

THE STATE OF SOUTH CAROLINA  
In the Court Of Appeals

APPEAL FROM AIKEN COUNTY  
Ernest J. Kinard, Circuit Court Judge

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**RECEIVED**

OCT 20 2014

**SC Court of Appeals**

Stephen P. Donohue

Appellant,

v.

73906

City of North Augusta,  
the Mayor and City Council  
of North Augusta

Respondents.

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**MOTION FOR AN EXPEDITED SCHEDULE**

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Respondents, the City of North Augusta and the Mayor and City Council of North Augusta (the "City" or "North Augusta"), respectfully request that this Court expedite this appeal, pursuant to Rule 263(b) of the South Carolina Appellate Court Rules. The City requests that the Court order an expedited schedule in this matter in the event that the Court denies the City's Motion to Dismiss Appellant's Appeal as Untimely.

The City urges this Court to expedite the schedule for this appeal due to the weight of the public interest at stake for the citizens of North Augusta and the prejudice to the City that will be caused by additional delay. Accordingly, the City submits the following proposed schedule for the briefing and hearing of this matter:

1. The trial transcript has been ordered and received by Respondents and made available to Appellant. Accordingly, the deadlines herein should give no consideration for the order or receipt of the transcript.

2. The initial brief of Appellant shall be served within ten (10) days of the issuance of an order by the Court regarding this motion but, in no case, prior to fifteen (15) days after service of the notice of appeal.

3. The initial brief of Respondents shall be served within ten (10) days after service of the initial brief of Appellant.

4. The reply brief of Appellant shall be served within five (5) days after service of the initial brief of Respondents.

5. Respondents shall prepare the Record on Appeal and shall serve the Record of Appeal on Appellant within ten (10) days after service of the reply brief of Appellant or expiration of time for service.

6. Final briefs of Appellant and Respondents shall be served within ten (10) days after service of the Record on Appeal.

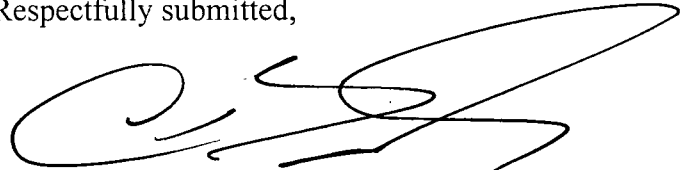
7. Pursuant to Rule 215, SCACR, this Court should decide this appeal based upon the briefs of the parties and the Record on Appeal without oral argument.

WHEREFORE, pursuant to Rule 263(b), SCACR, and the reasons set forth in the City's Memorandum in Support of its Motion for Expedited Schedule and the supporting affidavit of Todd Glover, the City respectfully requests that this Court enter a scheduling order in this matter that provides for the deadlines contained herein.

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Respectfully submitted,

By:



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ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina  
October 20, 2014

THE STATE OF SOUTH CAROLINA  
In the Court Of Appeals

APPEAL FROM AIKEN COUNTY  
Ernest J. Kinard, Circuit Court Judge

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Stephen P. Donohue

Appellant,

v.

City of North Augusta,  
the Mayor and City Council  
of North Augusta

Respondents.

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**MEMORANDUM IN SUPPORT OF RESPONDENT'S  
MOTION FOR EXPEDITED SCHEDULE**

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Respondents, the City of North Augusta and the Mayor and City Council of North Augusta (the "City" or "North Augusta"), file this Memorandum in Support of its Motion for Expedited Schedule ("Motion") in this appeal.

