attempt to achieve "retroactive" compliance with the enabling statute. In this instance, the Town hired consultants to draft a revision of its Comprehensive Plan, under S.C. Code Ann. § 6-29-510, which the Town called its "Vision Plan," and afterwards this Vision Plan, which barely mentions the Hotel project, was adopted by the RDC as its "redevelopment plan." Contrary to statute,¹⁷ the RDC itself did not create a "redevelopment plan" that includes the Hotel project as an RDC "redevelopment project," but, instead, the Town revised its Comprehensive Plan ("Vision Plan") and the RDC later adopted without consideration, change or comment as its "redevelopment plan."

The issue in both Motions is whether the Town can ignore the Community Development Law, exercise the powers granted therein solely to redevelopment commissions, perform the mandatory functions required therein solely of redevelopment commissions, and thereafter retroactively find "blight" and create a redevelopment commission which validly assumes, approves, adopts or ratifies the actions already taken by the Town as if those actions had been taken by the RDC. Stated another way, the issue in both Motions is whether the RDC can enter into and implement the PPPA and any related agreement without having complied with the requirements of the Community Development Law.¹⁸ Even more simply, can the Town, under the Community

¹⁷ See S.C. Code Ann. § 31-10-10 *et. seq.*

¹⁸ *Id.*

Development Law, act, instead of the RDC, then create an RDC after the fact that simply incorporates everything that the Town has done? Under the plain language of the statute, the answer is clearly, NO.

1. The South Carolina Community Development Law Grants Extraordinary Powers to Redevelopment Commissions to Eradicate Blight.

The Hotel project at issue here is purported¹⁹ to be a "redevelopment project"²⁰ to be created pursuant to a "redevelopment plan"²¹ in a "redevelopment area,"²² as those terms are defined in the Community Development Law²³. The sole purpose of this law is to eradicate "blight."²⁴ Under S.C. Code Section 31-10-30(b) a municipality may create a redevelopment commission if and only if it finds "(1) that a blighted area or conservation area²⁵ exists in whole or in part in such municipality" and "(2) the redevelopment of such areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality."²⁶ Municipalities and redevelopment commissions are "separate and distinct bodies corporate and politic."²⁷

¹⁹ The word "purported" is used here because the Defendants make these claims to justify the RDC entering into the PPPA. The RDC's participation in the PPPA is not allowed by the Community Development Law unless these claims are true. However, these claims cannot be true because the RDC has failed to comply with the Community Development Law, as stated herein.

²⁰ "'Redevelopment project' means any work or undertaking" as defined in Section 31-10-20(16).

²¹ A "redevelopment plan" is defined as "a plan for the redevelopment of a redevelopment area made by a commission in accordance with the provisions of" the Community Development Law. Section 31-10-20(15). The required contents of a "redevelopment plan" is stated in Section 31-10-90(4).

²² "'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." Section 31-10-20(13).

²³ See S.C. Code Ann. §31-10-20 (11)-(16); Order Dismissing Defendants Applegate & Co., The Dorchester LLC, and Arthur H. Applegate (The Applegate Defendants) As Defendants in this case, September 25, 2015, at 3 §9.

²⁴ Section 31-10-30(b). "Blight" is defined in Section 31-10-20(2).

²⁵ A "conservation area" is an area about to become blighted. Section 31-10-20(5).

²⁶ Section 31-10-30(b).

²⁷ Section 31-20-30(a).

Article X, Section 14, Subdivision 10 of the State Constitution permits indebtedness payable for the purposes of "redevelopment" "upon such terms and conditions as the General Assembly may prescribe by general law. . . ."²⁸ To entice developers to participate in redevelopment projects, the General Assembly passed the Community Development Law, which gives redevelopment commissions extraordinary powers, beyond those granted municipal corporations, to subsidize and enter into agreements with private developers and to do so without public hearings. In fact, many of such acts, if undertaken by municipalities instead of redevelopment commissions, would be unconstitutional. See *State ex rel. McLeod v. Riley*, 276 S.C. 323, 278 S.E.2d 612 (1981) (Article X, Section 11 of the South Carolina Constitution prohibits the State and its political subdivisions, including municipalities, from pledging or lending their "credit" for the benefit of any individual, company, association, corporation or religious or private education institution) and *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967) (construing "credit" as any "pecuniary liability" or "pecuniary involvement").

2. The RDC Violated Sections 31-10-20, 31-10-90 and 31-10-100 of the Community Development Law and Therefore Was Not Authorized to Execute and Is Not Authorized to Implement the PPPA and to Exercise the Powers Specified Therein.

S.C. Code Section 31-10-20 states in part as follows:

"Definitions. The following terms where used in this chapter, shall have the following meanings, except where the context clearly indicates a different meaning:

(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

²⁸ Article X, Section 14, Subdivision 10

redevelopment of all or any part of a redevelopment area under the provisions of this chapter.

(14) "Redevelopment contract" means a contract between a commission and a re-developer 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. (Emphasis added.)

S.C. Code Section 31-10-90 states in part as follows:

Powers of redevelopment commission, in general.

A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to those herein otherwise granted:

(4) to prepare or cause to be prepared and recommend redevelopment plans to the governing body of its parent municipality (Emphasis added.)

S.C. Code Section 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.

(c) 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. (Emphasis added.)

The Summerville RDC has never developed or caused to be developed a redevelopment plan, including the purported redevelopment plan involving the Hotel project. Instead, the Town adopted a revision to its Comprehensive Plan without any involvement of or participation by the RDC and almost entirely before the RDC was created, and subsequently presented the Town's finalized Vision Plan to the RDC, which the RDC approved *in toto* without any comment or consideration by the RDC.²⁹

Further, the RDC never has recommended a redevelopment plan to its governing body, the Town of Summerville, for approval.³⁰ Rather, without any recommendation of approval by the Town from the RDC, the Town approved, on its own initiative,³¹ what it called the RDC's redevelopment plan, which was really the Town's "Vision Plan" the Town had presented to the RDC and that the RDC thereafter recycled back to the Town relabeled with the RDC's newly created title of "Redevelopment Plan."

Further, in violation of S.C. Code Section 31-10-100(e), "[p]rior to recommending a redevelopment plan to the government body for approval"³² the RDC did not "utilize the local private

²⁹ The minutes of the June 25, 2014 Meetings of the Summerville RDC state that a motion was passed "to approve a Resolution to adopt the Town of Summerville Vision Plan as the Summerville Redevelopment Plan." The minutes contain no findings, recommendations, comments or questions by the RDC about the Vision Plan the RDC adopted as its redevelopment plan. See Minutes of RDC Meeting, June 25, 2014, attached as Exhibit #1.

³⁰ See footnote 22 *supra*.

³¹ See footnote 22 *supra*.

³² S.C. Code Section 31-10-100(e).

planning, financing and financial services to the greatest extent possible”³³ and did not “consider whether the proposed land uses and building requirements in the redevelopment project area” conformed with statutorily required criteria.³⁴ The Town, not the RDC, developed and created what the RDC ultimately adopted as its purported “redevelopment plan,” and the Town did so without using local private planning services, as provided in the statute³⁵

There is no public record, in minutes or recordings of meetings, that in any way indicate that the RDC “utilize[d] the local private planning, financing, and financial services to the greatest extent possible” or “consider[ed] whether[.]”

[T]he 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.” (Emphasis added.)³⁶

The RDC clearly did not do so.

3. Because the RDC Did Not Comply with the Mandatory Redevelopment Plan Requirements of Sections 31-10-20, 31-10-90 and 31-10-100 of the Community Development

³³ *Id.* The RDC did not utilize any of these items because the RDC did not create its redevelopment plan but, rather, adopted the Town’s Vision Plan as the RDC’s redevelopment plan.

³⁴ *Id.* The RDC did not consider any of this because the RDC did not create its redevelopment plan but, rather, adopted the Town’s Vision Plan as the RDC’s redevelopment plan.

³⁵ The Town’s Vision Plan was created using the Lawrence Group, consultants headquartered in North Carolina.

³⁶ S.C. Code Section 31-10-100(e).

4. Law, the RDC Was Not and Is Not Authorized To Convey Any Real Property to Applegate & Co. or to Enter Into Any Related Agreement.

The PPPA requires the RDC to “convey a portion of the Town Property [as defined therein] to the Developer [Applegate & Co.] or the SPE [a Special Purpose Entity to be formed by the Developer].³⁷ Sections 4 and 6 of the PPPA additionally contemplate conveyances of title to land by the RDC to the SPE pursuant to a “Property Swap,” as defined in those sections.³⁸ The Purchase Lease Agreement and Purchase Obligation Agreement between the RDC and The Dorchester, LLC, attached to the PPPA as Exhibit A, requires the RDC to lease and to sell to The Dorchester, LLC spaces in the parking garage to be built pursuant to the PPPA.³⁹ Exhibit C of the PPPA requires the RDC to use 1.58 acres of property conveyed to the RDC by the Town “for the purposes of the [Hotel] project.”⁴⁰ The RDC represented to the Town and the Developer that it had “full power and authority to . . . perform its obligations under, as and when required by” the PPPA.⁴¹

Notwithstanding these representations, the RDC is prohibited from performing these real property conveyances as required by these sections of the PPPA and from otherwise implementing the PPPA, because, contrary to the statutes cited above, the RDC did not prepare or cause to be prepared, and did not recommend to the Town, a redevelopment plan created by the RDC; and, “[p]rior to recommending a redevelopment plan to the governing body for approval,” the RDC did not utilize local private planning, financing, and financial services to the greatest extent possible and did not consider whether the proposed land uses and building requirements in the Hotel project

³⁷ E.g., PPPA, Section 3(b)(i), at 4. See also Section 10c, at 7, regarding collateral on RDC owned property to be provided by the RDC to the developer.

³⁸ See PPPA, Sections 4 and 6, at 4-5.

³⁹ These spaces are real property interests. See Parking Lease Agreement and Purchase Obligation [by and between the] Town of Summerville Redevelopment Corporation [and] The Dorchester, LLC, dated July 9, 2014, at 1-2.

⁴⁰ Grant and Property Conveyance Agreement for Tourism and Other Economic Development Projects, at 1-2.

⁴¹ See PPPA, Section 15, at 8.

redevelopment areas comply with the relevant statutory requirements pertaining to traffic, parking safety, light, air, health, transportation, water, sewerage, schools, recreation and other factors.⁴²

In violation of the Community Development Law, the RDC failed to create a redevelopment plan in a redevelopment area and a redevelopment project pursuant to a redevelopment plan, and to afterwards obtain approval of that redevelopment plan, area and project from the Town. Instead, the Town created, with no involvement of the RDC, what the Town calls a Vision Plan which, after having been created by the Town, the RDC adopted and called a "redevelopment plan" involving the Hotel project as a "redevelopment project" in a "redevelopment area," and subsequently and immediately recycled back to the Town for the Town's approval.

5. The Community Development Law Is a Mandate.

Sections 31-10-20(11),(14),(15) and 31-10-100(c),(e) of the Community Development Law are not mere "suggestions" or "recommendations." They are not permissive. Subsection 31-10-100(c),(e) are a mandate, compliance with which is a prerequisite to exercise of the powers enumerated for redevelopment of a redevelopment area pursuant to a redevelopment plan. Redevelopment commissions are given extraordinary powers to subsidize, enter into development agreements with and convey real property to private developers, without public hearings — all in the interest of eliminating blight. These are powers that municipalities do not have.

6. The Community Development Law is Not Ambiguous.

"If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation." Piedmont Public Service Dist.

⁴² See S.C. Code Section 31-10-100(e).

v. Coward, 319 S.C. 124, 459 S.E. 2d 876 (Ct. App. 1995), *aff'd* 324 S.C. 239, 478 S.E.2d 836 (1996). In such circumstances, "the Court simply lacks the authority to look for or impose another meaning and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope." Tilley v. Pacesetter Corp., 355 S.C. 361, 373, 585 S.E. 2d 292 (2003).

7. The Violation of the Community Development Law Is Not Merely "Technical."

The original rationale for redevelopment statutes such as the Community Development Law was to eliminate blight. A finding of blight or imminent blight is an absolute prerequisite to use of the redevelopment laws; they are not intended for building hotels and condos in Summerville's Historic District. Although the issue of blight is not presented in this motion, the underlying rationale of the Community Development Law informs the question whether the violations of Sections 31-10-20, 31-10-90 and 31-10-100 are merely technical. Compliance with that section is mandatory before a redevelopment commission can exercise the extraordinary powers authorized therein and enter into a multimillion dollar contract for the redevelopment of land in an historic district that involves use of taxpayer funds without a public hearing.

8. The Town of Summerville and the Summerville RDC Are Not Identical Entities Such That One Could Substitute for the Other.

The actions taken by the Town in publishing the Request for Proposal on November 10, 2013, cannot be assumed by, ratified by or attributed to the RDC. The RDC and the Town are not one and the same; the Town of Summerville and the Summerville RDC are separate and distinct legal entities. This is shown by Section 31-10-30(a), which states that municipalities and redevelopment

commissions are "separate and distinct bodies corporate and politic."⁴³ This is shown also by the Narrative Description of Activities of Summerville Redevelopment Corporation, Attachment 1 to IRS Form 1024, page 2, submitted by the Summerville RDC to the Internal Revenue Service, attached as Exhibit #3 to the Motion Partial Summary Judgment, October 19, 2015, which states in part as follows:

"The Community Development Law plainly recognizes that a redevelopment commission is incorporated as a separate entity apart from the local municipality. The Act expressly recognizes that a redevelopment commission is a 'separate and distinct bod[y] corporate and politic.' South Carolina Code Sec. 33-31-30(a) [sic]. The Act requires that the Secretary of State issue a certificate of incorporation to the redevelopment commission. Each redevelopment corporation is governed by a governing body and exercises its own separate powers (including the power to issue bonds) in its own name. See South Carolina Code Secs. 33-31-40 through -70 -90. ([sic]

* * * *

A redevelopment commission may make 'recommendations affecting any area in its field of operation or property therein, which it may deem likely to promote the public health, morals, safety, or welfare,' but has no power to enforce any of such recommendations. Given that a redevelopment commission does not have such powers, a redevelopment commission would not be treated as a political subdivision.

In sum, a redevelopment commission may qualify for an exemption from federal income taxation under Section 501(c) so long as it meets the requirements of the applicable subsection (in this instance, Section 501(c)(4))."

Thus, any argument by Defendants suggesting the RDC and the Town are identical entities such that one could substitute for the other or that one could assume, ratify, adopt or nullify the acts of the other is contrary to law and to the representations the RDC made to the IRS.

9. The Town's Use of a Misnomer, Failure to Timely Notify the Public and Failure to Follow the Community Development Law When Creating the Redevelopment Plan Misled the Public and Caused Public Harm

⁴³ Section 31-10-30(a).

One of two things must be true. Either, (1) over a period of many months the Town created the Vision Plan to develop the Hotel project and misled the public by identifying that plan as a "Vision Plan," a misnomer, instead of the "Redevelopment Plan" the Town intended the RDC to adopt and that the RDC adopted. The Town deliberately delayed creating the RDC as long as possible while the Town's Vision Plan was being created, and failed to inform the public timely that the Town's Vision Plan would become an RDC's Redevelopment Plan, thereby avoiding public understanding that the Town's Vision Plan would be converted to the RDC's Redevelopment Plan. Or, (2) the Town realized, too late, that it had not complied with the Community Development Law, and, instead of stopping the process and beginning again, in compliance with the statute, it tried to remedy its noncompliance by creating the RDC and having the RDC simply adopt everything the Town had already done, as if the RDC had done it (which of course, it had not). Either way, as a result, the public had no idea when the Town was creating its Vision Plan that a RDC would be created upon near completion of the Vision Plan and that that the RDC and Town would claim that the Town's Vision Plan had become the RDC's Redevelopment Plan. The public did not know that the Town's Vision Plan would be converted to the RDC's Redevelopment Plan because the Town never defined the meaning and significance of its Vision Plan nor notified the public while it was creating the Vision Plan that an RDC would be created and the Vision Plan would become the RDC's Redevelopment Plan. As a result of all of this maneuvering, not one member of the public attended a public hearing on June 25, 2014, about the adoption by the RDC of the Town's Vision Plan as the RDC's Redevelopment Plan, because the public was not on notice that the Town was proceeding under the Community Development Law to declare a block of historic downtown Summerville a "blight" and attempt to redevelop it under the Community Development Law.

That law was passed to avoid just such circumstances as this: the public was entitled to be protected by the RDC's strict adherence to the Community Development Law's requirements about how the RDC must develop its Redevelopment Plan for the Hotel project.

10. The End Does Not Justify the Means

As shown in Plaintiffs' Motion Partial Summary Judgment, October 19, 2015, the Town's consultants, the Lawrence Group, opined that as long as the "intent" of the Community Development Law was followed, the Town's violations should be disregarded. The Town's attorneys apparently did not agree with regard to violations of Section 31-10-110, but the Town and the RDC proceeded to sign and begin implementing the PPPA, nevertheless.

The South Carolina Supreme Court does not agree that the end justifies the means in procurement cases. For example, in Sloan v. DOT, 365 S.C. 299, 618 S.E. 2d 876 (2005), the issue was whether the DOT's procurement of three construction contracts using a Request for Proposals method of procurement rather than competitive sealed bidding was authorized. The Circuit Court had found that even if there were "technical" differences between the two methods, it did not matter because the contracts were in fact awarded to the lowest bidder (which is the goal of competitive sealed bidding but not necessarily of RFPs). The Supreme Court reversed the Circuit Court on the merits, saying, "The fact that these three contracts were awarded to the lowest bidder is irrelevant." Even though the case was moot, the Court went to great lengths to explain the differences between the two methods, finding the DOT was not authorized to use the RFP method, stressing the importance of compliance with applicable law in government contracting and holding, essentially, that the end does not justify the means.

Similarly, here, the fact that the Town created a revised Comprehensive Plan that the RDC adopted as a redevelopment plan, does not relieve the RDC from performing its own statutory

obligations. The facts that the RDC adopted a redevelopment plan created by the Town, the RDC recycled that exact plan back to the Town identified with new nomenclature and the Town subsequently approved that RDC plan that had been created by the Town, does not excuse the RDC from complying with the requirements of Sections 31-10-20, 31-10-90 and 31-10-100 of the Community Development Law.

CONCLUSION

The RDC has never prepared a redevelopment plan or caused one to be prepared, as contemplated in Secs. 31-10-20(15) and 31-10-90(4) of the Community Development law. It has never "utilize[d] the local private planning, financing and financial service to the greatest extent possible"⁴⁴ about a redevelopment plan, and it has not made any of the specific qualitative determinations required by Sec. 31-10-100(e) of the Community Development Law.⁴⁵ The RDC has never submitted a redevelopment plan to the Town for approval, as required by Sec. 31-10-100(e) of the Law. Nor has the Town ever approved a "redevelopment plan" prepared by or for the RDC, as required by Secs. 31-10-20(15) and 31-10-100(f). These steps are essential prerequisites to the authority of the RDC to enter into the PPPA. Sec. 31-10-100(g). As a result, and as discussed more fully above, the RDC is not a valid party to the PPPA; the PPPA is not a valid redevelopment contract; and the PPPA cannot be implemented.

