

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2020-000080

Herman Perry Holcomb,

Respondent,

v.

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

Appellants.

RECORD ON APPEAL
VOLUME 1

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Herman Perry Holcomb,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No. 2018-CP-02-02705

**ORDER ON THE MERITS
AND FINAL RULING**

By his Amended Complaint, the Plaintiff Herman Perry Holcomb (“Holcomb”) seeks a declaration of the Court that the Defendants (jointly, the “City”) violated the State Freedom of Information Act (S.C. Code section 30-4-10 et seq.) and specifically the provisions of S.C. Code section 30-4-80(a) concerning amendment of the agenda for a regular City Council meeting. Concurrently with the filing of the Answer to the Amended Complaint, the City requested an “initial hearing” as provided by S.C. Code section 30-4-100(A). That “initial hearing” was held before the Court on January 15, 2019, at which the parties offered witnesses, introduced documentary evidence, and presented written and oral argument.

Our appellate courts have not yet delineated the full nature of the “initial hearing” called for by section 30-4-100(A). However, it is clear that the Code section, by its language, contemplates that the “initial hearing” can result in “a final ruling” on the relief sought. (“If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing.”). At the hearing before the Court on January 15, the parties did not request or suggest a need for discovery or for further factual development or presentation but, rather, requested that the Court rule on the merits of the action.

After hearing and considering the testimony of the witnesses and the submittals and arguments of counsel, and after considering the exhibits introduced into evidence, the Court makes the following findings of fact and conclusions of law, as required by Rule 52(a), SCRC, and issues the following declarations and order.

NATURE OF THE CASE AND PROCEDURAL BACKGROUND

S.C. Code section 30-4-80 (“Notice of meetings of public bodies”) provides in its subsection (A) in pertinent part:

Once an agenda for a regular, called, special or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda.

The gist of the original Complaint (filed on November 16, 2018) and of the Amended Complaint (filed on November 28, 2018) is that the City violated S.C. Code section 30-4-80(A) when the City Council, by a duly approved motion at a regular Council meeting, added a new project to a list of City projects (requested for the County Capital Projects Sales Tax) attached as an Exhibit to a Resolution that was listed on the agenda. Both the Complaint and Amended Complaint characterize this action by the Council as “amending the agenda item” (Complaint, paragraph 16, and Amended Complaint, paragraph 16) or the Council having “amended the

agenda item” (Complaint, paragraphs 15, 18, and 19, and Amended Complaint, paragraphs 15, 18, and 19).

The Answer to the Amended Complaint, among other things, denied any violation of the FOIA by the amendment of the list of projects, and denied that the “agenda” for the meeting was amended. The Answer asserted that only a single page (captioned as “AGENDA: REGULAR CITY COUNCIL MEETING”) of Exhibit 1 to the Amended Complaint was the “agenda” and that the remainder of the documents in Exhibit 1 were the “agenda packet” (paragraphs 8, 12, 14, 23, and 24). The Answer further asserted that the amendment of the list of projects attached to the Resolution was not an amendment of an agenda as contemplated by the FOIA (paragraphs 18, 23, and 24). Rather, according to the Answer, the amendment at the meeting was an amendment to the internal content of an item already listed on the agenda (paragraphs 14, 23, and 24).

STANDARD OF REVIEW AND PRINCIPLES OF STATUTORY CONSTRUCTION

The question of whether the City complied with the agenda and notice requirements of the FOIA appears to the Court to be a mixed question of law and fact to be determined by analysis of the language of the applicable statute and the evidence before the Court. See 4 McQuillin Municipal Corporations § 13:11 (3d ed.).

The cardinal rule in statutory construction is that a court must ascertain and effectuate legislative intent whenever possible. Joint Legislative Committee v. Huff, 320 S.C. 241, 245, 464 S.E.2d 324, 326 (1995). Legislative intent must prevail if it can reasonably be discovered in language used and construed in light of its intended purpose. Glover by Cauthen v. Suitt Construction Co., 318 S.C. 465, 458 S.E.2d 535 (1995). Our appellate courts have held that words used in a statute are to be given their plain and ordinary meaning. Worthington v. Belcher,

274 S.C. 366, 368, 264 S.E.2d 148, 149 (1980); Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975). When the terms and language of a statute are plain and unambiguous and convey a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. Miller v. Doe, 312 S.C. 444, 441 S.E.2d 319 (1994); City of Columbia v. American Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996). Courts must apply the terms of a statute according to its literal meaning, without resort to subtle or forced construction in an attempt to limit or expand the scope of the statute. Holley v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E.2d 373 (1994). Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language. Timmons v. Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970). Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning. Lee v. Thermal Engineering Corp., 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002); see also State v. Dickinson, 339 S.C. 194, 199, 528 S.E.2d 675, 677 (Ct. App. 2000) (citing Black's Law Dictionary).

FINDINGS OF FACT¹

1. The action by the City Council at its regular meeting on May 7, 2018, complained of by Holcomb, was its amendment of a list of projects attached as an Exhibit to a Resolution listed on the agenda. Plaintiff's Hearing Exhibit 6 (which is identical to Exhibit 1 to Plaintiff's Amended Complaint) contains the Resolution ("Resolution No. 2018-11 Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV") and the Resolution's attached Exhibit A (a listing of six broadly described projects). The Minutes for the May 7

¹ The categorization of matters by the Court as either findings of fact or conclusions of law is not determinative. Accordingly, the mere delineation of a conclusion of law as a finding of fact, or vice versa, does not alter its effect in this Order.

meeting are Plaintiff's Hearing Exhibit 7 at trial (which is identical to Exhibit 2 to Plaintiff's Amended Complaint). The Minutes, prepared by then City Clerk Donna B. Young (who also testified at the hearing before the Court), reveal that, following introduction of the Resolution by motion and second, a further motion was made, seconded, and passed unanimously, to

amend the list of projects to add "New Savannah Bluff Lock and Dam" under the list of projects under the Public Works and Transportation Projects title.

The Minutes show that the Resolution, as amended, was passed unanimously.

2. At the hearing before the Court, Donna Young, the City Clerk at the time of the subject meeting, testified that, among her official duties as City Clerk, were preparation of the Council meeting minutes, the meeting agenda, and the other agenda information made available to the Council and the public. Ms. Young identified Defendants' Hearing Exhibit 1, a single page captioned as "AGENDA: REGULAR CITY COUNCIL MEETING," as the "agenda" for the Council meeting on May 7, 2018. This page also is represented in Plaintiff's Hearing Exhibit 5 and contained within Plaintiff's Hearing Exhibit 6. Ms. Young testified that Defendants' Hearing Exhibit 1 was posted on the City bulletin board in advance of the City Council meeting as the agenda required to be posted by the FOIA. She described the remainder of the documents contained in Plaintiff's Hearing Exhibit 6 as the agenda background, the agenda memo or the agenda packet. She further testified that Plaintiff's Hearing Exhibit 1 also described these other documents as "agenda attachments" or "agenda information," and that they were available online at the City website under the description "Agenda 050718 Complete" as indicated on Plaintiff's Hearing Exhibit 4.

Holcomb testified at the hearing before the Court that the "Agenda Complete" documents contained the "agenda" (which he described as only a summary of what was to be discussed). He

testified that he relied on the “Agenda Complete” documents that were “more detailed” than the “agenda” to supply him with information on the agenda items.

The Court finds as fact that Defendants’ Hearing Exhibit 1 (also represented by the first page of Plaintiff’s Hearing Exhibit 5) is the “agenda” for the Council meeting of May 7, 2018. The remainder of Plaintiff’s Hearing Exhibit 6, by whatever name, contains information and documents in addition to the “agenda.” See, for example, the description of “agenda packets” in S.C. Code of Regulations R. 12-604-3.

3. The agenda for the Council meeting of May 7, 2018, included as an agenda item under “New Business”:

6. FINANCE: Resolution No. 2018-11 - A Resolution Identifying North Augusta Projects for the Aiken County Capital Project Sales Tax IV.

This agenda item provided the public with notice that the Council discussion and Council action at the meeting included the subject matter of projects for the Capital Projects Sales Tax.

CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction of this controversy and action by reason of the provisions of S.C. Code section 30-4-100. This Court has personal jurisdiction of the parties by reason of their location within the geographical boundaries of Aiken County. Venue is proper in Aiken County. Additionally, the parties, through counsel, acknowledge that the case is subject to a final ruling by this Court, without further discovery or presentation by the parties, pursuant to section 30-4-100(A).

2. The agenda for the Council meeting on May 7, 2018, is represented by Defendants’ Hearing Exhibit 1. The word “agenda” is not defined in the FOIA; however, its

plain and ordinary meaning is consistent with the Black's Law Dictionary definition of "agenda" (submitted to the Court by Defendants' attorney at the hearing) as "a list of things to be done, as items to be considered at a meeting, usu. arranged in order of consideration." Black's Law Dictionary (10th ed. 2014). This definition is further supported by the testimony of the City Clerk and, indeed, by the testimony of Holcomb, as discussed in the Findings of Fact above.

3. The agenda for the meeting (Defendants' Hearing Exhibit 1) listed the Resolution identifying sales tax projects as an agenda item (Item 6). The agenda did not list the specific projects contained in the Exhibit to the Resolution. The Minutes establish that the agenda was not amended, and that no agenda item was added to the agenda. Further, the purpose of notice to the public underlying the FOIA was served; the public was fairly on notice, by the listing of the title of the Resolution, that projects for the Capital Projects Sales Tax would be the subject of Council discussion and Council action. Holcomb's contentions and argument, that he was entitled under the FOIA to notice of any additional specific projects proposed to be listed in the Resolution's attached Exhibit, advance a forced construction that expands the clear and explicit language of section 30-4-80(A).

4. Section 30-4-80(A), by that clear and explicit language, restricts only the addition of items to an agenda; it does not prohibit the amendment of the content of an item that already appears on an agenda. The operative allegations of the Complaint and Amended Complaint (in paragraphs 15, 16, 18, and 19) are that, at the Council meeting, the Council "amended the agenda item." However, S.C. Code section 30-4-80(A), by its clear and repeated language, only addresses adding items to the agenda, not amending an agenda item.

The seventh sentence of section 30-4-80(A) provides that, once an agenda is posted, "no items may be **added to the agenda** without an additional twenty-four hours notice to the

public...” The eighth sentence of the subsection provides that, after a meeting begins, “an item upon which action can be taken only may be **added to the agenda** by a two-thirds vote of the members . . . [or if it represents a final action] . . . it only may be **added to the agenda** by a two-thirds vote . . . and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not **added to the agenda.**” (Emphasis supplied).

5. For the reasons set out above, the Court concludes that the Plaintiff Holcomb has failed to establish a violation of the Freedom of Information Act by the Defendants as alleged.

DECLARATIONS

1. The Court declares that the action of the North Augusta City Council, at its meeting on May 7, 2018, in adopting Resolution No. 2018-11 as amended during the meeting, did not violate the State Freedom of Information Act.

2. The Court declares that the Plaintiff has failed to establish a violation of the Freedom of Information Act by the Defendants, and has failed to establish a right to any relief as sought by his Amended Complaint.

ORDER

Based on the Findings of Fact, Conclusions of Law, and Declarations above, **IT IS ORDERED** that judgment in this case be entered in favor of the Defendants.

AND IT IS SO ORDERED.

Clifton B. Newman, Circuit Court Judge

Dated: _____



Aiken Common Pleas

Case Caption: Herman Perry Holcomb VS North Augusta City Of , defendant, et al
Case Number: 2018CP0202705
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

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ELECTRONICALLY FILED - 2019 Oct 07 8:48 AM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS FOR COUNTY OF AIKEN
THE SECOND JUDICIAL CIRCUIT

HERMAN PERRY HOLCOMB)
Plaintiff,)
vs.)
CITY OF NORTH AUGUSTA,)
and MAYOR AND CITY)
COUNCIL OF NORTH AUGUSTA,)
Defendants.)
_____)

CIVIL ACTION FILE NO: 18-CP02-02705

ORDER

Date of Hearing: January 15, 2019
Presiding Judge: The Honorable Clifton B. Newman
Plaintiff’s Attorney: Dionè C. Carroll, Esq.
Defendants’ Attorneys: Danny C. Crowe, Esq.
Kelly F. Zier, Esq.
Court Reporter: Brenda J. Sigwald

THIS action came before this Court for an initial hearing, pursuant to Plaintiff’s Amended Complaint brought under the South Carolina Freedom of Information Act (“FOIA”) as codified in sections 30-4-10 to 30-4-165 of the South Carolina Code, including section 30-4-100, which requires an initial hearing within 10 days of service on all the parties in FOIA cases. The Amended Complaint seeks declaratory and injunctive relief associated with alleged inconsistencies with FOIA arising from the May 7, 2018 meeting of the City of North Augusta City Council.

The Court has jurisdiction over the parties and the subject matter of this action. The Defendants were properly served with the Summons, Complaint and Amended Complaint and associated documents. The parties were properly served with the Date, Time, and Place of the Hearing.

This Court held a hearing on January 15, 2019. The Plaintiff was present and represented by his above-referenced attorney. The Defendants were represented by the above referenced attorneys. Both parties presented testimonial and documentary evidence for the Court's consideration, and counsel for both parties made argument with respect to the issues raised by the request for declaratory and injunctive relief under FOIA.

Based upon an examination of the file and evidence presented, I make the following:

FINDINGS OF FACT

I find that the Plaintiff gave and Defendants received proper notice. I find that this Court has subject matter jurisdiction of this matter and personal jurisdiction over Plaintiff and the Defendants. I find that the requirements of the FOIA and South Carolina Rules of Civil Procedure and all other statutory and common law procedural requirements necessary to bring suit under FOIA have been met to the extent necessary to accomplish the relief ordered herein.

Defendants do not have a policy regarding the composition of City of North Augusta agendas. See Tr. at 70-71. And, FOIA does not contain a definition for "agenda." Plaintiff contends that Plaintiff's Exhibit 6, entitled the "Regular Agenda of May 7, 2018," constitutes the complete agenda for the May 7, 2018 City of North Augusta City Council meeting. Tr. at 6; Tr. at 49-52. On the City's web site, the link to this document is called Agenda 050718 Complete. See Plaintiff's Exhibit 4; Tr. at 49.

Defendants contend that Defendants' Exhibit 1 is the "agenda" for the City Council meeting held on May 7, 2018. Defendants' Exhibit 1 is a single page which can be found within Plaintiff's Exhibit 6. See Answer to Amended Complaint at ¶ 8; see Plaintiff's Exhibit 5; see Defendants' Exhibit 1; see Tr. at 49. Plaintiff takes the view Defendants' 1 is a less detailed

version of the agenda and that to see the full agenda you need to view the full Agenda 050718 Complete document posted on the City's web site. See Tr. at 49.

The Defendants assert that Plaintiff's Exhibit 6 is an "agenda packet" within the meaning of S.C. Code of Regulations R. 12-604.3 rather than an "agenda." See Answer to Amended Complaint at ¶ 8; Plaintiff's Exhibit 5; Defendants' Exhibit 1. However, Defendants' alleged "agenda packet" can be found on its web site at a link entitled "Agenda 050718 Complete." On its cover, the Agenda 050718 Complete is called the "Regular Agenda of May 7, 2018." Plaintiff's Exhibit 6. And, nothing in the Plaintiff's Regular Agenda of May 7, 2018 says it is an "agenda packet." Tr. at 50; see Plaintiff's Exhibit 6.

Plaintiff further contends that the Defendants amended and added to the agenda in violation of FOIA during the May 7, 2018 meeting of the City Council when it added an entirely new project to the complete agenda without adequate notice or findings. Tr. at 6-8; Tr. at 56; see Plaintiff's Exhibit 6; see Plaintiff's Exhibit 7. The New Savannah Bluff Lock and Dam Project was added to the list of projects contemplated by Resolution 2018-11 scheduled to be considered at the May 7, 2018 meeting of the City Council on the day of the meeting. Tr. at 6-8; Tr. at 49 - 56; Plaintiff's Exhibit 7; see Plaintiff's Exhibit 6.

The New Savannah Bluff Lock and Dam Project had never before been presented at a City of North Augusta City Council meeting as a possible project to be paid for with the anticipated continuation of the Capital Projects Sales Tax as contemplated by the Resolution 2018-11. See Tr. at 55. It was discussed for the first time in the City Council's Study Session, which was held one hour before the regular City Council meeting. See Tr. at 55.

Final action was taken on the agenda item at the May 7, 2018 meeting to amend and pass Resolution 2018-11 and submit the list of projects to the Aiken County Sales Tax Commission for inclusion in the 2018 referendum. Tr. 54-55; see Exhibit 7. The final action taken included adding the brand new New Savannah Bluff Lock and Dam Project to the complete agenda. Tr. at 54-55; see Plaintiff's Exhibit 6, "Regular Agenda of May 7, 2018," at Resolution 2018-11; cf. Plaintiff's Exhibit 7, Minutes of May 7, 2018 (amending the list of projects to add "New Savannah Bluff Lock and Dam" and passing the Resolution as amended).

The City of North Augusta is required to publish its City Council Agendas on the web site. Tr. at 71. Defendants presented the Regular Agenda of May 7, 2019 as a complete agenda on its web site. It amended the complete agenda when it added the New Savannah Bluff Lock and Dam Project to the list of projects contemplated by Resolution 2018-11. It did so without twenty-four hours prior notice or a finding of emergency or exigent circumstances. Tr. at 54-56; see Plaintiff's Exhibit 7. Final action was taken with respect to the agenda item on May 7, 2018. Tr. at 55; Plaintiff's Exhibit 7.

CONCLUSIONS OF LAW

A. THE PURPOSE OF FOIA IS TO PROTECT THE PUBLIC BY PROVIDING DISCLOSURE OF INFORMATION. DISCLOSURE IS THE DOMINANT OBJECTIVE OF THE ACT, AND THE ESSENTIAL PURPOSE OF FOIA IS TO PROTECT THE PUBLIC FROM SECRET GOVERNMENT ACTIVITY.

The South Carolina Freedom of Information Act ("FOIA") is codified as sections 30-4-10 to 30-4-165 in the South Carolina Code. See S.C. Code Ann. §§ 30-4-10 to 30-4-165. Our Legislature explicitly provided in enacting FOIA that disclosure is the dominant objective of the Act. Specifically, the Act says:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be

advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15.

According to Burton v. York Cty. Sheriff's Dep't, 358 S.C. 339, 347, 594 S.E.2d 888, 892 (Ct. App. 2004),

The essential purpose of the FOIA is to protect the public from secret government activity. Campbell v. Marion County Hosp. Dist., 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003); see also Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 163, 547 S.E.2d 862, 865 (2001) ("FOIA was enacted to prevent the government from acting in secret."); Wiedemann v. Town of Hilton Head Island, 330 S.C. 532, 535 n.4, 500 S.E.2d 783, 785 n.4 (1998) (noting that "the purpose of the FOIA is to protect the public from secret government activity").

The FOIA meets the demand for open government while preserving workable confidentiality in governmental decisionmaking. Bellamy v. Brown, 305 S.C. 291, 408 S.E.2d 219 (1991); Campbell, 354 S.C. at 281, 580 S.E.2d at 166.

Burton v. York Cty. Sheriff's Dep't, 358 S.C. 339, 347, 594 S.E.2d 888, 892 (Ct. App. 2004).