**I. PROCEDURAL HISTORY**

This case was brought by Appellant, Stephen Donohue, in order to invalidate the City's Ordinance 2013-19 (the "Ordinance"). The Ordinance amended the redevelopment plan for the City's Riverfront Redevelopment District (the "Redevelopment District") to allow the City to construct a minor league baseball stadium to support other private development including a hotel and convention center, retail and office space and residences along the City's riverfront ("Project Jackson"). Mr. Donohue alleged that the Ordinance was not valid because the City did not follow the statutory requirements for amending redevelopment plans. Mr. Donohue also alleged that the City violated provisions of the South Carolina Freedom of Information Act ("FOIA") by improperly going into executive session at various times during the year that issues related to Project Jackson were under

consideration, and that the minor league baseball stadium would constitute a nuisance to his residence once constructed.

The Complaint in this action was initially filed on December 9, 2013, and an Amended Complaint was filed on December 23, 2013, that was served on the City on December 27, 2013. On January 15, 2014, the City filed a petition with this Court to remove this action to its original jurisdiction due to the important public issues involved and the risk of losing Project Jackson due to delay caused by this litigation. This Court denied the City's petition on April 3, 2014, but gave Judge Ernest J. Kinard exclusive jurisdiction to hear and dispose of the matter. The City served its Answer in this matter on April 14, 2014.

At a May 2, 2014 scheduling conference, with the consent of the parties, Judge Kinard established a date certain for trial of June 20, 2014. On June 16, 2014, Appellant requested a continuance on the grounds that there would not be sufficient time to review a large number of emails and other documents that were produced as a result of Appellant's broad request for production. These emails were provided in response to a request for production which was made on May 23, 2014; 28 days before the date certain for the trial. This was the only request for production other than the standard request specified in the rules. The court granted Appellant's request and the trial in this matter was held on July 18, 2014.

At the conclusion of the trial, Judge Kinard ruled from the bench to dismiss Appellant's claim related to nuisance and ordered that the parties submit proposed orders for the disposition of the other claims and requested those orders to be delivered to his chambers by July 23, 2014. The City complied with the Court's request and hand-delivered

a proposed order on the date ordered by the Court. The Appellant, however, failed to do so and did not place his proposed order in the mail until fifteen days later on August 2, 2014. Judgment was entered by the Aiken County Clerk of Court on August 20, 2014, finding for the City as to all remaining claims. On September 5, 2014, a Motion to Alter or Amend Judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (the "Rule 59(e) Motion") was served upon the City by Appellant. The parties were notified by the Court by email on September 17, 2014, that Appellant's motion was denied and an order to that effect was entered by the Clerk of Court of Aiken County on September 19, 2014. Appellant served a Notice of Appeal in this matter on October 17, 2014.

## **II. IMPACT OF FURTHER DELAY**

The final resolution of this case is of great importance to the citizens of North Augusta and Aiken County. At stake is Project Jackson; a project to redevelop the North Augusta riverfront area from a blighted and overgrown former industrial site to a thriving urban center that will fulfill the economic development goals of the City's leadership that go back to the early 1990's. This redevelopment of the riverfront, and the private investment that will make it possible, are the culmination of twenty-three years of work by North Augusta's administration and City Council to turn the riverfront into a true asset for the City. The longer that the City is delayed in moving forward with Project Jackson due to this litigation, the greater the possibility that these opportunities will be lost. The risks of delay that were present when the City petitioned this Court to remove this case remain present today and have grown greater now that Project Jackson has been delayed for nearly a year.

In order for Project Jackson to move forward, the City must invest \$55 million in various public infrastructure projects, to include a new baseball stadium. This investment by the City will incentivize private investment in the Riverfront Area that totals \$125 million. *See* Affidavit of Todd Glover at ¶ 4 (attached hereto). The most high-profile aspect of Project Jackson is the relocation of the Augusta Green Jackets minor league baseball team to North Augusta. This relocation is made possible by the City's constructing a new baseball stadium in Project Jackson. Although the City is excited to host a minor league baseball team, the Green Jackets are also vitally important as an anchor to the development to draw in foot traffic and other businesses that will transform the riverfront area. Among the businesses that have expressed their intent to locate in the riverfront area around the baseball stadium are a nationally recognized flagship hotel chain that intends to build a hotel and conference center, a nationally recognized craft beer brewery that intends to build restaurant and brewery, an award winning restaurant chain that specialized in fine southern cuisine, and two upscale retailers. *See* Affidavit of Glover at ¶ 14. Each of these businesses has a draft letter of intent with the City to locate in the district and are awaiting only the resolution of this case to formalize their commitments. *See* Affidavit of Glover at ¶ 15.