WHEREFORE, Plaintiffs pray the Court:

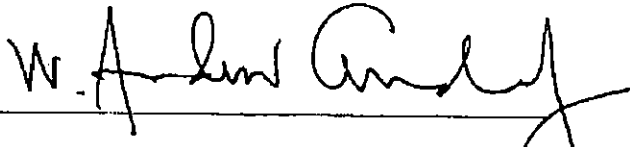
1. To declare that the Summerville RDC violated Section 31-10-90 of the Community Development Law by failing to comply with the requirements of subsection (4) thereof;

⁴⁴ S.C. Code Section 31-10-100(e).

⁴⁵ *Id.*

2. To declare that the Summerville RDC violated Section 31-10-100 of the Community Development Law by failing to comply with the requirements of subsection (e) thereof;
3. To declare that Sections 3(b)(i), 4, 6 and 10c of the PPPA, and any and all other provisions thereof, relating to the sale, exchange or other transfer of real property or any interest therein in a redevelopment area by the RDC, and any agreement relating thereto, including the PPPA and the agreements attached as exhibits to the PPPA, are unlawful, *ultra vires*, void *ab initio* and unenforceable due to violating the Community Development Act and being against public policy;
4. To enjoin the Defendants, and the Applegate Defendants dismissed from this lawsuit previously, from spending money and from otherwise implementing in any way the PPPA, and any and all provisions thereof;
5. To require the Defendants, and the Applegate Defendants dismissed from this lawsuit previously, to return to the *status quo ante* prior to the signing of the PPPA, including but not limited to returning to the Town and the RDC all monies given to the Applegate Defendants by the Town and the RDC, respectively;
6. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. Sec. 15-77-300ff; and
7. To grant such other and further relief as the Court deems just and proper.

[Signatures on following page]



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November 30, 2015

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Rules of Civil Procedure by electronic transmission or by hand delivery or by regular United States Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s),
on this 30 day of Nov, 2015.
Charleston, South Carolina.

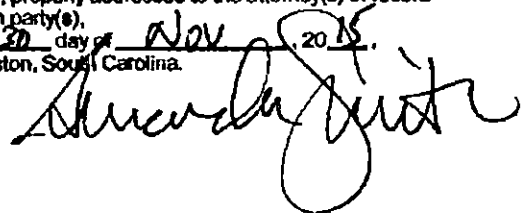


Exhibit 1

RECORDED
2015 DEC -1 AM 11:04
CLERK OF COURT
DORCHESTER COUNTY



2015 DEC -1 AM 11:04
CLERK OF COURT
DORCHESTER COUNTY
RECORD

Minutes of Summerville Redevelopment Corporation Meeting June 25, 2014

The Summerville Redevelopment Corporation (RDC) met on Wednesday, June 25, 2014 at 5:30 p.m. Present were Chairman Bill Collins, Vice Chairman Terry Jenkins and Commissioners Aaron Brown, Kima Garten-Schmidt, Bob Jackson and William McIntosh. Commissioner Walter Bailey was absent. Members of the press and the public were duly notified of the meeting.

APPROVAL OF MINUTES OF PREVIOUS MEETINGS

Mr. Jenkins made a motion, seconded by Ms. Garten-Schmidt, to approve the minutes from the May 28, 2014 meeting as presented. The motion carried unanimously.

PUBLIC HEARING: SUMMERVILLE REDEVELOPMENT PLAN

Chairman Collins announced the next item on the agenda was a public hearing on the Summerville Redevelopment Corporation's proposed redevelopment plan and called for any comments from the public. There being no comments offered, Chairman Collins declared the public hearing closed.

NEW BUSINESS: ADOPTION OF SUMMERVILLE REDEVELOPMENT PLAN

Mr. McIntosh made a motion, seconded by Mr. Jackson, to approve a Resolution to adopt the Town of Summerville Vision Plan as the Summerville Redevelopment Plan. The motion carried unanimously.

OLD BUSINESS

No items presented.

MISCELLANEOUS

Ms. Wallace reported that she had received a quote for directors and officers liability insurance for \$4,605 but is still seeking other proposals. In order to have the coverage in place prior to the next meeting, Ms. Wallace requested that the board authorize the chairman to enter into an agreement for D & O insurance that would not

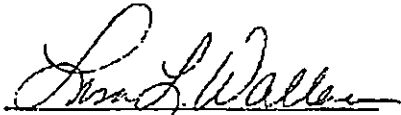
Minutes of Summerville RDC
June 25, 2014
Page 2

exceed the \$4,605 proposal. Mr. McIntosh made a motion, seconded by Mr. Jenkins, to authorize the Chairman to execute an agreement for insurance in the amount of \$4,605 or less. During discussion, there were some concerns about the liability limit and whether it should be higher. There were also questions about coverage for commissioners who are no longer serving on the board. After further discussion, Mr. Jenkins made a motion, seconded by Ms. Garten-Schmidt, to amend the previous motion to authorize the Chairman to execute an agreement for appropriate insurance coverage at an appropriate cost to cover the Summerville Redevelopment Corporation. Chairman Collins then called for a motion to approve the motion as amended. Mr. Jenkins made the motion, seconded by Ms. Garten-Schmidt and the amended motion carried unanimously.

The next miscellaneous item was the selection of a logo for the Redevelopment Corporation. Mr. Brown made a motion, seconded by Mrs. Garten-Schmidt, to select the second option as presented. The motion carried unanimously.

There being no further business, the meeting adjourned.

Respectfully submitted,



Lisa L. Wallace,
Secretary to the RDC

APPROVED:



William C. Collins
Chairman

FILED - RECORDS

2015 DEC -1 AM 11:04

CHERYL GRANHAM
CLERK OF COURT
DORCHESTER COUNTY

Exhibit 2

RECORD
JAN 11 1971
CLERK OF COURT
DORCHESTER COUNTY
William C. Collins, Mayor

Council Members:

Terry Jenkins, Mayor Pro Tem

Walter Bailey

Aaron Brown

Kima Garten-Schmidt

Bob Jackson

William McIntosh

ATTENDANCE

**Present: Mayor William C. C
Bailey, Aaron Brown, Kima**

ROA 01 19

that SCE&G has been contacted but nothing has been done. She also reported that the Germantown area needs help with traffic, trash and debris removal. Jean Ott of the Dorchester County Senior Citizens Center located near the former National Guard armory proposed expanding the Senior Citizens Center as a possible use of the armory building. She reported that they have funding to contribute to the project and the Senior Citizens Center would like to be included in the dialogue about possible uses for the armory building. Rosemary Tucker of the South Point subdivision reported that they do not currently have an active HOA and asked council to consider developing requirements for existing homes during this vision plan process. It is a problem for certain areas where people are not fixing or maintaining their homes. She also requested that preliminary plans for development require that no one be allowed to plant on easements. Linda Saylor of 410 Bryan Street spoke about the violence in their neighborhood and asked if the town could assist in searching for grants that would help with gang activity. She also requested that council consider assisting the Community Resource Center with health care sign-ups in the area. Heyward Hulson was concerned about the possible purchase of property north of the rail road tracks that may involve moving or destroying some historic homes. He asked Council to consider those historic homes and urged them think about other alternatives before allowing them to be destroyed. Diane Frankenberger thanked the town for the best Fourth of July celebration ever. N

APPROVAL OF MINUTES OF PREVIOUS MEETINGS

Mr. Brown made a motion, seconded by Mr. Jackson, to approve the minutes of the June 11, 2014 Council meeting as submitted. The motion carried unanimously.

APPROVAL OF COUNCIL COMMITTEE REPORTS

Mr. McIntosh made a motion, seconded by Mr. Jackson, to amend the minutes of the July 7, 2014 Finance Committee report to reflect that a vote was taken to remove the funding for the Flowertown Players that failed. He added that the minutes show that a second vote that was taken on that matter but the minutes should also reflect the original vote. Mayor Collins called for a vote to approve the Finance Committee report as amended and the motion carried unanimously on motion of Mr. McIntosh, seconded by Mr. Jackson. [Note: The July 7, 2014 Finance Committee Report has been amended accordingly.]

PETITIONS

Ms. Wallace reported that no petitions for annexation were submitted.

PENDING BILLS AND RESOLUTIONS

Mr. Jackson made a motion, seconded by Mr. Bailey to have second and final reading of an ordinance to rezone TMS #162-05-05-003, located on Parlor Drive and owned by Hung M. Ha from B-2 "Neighborhood Business Center" to B-3 "General Business". The motion carried unanimously.

- Mr. McIntosh made a motion, seconded by Mr. Jackson, to have second and final reading of an ordinance to amend the Town of Summerville comprehensive plan as amended by adopting the Town of Summerville vision plan and appending the vision plan as an update to the comprehensive plan. During discussion, Mr. Bailey made a motion to adopt the vision plan as a discretionary document and not as part of the town's comprehensive plan. This motion was

July 9, 2014

vision plan
becomes an
amendment
to the
town's
comprehensive
plan.

seconded by Mr. Jenkins. The motion failed with Mr. Bailey and Mr. Jenkins voting for the motion and Mr. McIntosh, Mr. Jackson, Mr. Brown, Ms. Garten-Schmidt and Mayor Collins voting against the motion. Mayor Collins then called for the vote on the first motion to adopt the vision plan and append the plan to the town's comprehensive plan. That motion carried with Mr. McIntosh, Mr. Jackson, Mr. Brown, Ms. Garten-Schmidt and Mayor Collins voting in favor of the motion and Mr. Bailey and Mr. Jenkins voting against the motion.

Mr. Jackson made a motion, seconded by Mr. Brown, to have second and final reading of an ordinance to amend the Town of Summerville fee schedule by deleting land disturbance permit fees and adding stormwater plan review fees. During discussion, Mr. Bailey stated that he does not see a need for this fee and is opposed to an increase in taxes. Mayor Collins then called for the vote and the motion carried with Mr. McIntosh, Mr. Jackson, Mr. Brown, Ms. Garten-Schmidt, Mr. Jenkins and Mayor Collins voting in favor of the motion and Mr. Bailey voting against the motion.

INTRODUCTION OF NEW BILLS AND RESOLUTIONS

Mr. Jackson made a motion, seconded by Ms. Garten-Schmidt, to adopt a Resolution approving the redevelopment plan as submitted by the Summerville Redevelopment Commission. The motion carried unanimously.

Mr. Jenkins made a motion, seconded by Mr. Bailey, to introduce and have first reading of an ordinance to establish the office of ministerial recorder for the Summerville Municipal Court. The motion carried unanimously.

MISCELLANEOUS

Mr. Brown made a motion, seconded by Mr. Jackson, to appoint the Town of Summerville Grievance Committee as follows: Don Brown, George Ploth, and Cassandra Williams with Andy Mahon as an alternate. The motion carried unanimously.

Mr. Jenkins made a motion, seconded by Mr. Jackson, to authorize the Mayor to finalize negotiations and execute a Public-Private Partnership Agreement between the Town of Summerville, the Summerville Redevelopment Corporation and Applegate & Company. The Mayor gave an overview of the economic development project stating that it would include a hotel, parking garage, an events facility and condominiums. Mr. Bailey stated that he believes this is a good project and a game-changer for the Town of Summerville; however, he does not believe government should be in private business and expressed some concern over the incentives being provided and the funding for the project. Mr. McIntosh stated that he is excited about the project and believes that it is an appropriate use of hospitality tax revenues; however, the devil is in the details. Mr. Jackson reported that, since he has been on council, it was always the intent to have a hotel on that property and that the town-owned properties are separate buildings that can be independent from the hotel property. There being no further discussion, the Mayor called for the vote. Mr. Jackson, Mr. Brown, Ms. Garten-Schmidt, Mr. Jenkins and Mayor Collins voted in favor of the motion and Mr. Bailey and Mr. McIntosh voted against the motion. The motion carried.

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July 9, 2014
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Mr. Jenkins made a motion, seconded by Mr. Bailey, to appoint Tara Richardson as a reserve Judge for the Summerville Municipal Court for a two-year term. The motion carried unanimously.

Mr. Brown reported that there have been several discussions in his community about having a local community center and the possibility of utilizing the National Guard armory building. After some discussion, Mr. Brown made a motion, seconded by Mr. McIntosh, to refer this matter to the Parks and Recreation Committee for further study to determine and make a recommendation to council for the best use of the building.

ADJOURN

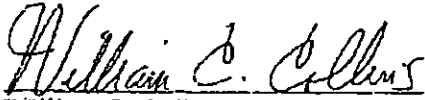
There being no further business, the meeting adjourned at 8:37 p.m. on motion of Mr. Jenkins, seconded by Mr. Brown.

Respectfully submitted,



Lisa Wallace, Director of Administrative Services
Clerk and Treasurer

APPROVED:



William C. Collins, Mayor

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2015 DEC -1 AM 11:04

CHERYL S. GAVIN
CLERK OF COURT
DORCHESTER COUNTY

Exhibit 3

ROA 0724

TO RECORD

2015 DEC -1 AM 11:04

CHERYL ARNONE
CLERK OF COURT
DORCHESTER COUNTY

Exhibit 4

**TOWN OF SUMMERVILLE
FINANCE COMMITTEE REPORT**

OCTOBER 7, 2013 AM 11:04

The Finance Committee met at 8:00 a.m. on Monday, October 7, 2013 in the Training Room of the Summerville Municipal Complex. Present were Mayor Bill Collins, and Council members Walter Bailey, Aaron Brown, Kima Garten-Schmidt, Bob Jackson, and Bill McIntosh. Terry Jenkins was absent. Also present were Town Attorney, G.W. Parker, Director of Administrative Services, Lisa Wallace and Finance Director, Belinda Harper. Other staff members, members of the press and members of the public were also present.

Presentation of Financial Report	Belinda Harper presented the September 2013 financial report. The report was accepted as information.
Approval of Financial Requisitions	Mr. Bailey made a motion, seconded by Mr. Jackson, to award the bid to Bobcat of Charleston and issue a purchase order in the amount of \$91,726 for an excavator to be paid from Stormwater fund balance. The motion carried unanimously. Mr. Brown made a motion, seconded by Mr. Bailey, to authorize a purchase order to AT&T (sole source) for upgrades to the E911 system in the amount of \$222,955 to be paid from 911 funds. The motion carried unanimously.
Discussion of Council Committee Reports	Mr. McIntosh gave the report of the October 4, 2013 Planning and Development Committee report. The report was accepted as information.
Discussion of Proposed/Upcoming Council Agenda Items	There were no questions about the proposed Council meeting agenda.
Miscellaneous	Mr. Bailey made a motion, seconded by Mr. Jackson, to authorize the Mayor to execute an addendum to the contract with WastePro for residential solid waste collection services. The motion carried unanimously. Mr. Jackson made a motion, seconded by Mr. McIntosh, to accept the 2013 Bulletproof Vest Partnership grant in the amount of \$3,940.31 to fund 50% of the cost to purchase 15 vests. The motion carried unanimously. Mayor Collins reported that the National Junior Art Honor Society of Rollings Middle School of the Arts and the National Art Honor Societies of Summerville, Fort Dorchester and Ashley Ridge High Schools are collaborating to design and create a mural for the town's cistern. They hope to have it completed before the Thanksgiving holiday. Mr. Bailey requested that Council have final approval over the design prior to beginning the work.

Executive Session

Mr. McIntosh made a motion, seconded by Mr. Jackson, to discuss contractual matters related to a proposed economic development project, the leasing of properties, the sale of real estate, and a proposed master plan and also to discuss personnel matters related to the town's organizational structure. The motion carried unanimously.

The Finance Committee returned to public session at 8:07 a.m. and announced that no action was taken.

Mr. McIntosh made a motion, seconded by Mr. Jackson, to authorize Mayor Collins to negotiate a contract with the Lawrence Group for the development of a master plan for the Town of Summerville and that the negotiations be within the parameters of their proposal and within the funds allocated in next year's budget for this purpose and the contingency fund in this year's budget. The motion carried unanimously.

Adjourn

There being no further business, the meeting adjourned at 8:08 a.m.

Respectfully submitted,



Lisa Wallace
Director of Administrative Services
Clerk/Treasurer

RECORD
2015 DEC -1 AM 11:04

CHERYL SHAW
CLERK OF COURT
DORCHESTER COUNTY

Exhibit 5

**LAWRENCE
GROUP**

RECORDED
2015 DEC -1 AM 11:04

SHERYL BRADLEY
CLERK OF COURT
DORCHESTER COUNTY

P.O. Box 1836
Davidson, NC 28036

p 704.896.1696
f 704.896.1697
www.thelawrencegroup.com

CONTRACT FOR PLANNING SERVICES

Project: Town of Summerville Master Plan
Proposal Date: October 30, 2013

Town: Town of Summerville, SC ("Town")
Attn: Bill Collins, Mayor
200 South Main Street
Summerville, SC 29483

Planner: The Lawrence Group Architects of the Carolinas, Inc. ("LG")
P.O. Box 1836
Davidson, North Carolina 28036

This document is intended to serve as an agreement between the Lawrence Group and the Town to ensure that all expectations are understood by both parties. Please indicate your acceptance of this proposal by signing and returning one copy for our files. Upon receipt of the accepted proposal, Lawrence Group will proceed with services under the terms described above. Please note that this proposal is valid for 60 days.

1.0 General Project Description

The town desires a conceptual and illustrative Master Plan that will meet as many of its long-term goals as possible. In meeting those goals, it wants a Master Plan that:

- Promotes Diversity of Use – to attract more people, more frequently and hold them as long as possible by creating a variety of reasons to come and stay.
- Incorporates Existing and Planned Civic Uses – Civic uses remain a vital component and draw to our town. Attention is needed in order to ensure that future civic uses are appropriately located and linked to other commercial areas of the town.
- Provides accessibility – Emphasize pedestrian circulation to establish a zone of walking and street activity. Do not eliminate cars but make it the kind of place that once you arrive, the car is left in favor of the stroll. Handicapped accessibility shall also be considered. Finally, future transit opportunities shall be explored.
- Creates functional linkages – People must be able to walk between activity centers. Pedestrian linkages should connect major anchors and core areas with adjacent neighborhoods. Physical barriers to pedestrian activity, such as major traffic corridors shall be addressed.
- Fosters Intensity and Ensures Balance – there should be mixed uses, day, night, weekday and weekend activity generators and densities that establish this as the community's center. Density of development to make it vital should be interspersed with public open spaces for gatherings.
- Plans for parking and circulation – Design adequate parking for all types of uses – shoppers, workers, residents and transit patrons based on the Master Plan's ultimate land use intensity.
- Recognizes historical sensitivity – Summerville's historic downtown is part of the designated historic district of the Town and is listed on the National Register of Historic Places.
- Builds a positive identity – The town is comprised of several distinctive commercial areas including the historic downtown, the corridors of US Hwy 17-A (Main Street), US 78 (E. and W. 5th N. St.), Trolley Road, Dorchester Road,

and Central Avenue. The Master Plan should emphasize the positive characteristics of each of these areas in order to create an identity for the town to include areas within the town limits as well as future planning areas.