South Carolina's FOIA was designed to guarantee the public reasonable access to certain activities of the government. See Fowler v. Beasley, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996). Last minute agenda changes are inconsistent with this obligation. FOIA creates an affirmative duty on the part of public bodies to disclose information. Bellamy, 305 S.C. at 295, 408 S.E.2d at 221; Campbell, 354 S.C. at 281, 580 S.E.2d at 166. The purpose of the FOIA is to protect the public by providing for the disclosure of information. Id. FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature. Campbell, 354 S.C. at 281, 580 S.E.2d at 166; Burton v. York Cty. Sheriff's Dep't, 358 S.C. 339, 347, 594 S.E.2d 888, 892-93 (Ct. App. 2004). It has also been recognized that any exception to FOIA's

applicability must be narrowly construed. Evening Post Publ'g Co. v. City of North Charleston, 363 S.E. 452, 457, 611 S.E.2d 496, 499 (2005).

B. FOIA REQUIRES THAT AN AGENDA MUST BE POSTED ON A PUBLIC WEBSITE FOR REGULARLY SCHEDULED MEETINGS. NO ITEMS MAY BE ADDED TO THE AGENDA WITHOUT AN ADDITIONAL TWENTY-FOUR HOURS NOTICE WITHOUT A TWO-THIRDS VOTE AND A FINDING OF EMERGENCY OR EXIGENT CIRCUMSTANCES.

Pursuant to the FOIA, every meeting of all public bodies shall be open to the public unless closed pursuant to section 30-4-70 of the FOIA Chapter. S.C. Code Ann. § 30-4-60. And, although FOIA did not always, by direction of the legislature in 2015 by Act No. 70 of 2015, FOIA now requires agendas for regularly scheduled meetings and sets forth a specific procedure for amending agendas during meetings. S.C. Code Ann. § 30-4-80(A); see Brock v. Town of Mount Pleasant, 415 S.C. 625, 629 n.4, 785 S.E.2d 198, 201 (2016).

South Carolina Code section 30-4-80(A) requires of a public body in part that,

An agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings. . . . Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda.

S.C. Code Ann. § 30-4-80(A)(emphasis supplied). And, S.C. Code Ann. section 30-4-100(A)

allows:

A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later.

S.C. Code Ann. §30-4-100(A).

Defendants admit an agenda was posted in advance of the meeting. See Answer to Amended Complaint. The statute requires that the agenda be posted on a website maintained by the City. The City posted both a summary agenda and what it represents as an agenda 050718 complete on its website. Neither the complete agenda identified by Plaintiff as the agenda nor the shorter document identified as the agenda by Defendants at trial included any reference to the New Savannah Bluff Lock and Dam. See Plaintiff's Exhibit 6, the "Regular Agenda of May 7, 2018." The Act requires twenty-four hours notice to add items to an agenda. See S.C. Code Ann. § 30-4-80(A). No new or additional notice was given before the May 7, 2018 hearing.

After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda. See S.C. Code Ann. § 30-4-80(A). Although the first prong, a two-thirds vote, appears to have been satisfied, no finding was made by the body that an emergency or an exigent circumstance existed. See Plaintiff's Exhibit 7, Minutes of May 7, 2018. Without satisfying both prongs, the amendment attempted by the Defendants at the May 7, 2018 City Council meeting violates FOIA, entitling Plaintiff to declaratory and injunctive relief and consequently attorney's fees and costs. Cockrell v. Trs. of Dist. 20 Constituent Sch. Dist., 299 S.C. 155, 156, 382 S.E.2d 923, 924 (1989)(under section 30-4-100 the only prerequisite to an award of attorney fees and costs is that the party seeking relief must prevail, in whole or in part).

Since Defendants told the public on the City website there was a complete agenda, by calling the document agenda 050718 complete, it was only reasonable for the public to rely on that document in preparing for a meeting. In fairness, and the spirit of the liberal construction required when applying FOIA, Defendants must treat what they call an “agenda” on their website as an agenda for FOIA purposes. The complete agenda was amended by the Defendants at the City Council meeting when it added the New Savannah Bluff Lock and Dam Project. Twenty-four hours notice was not given, and no finding that an emergency or an exigent circumstance existed was made. Defendants have, therefore, violated FOIA and are subject to declaratory and injunctive relief.

CONCLUSION

The public and the people who make up the public, like Plaintiff Holcomb, have a right to know. Taxpayers have a right to know how their government is functioning. They have a right to attend public meetings, to obtain public records at the lowest possible cost and the right to know how the tax money they pay is being spent.

When a City like the City of North Augusta presents its agenda in a way that misleads, it undermines FOIA. Defendants made up a detailed agenda it called “Regular Agenda of May 7, 2018.” Defendants put the Regular Agenda of May 7, 2018 on the City website under a tab called “Agenda 050718 Complete.” Defendants included in this complete agenda an apparent comprehensive list of projects, never mentioning any other project that might be added, and never having a prior publicly noticed meeting where the possibility of the New Savannah Lock and Dam Project being added was discussed until the hour before the City Council meeting. In this manner, Defendants gave Plaintiff and other members of the public confidence that they

knew what was on the agenda, thus providing comfort that the decision that was being made was clear and not a secret.

Then, without warning or adequate legal notice, Defendants suddenly added a very significant project. It did so on the day final action was taken, during a City meeting. And, it amended the list of projects without making a finding of emergency or exigent circumstances. In this manner, Defendants violated FOIA and failed to fulfill their obligations to the public and the Plaintiff.

For the foregoing reasons this Court declares the conduct of Defendants in amending a document represented to the public as an agenda to add an item, without adequate process, a violation of FOIA. It enjoins¹ Defendants from future similar violations, and awards Plaintiff reasonable attorney's fees and costs.

IT IS SO ORDERED.

_____, 2019
Aiken, South Carolina

Clifton B. Newman
Presiding Judge

¹ This is not the first FOIA violation by the City of North Augusta that has been addressed by the courts. See Donahue v. City of N. Augusta, 412 S.C. 526 (SC 2015). The court may order equitable relief as it considers appropriate. A violation of FOIA must be considered irreparable injury. Burton v. York Cty. Sheriff's Dep't., 358 S.C. at 355.



Aiken Common Pleas

Case Caption: Herman Perry Holcomb VS North Augusta City Of , defendant, et al
Case Number: 2018CP0202705
Type: Order/Judgment and Form 4

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2019-10-04 18:56:59 page 10 of 10

ELECTRONICALLY FILED - 2019 Oct 08 12:40 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

STATE OF SOUTH CAROLINA
 COURT OF COMMON PLEAS FOR COUNTY OF AIKEN
 THE SECOND JUDICIAL CIRCUIT

Herman Perry Holcomb,)	
)	
Plaintiff,)	
)	CIVIL ACTION FILE NO: 2018-CP-02-02705
vs.)	
)	
City of North Augusta and)	ORDER
Mayor and City Council of North)	
Augusta)	
)	
Defendants.)	
_____)	

Date of Hearing:	December 5, 2019
Presiding Judge:	The Honorable Clifton B. Newman
Plaintiff's Attorney:	Dionè C. Carroll, Esq.
Defendants' Attorneys:	Danny C. Crowe, Esq.
	Kelly F. Zier, Esq.
Court Reporter:	Maryann Nevers

THIS action came before the Court upon the Motion of the Defendants filed on October 18, 2019 for Alteration and Amendment of Findings and Judgment or, Alternatively, for a new Trial, Pursuant to Rules 52 and 59(a)(2) and (e), SCRPC. On October 31, 2019, Plaintiff filed a Memorandum in Opposition of Defendants' Motion. The Court concludes as follows:

PROCEDURAL HISTORY

A final Order in the matter was filed on October 8, 2019, which replaced an order inadvertently e-filed in error on October 7, 2019. In the October 8 Order, this Court held in favor of Plaintiff and declared the conduct of Defendants in amending a document represented to the public as a regular agenda to add an item, without adequate process, to be in violation of the Freedom of Information Act ("FOIA"), S.C. Code § 30-4-10 et seq. This Court also enjoined

Defendants from future similar violations, and awarded Plaintiff reasonable attorney's fees and costs.

On October 18, 2019, Plaintiff filed a Motion to Determine the Amount of Attorney's Fees and Costs. Plaintiff requested a Judgment from the Court awarding him attorney's fees in the amount of \$10,518.00; costs in the amount of \$699.92; and any other relief the Court deemed appropriate, just and proper.

On October 18, 2019, Defendants also filed a Motion for Alteration and Amendment of Findings and Judgment or, Alternatively, for a new Trial, Pursuant to Rules 52 and 59(a)(2) and (e), SCRCP, which included argument as to the appropriateness of the award of fees and costs. On October 31, 2019, Plaintiff filed a Memorandum in Opposition of Defendants' Motion.

This Court held a hearing on December 5, 2019 and addressed both outstanding motions. The Plaintiff was present and represented by his above-referenced attorney. The Defendants were represented by the above referenced attorneys. Counsel for both parties make argument for the Court's consideration with respect to the Defendants' Motion for Alteration and Amendment of Findings and Judgment or, Alternatively, for a new Trial, Pursuant to Rules 52 and 59(a)(2) and (e), SCRCP., and with respect to the appropriateness of the award of attorney's fees and costs, including issues raised by Plaintiff's Motion to Determine the Amount of Attorney's Fee and Costs.

The Court has jurisdiction over the parties and the subject matter of this action. The Defendants were properly served with the Summons, Complaint and Amended Complaint and associated documents, notices of hearing and any other subsequent papers. The parties were properly served with the date, time, and place of the Hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon an examination of the file, evidence presented, legal arguments and applicable law, I make the following findings of fact and conclusions of law:

1. Defendants’ Motion for Alteration and Amendment of Findings and Judgment or Alternatively, for a new Trial, Pursuant to Rules 52 and 59(a)(2) and (e), SCRCF is hereby denied;
2. This Court did not abuse its discretion in making the October 8, 2019 Order;
3. The October 8 final Order of the Court is based on evidence in the record and contains no error of law;
4. The Order entered into by the Court on October 8, 2019 continues to be the order of the Court;
5. Plaintiff is awarded his attorney’s fees in the amount of \$10,518.00;
6. Plaintiff is awarded his costs in the amount of \$699.92;
7. Attorney’s fees and costs are reasonable and appropriate;
8. Plaintiff’s fees and costs shall be paid by Defendants within 30 days of entry of this Order.

IT IS SO ORDERED.

_____, 2019
Aiken, South Carolina

The Honorable Clifton B. Newman
Circuit Court Judge



Aiken Common Pleas

Case Caption: Herman Perry Holcomb VS North Augusta City Of , defendant, et al
Case Number: 2018CP0202705
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2019-12-30 13:20:52 page 4 of 4

ELECTRONICALLY FILED - 2019 Dec 30 2:34 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS FOR COUNTY OF AIKEN
THE SECOND JUDICIAL CIRCUIT

Herman Perry Holcomb,)
Plaintiff,)
vs.)
CITY OF NORTH AUGUSTA,)
and MAYOR AND CITY)
COUNCIL OF NORTH AUGUSTA,)
Defendants.)
_____)

CIVIL ACTION FILE NO: 18-CP-02-02705

AMENDED SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and notified that an action has been filed against you in this court. Within thirty (30) days of the day you receive this Summons, you must respond in writing to this Amended Complaint by filing an Answer with this court. You must also serve a copy of your Answer to this Amended Complaint upon the Plaintiff or the Plaintiff's Attorney at the address shown below. If you fail to answer the Amended Complaint, judgment by default could be rendered against you for the relief requested in the Amended Complaint.

Date: November 28 ,2018
Aiken , South Carolina

s/Dionè C. Carroll, Esq.

S.C. Bar No.: 78185
Attorney for the Plaintiff
Carroll Law Offices, P.A.
107 Pendleton St. NW.
Aiken, SC 29801
Phone: 803-514-2557
Fax: 866-954-0184
Email:dione@carroll-law-offices.com

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS FOR COUNTY OF AIKEN
THE SECOND JUDICIAL CIRCUIT

Herman Perry Holcomb,
Plaintiff,

vs.

CITY OF NORTH AUGUSTA,
and MAYOR AND CITY
COUNCIL OF NORTH AUGUSTA,
Defendants.

CIVIL ACTION FILE NO: 18-CP-02-02705

AMENDED COMPLAINT

COMES NOW Plaintiff Herman Perry Holcomb, a.k.a. H. Perry Holcomb, by and through his undersigned counsel, and files this Complaint against Defendants City of North Augusta and the Mayor and City Council of North Augusta in the above-referenced case and respectfully shows this Court the following:

1. Plaintiff Herman Perry Holcomb (“Holcomb”) is a citizen and resident of the City of North Augusta, County of Aiken, South Carolina. Mr. Holcomb has lived there for fifty-eight (58) years, and he is active and outspoken in matters of great importance to his local and statewide community.
2. Defendant City of North Augusta (the “City”) is a municipal corporation of the State of South Carolina located in Aiken County, with a history of prior Freedom of Information Act violations. See Donohue v. City of N. Augusta, 412 S.C. 526, 531 (2015).
3. Defendant the Mayor and City Council of North Augusta (collectively the “City Council”) is a public body subject to the South Carolina Freedom of Information Act (“FOIA”), S.C. Code Ann. Section 30-4-10 et seq. The City and City Council are subject to the jurisdiction and venue of this Court pursuant to S.C. Code Ann. Section 30-4-20 (a) and Section 30-4-100.
4. Jurisdiction and venue are proper in this Court.
5. Pursuant to the FOIA, every meeting of all public bodies shall be open to the public unless closed pursuant to Section 30-4-70 of the FOIA Chapter. S.C. Code Ann. Section 30-4-60.
6. South Carolina Code Section 30-4-80(A) requires of a public body in part that:

An agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings. . . . Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda.

S.C. Code Ann. Section 30-4-80(A)(emphasis supplied).

7. SECTION 30-4-100(A), S.C. Code Ann. allows:

A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later.

8. The City of North Augusta timely published, on May 4, 2018, an agenda for the anticipated May 7, 2018 regular meeting of the City Council in advance of the meeting.
9. Item 6 on the agenda was entitled "Finance: Resolution No. 2018-11 – A Resolution Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV. See attached Exhibit 1, North Augusta, Regular Agenda of May 7, 2018.
10. The agenda included a list of many projects in Item 6, but it did not include the "New Savannah Bluff Lock and Dam" as a specific identified project. See Exhibit 1, Attachment 6, Exhibit A.
11. Scarce resources have meant that many important projects have gone unfunded over the years. Approval of a project in the list of projects from the Item 6 agenda item meant the listed project would be eligible to receive funding from the Capital Projects Sales Tax IV if approved by the electorate.
12. On November 6, 2018, the voters overwhelmingly approved the Capital Projects Sales Tax IV.

- 13. On May 7, 2018, the City of North Augusta held a regularly scheduled meeting of the City Council, where according to the agenda, Item 6, the first item under new business, was to be considered. See Exhibit 1.
- 14. Item 6 from the agenda was taken up as Item 2 in the order of business at the May 7, 2018 meeting. See attached Exhibit 2 at 2-3, North Augusta, Minutes of May 7, 2018.
- 15. During the May 7, 2018 meeting, the City Council unanimously amended the agenda Item by adding the New Savannah Bluff Lock and Dam to the list of projects contemplated by its published Resolution. The Item was taken up on final reading, and Defendants passed the amended Item in its entirety, all without prior notice to the public of the addition of the New Savannah Bluff Lock and Dam, made during the May 7, 2018 meeting. See Exhibit 2 at 2-3.
- 16. In amending the agenda Item, the City and City Council did not make a finding by the body that an emergency or an exigent circumstance existed if the Item was not added to the agenda. See Exhibit 2; c.f. S.C. Code Ann. Section 30-4-80(A)(requiring a finding of emergency of exigent circumstances to add an item to the agenda).

COUNT 1

SOUTH CAROLINA FREEDOM OF INFORMATION ACT VIOLATION

The allegations of paragraphs one (1) through sixteen (16) are incorporated by reference as if fully and specifically set out herein.

- 17. The City of North Augusta timely published an agenda for the May 7, 2018 regular meeting of the City Council.
- 18. The City of North Augusta, through its City Council, held a regular meeting and amended the agenda Item by adding an entirely new project to the list of projects to be approved as City of North Augusta Capital Projects eligible for Aiken County Capital Projects Sales Tax IV. See Exhibit 2 at 2-3. The New Savannah Bluff Lock and Dam project added was not contemplated by the published agenda in any way. See Exhibit 1.
- 19. The City, through its City Council, unanimously amended the agenda Item but did not find that an emergency or an exigent circumstance existed necessitating amendment without proper notice to the public. See Exhibit 2 at 2-3.
- 20. The City, through its City Council, took final action on the agenda Item. See Exhibit 2 at 2-3.
- 21. By failing to properly give notice to the public, Defendants allowed the addition of a significant project to an agenda item but did not allow for adequate consideration and proper comment by the public beforehand.

22. Plaintiff, who lives in City of North Augusta, was present at the May 7, 2018 meeting of the City of North Augusta Mayor and City Council meeting. However, Plaintiff was not prepared to speak on the council's addition of the Savannah Bluff Lock and Dam project because Plaintiff was unaware that the project would become part of the agenda considered at the meeting. Plaintiff had read the agenda published on May 4, 2018, and the project was not mentioned on the agenda. The other projects to be considered at the meeting were referenced on the agenda.
23. Shortly after the meeting, on May 31, 2018, Plaintiff put the City, its Mayor and City Council and attorney on notice, in a detailed writing, of the violations described in this Complaint and requested an explanation. See attached Exhibit 3, letter Email from H. Perry Holcomb to Mayor et al. Since Plaintiff received no response, counsel for Plaintiff followed by again notifying the Defendants, on Plaintiff's behalf, of Defendants' violations on August 24, 2018. See attached Exhibit 4, Letter from Dionè C. Carroll, Esq. to Kelly Zier, Esq. Plaintiff received no redress of the issues raised. See attached Exhibit 5, Response letter from Kelly Zier, Esq. at 2.

WHEREFORE, the Plaintiff respectfully prays for the following relief:

- a. That this Court issue an order declaring that the above described actions of the City and Mayor and City Council violated FOIA and were unlawful under South Carolina law and that the public should have had an opportunity to receive adequate notice and be allowed to adequately comment prior to adoption as required by law;
- b. That this Court invalidate the vote taken on Item 6 of the May 7, 2018 agenda (Item 2 of the Meeting) and require that the City, through its Mayor and City Council, reconsider Item 6 with adequate notice and opportunity for the public to be heard if Defendants wish to take action again on the Item in the future;
- c. That this Court enjoin the City, its Mayor and its City Council from further FOIA violations;
- d. That this Court order Defendants to pay the Plaintiff his reasonable attorney fees and other costs and litigation expenses incurred in pursuing this case pursuant to S.C. Code Ann. Section 30-4-100;
- e. That this Court set down at the earliest possible time a hearing on the matters set forth in this Complaint; and
- f. For all other and further relief that this Court deems just and proper.

Respectfully submitted, this 28th day of November, 2018.

/s/ Dionè C. Carroll
Dionè C. Carroll, Esq.
S.C. Bar 78185
Attorney for Plaintiff H. Perry Holcomb

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107 Pendleton St. NW
Aiken, SC 29801
Telephone: 803-514-2557
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Website: carroll-law-offices.com



REGULAR AGENDA

OF

MAY 7, 2018



CITY OF NORTH AUGUSTA

AGENDA: REGULAR CITY COUNCIL MEETING

May 7, 2018 – Municipal Center – 100 Georgia Avenue, 3rd Floor – 7:00 P.M.