City Council has determined that the best way to go about funding the City's investment in Project Jackson is through tax increment financing ("TIF") relying on increases in property values within the Redevelopment District. The City will use the increase in tax revenue resulting from the private investment in Project Jackson to pay back bonds that will finance the City's investment. If the City is unable to issue bonds to finance its portion of Project Jackson, the private development within Project Jackson will not

occur. The issuance of these bonds is entirely dependent upon the final resolution of this case. *See* Affidavit of Glover at ¶¶ 18-22.

At this point, the City and the private developers have taken every step that they could prudently take to move Project Jackson forward while this litigation has continued. The City and the developers have engaged architects to design a state of the art baseball stadium that can double as a venue for many other community events and concerts. *See* Renderings at **Exhibit A**. Planners have also been hard at work to layout the remainder of the Project Jackson area to be suitable for the hotel and conference center, restaurants, retail, office space and necessary parking. The developers and the City have performed engineering studies on the property around Project Jackson in order to estimate costs and assist in the design process. *See* Affidavit of Glover at ¶¶ 8-12.

All of the pieces are in place to begin the construction of Project Jackson but the development is at a critical juncture. The success of Project Jackson hinges on the construction of the baseball stadium and its development is extremely time-sensitive. Due to the requirements associated with ticket sales and sponsorships, the Green Jackets cannot move into the stadium during the middle of the baseball season. *See* Affidavit of Glover at ¶ 16. Construction has to be timed so that the stadium is complete before the season begins. *See* Affidavit of Glover at ¶¶ 17-18. If the bonds to finance construction are not issued by the end of January 2015, the entire project—the hotel and conference center, restaurants and retail, and all of the benefits that will come with it—will be delayed for an entire year. *See* Affidavit of Glover at ¶ 22. The cost to the City and its citizens will be great. The costs of Project Jackson have increased over the past year as construction costs and interest rates have increased. This trend will continue and the costs of Project Jackson

will continue to increase during any delay caused by this appeal. The most significant cost to the citizens, however, may be the loss of the project altogether if the delay continues for too long. *See* Affidavit of Glover at ¶ 22.

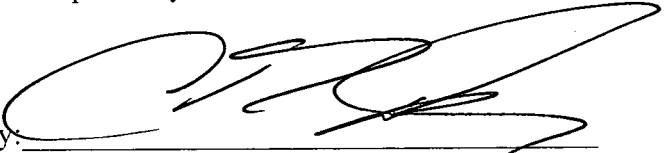
To meet the schedule of having the stadium available for play at the start of the 2016 minor league baseball season, construction must begin in late 2014 or in the first weeks of 2015. Although the proposed briefing schedule outlined in the City's Motion is accelerated, it is essential if the City is to have any chance of beginning the construction of Project Jackson in early 2015. Given that the matters for review here are largely matters of law and statutory interpretation, the briefs of the parties should be relatively short and uncomplicated. If the Court adopts the City's proposed schedule, and decides this appeal on the briefs without oral argument, the City would respectfully request that the Court could enter an order by December 15, 2014.

### **III. CONCLUSION**

Throughout the entirety of this litigation, the City has made every effort to hasten the resolution of this case on behalf of its citizens. Now, at this critical time in the development of Project Jackson, the Respondents respectfully requests that this Court limit the damage done to Project Jackson and the public interest in North Augusta by entering a Scheduling Order pursuant to the City's Motion for an Expedited Schedule and enter an order deciding this appeal by December 15, 2014.