- Encourages architectural quality – There should be specific standards and requirements to identify suitable building forms and demand quality architecture without compromising the established historic characteristic unique to Summerville and the region but encouraging creativity and progress.
- Creates a sustainable community – The Master Plan should emphasize policies that balance environmental protection, economic development and social equity.
- Addresses land use compatibility and a mixture of uses – The town contains commercial and residential neighborhoods that occasionally blend into each other. The Master Plan shall address the mix of land uses and look for ways to accommodate needed commercial expansion while maintaining neighborhood compatibility.
- Considers the role of public spaces/parks in the community – The town is looking to link the existing parks with a series of open space connections.

2.0 Scope of Work

Our proposed methodology for the Town of Summerville Master Plan uses a community-based public design philosophy to guide the overall planning process. This process incorporates three phases: 1-Reconnaissance, 2-Planning & Design Charrette, and 3-Report & Implementation. It is a fluid process that can easily be modified to suit the Town of Summerville's desires, while maintaining an efficient schedule, permitting the Town to advance to implementation much quicker than conventional planning processes. Additionally, this process ensures the link between land use and transportation planning, allowing the proposed infrastructure enhancements to fully support the realization of the community vision. The outcome is a practical, place-based plan that will help guide development activity.

Phase I: Project Kickoff and Reconnaissance

- 1.1. **Kickoff Meeting with Staff & Advisory Committee Meeting:** We will meet with all appropriate Town staff to finalize the study area, understand the existing development/political/economic climate, and gather all appropriate digital data and materials such as GIS mapping, previous plans, existing ordinances, etc from the local government. In addition, we will tour the project area with the Town's project manager and any appropriate people to help us gather any institutional knowledge specific to the parcels and property in the study area. This meeting will also begin discussions about the outreach process to encourage public interaction throughout the process. During this visit we will also perform a field survey of the study area to evaluate existing development patterns so as to compare them to current regulations and maps. (*On-site Meeting #1*)
- 1.2. **Background Information Review and Code Diagnostic:** We will thoroughly review the town's existing conditions, including: site conditions, applicable development and zoning regulations, previous plans and studies, traffic patterns, parking inventory, historic infrastructure and settlement patterns, and surrounding public and private development which may affect the future development and redevelopment of the Town. The initial review of the documents will include a preliminary Diagnostic Report of the existing regulatory policies of the Town including recommendations for specific changes to promote the preferred vision. The specific recommendation will be completed after the charrette.
- 1.3. **Physical Form Analysis & Infrastructure Investigation:** We will complete a "Ripe and Firm" evaluation of the properties in the study area as appropriate. From this survey, we make a preliminary determination of which areas are firm and not likely to develop or need change and which areas are ready or currently under pressure for change. This survey will be constantly evaluated during the process and will serve as the primary parameter that will guide our proposed development/redevelopment strategies. In addition, we will begin to collect all available information about above and below-ground utility infrastructure, parking facilities, and traffic data including the Town's existing traffic study.

- 1.4. **Stakeholder Interviews/Advisory Committee Kickoff:** Upon a thorough review of all documents, we will then lead a series of stakeholder meetings and interviews over a two day period. These sessions usually consist of detailed, one-on-one discussions or focus group meetings with key client staff and stakeholders as identified by the consultant team and staff. Staff, stakeholder, and general public input will help identify best tools and methods to be used to support a more economically and aesthetically successful corridor. Information will be gathered and disseminated back to the public through the project website.

We will work with an Advisory Committee for the project area to serve as a resource for our team and the Town throughout the project. The Advisory Committee should be approximately 6-12 individuals appointed by the Town to provide general guidance, assist in public outreach and communications, and facilitate the implementation of the plans. In this manner, the Committee should represent key property owners, Town officials, and community leaders who are focused on implementing change in the area. We will conduct a kickoff meeting with the Advisory Committee during this trip. *(On-site Meeting #2 - 3 Days)*

- 1.5. **Preliminary Market Study:** After a careful review of past studies, we will target our research to fill the missing gaps that tell the economic story of the area. Our analysis sets the stage for balancing an appropriate and supportable mix of land uses. Unlike a traditional market study, this information is gathered and analyzed and re-evaluated as designs emerge. A typical investigation will seek to quantify the lifestyle segments and their housing preferences of the area and region to understand the potential for future urban products. A targeted retail spending analysis helps balance the amount and location of space recommended for different kinds of shopping and entertainment areas to serve local and regional residents. Employment trends suggest not only which industries and clusters are thriving or underrepresented, but also the average size of firms to better quantify the size of required space and determine appropriate locations. At the charrette, this information is used as a resource to identify opportunities and suggest enabling trends to support the community vision. Together, it results in a supportable program of synergistic uses for the study area.

We will also analyze GIS data from the Town together with local market information and design alternatives to determine a realistic capacity of downtown for future growth. By determining the amount, location and suitability of existing vacant and re-developable parcels, we assess the capacity of the existing built environment for new infill uses. Using the preferred density scenarios generated by planners and designers through a public input process, we map programs of development. This provides an analysis of future development at different densities for housing, employment and retail space, determining a range of acres required for each scenario. The program of uses is iteratively balanced with market considerations and checked for feasibility through the charrette process.

While tax lot data may not reflect current market value, it is usually a reliable source of the relative value of land and improvements. We use this GIS data from the Town to map parcels by their building to land value. This highlights vacant lots and lots with land worth more than improvements, and identifies a range of improved property values. Through the collaborative effort in the charrette, we can divide the study area into districts where different land uses and programs may be deemed appropriate. Tabulating the land value analysis, we are able to understand the capacity of each area to absorb infill in the short and long term. The resulting development scenarios can be compared with the existing condition to understand the impact of new development on such things as property taxes, employment, residential units and their impact on retail demand, and projected retail sales and taxes. This level of analysis is important in understanding the benefits of any required new infrastructure or the cost of incentives.

- 1.6 **Project Communication/Public Outreach:** Public involvement is an integral part of this project, and an integral part of our approach to community planning. We will work with the Town staff to finalize an Outreach Plan for the project. Additionally, throughout the process, we will continue to work closely to ensure that we are utilizing creative methods that maximize the level of engagement from the community. As part of this process,

we also propose to include a targeted public relations campaign that will manage all project communications with three tightly integrated services: Identity, Public Relations and Distribution of Information

- **IDENTITY.** We will help to establish a visual/graphic identity for the effort that will be used throughout the project and will be a part of all materials associated with the project.
- **COLLATERAL MATERIAL.** We will assist the client in creating various collateral materials for use in generating interest in participating in the project. These will include direct mailings, postcards, posters, and banners. The message of each of the materials will be scalable to other media and formats as well as the request of the client.
- **DISTRIBUTION OF INFORMATION.** We will create an element on the Town's website that includes a full written summary of all of the various steps of this planning process.

Additionally, we will explore reaching out to community members through local organizations and churches, utilizing "low tech" outreach, methods such as weekly bulletins and door hangers. Finally, we will work with Town staff to plan the schedule and programming for public meetings, as well as to develop media releases, website posts, and social media outreach.

Phase II: Planning & Design Charrette

- 2.1 Public Planning & Design Charrette:** We will conduct a 5 day planning and design charrette to complete the detailed work necessary for the Master Plan. (NOTE: For Charrette Coordination and Supplies needed, please refer to Appendix B.) (On-site Meeting #3, 4, and 5)

Narrative: For the charrette, our team will set up a working design studio preferably somewhere easily accessible to the entire community, such as in a well-accessible public building in the area (e.g. church or empty storefront). While we will be meeting with a number of stakeholders and interest groups, these meetings will be open to the public and include opportunities for everyone to understand and speak candidly about the issues, thus reducing the opportunity for any one group to dominate the discussion. These are also perfect meetings to actively engage local boards and commissions such as the Planning Board, staff and local citizens. On most evenings there is an open public review of the day's work, resembling a traditional architectural "pin-up." These sessions provide the powerful short feedback loops that are crucial to the success of the charrette.

Our multi-disciplinary team of designers, planners, real estate professionals, graphic designers and engineers will be present throughout the charrette, drawing various plans and strategies in concert with all necessary stakeholders, the Town and interested citizens. We are accustomed to providing high-quality, detailed plans in a short period and the inclusion of many technical disciplines permits us to be very thorough in our assumptions and outcomes.

Our experience shows that by the end of the charrette, the Master Plan will show realistic development capacity for the study area through detailed schematic design studies in three dimensions including streets, buildings, and open spaces.

- 2.1.1 Charrette Logistics:** We will work with Town staff and Advisory Committee members to identify an appropriate charrette location that will provide easy access for the public as well as serving as adequate studio space for the charrette effort. A listing of charrette studio needs and Town responsibilities is included at the end of this document.
- 2.1.2 Charrette Schedule:** We will work with the Town to produce a specific charrette schedule that includes the appropriate representation of key stakeholders over a five (5) day period. The schedule will be in table format and will indicate the charrette events, such as open house hours, meetings, meals and production targets. **Deliverables: Charrette Schedule**

- 2.1.3 **Public Outreach:** All public outreach and public relations will be coordinated directly by the Town. We will assist the Town in these efforts with the provision of sample press releases and additional information for the web site.
- 2.1.4 **Charrette Team Members:** We will have approximately 12 planners and designers including individuals with areas of specific expertise in planning, transportation, architecture, landscape architecture, urban design and form-based codes. Other consultants may be added as project details require and will be at the discretion of Lawrence Group as part of the agreed-upon fee.
- 2.1.5 **Kickoff Public Presentation/Workshop:** We will conduct a public presentation and facilitated public workshop approximately 1-2 weeks prior to the first day of the charrette. The purpose of this presentation will be to introduce the public to the planning process, present stakeholder feedback and analyses, present a survey of best practices that may be appropriate for incorporation in the community, and to gather general and specific public comments/suggestions for the project. This workshop will include a series of public engagement elements including a SWOT analysis; a visioning exercise; and a retail/walkability survey.
- 2.1.6 **Charrette Stakeholder Meetings:** During the charrette we will lead a series of focused interviews with key staff members, elected and appointed officials, and interest group members such as developers, area property and business owners, environmental interests, community activists, economic developers, and neighborhood leaders.
- 2.1.7 **Plan Development & Refinement:** During the charrette we will continuously refine the proposed alternative(s) and complete any related planning, analysis or graphic work based on comments from key stakeholders, staff, elected officials, and the general public.
- 2.1.8 **Charrette Document Preparation:** We will prepare detailed plans and perspective drawings to convey conceptual design intent and key strategies in implementing various initiatives/best practices. (See Appendix A)
- 2.1.9 **Closing Presentation:** The team will deliver a closing presentation approximately one week later to present the preliminary findings and recommendations for the Master Plan. This will be a PowerPoint Presentation restating the goals of the process, illustrating in detail the proposed plan, and permitting the team to suggest strategies for implementation. Because of the digital nature of our presentations, we are able to provide the Town with both the final PowerPoint presentation illustrating the draft Master Plan as well as a majority of the illustrations in high-resolution digital form as a press package, suitable for posting on the web.

Phase III: Plan Development and Project Documentation

- 3.1 **Plan Refinement:** Following the charrette, we will refine the proposed alternative(s) and complete any related analysis or graphic work.
- 3.2 **Advisory Committee Meeting:** We will facilitate a meeting with the Steering Committee to develop a consensus direction for the basic plan elements. This can be conducted as lunch meeting the day after the closing presentation. (On-site Meeting #6)
- 3.3 **Document Preparation:** Following the completion of the charrette, we will complete a draft of the Town of Summerville Master Plan based on the information gathered in Phases 1 and 2 and using the best practices in town planning. We will be responsible for all researching, designing, writing, illustrating, and editing the manuscript and provide all graphic design and layout as approved by the project manager. Each vision and

action will be concisely described and supported with appropriate resources and documentation. In addition to being comprehensive in scope the final plan will:

- Be achievable and implementable and provide clear guidance as to the steps that need to be taken in order to make the vision a reality. The final report will include a detailed implementation plan for the proposed recommendations that will:
- Provide decision-makers with a blueprint for action that will enable them to track progress and schedule future improvements, and
- Enable regional leaders to pinpoint public and private investment opportunities that are financially viable, achievable, and sustainable through sound land use policies that encourage quality design of the built environment and protection of land resources.
- Provide implementation recommendations will be identified for each of the elements addressed by the Plan, and include priorities, conceptual costs, an estimated time frame, projected level of effort for each task, and identification of the organization(s) responsible for each task, and a fiscal analysis that outlines potential funding sources and/or identification of leveraging of public and private investment and potential partnerships. The Implementation Plan also will identify obstacles in the municipal codes and public policies to implementing projects.

3.4 Presentation of Preliminary Documents: Upon completion of the first draft of the documents, we will meet with the Advisory Committee to present the initial recommendations. We are also able to make an additional public presentation during this trip as well. *(On-site Meeting #6)*

3.5 Final Project Document Preparation: Following the completion of Task 3.4, we will prepare the final draft of all related project documents.

3.6 Public Approval/Presentations: We will make up to three (3) additional public presentations to be determined by the Town staff in furtherance of the plan adoption process. *(On-site Meetings # 7, 8 and 9)*

3.7 Final Project Deliverables and Closeout: All documents will be submitted to the Town in digital format in their native format, in high-resolution .pdf format (for printing and publishing) and in low-resolution .pdf format (for posting on the Web). All images will become the property of the Town upon payment of the final invoice.

3.0 Estimated Schedule

From the notice to proceed by the Town we estimate a 12 month schedule for the Project.

4.0 Compensation Terms

4.1 Project-Based Fees and Proposed Additional Services:

Phase 1: Project Kickoff and Reconnaissance:	\$49,890
Phase 2: Planning & Design Charrette/Preliminary Master Plan:	\$97,150
Phase 3: Plan Development & Final Documentation:	<u>\$52,450</u>
Total Fees for Base Services:	\$199,490

4.2 Regular and Customary Expenses: The cost of reimbursable expenses including, but not limited to, document reproduction, long distance communications, travel, mileage and delivery services, shall be reimbursed by the Client at one and one-tenth (1.1) times the direct cost to Lawrence Group and its consultants. Total expenses are estimated at \$13,560. Note that food for the charrette is not included in this estimate.

4.3 Compensation Terms: Compensation shall be paid to the Lawrence Group in accordance with the following provisions:

- Payment shall be rendered monthly based upon a percentage of work completed.
- Payment is due upon receipt of invoice. Any payment outstanding beyond sixty (60) days from date of invoice shall be cause to stop progress on the work. Unless payment in full is received by The Lawrence Group within 7 days of the date of the notice of the suspension of services, The Lawrence Group shall have no liability to the Town for delay or damages caused because of such suspension of services.
- Town agrees to pay interest on all amounts invoiced and not paid or objected to in writing for valid cause, within thirty (30) days from date of invoice at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted by applicable law), until paid.
- The Town must notify The Lawrence Group of any questions or concerns regarding invoices within a reasonable time after receipt. Where corrections or adjustments are necessary, a revised invoice shall be promptly issued by The Lawrence Group. In the event that a dispute arises from this agreement or in the event that one of the parties breaches or allegedly breaches the terms of this agreement, the parties agree that such dispute or question be resolved, to the extent possible through mediation. Unless the parties agree otherwise, they shall refer such dispute for mediation to the local third-party mediation center. Should the parties not resolve such dispute or question through mediation, they may exercise any legal or equitable rights or remedies available to them. In the event of any dispute arising under this Agreement, the prevailing party shall be entitled to all costs and reasonable attorneys' fees associated with enforcement of the terms and provisions hereof.
- Invoices submitted for services performed on a time and expenses basis shall clearly detail itemized expenses and time utilized.
- A rate sheet shall be submitted by any and all third party providers prior to payment for services.

4.4 Additional Services: The Lawrence Group, if expressly requested in writing by the Town, will:

- Produce additional documents to assist in the approval process or as a means of facilitating public education and/or involvement.
- Make additional public or private presentations.
- Incorporate additional changes to the Documents above and beyond those listed in Section 3.0 above.
- Review drawings or designs by other design professionals for adherence to the Documents.
- Complete any other services mutually agreed upon by the Town and Lawrence Group.

4.5 Hourly Rates: Fees for on-call/"time and expense" services as well as any additional services not noted above shall be invoiced as the actual hours worked plus regular and customary expenses (see Section 4.3) as follows:

Position	Hourly Rate	Daily Rate
Principal	\$ 185	\$ 1850
Associate Principal	\$ 160	\$ 1600
Senior Associate II	\$ 145	\$ 1450
Senior Associate I	\$ 130	\$ 1300
Senior Designer	\$ 145	\$ 1450
Associate II / Planner II	\$ 120	\$ 1200
Associate I / Planner I	\$ 110	\$ 1100
Designer II	\$ 100	\$ 1000

Designer I	\$ 85	\$ 850
Technical/Clerical	\$ 60	\$ 600
Intern	\$ 50	\$ 500

These rates shall be firm for the duration of this contract or through the end of 2014, whichever is sooner.

5.0 Standard of Care

Lawrence Group is providing a professional service. We shall perform these services consistent with the professional skill and care ordinarily provided by a planner practicing in the same or similar locality under the same or similar circumstances. We will perform these services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. At no time will we warrant that the documents and drawings produced will be either perfect or free of defects.

6.0 Insurance

We (including all subcontractors) will maintain throughout the term of this Agreement the following insurance limits and coverage and shall, upon executing this Agreement, provide the Town a certificate(s) of insurance evidencing same, showing the Town as an Additional Insured on all coverage except workers' compensation and professional liability:

- **WORKERS' COMPENSATION** Insurance in amounts required by state law including Employer's Liability Insurance with limits of not less than \$1,000,000.00 per accident, \$1,000,000.00 per disease, and \$1,000,000.00 policy limit on disease.
- **COMMERCIAL GENERAL LIABILITY** Insurance including Bodily Injury, Property Damage, Personal Injury, Blanket Contractual, and Broad Form Property Damage Coverage, including Products and Completed Operations, and XCU exposure with combined single limits of not less than \$2,000,000.00 per occurrence.
- **COMMERCIAL AUTOMOBILE LIABILITY** Insurance including owned, non-owned, leased, and hired motor vehicle coverage with limits of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- **PROFESSIONAL LIABILITY** Insurance with a limit of not less than \$1,000,000.00 per claim.