CITIZEN COMMENTS: Citizens may speak to Mayor and City Council on each item listed on this agenda. Mayor Pettit will call for your comments prior to City Council discussing the matter. Citizens wishing to address Mayor and City Council are required to submit a Speaker Form to the City Clerk before addressing Mayor and City Council. Forms are provided on the credenza at the entrance to the Council Chambers. Citizen comments are limited to five minutes.

CITIZEN ASSISTANCE: Individuals needing special assistance or sign interpreter to participate in the meeting, please notify the Administration Department 48 hours prior to the meeting.

- 1. **CALL TO ORDER:**
- 2. **INVOCATION AND PLEDGE OF ALLEGIANCE:**
- 3. **ROLL CALL:**
- 4. **APPROVAL OF MINUTES:** Regular and study session meeting minutes of April 16, 2018

UNFINISHED BUSINESS

- 5. **ECONOMIC DEVELOPMENT:** Ordinance No. 2018-06 – An Ordinance Designating a Portion of Riverside Village as a Designated Development Area Pursuant to the Tourism Infrastructure Admission Tax Act; Authorizing the City Administrator to Prepare and File Certain Documents Relating to the Designated Development Area; Authorizing the City Administrator to Prepare Provisions for the Expenditure of Monies Raised From the Area – Ordinance, Third and Final Reading

NEW BUSINESS

- 6. **FINANCE:** Resolution No. 2018-11 – A Resolution Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV
- 7. **UTILITIES:** Resolution No. 2018-12 – A Resolution Authorizing a Water Tank Attachment Lease Agreement Between the City of North Augusta and T-Mobile South, LLC for the Five Notch Road Water Tank

- 8. **PRESENTATIONS/COMMUNICATIONS/RECOGNITION OF VISITORS:**
 - A. **Citizen Comments:** At this time, citizens may speak to Mayor and City Council regarding matters not listed on the agenda. **Citizens wishing to address Mayor and City Council are required to submit a Speaker Form to the City Clerk before addressing Mayor and City Council.** Forms are provided on the credenza at the entrance to the Council Chambers. Citizen comments are limited to five minutes.
 - B. **Council Comments**

- 9. **ADJOURNMENT:**

ELECTRONICALLY FILED - 2018 Nov 28 10:30 AM - AIKEN - COMMON PLEAS - CASE#2018CP0202705



TO: Mayor and City Council
FROM: B. Todd Glover, City Administrator
DATE: May 4, 2018
SUBJECT: Regular City Council Meeting of May 7, 2018

REGULAR COUNCIL MEETING

ITEM 5. ECONOMIC DEVELOPMENT: Ordinance No. 2018-06 – An Ordinance Designating a Portion of Riverside Village as a Designated Development Area Pursuant to the Tourism Infrastructure Admission Tax Act; Authorizing the City Administrator to Prepare and File Certain Documents Relating to the Designated Development Area; Authorizing the City Administrator to Prepare Provisions for the Expenditure of Monies Raised from the Area – Third and Final Reading

An ordinance has been prepared for Council’s consideration on third and final reading designating a portion of Riverside Village as a Designated Development Area pursuant to the Tourism Infrastructure Admission Tax Act; authorizing the City Administrator to prepare and file certain documents relating to the designated development area; authorizing the City Administrator to prepare provisions for the expenditure of monies raised from the area.

Please see the minutes of April 16, 2018, for the ordinance text.

May 7, 2018

ITEM 6. FINANCE: Resolution No. 2018-11 – A Resolution Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV

A resolution has been prepared for Council’s consideration identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV.

Please see ATTACHMENT NO. 6 for a copy of the proposed resolution.

ITEM 7. UTILITIES: Resolution No. 2018-12 – A Resolution Authorizing a Water Tank Lease Agreement Between the City of North Augusta and T-Mobile South, LLC for the Five Notch Road Water Tank

A resolution has been prepared for Council’s consideration authorizing a Water Tank Lease Agreement between the City of North Augusta and T-Mobile South, LLC for the Five Notch Road Water Tank.

Please see ATTACHMENT NO. 7 for a copy of the proposed resolution and agreement.

ATTACHMENT 6

RESOLUTION NO. 2018-11
IDENTIFYING NORTH AUGUSTA PROJECTS FOR THE
AIKEN COUNTY CAPITAL PROJECTS SALES TAX IV

WHEREAS, Aiken County Council, in anticipation of conducting a referendum in 2018, has appointed a Capital Projects Sales Tax Commission to consider proposals for funding capital projects within Aiken County from the proceeds of a continuation of the Capital Projects Sales Tax and to formulate the referendum question that is to appear on the ballot; and

WHEREAS, the Mayor and members of City Council wish to submit for consideration a list of projects to be funded in North Augusta.

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council for the City of North Augusta in meeting duly assembled and by the authority thereof that the projects listed on the attached "Exhibit A" shall be submitted to the Aiken County Sales Tax Commission for inclusion in the 2018 referendum.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS _____ DAY OF _____, 2018.

Robert A. Pettit, Mayor

ATTEST:

Donna B. Young, City Clerk

ELECTRONICALLY FILED - 2018 Nov 28 10:30 AM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

EXHIBIT A

CAPITAL PROJECTS SALES TAX IV PROJECTS

(Projects to be prioritized as the revenues become available)

PUBLIC SAFETY PROJECTS		\$ 11,500,000
	Headquarters Development and Apparatus	
PUBLIC WORKS & TRANSPORTATION PROJECTS		7,950,000
	Martintown Road at US 1 Interchange Design and Improvements	
	Downtown Pedestrian and Vehicular Traffic and Safety Enhancements	
	Georgia Avenue Underground Utilities	
	Road Reconstruction Program	
	Street Resurfacing Program	
PARKS, RECREATION & TOURISM PROJECTS		3,900,000
	Park and Facility Restoration, Additions and Improvements	
	Downtown Greenway Connector	
INFRASTRUCTURE PROJECTS		5,000,000
	Wastewater Infrastructure Improvements	
	Stormwater Infrastructure Improvements	
ECONOMIC DEVELOPMENT PROJECTS		1,250,000
	Gateways and Wayfinding Enhancements	
MUNICIPAL IMPROVEMENT PROJECTS		1,100,000
	Software and Technology Enhancements for a Citizen Information Portal, Record Keeping & Storage, Transaction Processing, Accounting and Financial Reporting	
	Safety and Security Improvements for the Municipal Building	
	Finance Department Lobby Improvements for Citizen Transactions	
TOTAL		<u>\$ 30,700,000</u>

ATTACHMENT 7

RESOLUTION 2018-12
AUTHORIZING A WATER TANK ATTACHMENT LEASE AGREEMENT
BETWEEN THE CITY OF NORTH AUGUSTA AND
T-MOBILE SOUTH, LLC.
FOR THE FIVE NOTCH ROAD WATER TANK

WHEREAS, the City of North Augusta desires to lease to T-Mobile South LLC., certain space upon the City's Five Notch Road water tank upon which T-Mobile has certain antennae, other equipment, and related devices, and to lease ground space used exclusively to house T-Mobile's equipment; and

WHEREAS, T-Mobile desires to lease from the City certain space on the City's Five Notch Road water tank and ground space for T-Mobile's equipment.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Council of the City of North Augusta in meeting duly assembled and by the authority thereof, hereby authorize the attached Water Tank Attachment Lease Agreement between the City and T-Mobile South, LLC. for the Five Notch Road water tank.

BE IT FURTHER RESOLVED, that the City Administrator is authorized to sign the agreement on behalf of the City and to sign all other documents relating thereto.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS _____ DAY OF _____, 2018.

Robert A. Pettit, Mayor

ATTEST:

Donna B. Young, City Clerk

ELECTRONICALLY FILED - 2018 Nov 28 10:30 AM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

**WATER TANK SITE LEASE AGREEMENT
BETWEEN THE CITY OF NORTH AUGUSTA
AND T-MOBILE SOUTH LLC**

THIS LEASE AGREEMENT ("Agreement") is executed this ____ day of _____, 2018, between the City of North Augusta, South Carolina, a municipal corporation, hereinafter designated as ("Lessor") and T-Mobile South LLC, a Delaware limited liability company, hereinafter designated ("Lessee").

WHEREAS, Lessor desires to Lease to Lessee certain space upon a Water Tank owned by Lessor ("the water tank") upon which Lessee has certain antennas, other equipment, and related devices ("Wireless Communications Equipment"), and to continue Lease of Ground Space for the housing of Lessee's Wireless Communications Equipment.

NOW THEREFORE, for and in consideration of the terms and mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Property Description

- a. Lessor is the owner of the real property located at 481 West Five Notch Road, North Augusta, South Carolina 29841, (hereinafter called the "Property"). The Property includes the premises which are comprised of approximately four thousand five hundred sixty (4,560) square feet. The Lessee is hereby granted non-exclusive use of two hundred ninety (290) square feet of Ground Space, made part hereof, (the "Ground Equipment Area") as described and/or depicted in Exhibit "A" and the non-exclusive use of the Lessor's Water Tank located on the Property as described and/or depicted on Exhibit "B" attached hereto and made part hereof.

2. Property Use

- a. Lessee is hereby granted the non-exclusive right to install, maintain, operate, remove and replace its Wireless Communications Equipment and appurtenances on the Lessor's Property and Water Tank.
- b. The primary purpose of the Property is for the operation of a water storage tank and such other operations of the Lessor's Public Utilities Department.
- c. The Lessee understands and agrees that the Lessor's use of the Property shall have priority and the Lessee shall make necessary accommodations to permit the Lessor's uses of the Property to operate safely and efficiently.
- d. Any modifications to the Ground Equipment Area and/or the Water Tank, such as, but not limited to an increase in the size, number, color, or noise output of shelters, cabinets,

cables, antennae and/or expansion of the same shall require an amendment to this Lease and Lessee's prior written approval from Lessor.

- e. Notwithstanding the above, exchange of like-kind equipment on the Water Tank and Ground Equipment Area shall not require approval of the Lessor unless such exchange results in increased noise output, other appreciable impact, or potential health or safety impact.
- f. Lessee shall be responsible for all necessary utility service connections for its equipment and shall be solely responsible for all costs and expenses related to connection, disconnection, consumption and use of any utility service.
- g. Lessee shall have the right to install and maintain underground utility wires, cables, conduits, and pipes along the Property to the Ground Equipment Area.
- h. Lessee shall be granted a non-exclusive right of way for ingress and egress over the Property to the Ground Equipment Area and the Water Tank Equipment, seven (7) days a week twenty-four (24) hours a day.
- i. Notwithstanding the rights granted Lessor shall have the sole and exclusive right to lease any portion of the remainder of the Property, including but not limited to the Water Tank, to other Lessees, including but not limited to other telecommunications companies that may wish to collocate their equipment on the property.
- j. Lessee shall not take any action with respect to the remainder of the Property or its equipment installed on the Water Tank or Property that would hinder collocation by any other telecommunications provider(s).
- k. Lessor shall not be required to alter the Water Tank, the Premises, or the Property to accommodate Lessee's operation of its Communication Facility.
- l. Lessee shall comply with all present and future rules and regulations imposed by any local, state, or federal authority having jurisdiction over transmissions and operations involved in the wireless communications systems and equipment.

3. Initial Term

- a. The initial term of this Lease shall be for a period of five (5) years commencing on July 1, 2018 ("commencement date") and expiring on June 30, 2023 ("initial term").
- b. Upon the commencement of this Lease the Lessee shall pay the Lessor rent payments in the amount of Two Thousand Eight Hundred Sixty Two and No/100 Dollars (\$2,862.00) per month. Lessee shall deliver rent to Lessor at the address specified in section 3 (c), or by electronic wire transfer. The first payment shall be due within twenty (20) business

days after the Commencement Date. Subsequent rent shall be payable by the fifth day of each month. Each year thereafter the Lessee shall pay an increase rent an amount equal to the previous year, plus three percent (3%).

- c. All Rent Payments shall be made payable to "City of North Augusta", and delivered to the Attention of City Clerk, PO Box 6400, North Augusta, SC 29861-6400.

4. Renewal Term

- a. The initial term shall automatically renew for three (3) successive renewal terms of five (5) years each (each a "renewal term"), under the same terms and conditions including a 3% escalation over previous years rent. This agreement may be terminated by either party by giving to the other written notice of its intention to so terminate at least one hundred eighty (180) days prior to the end of such term.
- b. Upon the expiration of the final renewal term, Lessee shall have the right to continue occupying the premises, and the terms and conditions of the lease shall automatically extend for successive one (1) year periods each an extended period. Rent shall include a 3% escalation over previous years rent. Lessor or Lessee may terminate the renewal of any extended period by delivery of notice at least six (6) months prior to the end of the then current extended period.

5. Default

- a. If either party shall fail or neglect to keep and perform each and every one of the conditions and agreements contained herein, and such failure or neglect is not remedied within thirty (30) days after written notice from the other party specifying such failure or neglect, then such party shall be deemed to be in default under this agreement.
- b. In the event that either party shall fail to cure the default after notice given as set forth above, then the other party may pursue any legal remedy available to cure the default and/or may terminate this Agreement. There shall be no default if either party shall be deemed complete unless at the time the other party seeks to take any action based upon such alleged default, the same shall remain uncured.
- c. The Lessee shall be deemed in default under this Agreement if rent payment is not paid within forty five (45) days of the due date.
- d. In addition to, and not in substitution for, any other remedy for a default under this Agreement in the case of an emergency or urgent matter affecting the public health, safety, or welfare directly caused by Lessee, Lessor may take immediate action to remedy the default and the cost of such remedy shall be borne by the Lessee.

- d. The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

6. **Termination of Lease Agreement.**

Except as otherwise provided herein, this Lease may be terminated without any penalty or further liability upon written notice as follows:

- a. By Lessee upon six (6) months' advance written notice to Lessor in the event that Lessee is unable to continue to use the property for technical reasons including the property being unacceptable as part of Lessee's network design.
- b. Nothing contained in this Lease requires the Lessor to continue to operate or maintain the tank, and this Lease remains effective only so long as the Lessor operates and maintains such tank structure. In the event the Lessor at any time determines, at its sole discretion, to discontinue the use of the Water Tank which is the subject of this lease, then and in such event the Lessor may upon one (1) year's notice terminate this lease.
- c. That continued maintenance and/or operation of Lessee's Communication Equipment on the Property is contrary to the public, safety, health, or welfare.

7. **Removal of Lessee's Equipment**

- a. Prior to the expiration of any Lease Term under this Agreement, or any earlier termination of this Agreement, Lessee shall at its own cost and expense, remove from the Water Tank, and the Property its Communications Equipment and other property on the Premises, and restore the Property to its condition existing on the commencement date.
- b. If Lessee's Communications Equipment or other property remains on the Property after expiration of any Lease Term or any earlier termination of this Agreement, Lessee shall pay an amount to the Lessor equivalent to Rent at the last existing rate until such time as the removal of said property is completed or declared to be forfeited.
- c. If Lessee's Wireless Communications Equipment remains on the Property after the expiration of the final Renewal Term or Extended Period, or after earlier termination of this Agreement, Lessor may, by written notice to Lessee, declare all such property and equipment of Lessee to be forfeited, and lessor may retain or dispose of such property and equipment as it deems fit, without further responsibility of Lessee. Such forfeiture of property and equipment nor relieve Lessee of its responsibility for any damages to the Property caused by Lessee's use of the Property or operation of its Wireless Communications Equipment not relive Lessee of its responsibility to pay any outstanding Rent.

8. **Insurance.**

- a. During the initial term and all renewal terms, Lessee shall obtain and maintain, at their own expense, a policy of commercial general liability insurance with bodily injury limits of \$1,000,000 for injury or death to one (1) person, \$2,000,000 per occurrence and property damage insurance with a limit of \$1,000,000 or \$3,000,000 combined single limit coverage for bodily injury and property damage.
- b. Lessee may satisfy the limits required in this section with the combination of primary and Excess/umbrella liability insurance policies including the Lessor as additional insured.
- c. Lessee shall provide Lessor with a certificate of insurance showing the Lessor included as an additional insured on said commercial general liability insurance.
- d. Lessee during the initial term and all renewal terms shall obtain and maintain Workers Compensation and Employers Liability Policy with limits meeting statutory mandates with a minimum of \$500,000 for bodily injury.
- e. Lessee shall report to Lessor in writing with twenty-four (24) hours any accident or incident related to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Lessee or Lessor.
- f. Lessee shall report to Lessor any third party claim or lawsuit filed against Lessee arising from or related to services performed by Lessee under this Agreement.

9. **Subrogation.**

- a. **In General.** All insurance policies required under this Lease shall, if possible, contain a waiver of subrogation provision under the terms of which the insurance carrier waives all of its rights to proceed against Lessor or Lessee, as the case may be. If waivers of subrogation are obtained, the party procuring such insurance shall use its best efforts to obtain a certificate of insurance which notes the waiver of subrogation and a copy of the insurance policy endorsement which evidenced the insurance carrier's assent to the waiver of subrogation.
- b. **Mutual Release.** Lessor and Lessee each release the other and their respective representatives from any claims by them or any one claiming through or under them by way of subrogation or otherwise for damages to any person or to the Property and to the fixtures, personal property, improvements, and alterations in or on the Property that are caused by or result from risks insured against under any insurance policy carried by them and required by this Lease; provided that, such releases shall be effective only if and to the extent that the same do not diminish or adversely affect the coverage under such insurance policies.

10. **Destruction of Premises.**

- a. In the event the Premises and/or Water Tank is damaged or destroyed by fire, wind, flood or other natural or manmade cause, the Lessor shall have the option to repair or replace the Premises or to terminate this Lease effective on the date of such damage or destruction. If the Lessor elects to repair or replace the Premises, until such repair or replacement is completed, and during such time the Lessee is unable to utilize the Property, Lessee shall be entitled to the pro-rata reimbursement of any rent prepaid by Lessee. If the Lessor undertakes such repair or replacement, but cannot complete the same within one hundred eighty days (180) days after the damage occurred, Lessee may terminate this Lease upon thirty (30) days written notice and have no further obligations hereunder. In the event the Lessor elects to terminate the Lease, Lessee shall have no further obligations hereunder.
- b. In the event the Water Tank is damaged by Lessee or its officers, agents, employees, servants, or contractors, Lessor shall repair, restore or replace the tank, and, upon receipt of written documentary evidence, Lessee shall pay to Lessor all costs incurred in cleaning and/or repairing or replacing the Water Tank necessitated by said damage.

11. **Environmental Compliance.**

- a. Lessor, to the best of its knowledge, warrants or represents that the Property, the easement, and the improvements thereon are free of contaminants, oils, asbestos, radon, hazardous substances, or wastes as defined by federal, state, or local environmental laws, regulations, or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited, regulated, or penalized by any federal, state, or local government authority ("hazardous materials").
- b. This Lease may, at the option of Lessee, be void and of no further force or effect if hazardous materials are discovered to exist on the Property and Lessee shall be entitled to a refund of all the consideration given Lessor under this Lease.

12. **Accommodation of Other Carriers**

Lessee acknowledges that other carriers may be potentially using the Property for similar wireless communication use. Lessee agrees to timely cooperate with Lessor and such third party users in order to maximize the potential use of the Property; however, such cooperation shall not cause Lessee to encumber any expenses to permanently or temporarily relocate Lessee's equipment.