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Respectfully submitted,

By: 

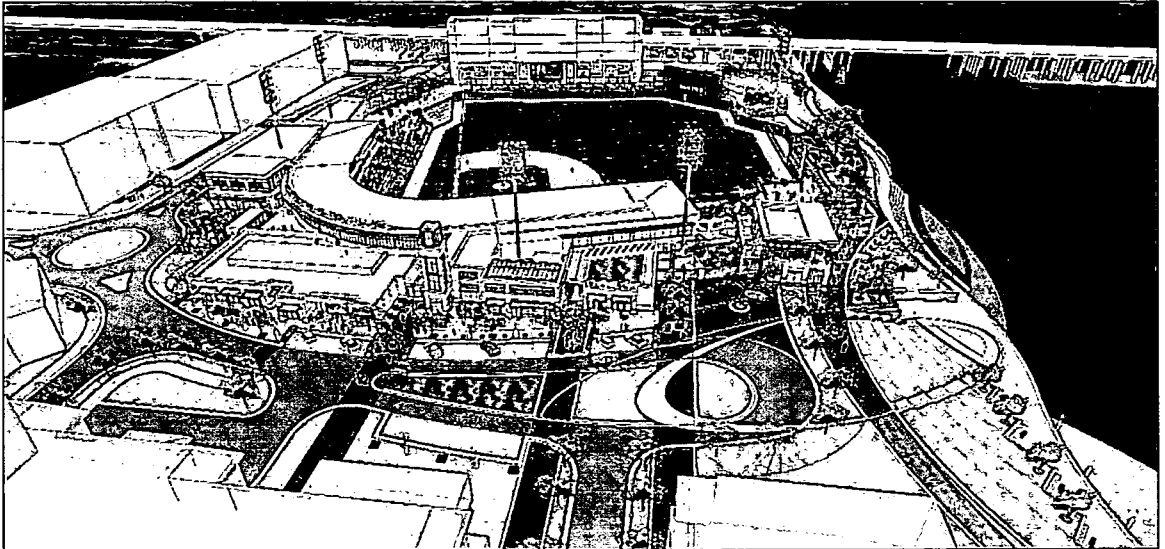
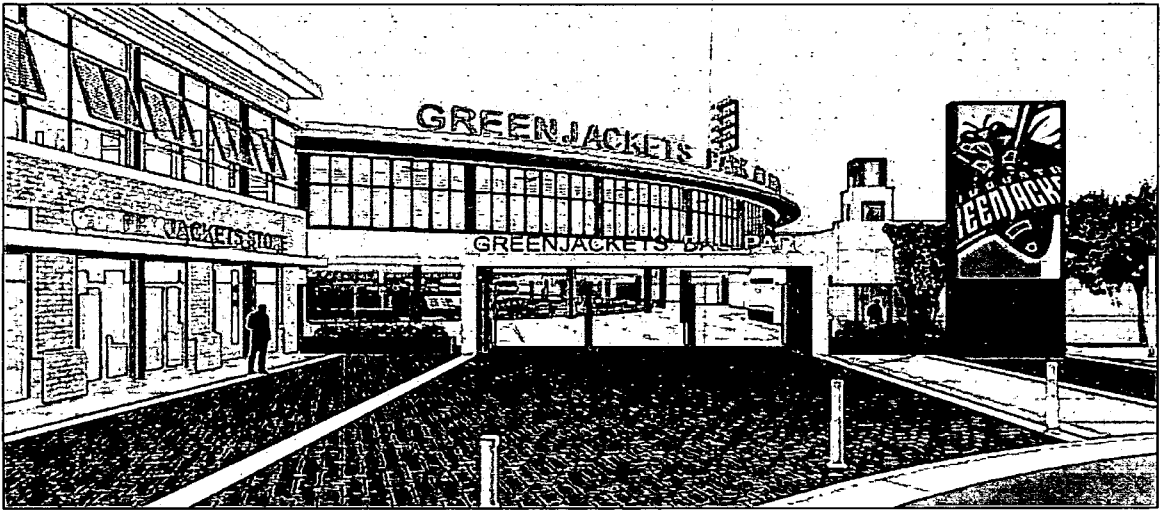
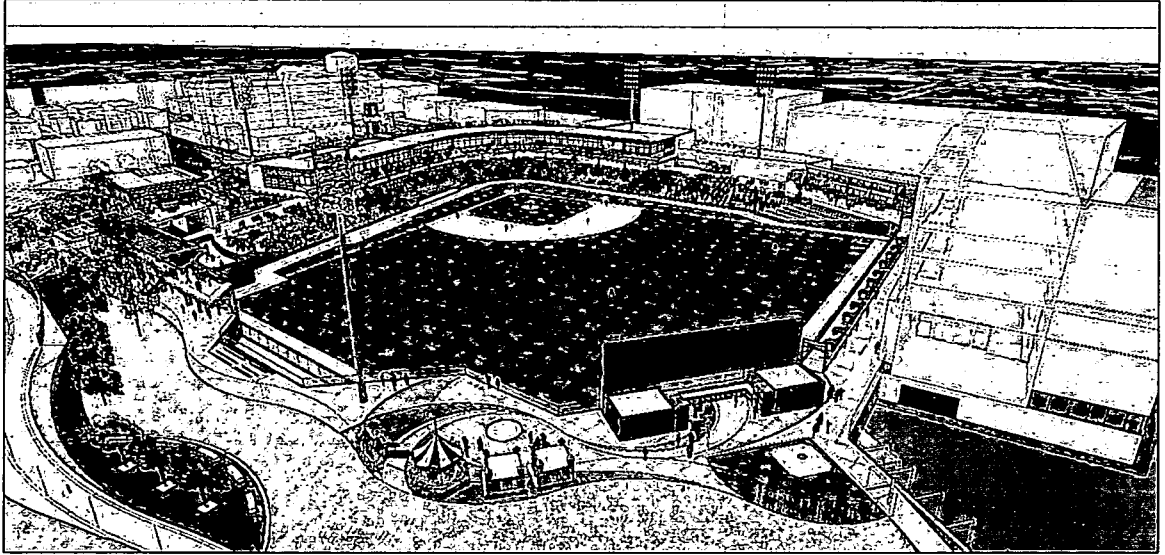
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ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina  
October 20, 2014