7.0 Early Termination

If, at any point along the process, the Town chooses to discontinue the project, The Lawrence Group will discontinue services. In addition, if the project has, in the opinion of The Lawrence Group, deviated in project scope in such a way as to be inconsistent with the professional values of The Lawrence Group, we will discontinue the project. Upon early termination, a final invoice will be issued that reflects percentage of work complete or the total hours dedicated to the project, as reasonably appropriate, by The Lawrence Group and The Lawrence Group's consultants up to the point that the project was discontinued, plus all reimbursable expenses.

8.0 Use of Documents

The Lawrence Group retains an interest in all documents and information generated in connection with the performance of services and may use these documents for the purposes of other similar projects or marketing efforts. Upon satisfaction of this proposal, The Lawrence Group shall transfer a copy of all original digital files to the Town for unrestricted ownership and use. A copyright on all images and text are retained jointly by The Lawrence Group and the Town. Reproduction may be granted with credit in print.

Respectfully submitted,

LAWRENCE
GROUP

Town of Summerville, SC
Town Master Plan
10.30.13
Page 9

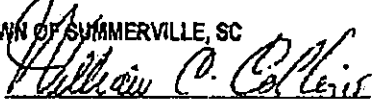
THE LAWRENCE GROUP ARCHITECTS of the CAROLINAS, INC.



Craig S. Lewis, AICP, CNU-A, LEED AP
Managing Principal-Carolinas Office

TOWN OF SUMMERVILLE, SC

By:



11/4/13

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Faye P. Croft, personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; Peter M. Gorman; James Stephen Greene, Jr.; Brian Peacher; Summerville Preservation Society; and Dorchester County Taxpayers Association; Plaintiffs, v. Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; Town of Summerville Board of Architectural Review, Defendants.	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICAL CIRCUIT Civil Action No.: 2015-CP-18-00713 MOTION FOR RECONSIDERATION AND REHEARING
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The Plaintiffs, by their undersigned counsel, respectfully submit this request for rehearing and reconsideration of the court's order dated December 12th, 2016 based on the following grounds and on such argument and briefing as the court will allow:

1. As provided in the Community Development Law, S.C. Code Ann. § 31-10-10 *et. seq.*, including the mandatory requirements of S.C. Code Ann. § 31-10-10(b) and (c) (hereafter "CDL"), compliance with the CDL is a prerequisite for the exercise by the Summerville Redevelopment Corporation (hereafter "RDC") of the power to sell,

exchange, or otherwise transfer real property or any interest therein and to enter into any agreement related.

2. The RDC was required to develop or cause to be developed, but did not develop or cause to be developed, a Redevelopment Plan as a prerequisite for the RDC entering into the Public-Private Partnership Agreement between the Town of Summerville (hereafter "Town") and the developer.
3. The RDC has never prepared or caused to be prepared a "redevelopment plan" submitted by the RDC to the Town for the Town's approval, and the Town has never approved a "redevelopment plan" prepared or caused to be prepared by the RDC, as required by the CDL, both of which are prerequisites to the RDC's entering into the PPPA.
4. There was no Redevelopment Plan in place at the time bids or proposals were sought through the Town's RFP, as required by the CDL: the Vision Plan, an update to the Town's Comprehensive Plan, had not been created at the time of the RFP and was not created as a Redevelopment Plan, and no public notice was provided indicating to the citizens of the Town that the Vision Plan was intended to be a Redevelopment Plan under the CDL.
5. The RDC could not validly adopt the Town's Vision Plan as the RDC's Redevelopment Plan.
6. The RDC has never prepared a redevelopment plan or caused one to be prepared, as required by the CDL. It has never "utilize[d] the local private planning, financing and financial service to the greatest extent possible" about a redevelopment plan, and it has not made any of the specific qualitative determinations required by the CDL. The

RDC has never submitted a redevelopment plan to the Town for approval, as required by the CDL, nor has the Town ever approved a "redevelopment plan" prepared by or for the RDC. These steps are essential prerequisites to the authority of the RDC to enter into and implement the PPPA.

7. The Town published the Request for Proposal for the Hotel Project, not the RDC as required by the CDL.
8. The RDC did not invite proposals, by public notice or otherwise, and did not make available required information about purchasing property or redeveloping the area where the Hotel Project would be built, in violation of the mandatory requirements of the CDL.
9. Neither the Town nor the RDC published a notice once a week for two consecutive weeks in a newspaper having general circulation in the Town, inviting proposals and making available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof, all in violation of the CDL. The RDC published no notice ever.
10. By failing to follow the steps mandated by the CDL, the RDC is not authorized to execute and implement the PPPA with Applegate, including conveying any real property or entering into any agreement with Applegate as a private developer.
11. The CDL must be strictly construed according to its terms and has no exceptions in its language allowing for towns to perform the functions of a redevelopment commission prior to the commission being created, as was the case here. Under the SC law, the Town and the RDC are separate legal entities and cannot be substituted one for the other.

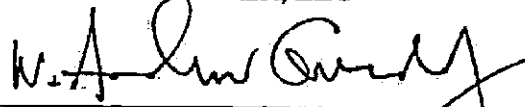
12. The Order contains statements not supported by any evidence on record in the case,
e.g., that the Applegate plan was in hand when the redevelopment plan was created.
13. Actions by the Town are not a legally valid substitute for actions required by the CDL
to be performed by the RDC.
14. The redevelopment plan was required by the CDL to have been created before the
Applegate plan was submitted and selected.
15. The RFP was required by the CDL to have been created after the redevelopment plan
had been created and before the Applegate plan was submitted or selected.
16. The Vision Plan did not meet the requirements of a redevelopment plan under the
CDL.
17. The CDL was created to protect and benefit everyone, including taxpayers and
adjoining property owners, affected by the redevelopment plan, not just to protect and
benefit developers.
18. Persons affected by the redevelopment plan, including taxpayers and adjoining
property owners, were deprived of their rights of notice and an opportunity to
meaningfully be heard and object to the redevelopment plan and to the Applegate
plan.
19. The public was not given notice required by the CDL that the Town was proceeding
under the CDL to declare a block of historic downtown Summerville a "blight" and to
attempt to develop it under the CDL.

Respectfully submitted,

AUSTEN & GOWDER, LLC

Respectfully submitted, ,

AUSTEN & GOWDER, LLC



W. Andrew Gowder, Jr. (S.C. Bar # 7895)
1629 Meeting Street, Suite A
Charleston, SC 29405
Phone: (843) 727-2200
Email: andy@austengowder.com
Attorney for Plaintiff



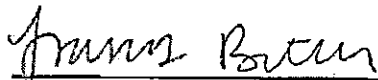
Michael T. Rose (S.C. Bar # 4910)
Mike Rose Law Firm, PC
409 Central Ave.
Summerville, SC 29483
(843) 871-1821
Email: mrose5@sc.rr.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion for Reconsideration and Rehearing has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 9th day of January, 2017 to:

Timothy A. Domin
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Email: tdomin@clawsonandstaubes.com
Attorney for Defendants

G. Waring Parker
G. Waring Parker Law Firm, LLC
518 W. Carolina Avenue
Summerville, SC 29483-6632
Phone: (843) 821-7323
Email: gwaringparker@bellsouth.net
Attorney for Defendants



Frances Butler
Assistant to W. Andrew Gowder Jr.

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-18-00713

Faye P. Croft, personally and as Trustee of the
James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson;
Peter M. Gorman; James Stephen Greene, Jr.;
Brian Peacher; Summerville Preservation
Society; and Dorchester County Taxpayers
Association

Plaintiff,)

vs.)

Town of Summerville; William C. Collins, in
his capacity as Mayor; Terry Jenkins, Aaron
Brown, Walter Bailey, William McIntosh,
Kima Garten-Schmidt and Robert Jackson, in
their capacities as members of Town Council;
Town of Summerville Redevelopment
Corporation; Town of Summerville Planning
Commission; Town of Summerville Board of
Architectural Review,

Defendant.)

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:
W. Andrew Gowder, Jr., Bar No. 7895
Address:
Post Office Drawer 22247
Charleston, SC 29413
Phone: 843-727-2229 Fax 843-727-2231
E-mail: wag@p-tw.com Other: _____

Defendant's Attorney:
Timothy A. Domin, Bar No. _____
Address:
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
Phone: 843-577-2026 Fax 843-722-2867
E-mail: tdomin@clawsonandstaubes.com Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration and Rehearing

Estimated Time Needed: 20

Court Reporter Needed: ☒ YES/ ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff ☐ Defendant

1-9-16

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Croft; Heyward G. Hutson; James Stephen Greene, Jr.; Brian Peacher; Robert Klinger; Mary Becker; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; and Town of Summerville Board of Architectural Review,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

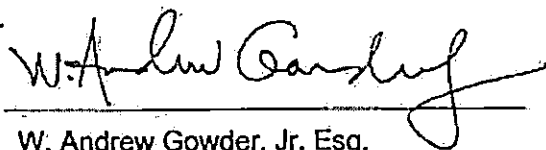
CASE NO.: 2015-CP-18-00713

**STIPULATION OF DISMISSAL
WITHOUT PREJUDICE
PURSUANT TO RULE 41 AS
SOME DEFENDANTS**

Pursuant to Rule 41, the Plaintiffs, with the consent of the Defendants hereby dismiss this action without prejudice as to the following Defendants: William C. Collins, Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, and Kima Garten-Schmidt and Robert Jackson. This action is not dismissed as to the remaining defendants.


Timothy A. Domin, Esq.
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Attorney for Defendants William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; and Town of Summerville Board of Architectural Review

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Attorney for Defendant Town of Summerville


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Attorney for Plaintiffs

Michael T. Rose, Esq.
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Summerville, SC 29483-5903
Phone: (843) 871-1821
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Faye P. Croft, personally and as Trustee of the
James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson;
James Stephen Greene, Jr.; Brian Peacher;
Robert Klinger; Mary Becker; Summerville
Preservation Society; and Dorchester County
Taxpayers Association, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in
his capacity as Mayor; Terry Jenkins, Aaron
Brown, Walter Bailey, William McIntosh,
Kima Garten-Schmidt and Robert Jackson, in
their capacities as members of Town Council;
Town of Summerville Redevelopment
Corporation; Town of Summerville
Redevelopment Commission; Town of
Summerville Planning Commission; and Town
of Summerville Board of Architectural
Review,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2022-CP-18-01494

**NOTICE OF MOTION AND
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Defendants, by and through their undersigned attorneys, shall, and hereby do, move this Honorable Court for an Order granting Partial Summary Judgment, pursuant to Rule 56, SCRCP, in favor of the Plaintiffs in the above-captioned matter upon the grounds that there exists no genuine issue as to any material fact and that the Plaintiffs are entitled to judgment as a matter of law in its favor. This basis for this motion is as follows:

AGREEMENT, REDEVELOPMENT PLAN, PROJECT INVALID

1. The Public-Private Partnership Agreement Between *[sic]* Town of Summerville, Town of Summerville Redevelopment Corporation and Applegate & Co. signed on July 9, 2014, by the Town of Summerville, the Summerville Redevelopment Corporation and Applegate & Co. ("PPPA") is invalid, void *ab initio* and unenforceable;
2. The Redevelopment Plan of the Town's Redevelopment Corporation regarding the building of a mixed-use development project within the Town described in the Second Amended Complaint ("Project") is invalid, void *ab initio* and unenforceable;
3. The Project based on the PPPA is invalid, void *ab initio* and unenforceable.

FREEDOM OF INFORMATION ACT

4. The "Staff Kickoff" meeting of the Master Plain Advisory Committee ("MPAC") of the Town of Summerville ("Town") held on December 9, 2013, violated the South Carolina Freedom of Information Act ("FOIA") because no notice, agenda or minutes for the meeting were published and the meeting was not available for the public to attend.
5. The meeting of the MPAC held on January 7, 2014, violated FOIA because no notice, agenda or minutes for the meeting were published and the meeting was not available for the public to attend;
6. The meeting of the MPAC held on March 28, 2014, violated FOIA because no notice, agenda or minutes for the meeting were published and the meeting was not available for the public to attend;

7. The meeting of the MPAC held with the Town Planning Commission on June 16, 2014, at which members of the MPAC addressed the Town Planning Commission violated FOIA because no notice, agenda or minutes for the meeting was published;
8. The Town's distributing written ballots to all members of the MPAC on which all members of the MPAC were instructed to vote their recommendations to the Town violated FOIA when no notice, agenda or minutes for that ballot distribution were published and the ballot distribution was not disclosed to the public or made at a public meeting;
9. The voting on written ballots by members of the MPAC showing their recommendations to the Town violated FOIA when there was no notice, agenda or minutes published regarding those voted-on ballots and the ballot voting itself and the results of the ballot voting were not disclosed to the public or done at a public meeting.
10. The Town's official designation of two Town Council members on each of three groups for the purpose of meeting on December 10, 2014, to review and discuss with the Lawrence Group consultants the content and process for creating the Master Plan was the appointment of a "committee [] . . . and the like" within the meaning of S.C. Code Ann. § 30-4-20(a).
11. Since both members of each of the three respective two-person groups of Town Council members appointed by the Town attended a meeting on December 10, 2014, with Lawrence Group consultants where they discussed the Project, the Master Plan, the Comprehensive Plan, and the Redevelopment Plan as arranged by the Town, a quorum of each of those groups a/k/a committees was present at each of those meetings.

12. The separate meetings on December 10, 2014, of three groups of two Town Council members per meeting at which they discussed the Project, the Master Plan, the Comprehensive Plan, and the Redevelopment Plan with Lawrence Group consultants as arranged by the Town violated FOIA because no notice, agenda or minutes for the meetings were published and the meetings were not available for the public to attend.
13. The Town's official designation of two BAR members on each of three groups for the purpose of meeting with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, respectively, to discuss BAR business regarding the Project was the appointment of a "committee [] . . . and the like" within the meaning of S.C. Code Ann. § 30-4-20(a).
14. Since both BAR members of each of the three respective two-person groups appointed by the Town attended respective meetings with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project, a quorum of each of the three committees was present at each of those meetings;
15. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated FOIA because no notice, agenda or minutes for the meetings was published and the meetings were not available for the public to attend;
16. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinances 32-176(d);

17. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinance 32-176(e);
18. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-870(0);
19. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-920(A);
20. The Town's official designation of three BAR members on each of two groups for the purpose of each respective group meeting with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, in different, successive meetings to discuss BAR business regarding the Project was the appointment of a "committee [] . . . and the like" within the meaning of S.C. Code Ann. § 30-4-20(a).
21. Since all three members of each of the two respective three-person BAR groups appointed by the Town attended their respective meeting with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, where they discussed BAR business regarding the design of the Project, a quorum of each of these two BAR groups was present at each of their respective meetings.

22. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town, violated FOIA because no notice, agenda or minutes for the meetings was published and the meetings were not available for the public to attend;
23. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-870(0);
24. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-920(A);
25. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinances 32-176(d);
26. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinance 32-176(e);

27. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinance 32-182(b);
28. The sending of an email on December 30, 2014, by BAR member John Kwist to all other members of the BAR expressing his reasons for opposing the Project violated the FOIA because it was a discussion of the business of the BAR without the notice, agenda, minutes and public openness required by FOIA;
29. The sending of an email on December 30, 2014, by BAR member John Kwist to all other members of the BAR expressing his reasons for opposing the Project violated S.C. Code Ann. § 30-4-70(c), which provides in part that: "No . . . 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;"
30. The BAR held a meeting after its regularly scheduled BAR meeting on February 1, 2016, that violated the FOIA by not publishing notice, an agenda and minutes regarding that meeting, and by not allowing members of the public to attend that meeting;
31. The Town's Annexation Committee is an "advisory committee" within the meaning of S.C. Code Ann. § 30-4-20(a) (2007);
32. Meetings of the Town's Annexation Committee on July 7, 2017, and August 3, 2017, violated the FOIA because no notice, agenda or minutes were published by the Town regarding these meetings, and the public was not allowed to attend these meetings;

33. Meetings of the Town's Business License Committee violated the FOIA because no notice, agenda or minutes were published by the Town regarding these meetings, and the public was not allowed to attend these meetings;
34. The BAR unreasonably failed to let the public inspect or copy BAR applications regarding the Project until after BAR meetings occurred at which the applications were considered by the BAR, in violation of S.C. Code Ann. § 30-4-30(a);
35. The BAR failed to allow members of the public to speak about demolition at its January 5, 2015, meeting, in violation of Summerville Town Ordinance Sec. 32-182(b);
36. The BAR violated FOIA by holding an important BAR meeting on January 5, 2015, in a room too small to contain the members of the public attempting to attend the meeting and failed to provide any video, sound or amplification system to enable the public to see, hear or participate in the meeting.

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

37. The Planning Commission did not pass a resolution approving the Master (Vision) Plan as an amendment to the Town's Comprehensive Plan, in violation of S.C. Code Section 6-29-520(B);
38. The Planning Commission did not record in its official minutes that the Planning Commission passed a resolution approving the Master (Vision) Plan as an amendment to the Town's Comprehensive Plan, in violation of S.C. Code Section 6-29-520(B);
39. The Motion passed by the Planning Commission regarding recommending that Town Council approve the Master (Vision) Plan as an amendment to the Comprehensive Plan did not "refer expressly to maps and other descriptive matters intended by the planning

commission to form the whole or element of the recommended plan,” in violation of SC Code Section 6-29-520(B);

40. The version of the Master Plan the Planning Commission voted on June 16, 2014, to recommend that the Town Council approve as an amendment to the Town’s Comprehensive Plan is not the same as the version of the Master Plan received and considered by the Town Council on July 9, 2014;
41. In violation of S.C. Code Ann. § 6-29-530, Town Council did not hold and advertise a public hearing about amending the Town’s Comprehensive Plan with the Master Plan before it passed, on July 9, 2014, motion “to have second and final reading of an ordinance to **amend** the Town of Summerville **comprehensive plan** as amended by **adopting** the Town of Summerville **vision [Master] plan** and appending the vision **[Master] plan** as an **update** to the comprehensive plan;”
42. Town Council’s passage on July 9, 2014, of an ordinance amending the Town’s Comprehensive Plan 2009-2011 with the Master Plan is invalid;
43. The Planning Commission failed to review the project and to comment on the compatibility of the Project with the Town’s Comprehensive Plan, in violation of S.C. Code § 6-29-540; and
44. The Town Council failed to publicly state whether the Project conforms or conflicts with the Comprehensive Plan and/or its reasons, if any, to proceed with the Project if it does not conform to the Comprehensive Plan, or to send any findings regarding any of those matters to the Planning Commission or any other person or entity, or to publish any said findings in a newspaper, in violation of S.C. Code § 6-29-540.