13. **Interference.**

Both Lessor and Lessee recognize that the tank's primary purpose is to serve its function within the Lessor's water distribution system. The rights of Lessee shall be protected from interference from any third party whose equipment may be installed on the tank subsequent to this lease. Lessee shall be responsible for curing any and all interference to the operation of the Lessor's tank and communication systems equipment caused by the operation of equipment owned by Lessee. In the event that such interference cannot be eliminated or rectified within forty-eight (48) hours of the receipt of notice by Lessee from Lessor of the existence of interference ("notice date"), Lessor shall require the party causing the interference to disconnect utility service to their equipment until such time as the interference can be eliminated or rectified. If said interference cannot be eliminated or rectified within thirty (30) days of the notice date, Lessor may require the party causing the interference to immediately remove its equipment from the tank and the property.

14. **Maintenance of Water Tank**

- a. Upon at least ninety (90) days written notice from Lessor, Lessee at its sole cost and expense, shall make any necessary arrangements to either temporarily protect or remove all or portions of its communications equipment on and adjacent to the Water Tank to allow for Lessor's painting or other maintenance of the Water Tank. In the event of an emergency, advance notice shall not be required.
- b. If Lessee and Lessor agree that it is reasonable to keep all or any portion of the communications equipment in place during such painting or other maintenance of the Water Tank by Lessor, any additional expense of repainting, repairing, or maintaining the Water Tank incurred by Lessor and caused by the presence of Lessee's communications equipment shall be paid promptly by the Lessee to Lessor.
- c. Should Lessor and Lessee agree that the scheduled maintenance or painting of the Water Tank will prevent Lessee from using the water Tank for Lessee's Equipment, and it is more reasonable for the Lessee to temporarily relocate rather than protect its communications equipment in place, then at its own expense Lessee may install and operate temporary equipment, including a Cell-on-Wheels, if a mutually acceptable location on the Property is available subject to applicable laws, rule, and regulations then in effect.
- d. Notwithstanding anything to the contrary in this Agreement, Lessee shall have the continuing right to access its Communication Equipment while Lessor performs maintenance on or paints the Water Tank as long as the access does not interfere with the Lessor's work or with the operation of the Water Tank.

15. **Title and Quiet Enjoyment.**

Lessor warrants that:

- a. It has the full right, power, and authority to execute this Lease.
- b. It has good and marketable title to the property and the easement free and clear of any liens, encumbrances, or mortgages.
- c. The property constitutes a legal lot that may be leased without the need for any subdivision or platting approval.
- d. Lessor further warrants that Lessee shall have the quiet enjoyment of the Property during the term of this Lease.

16. **Successors and Assigns.**

- a. Lessee shall not sublease any portion of the Property or its Communication Facilities.
- b. Lessee upon written approval of the Lessor shall have the right to assign, or otherwise transfer this Agreement to its affiliates. Upon Lessor's approval of assignment or transfer of Agreement the Lessee shall be relieved of all liabilities and obligations of the Lessor and shall look solely to the transferee for performance under this agreement.

17. **Miscellaneous.**

- a. This Lease constitutes the entire Agreement and understanding of Lessor and Lessee with respect to the subject matter hereof, and supersedes all offers, negotiations, and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to said Lease must be in writing and executed by Lessor and Lessee.
- b. Lessor agrees to cooperate with Lessee in executing any documents necessary to protect Lessee's rights under this Lease or Lessee's use of the Property and to take any further action which Lessee may reasonably require as to affect the intent of this Lease.
- c. This Lease shall be construed in accordance with the laws of the state in which the property is situated.
- d. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
- e. Lessee may file in the county in which the Property and easement(s) are located a Memorandum of Lease which sets forth the names and addresses of Lessor and Lessee,

the legal description of the Property and the easement(s), the duration of the initial term, and the quantity and the duration of the renewal terms.

- f. Lessor shall cooperate with Lessee's efforts to evaluate the tank and to comply with governmental regulations affecting Lessee's use of the Property by providing information about the tank, the tank's location, and prior filings made by Lessor with governmental agencies.
- g. This Lease may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.
- h. Lessor hereby waives any and all lien rights it may have, statutory or otherwise, in and to the antenna, equipment, and appurtenances or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.
- i. Lessor will not assert any claim whatsoever against Lessee for loss of anticipatory profits or any other indirect, special, incidental, or consequential damages incurred by Lessor as a result of the construction, maintenance, operation, or use of the property or the easement by Lessee. Notwithstanding the foregoing, Lessee shall remain responsible for direct losses or damages attributable to Lessee's negligence or the negligent acts of Lessee's employees.

18. **Entire Agreement; No Oral Statements**

It is agreed and understood that this Agreement contains all agreements, promises and understandings between Lessor and Lessee and that no oral agreements, promises or understandings shall be binding upon either Lessor or Lessee in any dispute, controversy or proceedings at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by both parties.

19. **Representation and Warranties**

- a. Lessee represents and warrants that all operations conducted by Lessee in connection with the tank and the property, including the tank lighting systems, meet all applicable rules and regulations of the Federal Communications Commission, Federal Aviation Administration, and all applicable codes and regulations of the Lessor, county, and state concerned. Lessee shall maintain its lighting systems, tank antenna, transmission lines, equipment, and facilities in a proper operating and safe condition and shall comply with all notice requirements of the Federal Aviation Administration regarding the failure, malfunction, or repairs of the tank lighting systems.

- b. Lessor shall comply with any requirements of any federal, state, local, or regulatory body necessitated as a result of Lessor's equipment and/or its installation shall be the responsibility of the Lessor.

20. Notices

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or if personally delivered or sent by next-business-day delivery via a nationally recognized overnight carrier, to the following address(es) (or other address that the party to be notified may designate to the sender by like notice):

Lessee: T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Property Manager/8AU324C

Lessor: City Clerk
100 Georgia Avenue
North Augusta, SC 29841

IN WITNESS WHEREOF, Lessor and Lessee have executed this Water Tank Site Lease Agreement as of the date and year first above written.

LESSEE: T-MOBILE SOUTH LLC, A
DELAWARE LIMITED LIABILITY COMPANY

WITNESS:

BY: _____
TITLE: _____
Kelly Dunham 4/25/18
T-Mobile Contract Attorney, as to form

LESSOR: CITY OF NORTH AUGUSTA, SOUTH
CAROLINA, A MUNICIPAL CORPORATION

WITNESS:

BY: _____
TITLE: _____

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

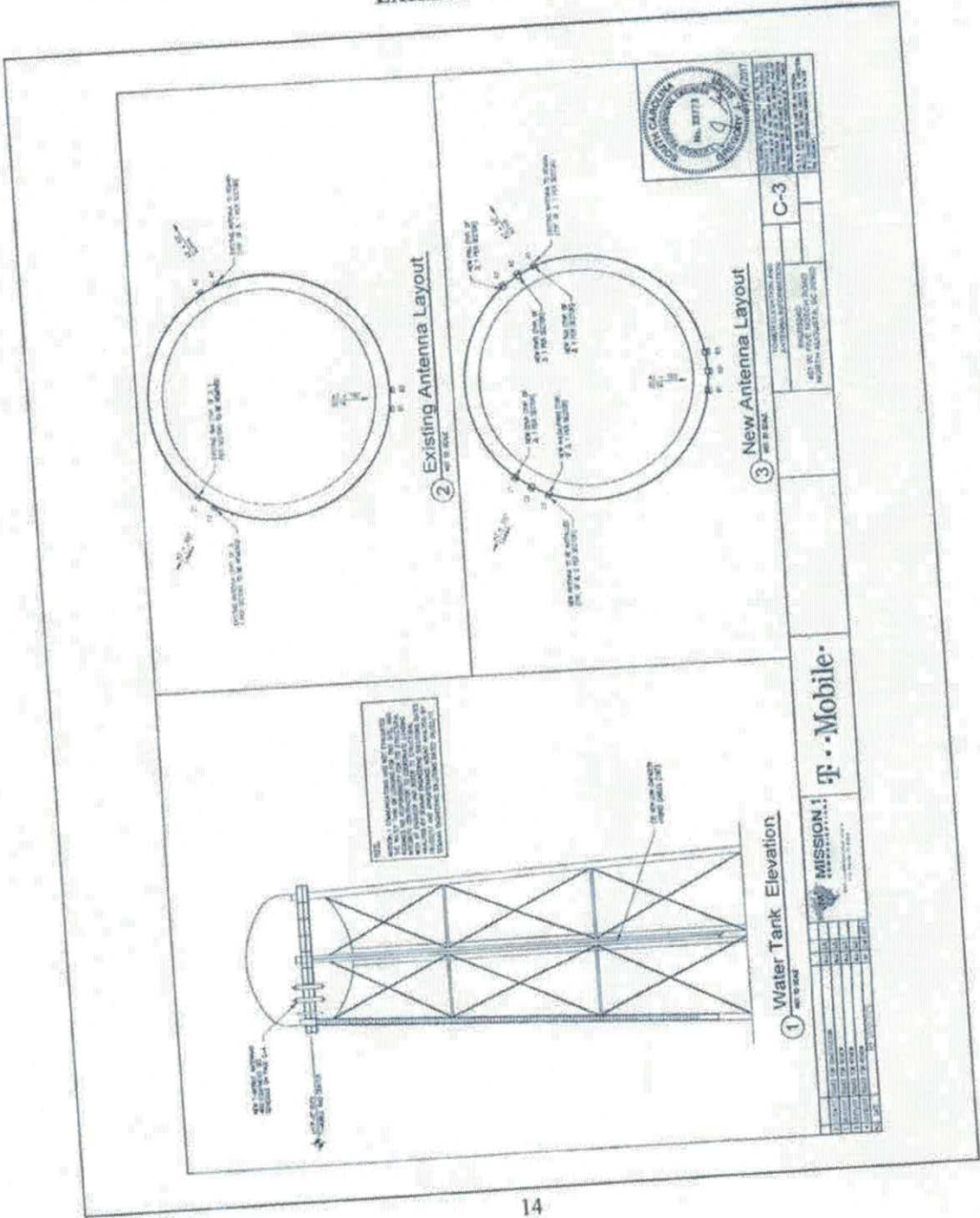
Personally appeared before me _____
and made oath that _____ saw the within _____
sign, seal, and as _____ act and deed, deliver the within Agreement, and that _____ with
_____ witnessed the execution thereof.

Sworn to before me this _____
day of _____, 2018.

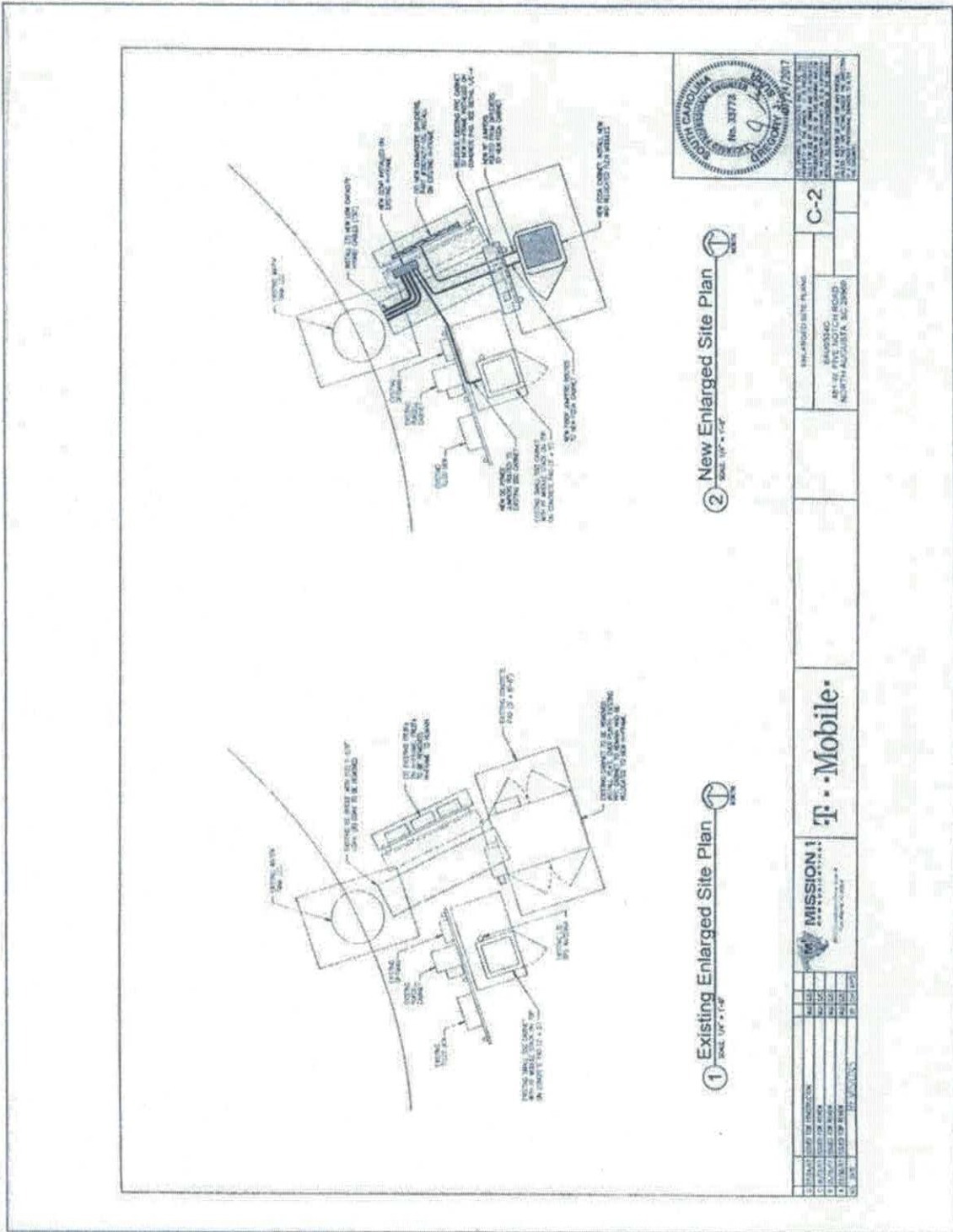
Notary Public for _____

My Commission Expires _____

EXHIBIT "A"



Site Name: Gregory Lake
 Site Number: 8AU0324C



Site Name: Gregory Lake
Site Number: 8AU0324C

Site Name: Gregory Lake
 Site Number: 8AU0324C

6732D_TEMP_RUN_GSM_U2100 ON GROUND - TOWER TOP EQUIPMENT SCHEDULE

ANTENNA TYPE	ANTENNA MODEL	ANTENNA HGT. (FT)	ANTENNA WIND (PSF)	ANTENNA WEIGHT (LBS)	ANTENNA WIND MOMENT (FT-LBS)	ANTENNA WIND AREA (SQ FT)	ANTENNA WIND COEFFICIENT	ANTENNA WIND LOAD (LBS)	ANTENNA WIND MOMENT (FT-LBS)	ANTENNA WIND AREA (SQ FT)	ANTENNA WIND COEFFICIENT	ANTENNA WIND LOAD (LBS)	ANTENNA WIND MOMENT (FT-LBS)
40	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107
41	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107
42	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107
43	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107
44	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107
45	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107
46	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107
47	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107
48	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107
49	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107
50	CONCRETE 100-100-42 2000 FT	87	107	107	107	107	107	107	107	107	107	107	107

REMARKS:

- SEE CONTRACTOR FOR DETAILS OF THIS TOWER TOP EQUIPMENT SCHEDULE.
- SEE CONTRACTOR FOR DETAILS OF THIS TOWER TOP EQUIPMENT SCHEDULE.
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1 New H-frame Detail

REMARKS:

- SEE CONTRACTOR FOR DETAILS OF THIS TOWER TOP EQUIPMENT SCHEDULE.
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REMARKS:

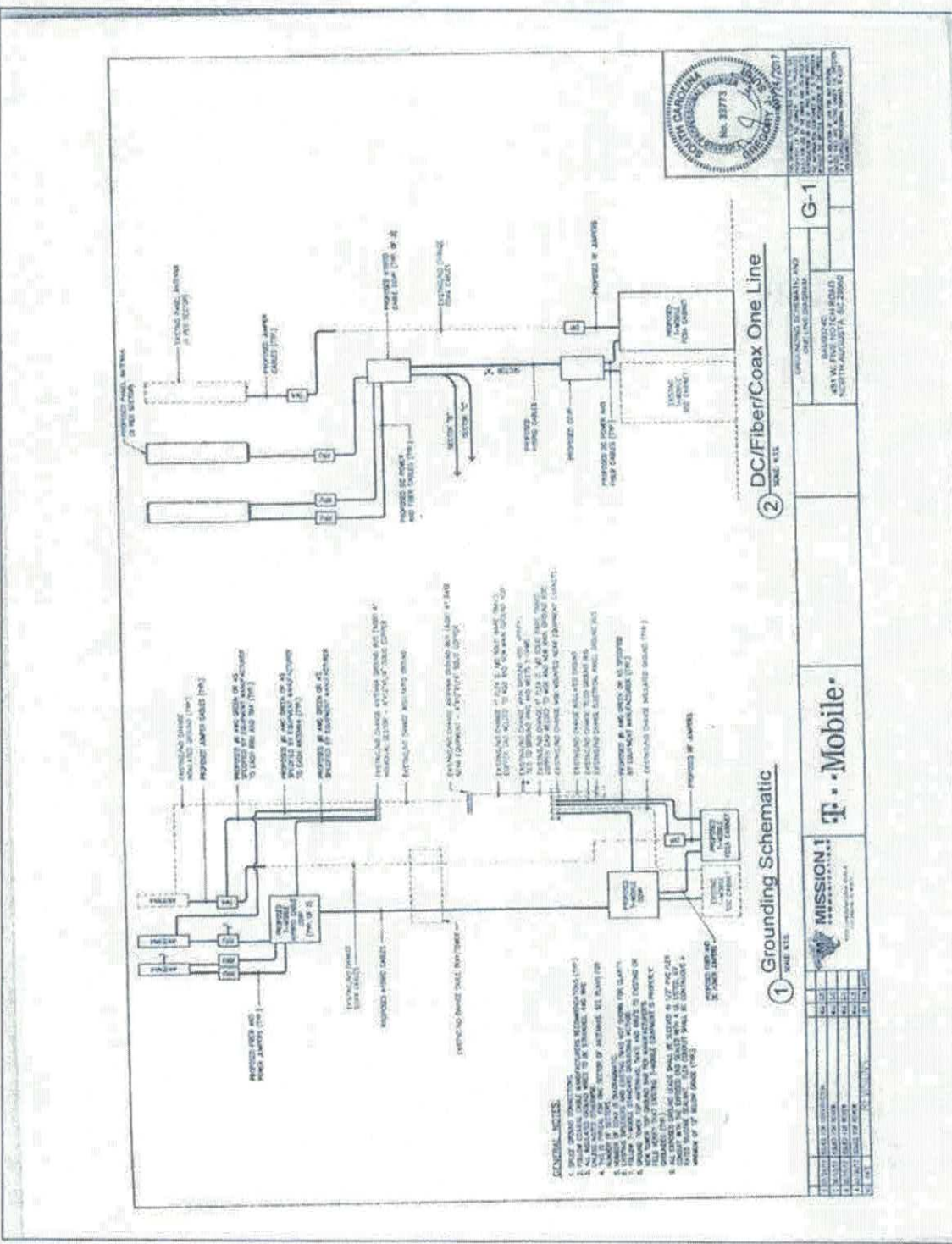
- SEE CONTRACTOR FOR DETAILS OF THIS TOWER TOP EQUIPMENT SCHEDULE.
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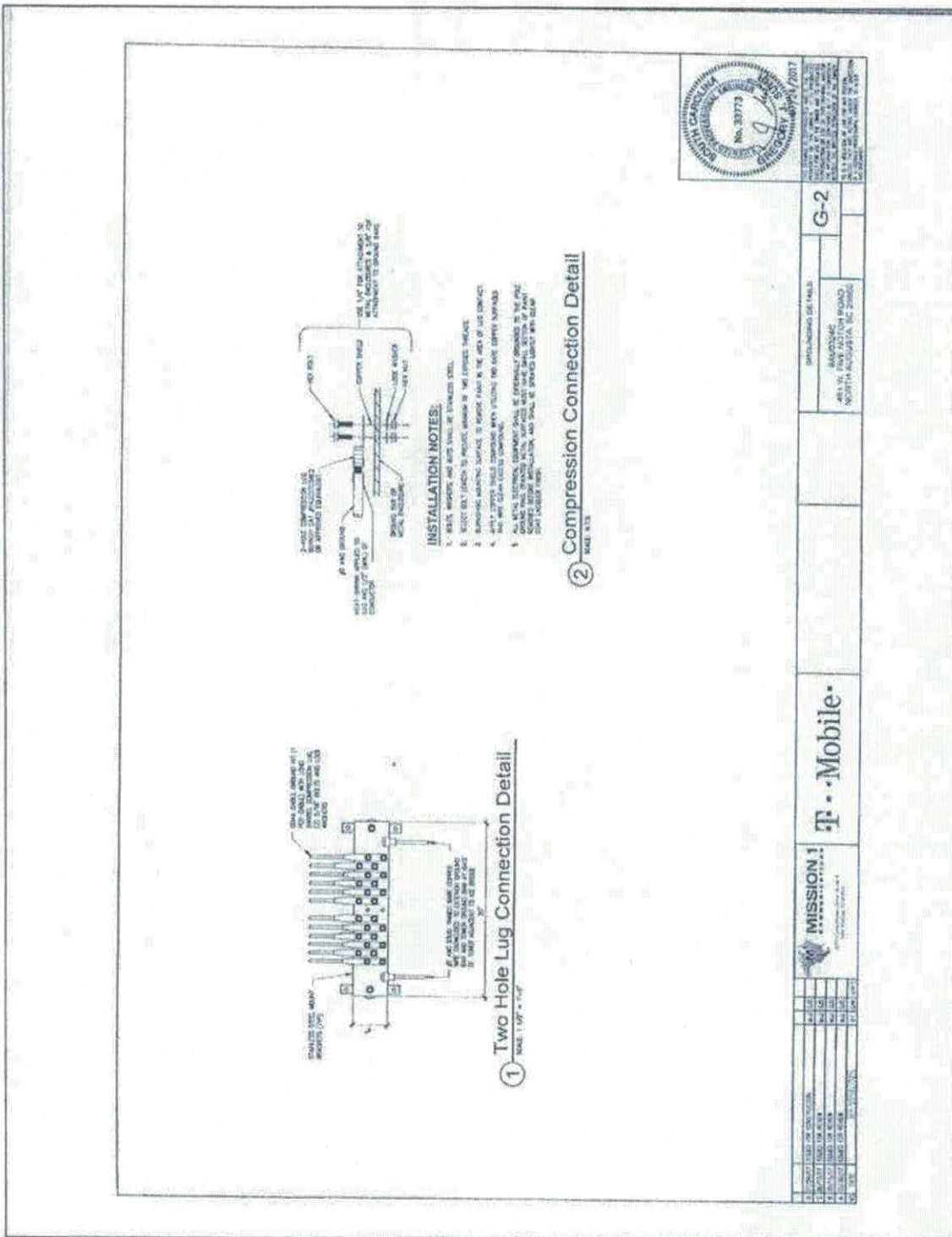
REMARKS:

- SEE CONTRACTOR FOR DETAILS OF THIS TOWER TOP EQUIPMENT SCHEDULE.
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Site Name: Gregory Lake
 Site Number: 8AU0324C

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 Site Number: 8AU0324C



North Augusta



South Carolina's Riverfront

MINUTES OF MAY 7, 2018

Robert A. Pettit, Mayor

- James M. Adams, Jr., Councilmember*
- J. Robert Brooks, Councilmember*
- Pat C. Carpenter, Councilmember*
- Fletcher L. Dickert, Councilmember*
- Kenneth J. McDowell, Councilmember*
- David W. McGhee, Councilmember*

ORDER OF BUSINESS

REGULAR MEETING

The regular meeting of May 7, 2018, having been duly publicized, was called to order by Mayor Pettit at 7:00 p.m. and adjourned at 7:19 p.m. Per Section 30-4-80(e) notice of the meeting by email was sent out to the current maintained "Agenda Mailout" list consisting of news media outlets and individuals or companies requesting notification. Notice of the meeting was also posted on the outside doors of the Municipal Center, the main bulletin board of the Municipal Center located on the first floor, and the City of North Augusta website.

Mayor Pettit rendered the invocation and led in the Pledge of Allegiance.

Members present were Mayor Pettit and Councilmembers Adams, Brooks Carpenter, Dickert, McDowell, and McGhee.

Also in attendance were B. Todd Glover, City Administrator; Kelly F. Zier, City Attorney; Cammie T. Hayes, Director of Finance; Thomas C. Zeaser, Director of Engineering and Public Works; James E. Sutton, Director of Public Services; and Donna B. Young, City Clerk.

The minutes of the regular and study session meetings of April 16, 2018 were approved by general consent. The minutes of the special called study session of April 11, 2018 was also approved by general consent.

ITEM 1. ECONOMIC DEVELOPMENT: Ordinance No. 2018-06 – An Ordinance Designating a Portion of Riverside Village as a Designated Development Area Pursuant to the Tourism Infrastructure Admission Tax Act; Authorizing the City Administrator to Prepare and File Certain Documents Relating to the Designated Development Area; Authorizing the City Administrator to Prepare Provisions for the Expenditure of Monies Raised from the Area – Ordinance, Third and Final Reading

On motion by Councilmember McDowell, second by Councilmember Dickert, Council unanimously adopted an ordinance on third and final reading designating a portion of Riverside Village as a Designated Development Area pursuant to the Tourism Infrastructure Admission Tax Act; authorizing the City Administrator to prepare and file certain documents relating to the designated development area; authorizing the City Administrator to prepare provisions for the expenditure of monies raised from the area.

Please see the minutes of April 16, 2018 for the ordinance text. *Please note that all complete exhibits and attachments are available in the Office of the City Clerk.*

ITEM 2. FINANCE: Resolution No. 2018-11 – A Resolution Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV

On motion by Councilmember Brooks, second by Councilmember McGhee, Council considered a resolution identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV.

On motion by Mayor Pettit, second by Councilmember Carpenter, a motion to amend the list of projects to add “New Savannah Bluff Lock and Dam” under the list of projects under the Public Works and Transportation Projects title was unanimously passed.

Vote was then taken on the original resolution, as amended, and unanimously passed.

The resolution text is as follows: *Please note that all complete exhibits and attachments are available in the Office of the City Clerk.*

RESOLUTION NO. 2018-11
IDENTIFYING NORTH AUGUSTA PROJECTS FOR THE
AIKEN COUNTY CAPITAL PROJECTS SALES TAX IV

WHEREAS, Aiken County Council, in anticipation of conducting a referendum in 2018, has appointed a Capital Projects Sales Tax Commission to consider proposals for funding capital projects within Aiken County from the proceeds of a continuation of the Capital Projects Sales Tax and to formulate the referendum question that is to appear on the ballot; and

WHEREAS, the Mayor and members of City Council wish to submit for consideration a list of projects to be funded in North Augusta.

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council for the City of North Augusta in meeting duly assembled and by the authority thereof that the projects listed on the attached "Exhibit A" shall be submitted to the Aiken County Sales Tax Commission for inclusion in the 2018 referendum.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS _____ DAY OF _____, 2018.

ITEM 3. UTILITIES: Resolution No. 2018-12 – Authorizing a Water Tank Attachment Lease Agreement Between the City of North Augusta and T-Mobile South, LLC for the Five Notch Road Water Tank

On motion by Councilmember Carpenter, second by Councilmember Dickert, Council unanimously passed a resolution authorizing a water tank attachment lease agreement between the City of North Augusta and T-Mobile South, LLC for the Five Notch Road water tank.

The resolution text is as follows: *Please note that all complete exhibits and attachments are available in the Office of the City Clerk.*

RESOLUTION 2018-12
AUTHORIZING A WATER TANK ATTACHMENT LEASE AGREEMENT
BETWEEN THE CITY OF NORTH AUGUSTA AND
T-MOBILE SOUTH, LLC.
FOR THE FIVE NOTCH ROAD WATER TANK

WHEREAS, the City of North Augusta desires to lease to T-Mobile South, LLC., certain space upon the City's Five Notch Road water tank upon which T-Mobile has certain

antennae, other equipment, and related devices, and to lease ground space used exclusively to house T-Mobile's equipment; and

WHEREAS, T-Mobile desires to lease from the City certain space on the City's Five Notch Road water tank and ground space for T-Mobile's equipment.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Council for the City of North Augusta in meeting duly assembled and by the authority thereof, hereby authorize the attached Water Tank Attachment Lease Agreement between the City and T-Mobile South, LLC. for the Five Notch Road water tank.

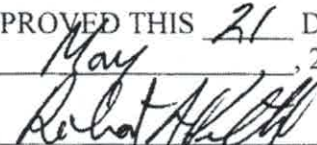
BE IT FURTHER RESOLVED, that the City Administrator is authorized to sign the agreement on behalf of the City and to sign all other documents relating thereto.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS _____ DAY OF _____, 2018.

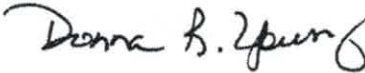
ITEM 4. CITIZEN COMMENTS: Speaker Forms Submitted for May 7, 2018 Council Meeting

Please see the attached Speaker Forms completed by citizens for the May 7, 2018 Council meeting.

There being no further business, Council adjourned at 7:19 p.m.

APPROVED THIS 21 DAY OF May, 2018.


Robert A. Pettit, Mayor

Respectfully submitted,

Donna B. Young

NACC Meeting Monday, May 7, 2018

Council Meeting Public Comments by Perry Holcomb, 1891 Green Forest Drive, North Augusta, SC 29841 – (803) 279-4839

Summary of Comments – Questions to Mayor, Mr. Glover, and to City Council as follows:

Question to Mayor - As per SC Code § 5-9-30, which contain the responsibilities of the mayor in a mayor-council form of government, Section (6) states: “to submit to the council and make available to the public a complete report on the finances and administrative activities of the municipality as of the end of each fiscal year;” When will this complete report be made available to the public?

Questions to Mr. Glover, City Administrator

1. When will Mr. James Dean of Greenstone make another progress report to the City about continuing construction at RV.

2. Questions regarding the Stadium Parking Deck.

(a) In a Facebook interchange with Mr. Jess Eiseman, co-owner of the Augusta GreenJackets, who play at SRP Park in our city, I mentioned the initial failure of Greenstone to obtain a developer for the Stadium Parking Deck. He replied that the Stadium Deck construction would begin “this summer and be completed for the beginning of the GreenJacket’s 2019 season.” Can you elaborate on that, i. e., just who’s the new developer?

(b) Will the proposed deck contain as many vehicles as that originally planned?

3. What’s happened to the proposed RV “drinking area” ordinance?

Questions to members of Council – At the March 19th meeting of Council, I proposed an amendment to Sec. 2-63 of the City Code to lengthen individual citizen comments to 10 minutes. That proposal is part of the minutes of that meeting. What is the status of my proposal? Will Council take any action on it? If Council does not have any substantive ideas about their position, I will proceed as already planned.

Mrs. Young, please accept this as a substitute for the required form and make this page a part of the minutes. Thank you!

To: Mayor Bob Pettit, Mayor Pro Tem Ken McDowell, Councillwoman Pat Carpenter, Councilman Jimmy Adams, Councilman Fletcher Dickert, Councilman Bob Brooks, Councilman David McGhee, City Administrator Todd Glover, City Attorney Kelly Zier, City Clerk Donna Young

THE STUDY SESSION AND THE REGULAR MEETING OF CITY COUNCIL ON MONDAY, MAY 7, 2018

I have become a very concerned citizen of the City of North Augusta, especially in the manner it conducts business for its citizens. The subjects are the latest example for my increased uneasiness.

In the SS, Mayor Pettit introduced an addition of the list of projects to be sent to the County Board of Elections. That new item was to set aside monies from Sales Tax IV for the "New Savannah Bluff Lock and Dam." Later in the formal meeting, Council added it to the previously published list that was part of the agenda announced by the City for its consideration during the May 7th meeting. It was passed unanimously.

However, Mayor and Council violated the tenets of the SC Freedom of Information Act, which is Title 30, Chapter 4 of the SC Code. Specifically, Section 30-4-80 - "Notice of meetings of public bodies," states the following in Section (A):

"Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting."

Such may be done, again quoting Section (A), if the following exists:

"...an emergency or an exigent circumstance exists if the item is not added to the agenda."

Video/audio records of those meetings clearly show that the words "emergency" and "exigent circumstance" are missing from Mayor or Council. Such words are also missing from the published agenda prior to the meetings. The meeting of Council was advertised to the public as being "regular."

So, I assert that Mayor and Council violated SC Code Ann. § 30-4-80(A). That brings forth a cadre of questions that I, as a concerned citizen of North Augusta, demand answers for. I enumerate:

1. What instigated the Mayor to introduce this need for money to support a facility doomed to be removed and replaced by most accounts, even those doubts the

Mayor, himself, stated that it would not remain "as is" to maintain the current pool level, which now exists upstream?

2. Why was this item so important that the City had to violate SC FOIA to insert it in the list at so late a date? The list of projects to be financed by Sales Tax IV was due to be sent to the Aiken County Board of Registration and Elections the week of May 6th, but to violate the SC FOIA to do so is not an appropriate excuse.
3. Why didn't the City Attorney speak out to inform Mayor and Council that they were violating SC FOIA? The City Attorney did not address this during the Study Session or during the meeting of Mayor and Council. In fact, as I remember he remained silent during discussion of this item at both the Study Session and at the regular meeting of Council.
4. If the "New Savannah Bluff Lock and Dam" were such an important item, then why didn't the City address the matter earlier and have it on the published Agenda for Council's regular meeting. The item was missing from that document. However it appears in the minutes of the May 7th Council meeting since Council changed the agenda at that meeting.
5. Just who is Mayor and Council serving by their egregious action? It certainly is not in the best interest of the citizens of this City or others who pay sales taxes to the City. I petition for you to name names of a single person or a group who is influencing the City to such an extent as to violate the laws of SC in doing so.

Wishing answers for our citizens,

H. Perry Holcomb

August 24, 2018

ELECTRONICALLY FILED - 2018 Nov 28 10:30 AM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

(Delivery via: USPS Certified Mail RRR)
Kelly Zier, Esq.
602 West Avenue
North Augusta, SC 29841

Re: FOIA Violation

Dear Mr. Zier:

I have been retained by Perry Holcomb to address his concerns regarding City of North Augusta governance issues. It has been brought to my attention that there was an apparent FOIA Violation during the City Council meeting held on May 7, 2018.

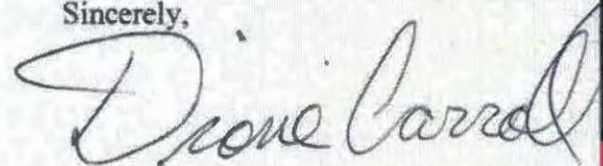
The May 7, 2018 City Council Agenda is attached for your reference. See Exhibit A. This Agenda reflects the actual Notice given in advance regarding Resolution No. 2018-11 – A Resolution Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV.

Please also see attached the minutes of the May 7, 2018 City Council meeting. See Exhibit B. According to the terms of those minutes, it is apparent that the list of projects identified for the Aiken County Capital Projects Sales Tax IV was noticeably modified to add the New Savannah Bluff Lock and Dam Project. This major addition to the Resolution was done without the required prior notification to the public, thus depriving them of a reasonable “notice and opportunity to be heard.”

Please advise me of the City’s position on this matter and what, if anything, you propose as an adequate remedy.

Thank you for your kind consideration.

Sincerely,



Dionè C. Carroll, Esq.

Cc: Donna Young, City Clerk & Public Records Custodian
Perry Holcomb

Enclosures



REGULAR AGENDA

OF

MAY 7, 2018



AGENDA: REGULAR CITY COUNCIL MEETING

May 7, 2018 – Municipal Center – 100 Georgia Avenue, 3rd Floor – 7:00 P.M.

CITIZEN COMMENTS: Citizens may speak to Mayor and City Council on each item listed on this agenda. Mayor Pettit will call for your comments prior to City Council discussing the matter. Citizens wishing to address Mayor and City Council are required to submit a Speaker Form to the City Clerk before addressing Mayor and City Council. Forms are provided at the credenza at the entrance to the Council Chambers. Citizen comments are limited to five minutes.

CITIZEN ASSISTANCE: Individuals needing special assistance or sign interpreter to participate in the meeting, please notify the Administration Department 48 hours prior to the meeting.

- 1. **CALL TO ORDER:**
- 2. **INVOCATION AND PLEDGE OF ALLEGIANCE:**
- 3. **ROLL CALL:**
- 4. **APPROVAL OF MINUTES:** Regular and study session meeting minutes of April 16, 2018

UNFINISHED BUSINESS

- 5. **ECONOMIC DEVELOPMENT:** Ordinance No. 2018-06 – An Ordinance Designating a Portion of Riverside Village as a Designated Development Area Pursuant to the Tourism Infrastructure Admission Tax Act; Authorizing the City Administrator to Prepare and File Certain Documents Relating to the Designated Development Area; Authorizing the City Administrator to Prepare Provisions for the Expenditure of Monies Raised From the Area – Ordinance, Third and Final Reading

NEW BUSINESS

- 6. **FINANCE:** Resolution No. 2018-11 – A Resolution Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV
- 7. **UTILITIES:** Resolution No. 2018-12 – A Resolution Authorizing a Water Tank Attachment Lease Agreement Between the City of North Augusta and T-Mobile South, LLC for the Five Notch Road Water Tank
- 8. **PRESENTATIONS/COMMUNICATIONS/RECOGNITION OF VISITORS:**
 - A. **Citizen Comments:** At this time, citizens may speak to Mayor and City Council regarding matters not listed on the agenda. Citizens wishing to address Mayor and City Council are required to submit a Speaker Form to the City Clerk before addressing Mayor and City Council. Forms are provided on the credenza at the entrance to the Council Chambers. Citizen comments are limited to five minutes.
 - B. **Council Comments**
- 9. **ADJOURNMENT:**



TO: Mayor and City Council
FROM: B. Todd Glover, City Administrator
DATE: May 4, 2018
SUBJECT: Regular City Council Meeting of May 7, 2018

REGULAR COUNCIL MEETING

ITEM 5. **ECONOMIC DEVELOPMENT:** Ordinance No. 2018-06 – An Ordinance Designating a Portion of Riverside Village as a Designated Development Area Pursuant to the Tourism Infrastructure Admission Tax Act; Authorizing the City Administrator to Prepare and File Certain Documents Relating to the Designated Development Area; Authorizing the City Administrator to Prepare Provisions for the Expenditure of Monies Raised from the Area – Third and Final Reading

An ordinance has been prepared for Council's consideration on third and final reading designating a portion of Riverside Village as a Designated Development Area pursuant to the Tourism Infrastructure Admission Tax Act; authorizing the City Administrator to prepare and file certain documents relating to the designated development area; authorizing the City Administrator to prepare provisions for the expenditure of monies raised from the area.