EXHIBIT A



STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

CASE NO.: \_\_\_\_\_

Stephen P. Donohue,

Appellant

v.

City of North Augusta, the Mayor and  
City Council of North Augusta,

Respondents.

AFFIDAVIT OF  
TODD GLOVER

Personally appeared before me the undersigned, Todd Glover, who being duly sworn  
deposes and states as follows:

1. I am Todd Glover, City Administrator of the City of North Augusta, South Carolina (the "City").
2. I have been personally involved in events that are the subject of this lawsuit.
3. The statements contained in my affidavit, dated January 13, 2014, and submitted to the Supreme Court of South Carolina with the City's Petition for Removal of Action from the Court of Common Pleas for the Second Judicial District (the "Prior Affidavit"), remain true and correct although the figures regarding the City's investment and the private investment in Project Jackson have increased since that time.
4. Since the Prior Affidavit was submitted, the total private investment for Project Jackson has risen from \$101 million to \$125 million by the private developers and other private entities.

5. The principal reason for this increase is that the development has attracted Medac Inc. to relocate its corporate headquarters and approximately 600 jobs to the Development District. The City will construct structured parking and other infrastructure to support Medac.
6. For its part, the amount that the City plans to finance to build the necessary facilities and infrastructure has increased from \$43 million to \$55 million.
7. The City remains in the position of not being able to proceed with Project Jackson and the redevelopment of its riverfront area until there is a final resolution of this litigation and any appeals.