Respectfully submitted,

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

November 15, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Faye P. Croft, personally and as Trustee of the
James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson;
James Stephen Greene, Jr.; Brian Peacher;
Robert Klinger; Mary Becker; Summerville
Preservation Society; and Dorchester County
Taxpayers Association, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in
his capacity as Mayor; Terry Jenkins, Aaron
Brown, Walter Bailey, William McIntosh,
Kima Garten-Schmidt and Robert Jackson, in
their capacities as members of Town Council;
Town of Summerville Redevelopment
Corporation; Town of Summerville
Redevelopment Commission; Town of
Summerville Planning Commission; and Town
of Summerville Board of Architectural
Review,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2022-CP-18-01494

NOTICE OF MOTION AND
FIRST AMENDED MOTION
FOR PARTIAL
SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the Defendants, by and through their undersigned attorneys, shall, and hereby do, move this Honorable Court for an Order granting Partial Summary Judgment, pursuant to Rule 56, SCRCP, in favor of the Plaintiffs in the above-captioned matter upon the grounds that there exists no genuine issue as to any material fact and that the Plaintiffs are entitled to judgment as a matter of law in its favor. This basis for this motion is as follows:

AGREEMENT, REDEVELOPMENT PLAN, PROJECT INVALID

1. The Public-Private Partnership Agreement Between *[sic]* Town of Summerville, Town of Summerville Redevelopment Corporation and Applegate & Co. signed on July 9, 2014, by the Town of Summerville, the Summerville Redevelopment Corporation and Applegate & Co. ("PPPA") is invalid, void *ab initio* and unenforceable.
2. The Redevelopment Plan of the Town's Redevelopment Corporation regarding the building of a mixed-use development project within the Town described in the Second Amended Complaint ("Project") is invalid, void *ab initio* and unenforceable.
3. The Project based on the PPPA is invalid, void *ab initio* and unenforceable.

FREEDOM OF INFORMATION ACT

4. The "Staff Kickoff" meeting of the Master Plain Advisory Committee ("MPAC") of the Town of Summerville ("Town") held on December 9, 2013, violated the South Carolina Freedom of Information Act ("FOIA") because no notice, agenda or minutes for the meeting were published and the meeting was not available for the public to attend.
5. The meeting of the MPAC held on January 7, 2014, violated FOIA because no notice, agenda or minutes for the meeting were published and the meeting was not available for the public to attend.
6. The meeting of the MPAC held on March 28, 2014, violated FOIA because no notice, agenda or minutes for the meeting were published and the meeting was not available for the public to attend.

7. The meeting of the MPAC held with the Town Planning Commission on June 16, 2014, at which members of the MPAC addressed the Town Planning Commission violated FOIA because no notice, agenda or minutes for the meeting was published.
8. The Town's distributing written ballots to all members of the MPAC on which all members of the MPAC were instructed to vote their recommendations to the Town violated FOIA when no notice, agenda or minutes for that ballot distribution were published and the ballot distribution was not disclosed to the public or made at a public meeting.
9. The voting on written ballots by members of the MPAC showing their recommendations to the Town violated FOIA when there was no notice, agenda or minutes published regarding those voted-on ballots and the ballot voting itself and the results of the ballot voting were not disclosed to the public or done at a public meeting.
10. The Town's official designation of two Town Council members on each of three groups for the purpose of meeting on December 10, 2014, to review and discuss with the Lawrence Group consultants the content and process for creating the Master Plan was the appointment of a "committee [] . . . and the like" within the meaning of S.C. Code Ann. § 30-4-20(a).
11. Since both members of each of the three respective two-person groups of Town Council members appointed by the Town attended a meeting on December 10, 2014, with Lawrence Group consultants where they discussed the Project, the Master Plan, the Comprehensive Plan, and the Redevelopment Plan as arranged by the Town, a quorum of each of those groups a/k/a committees was present at each of those meetings.

12. The separate meetings on December 10, 2014, of three groups of two Town Council members per meeting at which they discussed the Project, the Master Plan, the Comprehensive Plan, and the Redevelopment Plan with Lawrence Group consultants as arranged by the Town violated FOIA because no notice, agenda or minutes for the meetings were published and the meetings were not available for the public to attend.
13. The Town's official designation of two BAR members on each of three groups for the purpose of meeting with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, respectively, to discuss BAR business regarding the Project was the appointment of a "committee [] . . . and the like" within the meaning of S.C. Code Ann. § 30-4-20(a).
14. Since both BAR members of each of the three respective two-person groups appointed by the Town attended respective meetings with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project, a quorum of each of the three committees was present at each of those meetings.
15. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated FOIA because no notice, agenda or minutes for the meetings was published and the meetings were not available for the public to attend.
16. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinances 32-176(d).

17. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinance 32-176(e).
18. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-870(0).
19. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-920(A).
20. The Town's official designation of three BAR members on each of two groups for the purpose of each respective group meeting with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, in different, successive meetings to discuss BAR business regarding the Project was the appointment of a "committee [] . . . and the like" within the meaning of S.C. Code Ann. § 30-4-20(a).
21. Since all three members of each of the two respective three-person BAR groups appointed by the Town attended their respective meeting with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, where they discussed BAR business regarding the design of the Project, a quorum of each of these two BAR groups was present at each of their respective meetings.

22. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town, violated FOIA because no notice, agenda or minutes for the meetings was published and the meetings were not available for the public to attend.
23. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-870(0).
24. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-920(A).
25. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinances 32-176(d).
26. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinance 32-176(e).

27. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinance 32-182(b).
28. The sending of an email on December 30, 2014, by BAR member John Kwist to all other members of the BAR expressing his reasons for opposing the Project violated the FOIA because it was a discussion of the business of the BAR without the notice, agenda, minutes and public openness required by FOIA.
29. The sending of an email on December 30, 2014, by BAR member John Kwist to all other members of the BAR expressing his reasons for opposing the Project violated S.C. Code Ann. § 30-4-70(c), which provides in part that: "No . . . 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."
30. The BAR held a meeting after its regularly scheduled BAR meeting on February 1, 2016, that violated the FOIA by not publishing notice, an agenda and minutes regarding that meeting, and by not allowing members of the public to attend that meeting.
31. The Town's Annexation Committee is an "advisory committee" within the meaning of S.C. Code Ann. § 30-4-20(a) (2007).
32. Meetings of the Town's Annexation Committee on July 7, 2017, and August 3, 2017, violated the FOIA because no notice, agenda or minutes were published by the Town regarding these meetings, and the public was not allowed to attend these meetings.

33. Meetings of the Town's Business License Committee violated the FOIA because no notice, agenda or minutes were published by the Town regarding these meetings, and the public was not allowed to attend these meetings.
34. The BAR unreasonably failed to let the public inspect or copy BAR applications regarding the Project until after BAR meetings occurred at which the applications were considered by the BAR, in violation of S.C. Code Ann. § 30-4-30(a).
35. The BAR failed to allow members of the public to speak about demolition at its January 5, 2015, meeting, in violation of Summerville Town Ordinance Sec. 32-182(b).
36. The BAR violated FOIA by holding an important BAR meeting on January 5, 2015, in a room too small to contain the members of the public attempting to attend the meeting and failed to provide any video, sound or amplification system to enable the public to see, hear or participate in the meeting.

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

37. The Planning Commission did not pass a resolution approving the Master (Vision) Plan as an amendment to the Town's Comprehensive Plan, in violation of S.C. Code Section 6-29-520(B).
38. The Planning Commission did not record in its official minutes that the Planning Commission passed a resolution approving the Master (Vision) Plan as an amendment to the Town's Comprehensive Plan, in violation of S.C. Code Section 6-29-520(B).
39. The Motion passed by the Planning Commission regarding recommending that Town Council approve the Master (Vision) Plan as an amendment to the Comprehensive Plan did not "refer expressly to maps and other descriptive matters intended by the planning

commission to form the whole or element of the recommended plan,” in violation of SC Code Section 6-29-520(B).

40. The version of the Master Plan the Planning Commission voted on June 16, 2014, to recommend that the Town Council approve as an amendment to the Town’s Comprehensive Plan is not the same as the version of the Master Plan received and considered by the Town Council on July 9, 2014.
41. In violation of S.C. Code Ann. § 6-29-530, Town Council did not hold and advertise a public hearing about amending the Town’s Comprehensive Plan with the Master Plan before it passed, on July 9, 2014, motion “to have second and final reading of an ordinance to **amend** the Town of Summerville **comprehensive plan** as amended by **adopting** the Town of Summerville **vision [Master] plan** and appending the vision **[Master] plan** as an **update** to the comprehensive plan.”
42. Town Council’s passage on July 9, 2014, of an ordinance amending the Town’s Comprehensive Plan 2009-2011 with the Master Plan is invalid.
43. The Planning Commission failed to review the project and to comment on the compatibility of the Project with the Town’s Comprehensive Plan, in violation of S.C. Code § 6-29-540.
44. The Town Council failed to publicly state whether the Project conforms or conflicts with the Comprehensive Plan and/or its reasons, if any, to proceed with the Project if it does not conform to the Comprehensive Plan, or to send any findings regarding any of those matters to the Planning Commission or any other person or entity, or to publish any said findings in a newspaper, in violation of S.C. Code § 6-29-540.

PROCUREMENT LAW VIOLATIONS

45. The Town violated its Purchasing Ordinance by publishing a Request for Proposal ("RFP") that was not authorized by the Town Purchasing Ordinance and awarding the PPPA contract to Applegate based on that RFP, rather than soliciting competitive sealed bids as required by the Town's Purchasing Ordinance.

46. The Town's Purchasing Ordinance did not authorize or mention the RFP method of procurement.

47. The only method authorized for the Town for projects valued at \$25,000 or more, including the Hotel Project, was by means of competitive sealed bids.

48. No exception to the competitive sealed bid method of procurement in the Town's Purchasing Ordinance includes RFPs or applies to the Hotel Project or the PPPA.

49. The Defendants did not produce until August 12, 2015, any written rationale purporting to justify the Town's not using competitive sealed bids for the Project as required by Section 2-323(c)(19) of the Purchasing Ordinance, and that rationale did not justify and no other rationale justified, using the competitive sealed bid method of procurement regarding the RFP.

50. No statute, guideline, definition, procedure, policy, standard or rule validly authorized the use of an RFP instead of a competitive bid as the authorized procurement method for the Project and the PPPA.

51. As a matter of law, the RFP published in the *Post and Courier* newspaper on November 10, 2013, was contrary to the Town's Purchasing Ordinance. Accordingly, the award of the contract to developer Applegate and the PPPA entered into with Applegate as well as all other contracts and agreements emanating therefrom are illegal, invalid, *ultra vires* and void *ab initio*.

52. The Town violated its Purchasing Ordinance because at the time the RFP was issued and the PPPA signed, there was no “employee of the [T]own designated as the purchasing agent” for the Town “responsible for [t]he purchase of . . . contractual services” for the Town; “[e]stablishing specifications . . . for such services;” “encourag[ing] competition wherever practical;” “[d]eveloping and maintaining an up-to-date list of qualified suppliers, vendors and service providers;” “[o]btaining the most competitive prices on all purchases, contracts and services, all as required specifically by Sec. 2-321;” and receiving “full specifications and proposed vendors.”

53. No Town Purchasing Agent was not allowed to perform the duties of a Purchasing Agent required by the Town’s Purchasing Ordinance because the Town used the RFP procurement method instead of the competitive invitation for bids procurement method required by Sec. 2-322, 2-323(c), 2-324.

54. By not using the competitive sealed bid procedure required by the Purchasing Ordinance, the Town failed to use the specific procedures and criteria stated in Sec. 2-323(c)(17), including failing to (1) utilize purchase orders in accordance with departmental procedures with supporting bid award documents and source justification and/or written rationale as to why the procurement may be considered under other procurement methods as provided elsewhere within this chapter and to (2) utilize supporting bid award documents that include bid tabulation and a concise statement as to the reasons for the bid award recommendation.

55. Because the RFP method was not specifically authorized in the Purchasing Ordinance, the Town was not authorized to and could not use the RFP method of procurement for the Project and the PPPA even if an exemption to the competitive sealed bid method applied.

56. Retroactively claiming and documenting an exemption to excuse not using competitive bids violates the Town’s Purchasing Ordinance.

57. The Town must have classified a procurement as sole source and file documentation, approved by the division head, with any quote received by the vendor, **before** the use of a procurement method other than competitive bidding and **before** the signing of a contract for services, including the PPPA, by the Town.

58. The “sole source” procurement method does not qualify to apply to the PPPA or to the Project.

59. The fact that Applegate was an organizer/developer and contractor doing construction did not justify awarding the Project to Applegate without competition.

60. Professional services is not a procurement method.

61. The fact that an exemption from the competitive bid procurement method may apply cannot authorize use of a different procurement method not specifically authorized in the Town’s Purchasing Ordinance.

62. The Town’s acceptance of the proposal from Applegate violated its Purchasing Ordinance and State law because it was based on criteria materially different than what was stated in the RFP, and therefore was non-responsive.

63. Applegate’s proposal was materially non-responsive to the RFP.

64. The addition of 36 condominium units, a parking garage and 41.64% more land in Applegate’s proposal in response to the Town’s RFP caused the proposal to fail to conform to the essential elements of the Town’s RFP and therefore to be invalid.

65. The addition of 34 high-end condominiums, a parking garage and 41.64% more land in Applegate’s response to the Town’s RFP was not a minor informality or irregularity under Sec. 11-35-1520(13); could not be waived; was material; and was not responsive to the RFP.

Therefore, the Town was obliged to reject it and, by failing to reject it, the Town violated its Purchasing Ordinance and State law.

66. The Town should have rejected Applegate's proposal in response to the RFP because it was non-responsive to the RFP, the variations between the RFP and the proposal were material and the proposal rendered the procurement non-competitive.

67. If the Town determined that condominiums, additional land and a rental parking garage were necessary to attract the interest of developers or otherwise were desired, the Town should have rejected Applegate's proposal and **re-bid** the Project to include condominiums, the land and the parking garage.

68. Because the Town's acceptance of Applegate's non-responsive proposal violates Summerville's Purchasing Ordinance, the PPPA is contrary to the Purchasing Ordinance, illegal, invalid, *ultra vires* and void *ab initio*. Moreover, all contracts and agreements emanating from the RFP are also illegal invalid, *ultra vires* and void *ab initio*.

69. Town officials engaged with Applegate in an anti-competitive conspiracy by deliberately wording, timing, processing and otherwise fraudulently orchestrating and manipulating the Town's RFP and the events leading up to the RFP to ensure that Applegate got awarded the Project and the PPPA by subjective negotiations effectively controlled by Mayor Collins instead of by the competitive bid process required by Section 2-321(e), Section 2-322 and subsection (c) thereof, and Section 2-323(c)(19) of the Town's Purchasing Ordinance.

70. The Request for Qualifications ("RFQ") issued by the Town on July 13, 2013, resulting in the Town's hiring of the Lawrence Group to create a Master Plan was not authorized by the Town's Purchasing Ordinance, because no Request for Qualifications procurement procedure is authorized or even mentioned in the Purchasing Ordinance. Therefore, this RFQ is invalid and void.

71. At the time the RFP was issued and the PPPA was signed, the Town violated the requirements regarding a Town Purchasing Agent stated in Sec. 2-321 of the Purchasing Ordinance.

72. The Town violated laws by failing to appoint a Town Administrator for more than five years during March 10, 2011 through April 25, 2016, and by appointing for nearly 4½ years during July 11, 2011, through November 11, 2015, Mayor William C. Collins as the Town Administrator and assigning to Mayor Collins all or substantially all of the duties and authority of the Town Administrator.

73. The publication of the RFP, the award of the contract for the Project to Applegate, the execution of the PPPA and other agreements and contracts with Applegate and other actions taken to implement the award of the contract violate the Town's Purchasing Ordinance and constitute an unlawful expenditure of public funds.

COMMUNITY DEVELOPMENT LAW VIOLATIONS

74. No Vision Plan existed when on June 25, 2014, the Summerville Redevelopment Commission ("RDC") purported to adopt the Town's Vision Plan as the RDC's Redevelopment Plan because on that date no version of the Vision Plan had been finalized or adopted by the Town Council.

75. The Town Council did not validly approve on July 9, 2014, the Vision Plan as the RDC's Redevelopment Plan as had been recommended by the RDC on June 24, 2014, because the Vision Plan the RDC recommended did not exist when on June 25, 2014, the RDC adopted and recommended that the Town's Vision Plan be RDC's Redevelopment Plan.

76. Because no Vision Plan existed for the RDC to adopt as its redevelopment plan when the RDC passed a Resolution adopting the Vision Plan as the RDC's redevelopment plan on

June 25, 2014, and because no other RDC redevelopment plan existed, the RDC did not validly adopt a Redevelopment Plan and could not have had the Project or the PPPA as a redevelopment project pursuant to a redevelopment plan that did not exist.

77. The RDC did not create a valid redevelopment plan as required by the CDL because the RDC did not prepare or cause to be prepared and recommend a redevelopment plan to the Town Council as authorized by Section 31-10-90(4) but, instead, merely recommended that Town Council adopt as the RDC's "redevelopment plan" the Town's "Vision Plan" that had not yet been finalized or adopted by the Town Council.

78. The Town, not the RDC, prepared or caused the preparation of this "Vision Plan" and did so mostly when the RDC did not even exist, during the more than six-month period between when on November 4, 2013, the Town hired the Lawrence Group to create the Vision Plan (not a redevelopment plan) and when the RDC was created on May 28, 2014.

79. The Town's "Vision Plan" was not a "redevelopment plan" because the content and the means of preparing the "Vision Plan" did not comply with the CDL's statutory requirements for a "redevelopment plan."

80. The "Vision Plan," which was created and adopted as an amendment to the Town's Comprehensive Plan, is a substantively, substantially, qualitatively and materially different kind of document than a "redevelopment plan," which is created to provide special remedies for "blighted" or "conservation areas" within a defined "redevelopment area," and the "Vision Plan" and a "redevelopment plan" were prepared or required to be prepared pursuant to substantially different statutory requirements, procedures and authorities, for different purposes and using different criteria and procedures.

81. A “redevelopment **plan**” is limited by statutory definition to involve only a “redevelopment **area**” which in turn is limited by statutory definition to a “**blighted**” or a “**conservation**” area.

82. Neither the Town ordinance creating the RDC nor any other action or writing by the RDC or the Town in any way defines, identifies or finds the exact location in the Town where “blighted areas and/or conservation areas” exist or where redevelopment of those specific areas is “necessary” as referenced in the CDL.

83. Because the redevelopment plan passed by the RDC does not define the location of the redevelopment area to which the redevelopment plan pertains, that redevelopment plan is invalid.

84. The Vision Plan itself does not mention anywhere the existence or the location of a blighted or conservation area, and does not define in any way the location of a redevelopment area in which the RDC may engage in redevelopment.