Please see the minutes of April 16, 2018, for the ordinance text.

May 7, 2018

ITEM 6. FINANCE: Resolution No. 2018-11 – A Resolution Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV

A resolution has been prepared for Council's consideration identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV.

Please see ATTACHMENT NO. 6 for a copy of the proposed resolution.

ITEM 7. UTILITIES: Resolution No. 2018-12 – A Resolution Authorizing a Water Tank Lease Agreement Between the City of North Augusta and T-Mobile South, LLC for the Five Notch Road Water Tank

A resolution has been prepared for Council's consideration authorizing a Water Tank Lease Agreement between the City of North Augusta and T-Mobile South, LLC for the Five Notch Road Water Tank.

Please see ATTACHMENT NO. 7 for a copy of the proposed resolution and agreement.

RESOLUTION NO. 2018-11
IDENTIFYING NORTH AUGUSTA PROJECTS FOR THE
AIKEN COUNTY CAPITAL PROJECTS SALES TAX IV

WHEREAS, Aiken County Council, in anticipation of conducting a referendum in 2018, has appointed a Capital Projects Sales Tax Commission to consider proposals for funding capital projects within Aiken County from the proceeds of a continuation of the Capital Projects Sales Tax and to formulate the referendum question that is to appear on the ballot; and

WHEREAS, the Mayor and members of City Council wish to submit for consideration a list of projects to be funded in North Augusta.

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council for the City of North Augusta in meeting duly assembled and by the authority thereof that the projects listed on the attached "Exhibit A" shall be submitted to the Aiken County Sales Tax Commission for inclusion in the 2018 referendum.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS _____ DAY OF _____, 2018.

Robert A. Pettit, Mayor

ATTEST:

Donna B. Young, City Clerk

RESOLUTION NO. 2018-11
IDENTIFYING NORTH AUGUSTA PROJECTS FOR THE
AIKEN COUNTY CAPITAL PROJECTS SALES TAX IV

WHEREAS, Aiken County Council, in anticipation of conducting a referendum in 2018, has appointed a Capital Projects Sales Tax Commission to consider proposals for funding capital projects within Aiken County from the proceeds of a continuation of the Capital Projects Sales Tax and to formulate the referendum question that is to appear on the ballot; and

WHEREAS, the Mayor and members of City Council wish to submit for consideration a list of projects to be funded in North Augusta.

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council for the City of North Augusta in meeting duly assembled and by the authority thereof that the projects listed on the attached "Exhibit A" shall be submitted to the Aiken County Sales Tax Commission for inclusion in the 2018 referendum.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS 7 DAY OF May, 2018.



Robert A. Pettit, Mayor

ATTEST:



Donna B. Young, City Clerk

EXHIBIT A

CAPITAL PROJECTS SALES TAX IV PROJECTS
 (Projects to be prioritized as the revenues become available)

PUBLIC SAFETY PROJECTS		\$ 11,500,000
	Headquarters Development and Apparatus	
PUBLIC WORKS & TRANSPORTATION PROJECTS		7,950,000
	Martintown Road at US 1 Interchange Design and Improvements	
	Downtown Pedestrian and Vehicular Traffic and Safety Enhancements	
	Georgia Avenue Undergrounding Utilities	
	Road Reconstruction Program	
	Street Resurfacing Program	
PARKS, RECREATION & TOURISM PROJECTS		3,900,000
	Park and Facility Restoration, Additions and Improvements	
	Downtown Greenway Connector	
INFRASTRUCTURE PROJECTS		5,000,000
	Wastewater Infrastructure Improvements	
	Stormwater Infrastructure Improvements	
ECONOMIC DEVELOPMENT PROJECTS		1,250,000
	Gateways and Wayfinding Enhancements	
MUNICIPAL IMPROVEMENT PROJECTS		1,100,000
	Software and Technology Enhancements for a Citizen Information Portal, Record Keeping & Storage, Transaction Processing, Accounting and Financial Reporting	
	Safety and Security Improvements for the Municipal Building	
	Finance Department Lobby Improvements for Citizen Transactions	
TOTAL		<u>\$ 30,700,000</u>

North Augusta



South Carolina's Riverfront

MINUTES OF MAY 7, 2018

Robert A. Pettit, Mayor

- James M. Adams, Jr., Councilmember*
- J. Robert Brooks, Councilmember*
- Pat C. Carpenter, Councilmember*
- Fleicher L. Dickert, Councilmember*
- Kenneth J. McDowell, Councilmember*
- David W. McGhee, Councilmember*

ORDER OF BUSINESS

REGULAR MEETING

The regular meeting of May 7, 2018, having been duly publicized, was called to order by Mayor Pettit at 7:00 p.m. and adjourned at 7:19 p.m. Per Section 30-4-80(e) notice of the meeting by email was sent out to the current maintained "Agenda Mailout" list consisting of news media outlets and individuals or companies requesting notification. Notice of the meeting was also posted on the outside doors of the Municipal Center, the main bulletin board of the Municipal Center located on the first floor, and the City of North Augusta website.

Mayor Pettit rendered the invocation and led in the Pledge of Allegiance.

Members present were Mayor Pettit and Councilmembers Adams, Brooks Carpenter, Dickert, McDowell, and McGhee.

Also in attendance were B. Todd Glover, City Administrator; Kelly F. Zier, City Attorney; Cammie T. Hayes, Director of Finance; Thomas C. Zeaser, Director of Engineering and Public Works; James E. Sutton, Director of Public Services; and Donna B. Young, City Clerk.

The minutes of the regular and study session meetings of April 16, 2018 were approved by general consent. The minutes of the special called study session of April 11, 2018 was also approved by general consent.

ITEM 1. ECONOMIC DEVELOPMENT: Ordinance No. 2018-06 – An Ordinance Designating a Portion of Riverside Village as a Designated Development Area Pursuant to the Tourism Infrastructure Admission Tax Act; Authorizing the City Administrator to Prepare and File Certain Documents Relating to the Designated Development Area; Authorizing the City Administrator to Prepare Provisions for the Expenditure of Monies Raised from the Area – Ordinance, Third and Final Reading

On motion by Councilmember McDowell, second by Councilmember Dickert, Council unanimously adopted an ordinance on third and final reading designating a portion of Riverside Village as a Designated Development Area pursuant to the Tourism Infrastructure Admission Tax Act; authorizing the City Administrator to prepare and file certain documents relating to the designated development area; authorizing the City Administrator to prepare provisions for the expenditure of monies raised from the area.

Please see the minutes of April 16, 2018 for the ordinance text. *Please note that all complete exhibits and attachments are available in the Office of the City Clerk.*

ITEM 2. FINANCE: Resolution No. 2018-11 – A Resolution Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV

On motion by Councilmember Brooks, second by Councilmember McGhee, Council considered a resolution identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV.

On motion by Mayor Pettit, second by Councilmember Carpenter, a motion to amend the list of projects to add "New Savannah Bluff Lock and Dam" under the list of projects under the Public Works and Transportation Projects title was unanimously passed.

Vote was then taken on the original resolution, as amended, and unanimously passed.

The resolution text is as follows: *Please note that all complete exhibits and attachments are available in the Office of the City Clerk.*

RESOLUTION NO. 2018-11
IDENTIFYING NORTH AUGUSTA PROJECTS FOR THE
AIKEN COUNTY CAPITAL PROJECTS SALES TAX IV

WHEREAS, Aiken County Council, in anticipation of conducting a referendum in 2018, has appointed a Capital Projects Sales Tax Commission to consider proposals for funding capital projects within Aiken County from the proceeds of a continuation of the Capital Projects Sales Tax and to formulate the referendum question that is to appear on the ballot; and

WHEREAS, the Mayor and members of City Council wish to submit for consideration a list of projects to be funded in North Augusta.

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council for the City of North Augusta in meeting duly assembled and by the authority thereof that the projects listed on the attached "Exhibit A" shall be submitted to the Aiken County Sales Tax Commission for inclusion in the 2018 referendum.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS _____ DAY OF _____, 2018.

ITEM 3. UTILITIES: Resolution No. 2018-12 – Authorizing a Water Tank Attachment Lease Agreement Between the City of North Augusta and T-Mobile South, LLC for the Five Notch Road Water Tank

On motion by Councilmember Carpenter, second by Councilmember Dickert, Council unanimously passed a resolution authorizing a water tank attachment lease agreement between the City of North Augusta and T-Mobile South, LLC for the Five Notch Road water tank.

The resolution text is as follows: *Please note that all complete exhibits and attachments are available in the Office of the City Clerk.*

RESOLUTION 2018-12
AUTHORIZING A WATER TANK ATTACHMENT LEASE AGREEMENT
BETWEEN THE CITY OF NORTH AUGUSTA AND
T-MOBILE SOUTH, LLC.
FOR THE FIVE NOTCH ROAD WATER TANK

WHEREAS, the City of North Augusta desires to lease to T-Mobile South, LLC., certain space upon the City's Five Notch Road water tank upon which T-Mobile has certain

antennae, other equipment, and related devices, and to lease ground space used exclusively to house T-Mobile's equipment; and

WHEREAS, T-Mobile desires to lease from the City certain space on the City's Five Notch Road water tank and ground space for T-Mobile's equipment.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Council for the City of North Augusta in meeting duly assembled and by the authority thereof, hereby authorize the attached Water Tank Attachment Lease Agreement between the City and T-Mobile South, LLC. for the Five Notch Road water tank.


BE IT FURTHER RESOLVED, that the City Administrator is authorized to sign the agreement on behalf of the City and to sign all other documents relating thereto.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS _____ DAY OF _____, 2018.

ITEM 4. CITIZEN COMMENTS: Speaker Forms Submitted for May 7, 2018 Council Meeting

Please see the attached Speaker Forms completed by citizens for the May 7, 2018 Council meeting.

There being no further business, Council adjourned at 7:19 p.m.

APPROVED THIS 21 DAY OF May, 2018.

Robert A. Pettit, Mayor

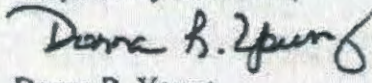
Respectfully submitted,

Donna B. Young

EXHIBIT A

CAPITAL PROJECTS SALES TAX IV PROJECTS

(Projects to be prioritized as the revenues become available)

PUBLIC SAFETY PROJECTS		\$ 11,500,000
	Headquarters Development and Apparatus	
PUBLIC WORKS & TRANSPORTATION PROJECTS		7,950,000
	Martintown Road at US 1 Interchange Design and Improvements	
	Downtown Pedestrian and Vehicular Traffic and Safety Enhancements	
	Georgia Avenue Undergrounding Utilities	
	Road Reconstruction Program	
	Street Resurfacing Program	
	New Savannah Bluff Lock and Dam	
PARKS, RECREATION & TOURISM PROJECTS		3,900,000
	Park and Facility Restoration, Additions and Improvements	
	Downtown Greenway Connector	
INFRASTRUCTURE PROJECTS		5,000,000
	Wastewater Infrastructure Improvements	
	Stormwater Infrastructure Improvements	
ECONOMIC DEVELOPMENT PROJECTS		1,250,000
	Gateways and Wayfinding Enhancements	
MUNICIPAL IMPROVEMENT PROJECTS		1,100,000
	Software and Technology Enhancements for a Citizen Information Portal, Record Keeping & Storage, Transaction Processing, Accounting and Financial Reporting	
	Safety and Security Improvements for the Municipal Building	
	Finance Department Lobby Improvements for Citizen Transactions	
TOTAL		<u>\$ 30,700,000</u>

CITY OF NORTH AUGUSTA

KELLY F. ZIER
CITY ATTORNEY
602 WEST AVENUE
NORTH AUGUSTA, SC 29841

Post Office Box 6516
North Augusta, SC 29861

kzier@northaugusta.net

(803) 279-5998 Office
(803) 278-4586 Facsimile

September 6, 2018

Dioné C. Carroll, Esquire
107 Pendleton Street, NW
Aiken, South Carolina 29801

RE: YOUR LETTER OF AUGUST 24, 2018 ALLEGING FOIA VIOLATION

Dear Ms. Carroll:

I am in receipt of your above identified letter. I would advise you that, based upon my original reading of the letter and consideration of same, I determined such allegation to be totally baseless. However, in order to make certain that I was not overlooking an issue or had misinterpreted the actions by the Court of Appeals, the Supreme Court, and the legislature over the last couple of years related to FOIA Requests, I delayed responding to thoroughly review the matter. I will advise you that following that research and further consideration of the matter, I come to the same conclusion. The City has not, in any manner, violated FOIA based upon their actions at the May 7, 2018 City Council Meeting.

The published agenda for the May 7 meeting, very specifically provided for the introduction and action by Council on Resolution No. 2018-11 which identified North Augusta Projects for the Aiken County Capital Project Sales Tax IV. This was a regular meeting of the City Council, not a specially called meeting. The notices required for the meeting under §30-4-80 were all complied with. This was an agenda matter.

A motion was made placing the formal resolution on the floor for approval. That motion was seconded. Thereafter, Mayor Pettit made a motion to amend the list by adding to such list "New Savannah Bluff Lock and Dam". That motion was seconded. Thereafter, the amendment was unanimously passed. Finally, a vote was taken on the amended resolution and unanimously passed.

Dr. Holcomb's allegation, as supported by your letter, apparently is asserting the position that Council does not have the right to amend a resolution that is properly

on the agenda for consideration at the public meeting. That most certainly is not a valid claim.

I think that possibly you are confusing amendments or additions to the published agenda with amendments to a resolution that is properly noticed and on the agenda.

The agenda, as properly published, posted, and distributed, advised the general public that the Council would consider a resolution identifying North Augusta projects for the Aiken County Capital Projects Sales Tax IV. That is exactly what the Council did.

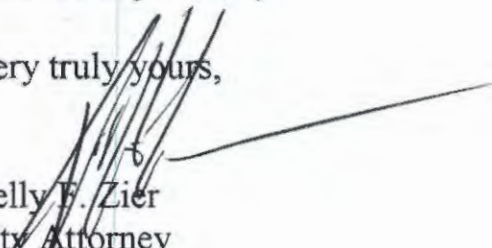
The purpose of the FOIA is to make certain that the public business is performed in an open and public manner.

In the present case, the public was very specifically notified of a matter that would be before the Council for consideration. The Council discussed the matter in public session and made a determination, "identifying North Augusta projects for the Aiken County Capital Project Sales Tax IV."

It appears quite possible that Dr. Holcomb, and you, are misinterpreting recent case law involving amendments to agendas and adding items to the agenda. That is not the case here. The agenda was very specific as to the matter that was considered and dealt with by Council at the May 7 meeting. This resolution was very definitely done with the required prior notification to the public and the public had notice and opportunity to be heard.

Your letter requested that I advise you of the City's position on this matter, and "what, if anything, you propose as an adequate remedy". The City's stated position is set forth above, and obviously since there is no violation, there is no need for any remedy.

Very truly yours,



Kelly F. Zier
City Attorney

KFZ:bz

Cc: Mayor; City Council; City Clerk

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Herman Perry Holcomb,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No. 2018-CP-02-02705

**ANSWER TO AMENDED
COMPLAINT**

The Defendants, having been served with an Amended Complaint prior to filing their Answer to the original Complaint, answer the Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Except as is hereinafter specifically admitted, the Defendants deny each and every allegation of the Amended Complaint.

2. Answering paragraph 1 of the Amended Complaint, the Defendants admit only that the Plaintiff, upon information, is a resident of this State.

3. Answering paragraph 2, the Defendants admit only that the Defendant City is a municipal corporation of this State.

4. Answering paragraph 3, the Defendants admit only that, as a body, the City Council (which includes the Mayor as a member) is subject to the State Freedom of Information Act (S.C. Code section 30-4-10 et seq.).

5. The allegations of paragraph 4 are admitted.

6. Answering paragraphs 5, 6 and 7, the Defendants refer to the Code sections cited for an accurate statement of their contents.

7. Answering paragraph 8, the Defendants admit only that the City of North Augusta timely published an agenda for the May 7, 2018, regular meeting of the City Council.

8. Answering paragraph 9, the Defendants refer to the actual one-page “AGENDA: REGULAR CITY COUNCIL MEETING” contained in Exhibit 1 to the Amended Complaint for an accurate statement of its provisions. The Defendants deny that the entirety of Exhibit 1 to the Amended Complaint is the “agenda” for the Council meeting or is an “agenda” as described in the State Freedom of Information Act. The Defendants assert that Exhibit 1 to the Amended Complaint is an “agenda packet” within the meaning of S.C. Code of Regulations R. 12-604.3 and that the “agenda” for the Council meeting is the single page within Exhibit 1 to the Amended Complaint entitled “AGENDA: REGULAR CITY COUNCIL MEETING.”

9. The allegations of paragraph 10 are denied.

10. Answering paragraph 11, the Defendants admit only that the Resolution and its attachment identified certain projects proposed by the City for the Capital Project Sales Tax.

11. Answering paragraph 12, the Defendants admit only that the Capital Projects Sales Tax was approved by County referendum on November 6, 2018.

12. Answering paragraph 13, the Defendants refer to the actual one-page agenda for the meeting that is contained within Exhibit 1 to the Amended Complaint and that is entitled “AGENDA: REGULAR CITY COUNCIL MEETING” for an accurate statement of its contents.

13. Answering paragraph 14, the Defendants refer to the Minutes of the Council meeting for an accurate statement of the order of the meeting.

14. The allegations of paragraph 15 are denied, and the Defendants specifically deny that the agenda of the meeting was amended at the meeting. The Defendants further assert that Plaintiff has confused and conflated the agenda for the meeting with the agenda packet for the

meeting, and has confused and conflated an agenda item as described on the agenda with the content of an agenda item. The State Freedom of Information Act does not preclude the Council, as a legislative body, from amending at a meeting the content of a Resolution or Ordinance that is an agenda item.

15. Answering paragraph 16, the Defendants deny that the agenda was amended and deny that the description of the agenda item was amended.

16. Answering the unnumbered paragraph between numbered paragraph 16 and numbered paragraph 17, the Defendants reiterate and reallege paragraphs 1 through 15 of this Answer as fully and to the same extent as if here repeated word for word.

17. The allegations of paragraph 17 are admitted.

18. Answering paragraphs 18, 19 and 20, the Defendants admit only that, at the meeting, the Council amended the list of projects attached to Resolution No. 2018-11. The Defendants specifically deny that this amendment of the content of the Resolution was an amendment of an agenda as contemplated by the State Freedom of Information Act.

19. The allegations of paragraph 21 are denied.

20. Answering paragraph 22, the Defendants admit only, on information, that the Plaintiff was present at the Council meeting on May 7, 2018.

21. Answering paragraph 23, the Defendants deny that there was any violation of the State Freedom of Information Act and deny any allegations of paragraph 23 that assert such a violation or that assert any entitlement of the Plaintiff to a response or to any redress.

22. The Defendants deny any allegations of fact or law contained within Plaintiff's prayer for relief and further deny that Plaintiff is entitled to any relief as alleged or to any relief of any kind.