**Progress of Project Jackson to Date**

8. These increases in investment reflect that the City has continued to work since initiation of this litigation to promote the development to draw in additional businesses and private investment and that the private developers remain committed to Project Jackson.
9. In addition to promoting Project Jackson, the City and the developers have continued to perform any design and engineering work that could prudently be done without the full assurance that Project Jackson would move forward.
10. The architects have moved beyond the conceptual stages of planning for the baseball stadium and are in the design stages; planning for a construction start date as early as December 2014. The City has put the construction of the stadium out for bid and plans to select a contractor by the end of October 2014.

11. Site engineering work has progressed throughout the past nine months to analyze the Project Jackson site to determine the amount of remediation that will be necessary due to the presence of high levels of brick rubble in the soil.
12. To date, the City has spent over \$650,000 on designing Project Jackson and planning for the City's financing of the facilities and infrastructure.
13. The City has on hand draft letters of intent from a number of different businesses that intend to locate within Project Jackson. These letters of intent have been fully negotiated and await the signatures of the parties.
14. Although the specific names of the businesses remain confidential, they include a national flagship hotel and conference center operator, one restaurant branded by a nationally recognized craft brewery, one award winning fine dining restaurant with a focus on regional cuisine, and two upscale local retailers.
15. Each of these commitments from businesses is contingent upon the City constructing the baseball stadium to be occupied by the Augusta Green Jackets minor league baseball team. At this time, the ownership of the Green Jackets remain committed to occupying the baseball stadium.

**Effect of Further Delay Caused by an Appeal**

16. The City has been informed by the Green Jackets ownership that it is not feasible to relocate the team into the new stadium in the middle of a season. Complications with sponsors and season ticket holders require that the stadium be ready for the Green Jackets to move in at the beginning of a season.
17. The 2016 Green Jackets baseball season begins in April 2016.

18. It will take approximately 14 months to construct the stadium. Therefore, in order for the stadium to be ready by the beginning of the 2016 season, construction must begin by the end of January 2015. In order to finance the costs of the stadium, and in order for construction to begin, the City must have in place bonds that cannot be issued until this appeal is resolved.
19. Before the City may issue bonds to finance the costs of the stadium, it must go through an approximately eight-week process of preparing the disclosure documents for the bonds, having the bonds rated by rating agencies, marketing the bonds and working with potential investors and closing the transaction.
20. One critical issue that must be resolved prior to the issuance of any debt is the existence of any litigation or related appeals that could endanger the revenue streams that would support the bonds. While this appeal remains unresolved, it is not possible to market the bonds for sale. It is irrelevant to potential investors that Mr. Donohue's claims in this appeal are entirely without merit.
21. Since the bonds cannot be issued until this appeal is resolved, and construction cannot begin until the bonds are issued, in order to have the baseball stadium complete in time for the 2016 baseball season, this appeal will have to be resolved by approximately December 15, 2014.
22. If this appeal is not resolved in time, the development of Project Jackson will have to be delayed for an entire year. The costs of this project have already increased due to increases in construction costs and interest rates and will continue to do so. More importantly, during this year-long delay, the City could

easily lose many of the commitments that it currently has from businesses to locate in Project Jackson.

23. Mr. Donohue appears to have been aware throughout the entirety of this case that the City cannot move forward with Project Jackson as long as his case stands in the way.

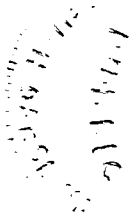
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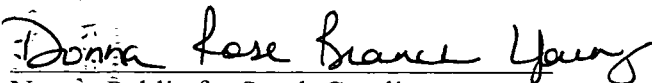
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SIGNATURE PAGE OF TODD GLOVER

  
\_\_\_\_\_  
B. Todd Glover

SWORN to BEFORE me the 20<sup>th</sup> day of October, 2014.



  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 4/10/19