85. A “redevelopment plan” means, according to the CDL, a plan for the redevelopment of a “redevelopment area” and because a “redevelopment area” is defined as only “any area that a commission may find to be a blighted area, a conservation area, or” both and the RDC never did “find” a specific area to be a blighted or a conservation area, there was no area available for which the RDC could create a redevelopment plan and, in any event, the RDC did not create a valid redevelopment plan because the Vision Plan the RDC adopted as a redevelopment plan did not state the Vision Plan was to redevelop a blighted or conservation area or where such a blighted or conservation area was located.

86. The Town's Vision Plan covered substantial and apparently majority land areas that were not "blighted" or "conservation" areas and, therefore, did not qualify as a "redevelopment area" for which a valid "redevelopment plan" could be created.

87. The Vision Plan that was adopted as the RDC's redevelopment plan did not include, as specifically required by Section 31-10-100(c), "the **boundaries of the development area**, with a map showing the existing uses of the real property therein;" "standards of population densities, land coverage and building intensities **in the proposed redevelopment**;" "a preliminary site plan **of the redevelopment area**;" and "a **statement of the estimated cost and method of financing redevelopment under the redevelopment plan**." The Vision Plan adopted as the RDC's redevelopment plan did not contain any information about the "development area." There is nothing in the Vision plan adopted as the RDC redevelopment plan about the costs and methods of financing the redevelopment area and, in particular, the Hotel Project.

88. There is no evidence that prior to recommending a redevelopment plan to the Town Council, the RDC "utilize[d] the local private planning, financing, and financial services to the greatest extent possible," as required by Section 31-10-100(e).

89. The RDC did not provide fifteen days notice of a public hearing prior to the RDC's final adoption of a redevelopment plan, as required by Section 31-10-100(d).

90. The Vision Plan that was adopted by the Town Council as an amendment to the Town's Comprehensive Plan on July 9, 2014, was invalid due to multiple violations by the Planning Commission and by the Town of the Enabling Act regarding the Vision Plan, including but not limited to, (1) the **failures** of the Town Council to hold a public hearing about the Vision Plan; and to do so after publishing at least thirty days notice of the time and place of that public hearing; (2) the Town Council **approving** the Vision Plan on final reading of an ordinance without

the Town Council having considered the Vision Plan recommended by the Planning Commission; and (3) the **failures** of the Planning Commission to properly approve and to recommend that Town Council adopt the Vision Plan by passing by majority vote a **resolution** to do so; to cause a Planning Commission resolution or any other writing to refer explicitly to maps and other descriptive matters intended by the Planning Commission to form the recommended Comprehensive Plan; to record the resolution in the Planning Commission's official minutes; to send an exact copy of the recommended comprehensive plan or element to the local governing body; and "[a]fter the comprehensive plan . . . relating to a proposed development [was] adopted . . . [t]he planning commission . . . review[ing] and comment[ing] on the compatibility of the **proposed development** with the comprehensive plan" and to otherwise sending to the Town Council findings and the particulars of any **nonconformity of the Hotel Project with the Comprehensive Plan**.

91. The Planning Commission did not review or comment on the compatibility of the Hotel Project or otherwise send to Town Council findings and the particulars of any nonconformity of the Hotel Project with either the Comprehensive Plan existing before or the Comprehensive Plan existing after the Town amended the Comprehensive Plan with the Vision Plan on July 9, 2014.

92. The Hotel Project stated in the PPPA was approved by the Town Council and the RDC without any public examination of the details of that Project compatibility with the Town's Comprehensive Plan of the RDC's Redevelopment Plan.

93. Because this Vision Plan adopted by the Town was invalid, the adoption by the Redevelopment Commission of that Vision Plan as the Redevelopment Commission's Redevelopment Plan and the Town's approval of the Redevelopment Commission's adoption of

the Vision Plan as the Redevelopment Plan are both invalid. The RDC's redevelopment plan is invalid because it is the Town's Vision Plan and the Town's Vision Plan is invalid.

94. Because the Summerville RDC never published an invitation for proposals regarding the Project as required by S.C. Code Ann. §31-10-110(b), (c), as a prerequisite to the RDC signing the PPPA with Applegate, the RDC was not and is not authorized to allow Applegate to redevelop any part of the redevelopment area, to convey any real property to Applegate or to enter into the PPPA or any other agreement related to the Project, and the PPPA therefore is invalid.

95. The Town's RFP is not a valid substitute for the invitation for bids required by Section 31-10-110(b),(c) because no RDC "redevelopment plan" existed as required by Section 31-10-110(c) or even was claimed to exist when the Town's RFP was published on November 10, 2013; when the Town Council awarded the Project to Applegate on December 18, 2013; and when the Town entered into contractual agreements with Applegate to implement the Project, including to provide Applegate public money, on April 1, 2014, and on April 7, 2014, respectively.

96. It was impossible for the RDC to have complied, and the RDC did not comply, with Section 31-10-110(c)'s requirement that "the sale [of a redevelopment contract or property purchase] 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**" (emphasis added) because no redevelopment plan existed when the Town advertised the RFP and awarded Applegate the Project based on the RFP. The sale of the Project could not have been made, and was not made, to Applegate based on whether Applegate's "plan . . . best effectuates the **redevelopment plan** set forth in" Section 31-10-110(c) when no RDC redevelopment plan and not even the RDC itself existed at the time the Project was awarded to Applegate (emphasis added).

97. The Town's RFP cannot substitute for the RFP required of the RDC because the CDL imposes specific requirements prerequisite to a redevelopment commission awarding a redevelopment project to a redeveloper, conveying property and contracting agreements with a redeveloper, and those requirements were not met by the RDC.

98. The Town's RFP for the Hotel Project and the agreements relating to the Hotel Project made with Applegate after the RFP were not and could not possibly have been "in accordance with" the RDC's "redevelopment plan" as required by Section 31-10-110(b) because at the time the Town's RFP was issued and these agreements related to the RFP were made, neither the RDC nor a RDC redevelopment plan existed.

99. The RDC did not and could not comply with Section 31-10-110(c)'s requirement that "[a]fter 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**" when there was **no "redevelopment plan"** in existence at the time of issuance of the Town's RFP, at the time of the one response to the Town's RFP issued by Applegate, and when the Town awarded the Project to Applegate; and when there was **no valid "redevelopment plan" at any time thereafter** and, therefore, there never was an RFP issued by the RDC as required by Section 31-10-110(c).

100. The Town's RFP could not substitute for the RFP required for the RDC because the Town's RFP failed in several respects to comply with the requirement of Section 31-10-110(c) that the RDC "**shall make available all pertinent information to any persons interested in undertaking the purchase of property or the development of [a redevelopment] area or any part thereof,**" including by: not make available to Tom Limehouse, Grey Raines, Mssrs. Fennell and Wiggins and other persons interested or potentially interested in developing the RDC's redevelopment area the knowledge that (1) the Town had arranged and financed the recently

published PKF Study that showed that the hotel proposed in the Town's RFP was not financially viable without substantial government subsidies; (2) the Town would consider allowing condominiums, a parking garage and additional land to be part of the Project, and had discussed the Town's and Applegate's interest in that with Applegate; (3) the Town desired to have additional residences in the Town; (4) Applegate had "locked up" an option to purchase the Jones Property adjacent to the Town's 1.58 acres at the site of the Project, and the Town's hired real estate agent, Robert Pratt, had helped Applegate obtain that option; (5) Applegate had been informed by the Town about the Town's intention to issue its RFP months in advance of the RFP and given time before the RFP sufficient to enable Applegate to cause architects to prepare an extensive response to the upcoming RFP and to acquire an option to purchase additional land to be used in response to the upcoming RFP; (6) the Town might provide subsidies to the Developer and the nature and amount of those subsidies; (7) a RDC would be created, thereby potentially providing unique and substantial financing and other benefits to a developer for the Project; and (8) the Hotel Project referenced in the RFP would be a redevelopment project authorized by a redevelopment plan created by the RDC for a redevelopment area. No one could make a reasonable proposal in response to the Town's RFP without knowing this information stated above.

101. The Town's RFP was not a valid substitute for the RDC's RFP required by Section 31-10-110(c) because the Town's RFP itself was invalid and illegal, because, as explained in detail above, (1) the Town lacked the authority to issue the RFP; (2) the Town's RFP violated provisions of the Town's Purchasing Ordinance; (3) no exception to the Purchasing Ordinance allowing non-use of competitive bids by the Town applies; (4) Applegate's reply to the Town's RFP was not "responsive" as a matter of law; and (5) the RFP process used by the Town was anti-competitive and a result of collusion, bid-rigging and fraud by and between the Town and Applegate.

102. The Town was required to follow its Purchasing Ordinance before obligating itself to convey property, provide money and incur other obligations stated in the PPPA, including but not limited to the Town's conveying property by deed and gifts of \$8,950,000 of public funds for the Project and loaning \$3,750,000 of public funds to Developer Applegate for the Project.

103. The RDC was required to comply with the RFP requirements of the CDL before it signed the PPPA obligating the RDC to perform significant functions for the benefit of Applegate, the developer, including providing up to \$5,200,000 to fund public improvements for the Project; "convey[ing] a portion of the Town Property [as defined therein] to the Developer [Applegate & Co.] or the SPE [a Special Purpose Entity to be formed by the Developer];" participating in a "Property Swap" contemplating conveyances of title to land by the RDC to the SPE; leasing and selling to The Dorchester, LLC, spaces in the parking garage to be built pursuant to the PPPA; and using 1.58 acres of property conveyed to the RDC by the Town "for the purposes of the [Hotel] project."

104. Money contributions, property sales and transfers and other obligations, and agreements relating to these money contributions, property sales and transfers and other obligations, stated in the PPPA could be made only "after public notice and award as specified in" Sections 31-10-110(b),(c) of the Community Development Law.

105. The Town's RFP was not published "once a week for two consecutive weeks in a newspaper having general circulation in the municipality" as required of the RDC by Section 31-10-110(a), (b), but was published only once. Moreover, the RDC itself never published an RFP as required of it by Section 31-10-110(a), (b). For these and the other reasons stated herein, the PPPA signed by the RDC is invalid.

106. The RDC knew it had failed to comply with Section 31-10-110(c) but proceeded to sign the PPPA with the developer, Applegate, nevertheless.

107. The RDC has been an entity legally separate and distinct from the Town.

108. The Community Development Law clearly does not provide that the *Town* can solicit a Request-for-Proposals. The CDL provides only that the RDC can and must do so.

109. The Town's Request for Proposal was not "in accordance with" Title 31, Chapter 10 of the Community Development Law.

110. Subsection (c) of Section 31-10-110 is a mandate, compliance with which was and is a prerequisite to exercise of the powers enumerated in subsection (b) of Section 31-10-110.

111. Redevelopment commissions are given extraordinary powers that municipalities do not have to subsidize, enter into development agreements with and convey real property to private developers, without public hearings and for the purpose of eliminating blight.

112. Compliance with Section 31-10-110(b),(c) of the CDL is mandatory before a redevelopment commission can exercise the extraordinary powers authorized therein and enter into a multimillion-dollar contract like the PPPA for the redevelopment of land with a project in an historic district that involves use of taxpayer funds without a public hearing about the project.

113. The public and others interested in developing a hotel and who might be interested in developing condominiums at the site of the Project were deprived of information about the Project by the RDC's non-compliance with the requirements of Section 31-10-110(b), (c).

114. The actions taken by the Town in publishing its Request for Proposal on November 10, 2013, cannot be substituted for the separate actions expressly required of the RDC by the Community Development Law.

115. The RDC and the Town are not one and the same. The Town of Summerville and the Summerville RDC are separate and distinct legal entities with separate legislation mandating different powers, requirements, limitations and purposes. If the Legislature intended a law pertaining to a municipality to substitute for a law pertaining to a RDC, the Legislature would have said so, which it did not, and there would have been no logical purpose the Town and the RDC having separate legislative requirements.

116. The fact that the Town published an RFP does not relieve the RDC from performing its own statutory obligations.

117. The Community Development Law does not authorize the municipality to invite proposals from redevelopers; only the RDC may issue such RFPs under the Community Development Law and only in strict accordance with the Community Development Law, including Section 31-10-110(b)(c).

Respectfully submitted,

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

January 26, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Faye P. Croft, personally and as Trustee of the
James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson;
James Stephen Greene, Jr.; Brian Peacher;
Robert Klinger; Mary Becker; Summerville
Preservation Society; and Dorchester County
Taxpayers Association, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in
his capacity as Mayor; Terry Jenkins, Aaron
Brown, Walter Bailey, William McIntosh,
Kima Garten-Schmidt and Robert Jackson, in
their capacities as members of Town Council;
Town of Summerville Redevelopment
Corporation; Town of Summerville
Redevelopment Commission; Town of
Summerville Planning Commission; and Town
of Summerville Board of Architectural
Review,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Civil Action No.: 2022-CP-18-01494

NOTICE OF MOTION AND
SECOND AMENDED MOTION
FOR PARTIAL
SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the Defendants, by and through their undersigned attorneys, shall, and hereby do, move this Honorable Court for an Order granting Partial Summary Judgment, pursuant to Rule 56, SCRCP, in favor of the Plaintiffs in the above-captioned matter

upon the grounds that there exists no genuine issue as to any material fact and that the Plaintiffs are entitled to judgment as a matter of law in its favor. This basis for this motion is as follows:

AGREEMENT, REDEVELOPMENT PLAN, PROJECT INVALID

1. The Public-Private Partnership Agreement Between *[sic]* Town of Summerville, Town of Summerville Redevelopment Corporation and Applegate & Co. signed on July 9, 2014, by the Town of Summerville, the Summerville Redevelopment Corporation and Applegate & Co. ("PPPA") is invalid, void *ab initio* and unenforceable.
2. The Redevelopment Plan of the Town's Redevelopment Corporation regarding the building of a mixed-use development project within the Town described in the Second Amended Complaint ("Project") is invalid, void *ab initio* and unenforceable.
3. The Project based on the PPPA is invalid, void *ab initio* and unenforceable.

FREEDOM OF INFORMATION ACT

4. The "Staff Kickoff" meeting of the Master Plain Advisory Committee ("MPAC") of the Town of Summerville ("Town") held on December 9, 2013, violated the South Carolina Freedom of Information Act ("FOIA") because no notice, agenda or minutes for the meeting were published and the meeting was not available for the public to attend.
5. The meeting of the MPAC held on January 7, 2014, violated FOIA because no notice, agenda or minutes for the meeting were published and the meeting was not available for the public to attend.
6. The meeting of the MPAC held on March 28, 2014, violated FOIA because no notice, agenda or minutes for the meeting were published and the meeting was not available for the public to attend.

7. The meeting of the MPAC held with the Town Planning Commission on June 16, 2014, at which members of the MPAC addressed the Town Planning Commission violated FOIA because no notice, agenda or minutes for the meeting was published.
8. The Town's distributing written ballots to all members of the MPAC on which all members of the MPAC were instructed to vote their recommendations to the Town violated FOIA when no notice, agenda or minutes for that ballot distribution were published and the ballot distribution was not disclosed to the public or made at a public meeting.
9. The voting on written ballots by members of the MPAC showing their recommendations to the Town violated FOIA when there was no notice, agenda or minutes published regarding those voted-on ballots and the ballot voting itself and the results of the ballot voting were not disclosed to the public or done at a public meeting.
10. The Town's official designation of two Town Council members on each of three groups for the purpose of meeting on December 10, 2014, to review and discuss with the Lawrence Group consultants the content and process for creating the Master Plan was the appointment of a "committee [] . . . and the like" within the meaning of S.C. Code Ann. § 30-4-20(a).
11. Since both members of each of the three respective two-person groups of Town Council members appointed by the Town attended a meeting on December 10, 2014, with Lawrence Group consultants where they discussed the Project, the Master Plan, the Comprehensive Plan, and the Redevelopment Plan as arranged by the Town, a quorum of each of those groups a/k/a committees was present at each of those meetings.

12. The separate meetings on December 10, 2014, of three groups of two Town Council members per meeting at which they discussed the Project, the Master Plan, the Comprehensive Plan, and the Redevelopment Plan with Lawrence Group consultants as arranged by the Town violated FOIA because no notice, agenda or minutes for the meetings were published and the meetings were not available for the public to attend.
13. The Town's official designation of two BAR members on each of three groups for the purpose of meeting with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, respectively, to discuss BAR business regarding the Project was the appointment of a "committee [] . . . and the like" within the meaning of S.C. Code Ann. § 30-4-20(a).
14. Since both BAR members of each of the three respective two-person groups appointed by the Town attended respective meetings with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project, a quorum of each of the three committees was present at each of those meetings.
15. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated FOIA because no notice, agenda or minutes for the meetings was published and the meetings were not available for the public to attend.
16. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinances 32-176(d).

17. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinance 32-176(e).
18. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-870(0).
19. The respective meetings of three different two-person groups of BAR members appointed by the Town with the Town's Mayor and the Developer on July 21, 23 and 29, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-920(A).
20. The Town's official designation of three BAR members on each of two groups for the purpose of each respective group meeting with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, in different, successive meetings to discuss BAR business regarding the Project was the appointment of a "committee [] . . . and the like" within the meaning of S.C. Code Ann. § 30-4-20(a).
21. Since all three members of each of the two respective three-person BAR groups appointed by the Town attended their respective meeting with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, where they discussed BAR business regarding the design of the Project, a quorum of each of these two BAR groups was present at each of their respective meetings.

22. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town, violated FOIA because no notice, agenda or minutes for the meetings was published and the meetings were not available for the public to attend.
23. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects of the Developer and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-870(0).
24. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated S.C. Code Ann. §6-29-920(A).
25. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinances 32-176(d).
26. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinance 32-176(e).

27. The respective meetings of two different three-person groups of BAR members appointed by the Town with the Town's Mayor, the Developer, two architects and the Town Planner on December 12, 2014, where they discussed BAR business regarding the Project as arranged by the Town violated Summerville Town Ordinance 32-182(b).
28. The sending of an email on December 30, 2014, by BAR member John Kwist to all other members of the BAR expressing his reasons for opposing the Project violated the FOIA because it was a discussion of the business of the BAR without the notice, agenda, minutes and public openness required by FOIA.
29. The sending of an email on December 30, 2014, by BAR member John Kwist to all other members of the BAR expressing his reasons for opposing the Project violated S.C. Code Ann. § 30-4-70(c), which provides in part that: "No . . . 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."
30. The BAR held a meeting after its regularly scheduled BAR meeting on February 1, 2016, that violated the FOIA by not publishing notice, an agenda and minutes regarding that meeting, and by not allowing members of the public to attend that meeting.
31. The Town's Annexation Committee is an "advisory committee" within the meaning of S.C. Code Ann. § 30-4-20(a) (2007).
32. Meetings of the Town's Annexation Committee on July 7, 2017, and August 3, 2017, violated the FOIA because no notice, agenda or minutes were published by the Town regarding these meetings, and the public was not allowed to attend these meetings.

33. Meetings of the Town's Business License Committee violated the FOIA because no notice, agenda or minutes were published by the Town regarding these meetings, and the public was not allowed to attend these meetings.
34. The BAR unreasonably failed to let the public inspect or copy BAR applications regarding the Project until after BAR meetings occurred at which the applications were considered by the BAR, in violation of S.C. Code Ann. § 30-4-30(a).
35. The BAR failed to allow members of the public to speak about demolition at its January 5, 2015, meeting, in violation of Summerville Town Ordinance Sec. 32-182(b).
36. The BAR violated FOIA by holding an important BAR meeting on January 5, 2015, in a room too small to contain the members of the public attempting to attend the meeting and failed to provide any video, sound or amplification system to enable the public to see, hear or participate in the meeting.

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

37. The Planning Commission did not pass a resolution approving the Master (Vision) Plan as an amendment to the Town's Comprehensive Plan, in violation of S.C. Code Section 6-29-520(B).
38. The Planning Commission did not record in its official minutes that the Planning Commission passed a resolution approving the Master (Vision) Plan as an amendment to the Town's Comprehensive Plan, in violation of S.C. Code Section 6-29-520(B).
39. The Motion passed by the Planning Commission regarding recommending that Town Council approve the Master (Vision) Plan as an amendment to the Comprehensive Plan did not "refer expressly to maps and other descriptive matters intended by the planning

commission to form the whole or element of the recommended plan,” in violation of SC Code Section 6-29-520(B).

40. The version of the Master Plan the Planning Commission voted on June 16, 2014, to recommend that the Town Council approve as an amendment to the Town’s Comprehensive Plan is not the same as the version of the Master Plan received and considered by the Town Council on July 9, 2014.
41. In violation of S.C. Code Ann. § 6-29-530, Town Council did not hold and advertise a public hearing about amending the Town’s Comprehensive Plan with the Master Plan before it passed, on July 9, 2014, motion “to have second and final reading of an ordinance to **amend** the Town of Summerville **comprehensive plan** as amended by **adopting** the Town of Summerville **vision [Master] plan** and appending the vision **[Master] plan** as an **update** to the comprehensive plan.”
42. Town Council’s passage on July 9, 2014, of an ordinance amending the Town’s Comprehensive Plan 2009-2011 with the Master Plan is invalid.
43. The Planning Commission failed to review the project and to comment on the compatibility of the Project with the Town’s Comprehensive Plan, in violation of S.C. Code § 6-29-540.
44. The Town Council failed to publicly state whether the Project conforms or conflicts with the Comprehensive Plan and/or its reasons, if any, to proceed with the Project if it does not conform to the Comprehensive Plan, or to send any findings regarding any of those matters to the Planning Commission or any other person or entity, or to publish any said findings in a newspaper, in violation of S.C. Code § 6-29-540.

PROCUREMENT LAW VIOLATIONS

45. The Town violated its Purchasing Ordinance by publishing a Request for Proposal ("RFP") that was not authorized by the Town Purchasing Ordinance and awarding the PPPA contract to Applegate based on that RFP, rather than soliciting competitive sealed bids as required by the Town's Purchasing Ordinance.

46. The Town's Purchasing Ordinance did not authorize or mention the RFP method of procurement.

47. The only method authorized for the Town for projects valued at \$25,000 or more, including the Hotel Project, was by means of competitive sealed bids.

48. No exception to the competitive sealed bid method of procurement in the Town's Purchasing Ordinance includes RFPs or applies to the Hotel Project or the PPPA.

49. The Defendants did not produce until August 12, 2015, any written rationale purporting to justify the Town's not using competitive sealed bids for the Project as required by Section 2-323(c)(19) of the Purchasing Ordinance, and that rationale did not justify and no other rationale justified, using the competitive sealed bid method of procurement regarding the RFP.

50. No statute, guideline, definition, procedure, policy, standard or rule validly authorized the use of an RFP instead of a competitive bid as the authorized procurement method for the Project and the PPPA.

51. As a matter of law, the RFP published in the *Post and Courier* newspaper on November 10, 2013, was contrary to the Town's Purchasing Ordinance. Accordingly, the award of the contract to developer Applegate and the PPPA entered into with Applegate as well as all other contracts and agreements emanating therefrom are illegal, invalid, *ultra vires* and void *ab initio*.

52. The Town violated its Purchasing Ordinance because at the time the RFP was issued and the PPPA signed, there was no “employee of the [T]own designated as the purchasing agent” for the Town “responsible for [t]he purchase of . . . contractual services” for the Town; “[e]stablishing specifications . . . for such services;” “encourag[ing] competition wherever practical;” “[d]eveloping and maintaining an up-to-date list of qualified suppliers, vendors and service providers;” “[o]btaining the most competitive prices on all purchases, contracts and services, all as required specifically by Sec. 2-321;” and receiving “full specifications and proposed vendors.”

53. No Town Purchasing Agent was not allowed to perform the duties of a Purchasing Agent required by the Town’s Purchasing Ordinance because the Town used the RFP procurement method instead of the competitive invitation for bids procurement method required by Sec. 2-322, 2-323(c), 2-324.

54. By not using the competitive sealed bid procedure required by the Purchasing Ordinance, the Town failed to use the specific procedures and criteria stated in Sec. 2-323(c)(17), including failing to (1) utilize purchase orders in accordance with departmental procedures with supporting bid award documents and source justification and/or written rationale as to why the procurement may be considered under other procurement methods as provided elsewhere within this chapter and to (2) utilize supporting bid award documents that include bid tabulation and a concise statement as to the reasons for the bid award recommendation.

55. Because the RFP method was not specifically authorized in the Purchasing Ordinance, the Town was not authorized to and could not use the RFP method of procurement for the Project and the PPPA even if an exemption to the competitive sealed bid method applied.

56. Retroactively claiming and documenting an exemption to excuse not using competitive bids violates the Town’s Purchasing Ordinance.

57. The Town must have classified a procurement as sole source and file documentation, approved by the division head, with any quote received by the vendor, **before** the use of a procurement method other than competitive bidding and **before** the signing of a contract for services, including the PPPA, by the Town.

58. The “sole source” procurement method does not qualify to apply to the PPPA or to the Project.

59. The fact that Applegate was an organizer/developer and contractor doing construction did not justify awarding the Project to Applegate without competition.

60. Professional services is not a procurement method.

61. The fact that an exemption from the competitive bid procurement method may apply cannot authorize use of a different procurement method not specifically authorized in the Town’s Purchasing Ordinance.

62. The Town’s acceptance of the proposal from Applegate violated its Purchasing Ordinance and State law because it was based on criteria materially different than what was stated in the RFP, and therefore was non-responsive.

63. Applegate’s proposal was materially non-responsive to the RFP.

64. The addition of 36 condominium units, a parking garage and 41.64% more land in Applegate’s proposal in response to the Town’s RFP caused the proposal to fail to conform to the essential elements of the Town’s RFP and therefore to be invalid.

65. The addition of 34 high-end condominiums, a parking garage and 41.64% more land in Applegate’s response to the Town’s RFP was not a minor informality or irregularity under Sec. 11-35-1520(13); could not be waived; was material; and was not responsive to the RFP.

Therefore, the Town was obliged to reject it and, by failing to reject it, the Town violated its Purchasing Ordinance and State law.

66. The Town should have rejected Applegate's proposal in response to the RFP because it was non-responsive to the RFP, the variations between the RFP and the proposal were material and the proposal rendered the procurement non-competitive.

67. If the Town determined that condominiums, additional land and a rental parking garage were necessary to attract the interest of developers or otherwise were desired, the Town should have rejected Applegate's proposal and **re-bid** the Project to include condominiums, the land and the parking garage.

68. Because the Town's acceptance of Applegate's non-responsive proposal violates Summerville's Purchasing Ordinance, the PPPA is contrary to the Purchasing Ordinance, illegal, invalid, *ultra vires* and void *ab initio*. Moreover, all contracts and agreements emanating from the RFP are also illegal invalid, *ultra vires* and void *ab initio*.

69. Town officials engaged with Applegate in an anti-competitive conspiracy by deliberately wording, timing, processing and otherwise fraudulently orchestrating and manipulating the Town's RFP and the events leading up to the RFP to ensure that Applegate got awarded the Project and the PPPA by subjective negotiations effectively controlled by Mayor Collins instead of by the competitive bid process required by Section 2-321(e), Section 2-322 and subsection (c) thereof, and Section 2-323(c)(19) of the Town's Purchasing Ordinance.

70. The Request for Qualifications ("RFQ") issued by the Town on July 13, 2013, resulting in the Town's hiring of the Lawrence Group to create a Master Plan was not authorized by the Town's Purchasing Ordinance, because no Request for Qualifications procurement procedure is authorized or even mentioned in the Purchasing Ordinance. Therefore, this RFQ is invalid and void.

71. At the time the RFP was issued and the PPPA was signed, the Town violated the requirements regarding a Town Purchasing Agent stated in Sec. 2-321 of the Purchasing Ordinance.

72. The Town violated laws by failing to appoint a Town Administrator for more than five years during March 10, 2011 through April 25, 2016, and by appointing for nearly 4½ years during July 11, 2011, through November 11, 2015, Mayor William C. Collins as the Town Administrator and assigning to Mayor Collins all or substantially all of the duties and authority of the Town Administrator.

73. The publication of the RFP, the award of the contract for the Project to Applegate, the execution of the PPPA and other agreements and contracts with Applegate and other actions taken to implement the award of the contract violate the Town's Purchasing Ordinance and constitute an unlawful expenditure of public funds.

COMMUNITY DEVELOPMENT LAW VIOLATIONS

74. No Vision Plan existed when on June 25, 2014, the Summerville Redevelopment Commission ("RDC") purported to adopt the Town's Vision Plan as the RDC's Redevelopment Plan because on that date no version of the Vision Plan had been finalized or adopted by the Town Council.

75. The Town Council did not validly approve on July 9, 2014, the Vision Plan as the RDC's Redevelopment Plan as had been recommended by the RDC on June 24, 2014, because the Vision Plan the RDC recommended did not exist when on June 25, 2014, the RDC adopted and recommended that the Town's Vision Plan be RDC's Redevelopment Plan.

76. Because no Vision Plan existed for the RDC to adopt as its redevelopment plan when the RDC passed a Resolution adopting the Vision Plan as the RDC's redevelopment plan on

June 25, 2014, and because no other RDC redevelopment plan existed, the RDC did not validly adopt a Redevelopment Plan and could not have had the Project or the PPPA as a redevelopment project pursuant to a redevelopment plan that did not exist.

77. The RDC did not create a valid redevelopment plan as required by the CDL because the RDC did not prepare or cause to be prepared and recommend a redevelopment plan to the Town Council as authorized by Section 31-10-90(4) but, instead, merely recommended that Town Council adopt as the RDC's "redevelopment plan" the Town's "Vision Plan" that had not yet been finalized or adopted by the Town Council.

78. The Town, not the RDC, prepared or caused the preparation of this "Vision Plan" and did so mostly when the RDC did not even exist, during the more than six-month period between when on November 4, 2013, the Town hired the Lawrence Group to create the Vision Plan (not a redevelopment plan) and when the RDC was created on May 28, 2014.

79. The Town's "Vision Plan" was not a "redevelopment plan" because the content and the means of preparing the "Vision Plan" did not comply with the CDL's statutory requirements for a "redevelopment plan."

80. The "Vision Plan," which was created and adopted as an amendment to the Town's Comprehensive Plan, is a substantively, substantially, qualitatively and materially different kind of document than a "redevelopment plan," which is created to provide special remedies for "blighted" or "conservation areas" within a defined "redevelopment area," and the "Vision Plan" and a "redevelopment plan" were prepared or required to be prepared pursuant to substantially different statutory requirements, procedures and authorities, for different purposes and using different criteria and procedures.

81. A “redevelopment **plan**” is limited by statutory definition to involve only a “redevelopment **area**” which in turn is limited by statutory definition to a “**blighted**” or a “**conservation**” area.

82. Neither the Town ordinance creating the RDC nor any other action or writing by the RDC or the Town in any way defines, identifies or finds the exact location in the Town where “blighted areas and/or conservation areas” exist or where redevelopment of those specific areas is “necessary” as referenced in the CDL.

83. Because the redevelopment plan passed by the RDC does not define the location of the redevelopment area to which the redevelopment plan pertains, that redevelopment plan is invalid.

84. The Vision Plan itself does not mention anywhere the existence or the location of a blighted or conservation area, and does not define in any way the location of a redevelopment area in which the RDC may engage in redevelopment.

85. A “redevelopment plan” means, according to the CDL, a plan for the redevelopment of a “redevelopment area” and because a “redevelopment area” is defined as only “any area that a commission may find to be a blighted area, a conservation area, or” both and the RDC never did “find” a specific area to be a blighted or a conservation area, there was no area available for which the RDC could create a redevelopment plan and, in any event, the RDC did not create a valid redevelopment plan because the Vision Plan the RDC adopted as a redevelopment plan did not state the Vision Plan was to redevelop a blighted or conservation area or where such a blighted or conservation area was located.

86. The Town's Vision Plan covered substantial and apparently majority land areas that were not "blighted" or "conservation" areas and, therefore, did not qualify as a "redevelopment area" for which a valid "redevelopment plan" could be created.

87. The Vision Plan that was adopted as the RDC's redevelopment plan did not include, as specifically required by Section 31-10-100(c), "the **boundaries of the development area**, with a map showing the existing uses of the real property therein;" "standards of population densities, land coverage and building intensities **in the proposed redevelopment**;" "a preliminary site plan **of the redevelopment area**;" and "a **statement of the estimated cost and method of financing redevelopment under the redevelopment plan**." The Vision Plan adopted as the RDC's redevelopment plan did not contain any information about the "development area." There is nothing in the Vision plan adopted as the RDC redevelopment plan about the costs and methods of financing the redevelopment area and, in particular, the Hotel Project.

88. There is no evidence that prior to recommending a redevelopment plan to the Town Council, the RDC "utilize[d] the local private planning, financing, and financial services to the greatest extent possible," as required by Section 31-10-100(e).

89. The RDC did not provide fifteen days notice of a public hearing prior to the RDC's final adoption of a redevelopment plan, as required by Section 31-10-100(d).

90. The Vision Plan that was adopted by the Town Council as an amendment to the Town's Comprehensive Plan on July 9, 2014, was invalid due to multiple violations by the Planning Commission and by the Town of the Enabling Act regarding the Vision Plan, including but not limited to, (1) the **failures** of the Town Council to hold a public hearing about the Vision Plan; and to do so after publishing at least thirty days notice of the time and place of that public hearing; (2) the Town Council **approving** the Vision Plan on final reading of an ordinance without

the Town Council having considered the Vision Plan recommended by the Planning Commission; and (3) the **failures** of the Planning Commission to properly approve and to recommend that Town Council adopt the Vision Plan by passing by majority vote a **resolution** to do so; to cause a Planning Commission resolution or any other writing to refer explicitly to maps and other descriptive matters intended by the Planning Commission to form the recommended Comprehensive Plan; to record the resolution in the Planning Commission's official minutes; to send an exact copy of the recommended comprehensive plan or element to the local governing body; and "[a]fter the comprehensive plan . . . relating to a proposed development [was] adopted . . . [t]he planning commission . . . review[ing] and comment[ing] on the compatibility of the **proposed development** with the comprehensive plan" and to otherwise sending to the Town Council findings and the particulars of any **nonconformity of the Hotel Project with the Comprehensive Plan**.

91. The Planning Commission did not review or comment on the compatibility of the Hotel Project or otherwise send to Town Council findings and the particulars of any nonconformity of the Hotel Project with either the Comprehensive Plan existing before or the Comprehensive Plan existing after the Town amended the Comprehensive Plan with the Vision Plan on July 9, 2014.

92. The Hotel Project stated in the PPPA was approved by the Town Council and the RDC without any public examination of the details of that Project compatibility with the Town's Comprehensive Plan of the RDC's Redevelopment Plan.

93. Because this Vision Plan adopted by the Town was invalid, the adoption by the Redevelopment Commission of that Vision Plan as the Redevelopment Commission's Redevelopment Plan and the Town's approval of the Redevelopment Commission's adoption of

the Vision Plan as the Redevelopment Plan are both invalid. The RDC's redevelopment plan is invalid because it is the Town's Vision Plan and the Town's Vision Plan is invalid.

94. Because the Summerville RDC never published an invitation for proposals regarding the Project as required by S.C. Code Ann. §31-10-110(b), (c), as a prerequisite to the RDC signing the PPPA with Applegate, the RDC was not and is not authorized to allow Applegate to redevelop any part of the redevelopment area, to convey any real property to Applegate or to enter into the PPPA or any other agreement related to the Project, and the PPPA therefore is invalid.

95. The Town's RFP is not a valid substitute for the invitation for bids required by Section 31-10-110(b), (c) because no RDC "redevelopment plan" existed as required by Section 31-10-110(c) or even was claimed to exist when the Town's RFP was published on November 10, 2013; when the Town Council awarded the Project to Applegate on December 18, 2013; and when the Town entered into contractual agreements with Applegate to implement the Project, including to provide Applegate public money, on April 1, 2014, and on April 7, 2014, respectively.

96. It was impossible for the RDC to have complied, and the RDC did not comply, with Section 31-10-110(c)'s requirement that "the sale [of a redevelopment contract or property purchase] 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 (c) of this section**" (emphasis added) because no redevelopment plan existed when the Town advertised the RFP and awarded Applegate the Project based on the RFP. The sale of the Project could not have been made, and was not made, to Applegate based on whether Applegate's "plan . . . best effectuates the **redevelopment plan** set forth in" Section 31-10-110(c) when no RDC redevelopment plan and not even the RDC itself existed at the time the Project was awarded to Applegate (emphasis added).

97. The Town's RFP cannot substitute for the RFP required of the RDC because the CDL imposes specific requirements prerequisite to a redevelopment commission awarding a redevelopment project to a redeveloper, conveying property and contracting agreements with a redeveloper, and those requirements were not met by the RDC.

98. The Town's RFP for the Hotel Project and the agreements relating to the Hotel Project made with Applegate after the RFP were not and could not possibly have been "in accordance with" the RDC's "redevelopment plan" as required by Section 31-10-110(b) because at the time the Town's RFP was issued and these agreements related to the RFP were made, neither the RDC nor a RDC redevelopment plan existed.

99. The RDC did not and could not comply with Section 31-10-110(c)'s requirement that "[a]fter 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**" when there was **no "redevelopment plan"** in existence at the time of issuance of the Town's RFP, at the time of the one response to the Town's RFP issued by Applegate, and when the Town awarded the Project to Applegate; and when there was **no valid "redevelopment plan" at any time thereafter** and, therefore, there never was an RFP issued by the RDC as required by Section 31-10-110(c).

100. The Town's RFP could not substitute for the RFP required for the RDC because the Town's RFP failed in several respects to comply with the requirement of Section 31-10-110(c) that the RDC "**shall make available all pertinent information to any persons interested in undertaking the purchase of property or the development of [a redevelopment] area or any part thereof,**" including by: not make available to Tom Limehouse, Grey Raines, Mssrs. Fennell and Wiggins and other persons interested or potentially interested in developing the RDC's redevelopment area the knowledge that (1) the Town had arranged and financed the recently

published PKF Study that showed that the hotel proposed in the Town's RFP was not financially viable without substantial government subsidies; (2) the Town would consider allowing condominiums, a parking garage and additional land to be part of the Project, and had discussed the Town's and Applegate's interest in that with Applegate; (3) the Town desired to have additional residences in the Town; (4) Applegate had "locked up" an option to purchase the Jones Property adjacent to the Town's 1.58 acres at the site of the Project, and the Town's hired real estate agent, Robert Pratt, had helped Applegate obtain that option; (5) Applegate had been informed by the Town about the Town's intention to issue its RFP months in advance of the RFP and given time before the RFP sufficient to enable Applegate to cause architects to prepare an extensive response to the upcoming RFP and to acquire an option to purchase additional land to be used in response to the upcoming RFP; (6) the Town might provide subsidies to the Developer and the nature and amount of those subsidies; (7) a RDC would be created, thereby potentially providing unique and substantial financing and other benefits to a developer for the Project; and (8) the Hotel Project referenced in the RFP would be a redevelopment project authorized by a redevelopment plan created by the RDC for a redevelopment area. No one could make a reasonable proposal in response to the Town's RFP without knowing this information stated above.

101. The Town's RFP was not a valid substitute for the RDC's RFP required by Section 31-10-110(c) because the Town's RFP itself was invalid and illegal, because, as explained in detail above, (1) the Town lacked the authority to issue the RFP; (2) the Town's RFP violated provisions of the Town's Purchasing Ordinance; (3) no exception to the Purchasing Ordinance allowing non-use of competitive bids by the Town applies; (4) Applegate's reply to the Town's RFP was not "responsive" as a matter of law; and (5) the RFP process used by the Town was anti-competitive and a result of collusion, bid-rigging and fraud by and between the Town and Applegate.

102. The Town was required to follow its Purchasing Ordinance before obligating itself to convey property, provide money and incur other obligations stated in the PPPA, including but not limited to the Town's conveying property by deed and gifts of \$8,950,000 of public funds for the Project and loaning \$3,750,000 of public funds to Developer Applegate for the Project.

103. The RDC was required to comply with the RFP requirements of the CDL before it signed the PPPA obligating the RDC to perform significant functions for the benefit of Applegate, the developer, including providing up to \$5,200,000 to fund public improvements for the Project; "convey[ing] a portion of the Town Property [as defined therein] to the Developer [Applegate & Co.] or the SPE [a Special Purpose Entity to be formed by the Developer];" participating in a "Property Swap" contemplating conveyances of title to land by the RDC to the SPE; leasing and selling to The Dorchester, LLC, spaces in the parking garage to be built pursuant to the PPPA; and using 1.58 acres of property conveyed to the RDC by the Town "for the purposes of the [Hotel] project."

104. Money contributions, property sales and transfers and other obligations, and agreements relating to these money contributions, property sales and transfers and other obligations, stated in the PPPA could be made only "after public notice and award as specified in" Sections 31-10-110(b), (c) of the Community Development Law.

105. The Town's RFP was not published "once a week for two consecutive weeks in a newspaper having general circulation in the municipality" as required of the RDC by Section 31-10-110(a), (b), but was published only once. Moreover, the RDC itself never published an RFP as required of it by Section 31-10-110(a), (b). For these and the other reasons stated herein, the PPPA signed by the RDC is invalid.

106. The RDC knew it had failed to comply with Section 31-10-110(c) but proceeded to sign the PPPA with the developer, Applegate, nevertheless.

107. The RDC has been an entity legally separate and distinct from the Town.

108. The Community Development Law clearly does not provide that the *Town* can solicit a Request-for-Proposals. The CDL provides only that the RDC can and must do so.

109. The Town's Request for Proposal was not "in accordance with" Title 31, Chapter 10 of the Community Development Law.

110. Subsection (c) of Section 31-10-110 is a mandate, compliance with which was and is a prerequisite to exercise of the powers enumerated in subsection (b) of Section 31-10-110.

111. Redevelopment commissions are given extraordinary powers that municipalities do not have to subsidize, enter into development agreements with and convey real property to private developers, without public hearings and for the purpose of eliminating blight.

112. Compliance with Section 31-10-110(b), (c) of the CDL is mandatory before a redevelopment commission can exercise the extraordinary powers authorized therein and enter into a multimillion-dollar contract like the PPPA for the redevelopment of land with a project in an historic district that involves use of taxpayer funds without a public hearing about the project.

113. The public and others interested in developing a hotel and who might be interested in developing condominiums at the site of the Project were deprived of information about the Project by the RDC's non-compliance with the requirements of Section 31-10-110(b), (c).

114. The actions taken by the Town in publishing its Request for Proposal on November 10, 2013, cannot be substituted for the separate actions expressly required of the RDC by the Community Development Law.

115. The RDC and the Town are not one and the same. The Town of Summerville and the Summerville RDC are separate and distinct legal entities with separate legislation mandating different powers, requirements, limitations and purposes. If the Legislature intended a law pertaining to a municipality to substitute for a law pertaining to a RDC, the Legislature would have said so, which it did not, and there would have been no logical purpose the Town and the RDC having separate legislative requirements.

116. The fact that the Town published an RFP does not relieve the RDC from performing its own statutory obligations.

117. The Community Development Law does not authorize the municipality to invite proposals from redevelopers; only the RDC may issue such RFPs under the Community Development Law and only in strict accordance with the Community Development Law, including Section 31-10-110(b)(c).

ILLEGALITY OF PUBLIC PRIVATE PARTNERSHIP AGREEMENT

118. The PPPA is a "Redevelopment Contract" as defined by SC Code Section 31-10-20(14).

119. The PPPA requires the Town and the RDC to contribute property, including real property and millions of dollars of loans, interest free and unsecured, to Applegate & Co. in a joint venture or partnership for the purpose and with the intended effect of making profits for Applegate & Co., the Town and the RDC.

120. Applegate & Co. is a "Redeveloper" within the meaning of Section 31-10-20(11).

121. The "project" referenced in and that is the subject of the PPPA is a "Redevelopment Project" as defined by S.C. Code Section 31-10-20(14).

122. Three indemnification provisions in the PPPA require that the RDC indemnify a private company, Applegate, against unlimited, open-ended, unknown and unknowable future pecuniary losses and violate, *inter alia*, Article X, §§ 5, 6, 7 and 11 of the South Carolina Constitution.

123. The Project and the PPPA violate, *inter alia*, Article X, Section 11 of the South Carolina Constitution because they do not promote a public purpose.

124. The ultimate real goal and benefit of the Project and of the PPPA primarily were to promote private, not public, interests.

125. The Town and the RDC do not claim in the PPPA that the PPPA or the Project are for the benefit of the public.

126. The Project and the PPPA benefit primarily the private interests of the developer, Applegate, and the other equity investors in the Project; the private owners of the hotel, restaurant, retail space and the condominiums; the private operators of the hotel, the restaurant, the retail space, the condominiums, the conference center and the garage; and the private retailers whose sales might increase due to increased foot traffic in the area surrounding the Project Site.

127. The hotel, restaurant and condominiums referenced in the PPPA would compete with other hotels, restaurants, residential real estate units and businesses that were not allowed the subsidies and other special advantages afforded by the PPPA and the Project.

128. The benefits conferred by the Project and the PPPA on developer Applegate, the equity investors and the private operators of the facilities to be constructed for the Project would competitively disadvantage other private hotel, residential real estate and event planning interests and other businesses in the Town that did not receive those benefits.

129. The PPPA allows “other funds” of the Town that are not from “hospitality fee revenue bonds” and that could be any other type of public funds to fund the GAP LOAN financing the private improvements in the Project, in violation of Article X, Section 14 of the South Carolina Constitution.

130. The facts that and the manners in which the PPPA provides that a private corporation, The Dorchester, LLC, will manage the Conference Center, the Parking Garage, the hotel and the condominiums cause potential financial and other conflicts of interest between the publicly owned and the privately owned interests of the Project.

131. The PPPA protects the private interests of Applegate, the Construction Lender and the Equity Investors (including Applegate) in the Project, over the interests of the RDC, the Town and the public.

132. The Project’s and the PPPA’s realistic operation benefits essentially private interests rather than public interests.

133. The Project and the PPPA bring about primarily a remote or indirect public benefit rather than primarily a public benefit.

134. The PPPA and the Project cause the Town and the RDC effectually to promote business undertakings to compete in free enterprise with other businesses which do not have the advantages that the Project and the PPPA would give.

135. The benefits to the developer of the PPPA and the Project would be substantial, and the benefits of the PPPA and the Project to the public would be negligible and speculative.

136. The Project and the PPPA would be primarily to the benefit of the developer, with no assurance of more than negligible advantage to the general public.

137. The PPPA requires the Town and the RDC to spend public property and money and to incur liabilities and risks that could and would prevent tax monies from being spent on infrastructure improvements and other greater priorities as stated in the Town's Comprehensive Plan and Vision Plan.

138. The financial risks to the public from the Project and the PPPA are especially great given that private individuals and companies (i.e., Applegate, SPE, The Dorchester, LLC) and not the Town or the RDC would have total authority to manage and control the Project.

139. The expenditure of public funds for the Project as provide by the PPPA violates Article X, Section 11 of the South Carolina Constitution "prohibiting the expenditure of public funds for the primary benefit of private parties."

140. The structure and terms of the Project as provided in the PPPA are so speculative, risky and illusory that they impose enormous risks to the public.

141. The Town and the RDC became partners in a partnership with developer Applegate so as to subject the Town and the RDC to liability for the acts of developer Applegate.

142. The Town, the RDC and Applegate repeatedly held themselves out to the public as being "partners" in a "partnership" with each other.

143. The Town and the RDC became partners in a partnership with developer Applegate in violation of Article X, Section 11, of the South Carolina Constitution stating that none of South Carolina's "political subdivisions shall become a joint owner of . . . any company, association, or corporation."

144. Nothing in the PPPA or its attachments, or in any other document, or even verbally, disclaims that developer Applegate, the Town and the RDC are not "partners" giving Applegate

the authority to bind or make decisions for the Town and the RDC and making the Town and the RDC liable for decisions and actions by Applegate.

145. The terms of the PPPA result in the ownership of the private property of the Project and the control of the Project being vested in a Special Purpose Entity; The Dorchester, LLC; Applegate & Company; affiliates; and subcontractors owned and controlled by persons and/or entities unknown or that could become unknown to, and uncontrolled and uncontrollable by, the Town and the RDC, thereby subjecting the Town and the RDC to such uncertainty and lack of authority and control over whom the Town and the RDC must rely on to implement the terms of the Project and the PPPA as to make the Project and the PPPA unlawfully speculative and risky.

146. Because the PPPA provides that “[the PPPA] and its exhibits may be collaterally assigned to the construction lender,” if the Developer defaults on its obligations to the Lender regarding the Project, the lender may own and control the PPPA and its exhibits, by assuming the rights of the Developer thereto, potentially to the detriment of the RDC and the Town.

147. The PPPA authorizes The Dorchester, LLC, to cause the RDC to enter into contracts regarding the conference center and the parking garage, without the RDC having reviewed or specifically approved those contracts. The PPPA also provides for the comingling of functions, property, costs and profits among private and public parties and for the conference center and the parking garage to be operated in certain respects for the benefit of the private hotel and condominiums. As a result, this singular management of both the public and privately owned properties and businesses comprising the Project constitutes conflicts between private and public interests that make the Project and the PPPA unlawfully speculative and risky for the Town and the RDC.

147. The PPPA provides that the “RDC will convey a portion of the TOWN PROPERTY [acquired from the Town] to the DEVELOPER or the SPE as outlined in Section 4 of this Agreement.” Sections 4 and 6 of the PPPA require that the RDC and the Developer or the SPE each swap ownership of its property with the other, thereby resulting in the Developer owning some of the RDC’s property. There is no provision in the PPPA or any other agreement for returning the RDC’s property to the RDC in the event of breach of contract or default by the Developer or SPE regarding the PPPA or other agreements. It is essential that a provision in the deed transferring the RDC’s property to the Developer or the SPE for the benefit of the Project, or at least a contract, require said property to revert to the [RDC] in fee simple, freed and discharged of all further trusts if the Developer defaults or the Project is not built.

148. Provisions of the PPPA imposing obligations on the RDC to purchase insurance for uncertain, open-ended amounts and costs violate, *inter alia*, Article X, §§ 5, 6, 7 and 11 of the South Carolina Constitution.

149. The PPPA authorizes The Dorchester, LLC, to cause the RDC to enter into contracts regarding the conference center and the parking garage without the RDC having reviewed or specifically approved those contracts, thereby causing the RDC to unlawfully delegate, and to incur the speculative risks of delegating, its authority to a private, autonomous, unregulated entity controlled by parties unknown and uncontrolled by the RDC or the Town.

150. The PPPA vests The Dorchester, LLC, an autonomous, unregulated entity controlled by parties unknown and uncontrolled by the RDC or the Town, with exclusive authority to operate two RDC owned businesses and properties (conference center, parking garage), including the authority to cause the RDC to enter into contracts and to incur costs, thereby potentially subjecting the RDC to unlimited liability and speculative risks. However, Article X, §§ 5, 6, 7 and 11 of the South Carolina Constitution prohibit a municipal council from delegating an executive or

ministerial power to a private, autonomous, unregulated entity, including the power to cause the RDC to enter contracts and to incur costs that potentially expose the RDC to unlimited liabilities, as provided in the PPPA.

151. The facts that the PPPA did not state the design specifications required for the Public Improvements of the Project and who would pay for any costs above the \$5.2 million agreed to in the PPPA exposes the RDC and the Town to excessive risks and makes the Project speculative, in violation of the South Carolina Constitution.

152. The PPPA contains ambiguous provisions, and lacks provisions necessary to protect the Town and the RDC,

153. The RDC was not a valid signer of the PPPA and its attachments because none of those documents was signed by the Secretary or Assistant Secretary of the RDC as required by S.C. Code Ann. § 31-10-90(14) in order for a contract with the RDC to have been properly executed.

154. Provisions of the PPPA and its attachments contain provisions that are impermissibly vague, unclear or otherwise illusory.

155. Section 10(c) of the PPPA is unlawfully illusory and risky because it does not identify or secure sufficiently when or how the \$3,750,000 GAP loan plus interest will be repaid to the RDC because the PPPA does not state what will be the terms of the construction loan on which repayment of the \$3,750,000 GAP Loan plus interest are stated to be contingent and whether or how the RDC would be repaid the \$3,750,000 loan plus interest if there were no permanent construction loan or if construction was not completed.

156. Nothing is stated in the PPPA or in any other agreement about why or how the RDC would be protected adequately by a "limited, subordinate personal guarantee of Arthur H.

Applegate” that ends when construction is completed and gives the financial interests of any lender and equity investors, including Applegate, priority over the RDC, thereby subjecting the RDC to unlawfully speculative risks.

157. The terms regarding repayment of the GAP loan and interest stated in the PPPA cause the RDC to assume excessive risks that the unsecured and subordinate \$3,750,000 GAP Loan will never be repaid and that the RDC will be left without recourse if the GAP Loan and interest are not repaid.

158. The PPPA’s provision that the “RDC will lease up to 55 spaces to Developer or the SPE for a term of twenty (20) years to support the residential portion of the project . . .” is illusory because the Developer is not required to rent any of the parking spaces from the RDC and, therefore, the RDC may receive no financial benefit from the parking garage the RDC was financing at the request of the Developer.

159. The PPPA’s provision that the Developer will create a corporation called The Dorchester, LLC, to manage the conference center and the parking garage is illusory and excessively risky because the Town and the RDC have no knowledge of or control over who would own, control and manage The Dorchester, LLC; no control over how The Dorchester, LLC, would manage the conference center and the garage; and no ability to prevent The Dorchester, LLC, from terminating its management services, thereby leaving the RDC with the responsibility of managing a conference center and garage for which it has not expertise or experience.

160. Section 3(l) of the “PARKING GARAGE/CONFERENCE CENTER OPERATION AGREEMENT (The Dorchester),” attached as Exhibit B to the PPPA, states: “Customer Service. It is the expectation of the RDC that [The Dorchester, LLC] shall, in the course of its duties hereunder, provide a high level of customer service to the users of the Conference

Center and the Parking Garage.” That statement is illusory because it literally does not require The Dorchester, LLC, to do anything and, therefore, is not enforceable.

161. The facts that the \$3,750,000 “GAP loan” is unsecured and has a limited, subordinate personal guarantee from Applegate to be paid only after any lenders and equity investors, including Applegate, are paid make the Project illegally risky and illusory for the Town and the RDC.

162. The Town Council illegally delegated exclusive authority to negotiate the terms of the PPPA and the Project to Mayor Collins even though the Mayor had conflicts of interest by illegally serving in the dual capacity of Town Administrator and Mayor and substituting for the Town’s required Purchasing Agent, and even though Mayor Collins lacked, as admitted by him, the qualifications needed to properly negotiate the terms of the PPPA and, as testified by him, did not read the PPPA before he signed it.

163. The content of the PPPA makes it probable that the public interest would not have been ultimately served to a great degree.

164. The Developer and the Town violated Section 8a of the PPPA by submitting to the Town’s Board of Architectural Review (“BAR”) applications for a Certificate of Appropriateness to approve demolition and construction of the Hotel Project that were **not** a **final** design of the private or public improvements, that had **not** been submitted to the RDC for review and approval, and that **never** had been reviewed or approved by the RDC.

165. The Town violated Section 8a of the PPPA by allowing its BAR to consider applications for a Certificate of Appropriateness to approve demolition and construction of the Hotel Project that were **not** a **final** design of the private or public improvements, that had **not** been submitted to the RDC for review and approval, and that **never** had been reviewed or approved by the RDC.

166. The BAR's consideration of the application from the Developer at the BAR's November 3, 2014, meeting, and of this and other applications from the Developer at other meetings, was improper because, in violation of Paragraph 8a of the PPPA, the Developer and the Town had not "submit[ted] a final design . . . to the RDC for review and approval" "[p]rior to submission for review and approval to any required public agency [e.g., the BAR] for [a] certificate of appropriateness."

167. The final design of the Project was never submitted to, nor reviewed or approved by, the RDC as required by Section 8a of the PPPA and, therefore, the RDC was deprived of its right and opportunity to object to the final design of the Project if it wished to do so.

Respectfully submitted,

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 Charleston, South Carolina