FOR A SECOND DEFENSE

23. The Defendants assert that, at all times with respect to the matters complained of in the Amended Complaint, they acted in accord with the State Freedom of Information Act, including S.C. Code section 30-4-80(A). The Plaintiff, in the Amended Complaint, confuses and conflates the agenda for the meeting with the agenda packet for the meeting, and confuses and conflates an agenda item as described on the agenda with the content of an agenda item. The Defendants, at the meeting complained of by the Plaintiff, did not amend the agenda, did not change the order of the agenda, did not add any items to the agenda, and did not change the description of any item on the agenda. Rather, the Council, by proper motion and vote, amended a list within an exhibit attached to a written Resolution that was listed on the agenda. As a legislative body, the Council has the lawful right to amend the wording of, or attachments to, an Ordinance or Resolution considered by it.

FOR A THIRD DEFENSE

24. The Defendants assert that the Amended Complaint fails to state a cause of action under S.C. Code sections 30-4-80(A) or 30-4-100 or under any other provision of the State Freedom of Information Act. The Plaintiff, in the Amended Complaint, confuses and conflates the agenda for the meeting with the agenda packet for the meeting, and confuses and conflates an agenda item as described on the agenda with the content of an agenda item. The Defendants, at the meeting complained of by the Plaintiff, did not amend the agenda, did not change the order of the agenda, did not add any items to the agenda, and did not change the description of any item on the agenda. Rather, the Council, by proper motion and vote, amended a list within an exhibit attached to a written Resolution that was listed on the agenda. As a legislative body, the

Council has the lawful right to amend the wording of, or attachments to, an Ordinance or Resolution considered by it.

FOR A FOURTH DEFENSE

25. The Defendants assert that the Plaintiff, even if he prevails in the lawsuit, should not be awarded attorney's fees and costs, inasmuch as the award of attorney's fees and other costs of litigation, pursuant to S.C. Code section 30-4-100(B), is discretionary with the Court, and the position of the Defendants is substantially justified and other circumstances of the case make any award of attorney's fees or costs unjust.

WHEREFORE, having answered the Amended Complaint, the Defendants pray that the relief requested by the Plaintiff be denied, that the Court provide such relief in favor of the Defendants as is proper, and that this case be dismissed.

/s/Danny C. Crowe
Danny C. Crowe, S.C. Bar #1480
CROWE LAFAVE, LLC
P.O. Box 1149
Columbia, SC 29202
803.724.5728
danny@crowelafave.com

Attorney for Defendants

December 14, 2018

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Herman Perry Holcomb,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No. 2018-CP-02-02705

**DEFENDANTS' REQUEST FOR
HEARING PURSUANT TO S.C. CODE
SECTION 30-4-100(A)**

The Defendants, pursuant to the hearing requirement of S.C. Code section 30-4-100(A) as amended effective May 19, 2017, hereby request that the Chief Administrative Judge of the Circuit Court schedule an initial hearing within ten (10) days on the declaratory and injunctive relief sought by the Plaintiff's Amended Complaint. A copy of S.C. Code section 30-4-100(A) is attached for the ready reference of the Court.

/s/Danny C. Crowe

Danny C. Crowe, S.C. Bar #1480

CROWE LAFAVE, LLC

P.O. Box 1149

Columbia, SC 29202

803.724.5728

danny@crowelafave.com

Attorney for Defendants

December 14, 2018

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 30. Public Records
Chapter 4. Freedom of Information Act (Refs & Annos)

Code 1976 § 30-4-100

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

Effective: May 19, 2017
Currentness

(A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(B) If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees.

Credits

HISTORY: 1978 Act No. 593, § 11; 1987 Act No. 118, § 8; 2017 Act No. 67 (H.3352), § 4, eff May 19, 2017.

Notes of Decisions (22)

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Code 1976 § 30-4-100, SC ST § 30-4-100

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Herman Perry Holcomb,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No. 2018-CP-02-02705

**DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR ALTERATION
AND AMENDMENT OF FINDINGS
AND JUDGMENT OR,
ALTERNATIVELY, FOR A NEW
TRIAL, PURSUANT TO RULES 52
AND 59(a)(2) AND (e), SCRPC**

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned counsel, will move before Circuit Court Judge Clifton B. Newman, at such date and time and place as may be set by the Court, for an Order (1) altering or amending the Order filed on October 8, 2019, so as to enter judgment in favor of Defendants, or, alternatively, (2) granting a new trial. This motion is made pursuant to Rules 52 and 59(a)(2) and (e), SCRPC, and on the grounds set out below.

“[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). “A motion under Rule 59(e) long has been viewed as a ‘motion for reconsideration’ despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Id.* (citing *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)).

There are two situations in which a party should consider pursuing a Rule 59(e) motion. First, if a party believes the court misunderstood, did not fully consider, or possibly did not rule

on an argument or issue, such a motion is proper. Secondly, so as to preserve an issue for appeal, a Rule 59(e) motion must be filed as to any issues or arguments raised but not ruled upon. Rule 52(b), like Rule 59(e), also provides for amendment of findings or additional findings, and amendment of a judgment.

Rule 59(a) also expressly provides for a new trial on all or part of the issues in a nonjury action:

On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

The Defendants make this Motion on the following grounds:

1. The Court, in its Order filed on October 8, committed an error of law in construing the legislative action of the Defendants complained of by the Amended Complaint as constituting a violation of S.C. Code § 30-4-80, when the only reasonable inference from the facts and the only appropriate legal conclusions are that there was no violation of the FOIA.

2. The Court, in its Order filed October 8, committed an error of law in conflating the concepts of “agenda” and “adding to an agenda” to include a purported “agenda complete” and the “amending of an agenda item” by adding a new project to a list of City projects attached as an Exhibit to a Resolution that was listed on the agenda. The evidence and law are insufficient to support any such findings, conclusion or judgment by the Court.

3. The Court, in its Order of October 8, committed legal error in failing to consider the common and dictionary meaning of “agenda” and the S.C. Code of Regulations definition of “agenda packet.” The October 8 Order also cited no legal authority for its findings and conclusions

that the supporting documents for the agenda (the agenda packet or “Agenda Complete”) constituted the “agenda” for purposes of the FOIA.

4. The Court, in the Order filed October 8, failed to rule on, consider, or follow the issue raised by Defendants (including at Transcript, pages 12-16, and in their proposed Order) that well-established rules of statutory construction warranted findings, conclusions and judgment in favor of Defendants. These rules include:

- (1) A court must ascertain and effectuate legislative intent whenever possible. Joint Legislative Committee v. Huff, 320 S.C. 241, 245, 464 S.E.2d 324, 326 (1995).
- (2) Legislative intent must prevail if it can reasonably be discovered in language used and construed in light of its intended purpose. Glover by Cauthen v. Suitt Construction Co., 318 S.C. 465, 458 S.E.2d 535 (1995).
- (3) Words used in a statute are to be given their plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 368, 264 S.E.2d 148, 149 (1980); Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975).
- (4) When the terms and language of a statute are plain and unambiguous and convey a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. Miller v. Doe, 312 S.C. 444, 441 S.E.2d 319 (1994); City of Columbia v. American Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996).
- (5) Courts must apply the terms of a statute according to its literal meaning, without resort to subtle or forced construction in an attempt to limit or

expand the scope of the statute. Holley v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E.2d 373 (1994).

- (6) Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language. Timmons v. Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970).
- (7) Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning. Lee v. Thermal Engineering Corp., 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002); see also State v. Dickinson, 339 S.C. 194, 199, 528 S.E.2d 675, 677 (Ct. App. 2000) (citing Black's Law Dictionary).

The October 8 Order was not supported by any known or cited rules of construction.

5. The Court, in the Order filed October 8, completely overlooked and failed to consider the direct and clear testimony of the Plaintiff that recognized the difference between an "agenda" and an "Agenda Complete," undercutting the specious wordplay argued by Plaintiff's attorney and adopted in the October 8 Order. This testimony included the Plaintiff's own testimony at Transcript, page 44, line 21 through page 45, line 3 (including, for example, "I prepare by going to the Agenda Complete, which also contains the agenda. But the agenda is only a summary of what the City's going to discuss at the meeting of council."); Transcript, page 49, lines 13-17 (including ". . . that agenda is actually part of Agenda 050718 Complete"); Transcript, page 58, lines 4-21 (including "Q. . . . an agenda complete includes the agenda, but it includes other things as well, correct? A. That's correct. Q. So agenda complete is something more than just an agenda? A. That's correct."); and Transcript, page 59, line 25 through page 60, line 14 (including "Q. Is

agenda complete something greater than the document called the agenda? A. Yes.”). The evidence is insufficient to establish, and there is no factual basis to support, a finding that an “Agenda Complete” is an “agenda” within the meaning of S.C. Code § 30-4-80(A).

6. The Court, in its Order filed October 8, overlooked and completely failed to consider the direct and clear hearing testimony of the City Clerk Donna Young (Transcript, pages 65-71) that Defendants Hearing Exhibit 1, a single page captioned as “AGENDA: REGULAR CITY COUNCIL MEETING,” was the “agenda” for the subject Council meeting on May 7, 2018. This page also is represented in Plaintiff’s Hearing Exhibit 5 and contained within Plaintiff’s Hearing Exhibit 6. Ms. Young testified that Defendants’ Hearing Exhibit 1 was posted on the City bulletin board in advance of the City Council meeting as the agenda required to be posted by the FOIA. She described the remainder of the documents contained in Plaintiff’s Hearing Exhibit 6 as the agenda background, the agenda memo or the agenda packet. She further testified that Plaintiff’s Hearing Exhibit 1 also described these other documents as “agenda attachments” or “agenda information,” and that they were available online at the City website under the description “Agenda 050718 Complete” as indicated on Plaintiff’s Hearing Exhibit 4.

7. The Court, in the Order filed on October 8, committed an error of law and abused its discretion in awarding attorney’s fees when the issue of attorney’s fees was not argued or discussed at the hearing, when the evidence showed no sufficient basis for an award of attorney’s fees, and when an award of attorney’s fees should be discretionary and not mandatory. Additionally, no findings of fact or conclusions of law concerning entitlement to attorney’s fees are set out in the October 8 Order.

8. The Court, in the Order filed October 8, committed an error of law and abused its discretion when it enjoined the Defendants on terms that are vague and do not fairly inform the

Defendants of the actions intended to be enjoined. Additionally, no findings or conclusions of law concerning entitlement to an injunction or the nature of the injunction are set out in the October 8 Order.

9. The highly unusual circumstances in which two contradictory Orders were signed and filed in two days (see the attached October 7 Order and the attached e-mail of the Clerk of Court office) establish an obvious error in the Court's failure to apply an appropriate level of judicial consideration and determination of this lawsuit, constitute a manifest injustice, and warrant a new trial.

10. The signing and filing of the October 8 Order, with no express vacating or superseding of the signed and filed October 7 Order, creates an anomalous legal situation in which both Orders stand, constitutes a manifest injustice, and warrants a new trial.

This Motion is based on the applicable law and rules of Court, the Orders and pleadings filed in this case, the Transcript and testimony at the hearing, the evidence and argument at the hearing, and the proposed Orders submitted.

/s/Danny C. Crowe
Danny C. Crowe, SC BAR #1480
CROWE LAFAVE, LLC
P.O. Box 1149
Columbia, SC 29202
803.724.5728
danny@crowelafave.com

Attorney for Defendants

October 18, 2019

Rule 11(a) Compliance

There is no duty of consultation on a motion for a new trial, and consultation on Defendants' motion to alter or amend would serve no useful purpose.

/s/Danny C. Crowe
Danny C. Crowe

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
Herman Perry Holcomb,

 Plaintiff,

 vs.

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

 Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No. 2018-CP-02-02705

**ORDER ON THE MERITS
AND FINAL RULING**

By his Amended Complaint, the Plaintiff Herman Perry Holcomb (“Holcomb”) seeks a declaration of the Court that the Defendants (jointly, the “City”) violated the State Freedom of Information Act (S.C. Code section 30-4-10 et seq.) and specifically the provisions of S.C. Code section 30-4-80(a) concerning amendment of the agenda for a regular City Council meeting. Concurrently with the filing of the Answer to the Amended Complaint, the City requested an “initial hearing” as provided by S.C. Code section 30-4-100(A). That “initial hearing” was held before the Court on January 15, 2019, at which the parties offered witnesses, introduced documentary evidence, and presented written and oral argument.

Our appellate courts have not yet delineated the full nature of the “initial hearing” called for by section 30-4-100(A). However, it is clear that the Code section, by its language, contemplates that the “initial hearing” can result in “a final ruling” on the relief sought. (“If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing.”). At the hearing before the Court on January 15, the parties did not request or suggest a need for discovery or for further factual development or presentation but, rather, requested that the Court rule on the merits of the action.

After hearing and considering the testimony of the witnesses and the submittals and arguments of counsel, and after considering the exhibits introduced into evidence, the Court makes the following findings of fact and conclusions of law, as required by Rule 52(a), SCRPC, and issues the following declarations and order.

NATURE OF THE CASE AND PROCEDURAL BACKGROUND

S.C. Code section 30-4-80 (“Notice of meetings of public bodies”) provides in its subsection (A) in pertinent part:

Once an agenda for a regular, called, special or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda.

The gist of the original Complaint (filed on November 16, 2018) and of the Amended Complaint (filed on November 28, 2018) is that the City violated S.C. Code section 30-4-80(A) when the City Council, by a duly approved motion at a regular Council meeting, added a new project to a list of City projects (requested for the County Capital Projects Sales Tax) attached as an Exhibit to a Resolution that was listed on the agenda. Both the Complaint and Amended Complaint characterize this action by the Council as “amending the agenda item” (Complaint, paragraph 16, and Amended Complaint, paragraph 16) or the Council having “amended the

agenda item” (Complaint, paragraphs 15, 18, and 19, and Amended Complaint, paragraphs 15, 18, and 19).

The Answer to the Amended Complaint, among other things, denied any violation of the FOIA by the amendment of the list of projects, and denied that the “agenda” for the meeting was amended. The Answer asserted that only a single page (captioned as “AGENDA: REGULAR CITY COUNCIL MEETING”) of Exhibit 1 to the Amended Complaint was the “agenda” and that the remainder of the documents in Exhibit 1 were the “agenda packet” (paragraphs 8, 12, 14, 23, and 24). The Answer further asserted that the amendment of the list of projects attached to the Resolution was not an amendment of an agenda as contemplated by the FOIA (paragraphs 18, 23, and 24). Rather, according to the Answer, the amendment at the meeting was an amendment to the internal content of an item already listed on the agenda (paragraphs 14, 23, and 24).

STANDARD OF REVIEW AND PRINCIPLES OF STATUTORY CONSTRUCTION

The question of whether the City complied with the agenda and notice requirements of the FOIA appears to the Court to be a mixed question of law and fact to be determined by analysis of the language of the applicable statute and the evidence before the Court. See 4 McQuillin Municipal Corporations § 13:11 (3d ed.).

The cardinal rule in statutory construction is that a court must ascertain and effectuate legislative intent whenever possible. Joint Legislative Committee v. Huff, 320 S.C. 241, 245, 464 S.E.2d 324, 326 (1995). Legislative intent must prevail if it can reasonably be discovered in language used and construed in light of its intended purpose. Glover by Cauthen v. Suitt Construction Co., 318 S.C. 465, 458 S.E.2d 535 (1995). Our appellate courts have held that words used in a statute are to be given their plain and ordinary meaning. Worthington v. Belcher,

274 S.C. 366, 368, 264 S.E.2d 148, 149 (1980); Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975). When the terms and language of a statute are plain and unambiguous and convey a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. Miller v. Doe, 312 S.C. 444, 441 S.E.2d 319 (1994); City of Columbia v. American Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996). Courts must apply the terms of a statute according to its literal meaning, without resort to subtle or forced construction in an attempt to limit or expand the scope of the statute. Holley v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E.2d 373 (1994). Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language. Timmons v. Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970). Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning. Lee v. Thermal Engineering Corp., 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002); see also State v. Dickinson, 339 S.C. 194, 199, 528 S.E.2d 675, 677 (Ct. App. 2000) (citing Black's Law Dictionary).

FINDINGS OF FACT¹

1. The action by the City Council at its regular meeting on May 7, 2018, complained of by Holcomb, was its amendment of a list of projects attached as an Exhibit to a Resolution listed on the agenda. Plaintiff's Hearing Exhibit 6 (which is identical to Exhibit 1 to Plaintiff's Amended Complaint) contains the Resolution ("Resolution No. 2018-11 Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV") and the Resolution's attached Exhibit A (a listing of six broadly described projects). The Minutes for the May 7

¹ The categorization of matters by the Court as either findings of fact or conclusions of law is not determinative. Accordingly, the mere delineation of a conclusion of law as a finding of fact, or vice versa, does not alter its effect in this Order.

meeting are Plaintiff's Hearing Exhibit 7 at trial (which is identical to Exhibit 2 to Plaintiff's Amended Complaint). The Minutes, prepared by then City Clerk Donna B. Young (who also testified at the hearing before the Court), reveal that, following introduction of the Resolution by motion and second, a further motion was made, seconded, and passed unanimously, to

amend the list of projects to add "New Savannah Bluff Lock and Dam" under the list of projects under the Public Works and Transportation Projects title.

The Minutes show that the Resolution, as amended, was passed unanimously.

2. At the hearing before the Court, Donna Young, the City Clerk at the time of the subject meeting, testified that, among her official duties as City Clerk, were preparation of the Council meeting minutes, the meeting agenda, and the other agenda information made available to the Council and the public. Ms. Young identified Defendants' Hearing Exhibit 1, a single page captioned as "AGENDA: REGULAR CITY COUNCIL MEETING," as the "agenda" for the Council meeting on May 7, 2018. This page also is represented in Plaintiff's Hearing Exhibit 5 and contained within Plaintiff's Hearing Exhibit 6. Ms. Young testified that Defendants' Hearing Exhibit 1 was posted on the City bulletin board in advance of the City Council meeting as the agenda required to be posted by the FOIA. She described the remainder of the documents contained in Plaintiff's Hearing Exhibit 6 as the agenda background, the agenda memo or the agenda packet. She further testified that Plaintiff's Hearing Exhibit 1 also described these other documents as "agenda attachments" or "agenda information," and that they were available online at the City website under the description "Agenda 050718 Complete" as indicated on Plaintiff's Hearing Exhibit 4.

Holcomb testified at the hearing before the Court that the "Agenda Complete" documents contained the "agenda" (which he described as only a summary of what was to be discussed). He

testified that he relied on the "Agenda Complete" documents that were "more detailed" than the "agenda" to supply him with information on the agenda items.

The Court finds as fact that Defendants' Hearing Exhibit 1 (also represented by the first page of Plaintiff's Hearing Exhibit 5) is the "agenda" for the Council meeting of May 7, 2018. The remainder of Plaintiff's Hearing Exhibit 6, by whatever name, contains information and documents in addition to the "agenda." See, for example, the description of "agenda packets" in S.C. Code of Regulations R. 12-604-3.

3. The agenda for the Council meeting of May 7, 2018, included as an agenda item under "New Business":

6. FINANCE: Resolution No. 2018-11 - A Resolution Identifying North Augusta Projects for the Aiken County Capital Project Sales Tax IV.

This agenda item provided the public with notice that the Council discussion and Council action at the meeting included the subject matter of projects for the Capital Projects Sales Tax.

CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction of this controversy and action by reason of the provisions of S.C. Code section 30-4-100. This Court has personal jurisdiction of the parties by reason of their location within the geographical boundaries of Aiken County. Venue is proper in Aiken County. Additionally, the parties, through counsel, acknowledge that the case is subject to a final ruling by this Court, without further discovery or presentation by the parties, pursuant to section 30-4-100(A).

2. The agenda for the Council meeting on May 7, 2018, is represented by Defendants' Hearing Exhibit 1. The word "agenda" is not defined in the FOIA; however, its

plain and ordinary meaning is consistent with the Black's Law Dictionary definition of "agenda" (submitted to the Court by Defendants' attorney at the hearing) as "a list of things to be done, as items to be considered at a meeting, usu. arranged in order of consideration." Black's Law Dictionary (10th ed. 2014). This definition is further supported by the testimony of the City Clerk and, indeed, by the testimony of Holcomb, as discussed in the Findings of Fact above.

3. The agenda for the meeting (Defendants' Hearing Exhibit 1) listed the Resolution identifying sales tax projects as an agenda item (Item 6). The agenda did not list the specific projects contained in the Exhibit to the Resolution. The Minutes establish that the agenda was not amended, and that no agenda item was added to the agenda. Further, the purpose of notice to the public underlying the FOIA was served; the public was fairly on notice, by the listing of the title of the Resolution, that projects for the Capital Projects Sales Tax would be the subject of Council discussion and Council action. Holcomb's contentions and argument, that he was entitled under the FOIA to notice of any additional specific projects proposed to be listed in the Resolution's attached Exhibit, advance a forced construction that expands the clear and explicit language of section 30-4-80(A).

4. Section 30-4-80(A), by that clear and explicit language, restricts only the addition of items to an agenda; it does not prohibit the amendment of the content of an item that already appears on an agenda. The operative allegations of the Complaint and Amended Complaint (in paragraphs 15, 16, 18, and 19) are that, at the Council meeting, the Council "amended the agenda item." However, S.C. Code section 30-4-80(A), by its clear and repeated language, only addresses adding items to the agenda, not amending an agenda item.

The seventh sentence of section 30-4-80(A) provides that, once an agenda is posted, "no items may be **added to the agenda** without an additional twenty-four hours notice to the

public...” The eighth sentence of the subsection provides that, after a meeting begins, “an item upon which action can be taken only may be **added to the agenda** by a two-thirds vote of the members . . . [or if it represents a final action] . . . it only may be **added to the agenda** by a two-thirds vote . . . and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not **added to the agenda**.” (Emphasis supplied).

5. For the reasons set out above, the Court concludes that the Plaintiff Holcomb has failed to establish a violation of the Freedom of Information Act by the Defendants as alleged.

DECLARATIONS

1. The Court declares that the action of the North Augusta City Council, at its meeting on May 7, 2018, in adopting Resolution No. 2018-11 as amended during the meeting, did not violate the State Freedom of Information Act.

2. The Court declares that the Plaintiff has failed to establish a violation of the Freedom of Information Act by the Defendants, and has failed to establish a right to any relief as sought by his Amended Complaint.

ORDER

Based on the Findings of Fact, Conclusions of Law, and Declarations above, **IT IS ORDERED** that judgment in this case be entered in favor of the Defendants.

AND IT IS SO ORDERED.

Clifton B. Newman, Circuit Court Judge

Dated: _____



Aiken Common Pleas

Case Caption: Herman Perry Holcomb VS North Augusta City Of , defendant, et al

Case Number: 2018CP0202705

Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2019-10-04 18:44:02 page 9 of 9

Thursday, October 17, 2019 at 6:33:24 PM Eastern Daylight Time

Subject: 2018CP0202705: Herman Perry Holcomb vs. City of North Augusta et al
Date: Tuesday, October 8, 2019 at 12:33:13 PM Eastern Daylight Time
From: Charla Plouffe
To: 'dione@carroll-law-offices.com'
CC: Danny Crowe

Good afternoon,

It has come to our attention that the Order on the Merits and Final Ruling signed by Judge Newman and filed on October 7, 2019 was done in error. Both Orders submitted by the parties were sent to our office having been signed by Judge Newman, and when we realized an Order had already been filed into the case, we asked Judge Newman which Order was meant to be signed. He indicated that the correct Order that needed to be filed was the Order submitted by the Plaintiff.

I will be removing the Order on the Merits and Final Ruling from the public view on the instruction from Judge Newman. The correct Order will be filed, and notification through the e-filing system will be sent out to all parties.

Please let me know if you have any questions.

Thank you,

Charla Plouffe
Aiken County Clerk of Court
Common Pleas/Jury
PO Box 583
Aiken, SC 29801

ELECTRONICALLY FILED - 2019 Oct 18 12:40 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)
)
) CASE NO.: 2018-CP-02-02705
HERMAN PERRY HOLCOMB,)
) Plaintiff,)
) MOTION TO DETERMINE THE
) AMOUNT OF ATTORNEY’S FEES AND
VS.) COSTS
)
CITY OF NORTH AUGUSTA)
and MAYOR AND CITY)
COUNCIL OF NORTH)
AUGUSTA,)
) Defendants.)
_____)

Comes now Plaintiff Herman Perry Holcomb (hereinafter “Holcomb”), by and through his undersigned counsel, and moves for an Order awarding attorney’s fees and costs, and respectfully provides the following in support:

1. This action came before this Court for an initial hearing on January 15, 2019.
2. On October 8, 2019, Judge Newman ruled in favor of the Plaintiff.
3. Plaintiff Holcomb was awarded reasonable attorney’s fees and costs.
4. The Court did not specify the amount deemed reasonable with regard to attorney’s fees or costs. The purpose of this motion is to demonstrate the

actual reasonable attorney's fees and costs and to request the Court make the award.

5. The undersigned has provided an Affidavit in support of this motion, which is adopted by reference as the basis for this motion. See Attached Affidavit of Dionè C. Carroll.
6. Attorney Kenneth R. Moss has also provided an Affidavit in support of the reasonableness of fees asserted by attorney Dionè C. Carroll, which further recommends the requested award. See Attached Affidavit of Kenneth R. Moss.

WHEREFORE, Plaintiff Holcomb prays for judgment from the Court as follows:

- a. an Order awarding him attorney's fees in the amount of \$10,518.00;
- b. an Order awarding him costs in the amount of \$699.92; and
- d. that the Court award such other and further relief as the Court deems appropriate, just and proper.

Respectfully submitted,

/s/ Dione' C. Carroll
Dione' C. Carroll, Esq.
S.C. Bar 78185
Attorney for Plaintiff Holcomb
Carroll Law Offices, P.A.
107 Pendleton St. NW
Aiken, SC 29801
Telephone: 803-514-2557
Fax: 1-866-954-0184
Email: dione@carroll-law-offices.com
Website: carroll-law-offices.com

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)

) CASE NO.: 2018-CP-02-02705
)

HERMAN PERRY HOLCOMB,)

Plaintiff,)

) AFFIDAVIT OF DIONÈ C. CARROLL
)

VS.)

CITY OF NORTH AUGUSTA)
and MAYOR AND CITY)
COUNCIL OF NORTH)
AUGUSTA,)

Defendants.)
_____)

Affidavit of Dione` C. Carroll, Esq. in support of attorney's fees and costs

PERSONALLY appeared before me Dione` C. Carroll, Esq. who, after being duly sworn, does swear or affirm, depose and state:

1. My name is Dione` C. Carroll. I am older than eighteen years of age. The statements in this Affidavit are based upon my own personal knowledge, and upon information and belief.
2. I am counsel for Plaintiff Herman Perry Holcomb in the above-captioned matter.

PROCEDURAL HISTORY OF THE CASE AND NATURE OF THE CLAIMS

3. This case was brought by Plaintiff Herman Perry Holcomb, pursuant to Plaintiff's Complaint as Amended, brought under the South Carolina Freedom of Information Act ("FOIA"), codified in sections 30-4-10 to 30-4-165 of the South Carolina Code.
4. The Amended Complaint seeks declaratory and injunctive relief associated with alleged inconsistencies with FOIA arising from the May 7, 2018 meeting of the City of North Augusta City Council.
5. An initial hearing was held on January 15, 2019. Both parties presented testimonial and documentary evidence for the Court's consideration, and counsel for both parties made argument with respect to the legal and factual issues raised by the request for declaratory and injunctive relief under FOIA. Proposed Orders were required of the parties, and were extensively briefed.
6. The Court ruled in favor of the Plaintiff on October 8, 2019 and declared that the conduct of the Defendants was a violation of FOIA.
7. The Court enjoined the Defendants from future similar actions and awarded Plaintiff Holcomb reasonable attorney's fees and costs. This affidavit sets forth the reasonable amount of those fees and costs.

REASONABLENESS OF FEES

8. Pursuant to the following six factors set forth in this affidavit, Mr. Holcomb's requested attorney's fees are reasonable.

The nature, extent, and difficulty of the case.

9. Over the past few years, the Defendants have not been transparent and have sought to limit timely access to public information and to circumvent agenda requirements articulated in FOIA, although Mr. Holcomb is entitled to said information, provided in compliance with FOIA.
10. The matter was strongly contested, and presented unique issues, involving a half day evidentiary hearing (approx.) on January 15, 2019. I worked more than 30 hours on this case. See Exhibit A (Dr. Holcomb Invoices with Summary Cover). And, significant paralegal hours were also necessary. See id. Additional hours were necessary for preparing this affidavit and associated documents, though compensation for them is not requested.
11. My rate charged to Mr. Holcomb is \$350 per hour. Mr. Holcomb has been invoiced for relevant attorney's fees plus costs for the case, including discounts from actual fees earned. See Exhibit A (Dr. Holcomb Invoices with Summary Cover) and Exhibit B (Holcomb Retainer Agreement).

12. There is an expectation that additional legal work will be necessary to bring the matter to completion as a motion to alter or amend has been filed by Defendants.
13. Consistent with the invoiced time and costs specifically dedicated to his case, Plaintiff Holcomb is requesting \$10,518.00 in attorney's fees for this case and \$699.92 reimbursement for costs associated with this action.

The time necessarily devoted to the case.

14. The amount of fees asserted herein was arrived at after consideration of the fees customary in the community for similar services, the time spent on the matters, the attorney's experience, the skill displayed by the attorney, and the amount of responsibility assumed by the attorney in connection with the matter.

Professional standing of counsel.

15. I am an attorney in good standing, licensed to practice law by the State of Florida since 1994, the State of South Carolina since 2009, and licensed in the State of North Carolina since 2017. See Exhibit C (Resume Materials).
16. I am also admitted to practice in the United States District Court for the Southern District of Florida, the United States District Court for the Middle

District of Florida, the United States District Court for South Carolina, the Eleventh Circuit Court of Appeals and the United States Supreme Court.

See id.

17. I was graduated cum laude from the Florida State University College of Law in 1994, where I was an Articles and Notes Editor for the Environmental and Land Use Law Journal and a member of the moot court mock trial division.

See id.

18. Immediately after law school, I worked for the Florida Governor's Commission for a Sustainable South Florida ("Governor's Commission"), to develop recommendations to the Governor's Office regarding comprehensive sustainability of the South Florida ecosystem.

19. After completing the Report for the Governor's Commission, I worked primarily as a commercial, land use and environmental litigator for Native American tribes, businesses, individuals and environmental groups in two Miami firms from September 1995 to September 2002. During this time, I worked very extensively on access to information and government in the sunshine matters and cases.

20. I spent the next six and a half (6.5) years as In-House General Counsel and legal advisor to a federally recognized Indian Tribe, the Miccosukee Tribe of

Indians of Florida, where I continued to maintain a significant litigation practice, while also acting as General Counsel.

21. In 2009, I moved to South Carolina where I already owned a horse farm and started a small firm practice, where I continue to practice today. My current practice involves significant work relating to issues involving FOIA and other government affairs. Other extensive work history and education is detailed in my attached resume. See Exhibit C (Resume Materials).
22. I have more than twenty-three (23) years of litigation experience, including numerous business, administrative, environmental, land use, Native American, government affairs, FOIA and government in the sunshine cases, among other significant areas. See Exhibit C (Resume Materials). I have practiced extensively in state, federal, administrative and tribal courts, including but not limited to Eleventh Circuit Court of Appeals and United States Supreme Court practice.
23. My professional standing more than justifies the charged rate.

Contingency of compensation.

24. Attorney's Fees relating to this case are governed by a retainer agreement between the undersigned affiant attorney and Plaintiff Holcomb. See Exhibit B. The agreement allows for attorney compensation based on an

hourly rate. Under that agreement, the maximum rate to be charged by any attorney is \$350.00 per hour. See Exhibit B.

25. The undersigned customarily bills by the hour, at the end of each month. This case required more than thirty (30) hours to complete tasks necessary to the case. Though, the undersigned discounted those hours for both the client and this application. Plaintiff Holcomb, therefore seeks to recover attorney's fees and costs associated with this matter consistent with the time that was spent as discounted.

The beneficial results obtained.

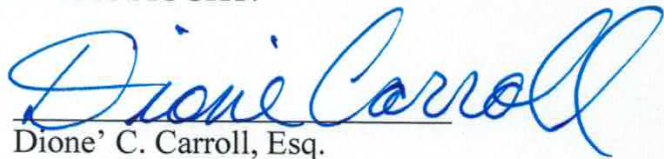
26. Plaintiff Holcomb prevailed on all his claims against the Defendants in this matter. Declaratory and injunctive relief was ordered as well as reasonable attorneys' fees and costs. In short, he was awarded all his requested relief.

Customary legal fees for similar services.

27. The undersigned submits this affidavit in support of Plaintiff Holcomb's attorney's fees request in Herman Perry Holcomb vs. City of North Augusta and Mayor and City Council of North Augusta, Court of Common Pleas Case No. 2018-CP-02-02705. The hours committed to the case and beneficial results obtained by the Plaintiff, support that the number of hours

worked are reasonable, appropriate and customary. The rate is reasonable as discussed above. And, the rate charged to Mr. Holcomb is a reasonable and appropriate rate considering the skill and experience and ordinary fees of the undersigned. A contemporaneous Affidavit is being submitted from attorney Kenneth Moss in support of the reasonableness of Mr. Holcomb's motion.

FURTHER THE AFFIANT SAYETH NAUGHT.



Dione' C. Carroll, Esq.

S.C. Bar 78185

Attorney for Plaintiff Holcomb

Carroll Law Offices, P.A.

107 Pendleton St. NW

Aiken, SC 29801

Telephone: 803-514-2557

Fax: 1-866-954-0184

Email: dione@carroll-law-offices.com

Website: carroll-law-offices.com

Sworn to me in Aiken County, South Carolina this 18th day of
October 2019.



Notary

My Commission expires 3-16-2022

Name: Natalie McPherson
Carroll Law Offices, P.A.
107 Pendleton St. NW
Aiken, SC 29801
Telephone: 803-514-2557
Fax: 1-866-954-0184
Email: natalie@carroll-law-offices.com

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EXHIBIT A

Dr. Holcomb Invoices (Attorney's Fees)

Time	Invoice Date	Invoice Number	Total
October 2018 Time	11/21/2018	1204	\$595.00
November 2018 Time	12/07/2018	1218	\$1,346.00
December 2018 Time	01/22/2019	1234	\$140
January 2019 Time	02/14/2019	1244	\$7,247.00
February 2019 Time	03/12/2019	1263	\$1,190.00
			\$10,518.00

Dr. Holcomb Invoices (Costs)

Time	Invoice Date	Invoice Number	Total
November 2018 Time	12/07/2018	1218	\$313.02
January 2019 Time	02/14/2019	1244	\$16.90
February 2019 Time	03/12/2019	1263	\$370.00
			\$699.92

INVOICE

BILL TO

Dr. Perry Holcomb

INVOICE # 1204

DATE 11/21/2018

DUE DATE 11/21/2018

TERMS Due on receipt

October 2018 Time

10/3/2018	[REDACTED]	0.20	350.00	70.00
10/4/2018	[REDACTED] Begin preparing Complaint.	0.20	350.00	70.00
10/4/2018	Continue preparing Complaint.	0.40	350.00	140.00
10/16/2018	[REDACTED]	0.10	350.00	35.00
10/17/2018	[REDACTED]	0.10	350.00	35.00
10/18/2018	[REDACTED]	0.10	350.00	35.00
10/18/2018	[REDACTED]	0.10	350.00	35.00
10/18/2018	[REDACTED] Continue preparing Complaint. Draft directions regarding Civil Cover Sheet and Summons.	2.20	350.00	770.00
10/19/2018	[REDACTED]	0.10	350.00	35.00
10/25/2018	[REDACTED]	0.80	350.00	280.00

Please remit payment to Carroll Law Offices, P.A. at 107 Pendleton Street N.W., Aiken, SC 29801. If you have any questions concerning this invoice, contact Natalie McPherson at (803) 514-2557 or at natalie@carroll-law-offices.com. Thank you for your business!

PAYMENT
BALANCE DUE

1,505.00

~~30.00~~

other issues

- \$ 910

\$ 595

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INVOICE

BILL TO

Dr. Perry Holcomb

INVOICE # 1218

DATE 12/07/2018

DUE DATE 12/07/2018

TERMS Due on receipt

November 2018 Time

11/9/2018	[REDACTED]	0.10	350.00	35.00
11/10/2018	[REDACTED]	0.10	350.00	35.00
11/12/2018	[REDACTED]			
11/13/2018	Revise complaint. Review materials from client.	1	350.00	350.00
11/13/2018	Draft Summons and Civil Action Coversheet. Research service issues. (Paralegal time)	0.30	90.00	27.00
11/13/2018	Conference with client. Finalize Complaint, Civil cover sheet, and Summons.	1	350.00	350.00
11/13/2018	Conference with client. Finalize draft initial filings.	0.60	350.00	210.00
11/14/2018	Calls to other counsel regarding issues in the Complaint.	0.10	350.00	35.00
11/15/2018	[REDACTED]	0.40	350.00	140.00
11/16/2018	Correspondence to client. Confirm procedure for filing Exhibits to Complaint. (Paralegal time)	0.10	90.00	9.00
11/16/2018	Revise Complaint and submit for filing.	1.50	350.00	525.00
11/16/2018	Efile Coversheet, Summons, and Complaint. Provide copy to client. (Paralegal time)	0.30	90.00	27.00
11/18/2018	[REDACTED]	0.10	350.00	35.00
11/19/2018	Prepare Amended Complaint.	1	350.00	350.00
11/20/2018	Revise draft Amended Complaint. Draft correspondence to client.	0.40	350.00	140.00
11/21/2018	Revise draft Amended Complaint. Draft correspondence to client regarding same.	0.20	350.00	70.00
11/26/2018	Revise draft Amended complaint. Draft correspondence to client.	0.20	350.00	70.00
11/27/2018	Confer with attorney. Research service issues. Prepare Amended Summons. Send correspondence to client. File Amended Summons and Amended Complaint. (Paralegal time)	0.50	90.00	45.00
11/28/2018	[REDACTED]	0.20	90.00	18.00
11/28/2018	[REDACTED]	0.10	350.00	35.00

PAID

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11/29/2018 Prepare Certificates of Service to Donna Young and Mayor and City Council of North Augusta. (Paralegal time)	0.20	90.00	18.00
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Costs:

11/16/2018 E-filing court costs to files Summons and Complaint			180.32
11/19/2018 Excess copies Provide copies of Civil Coversheet, Summons, and Complaint to defendants. Print copy for our file.	189	0.15	28.35
11/27/2018 Certified mail - Service of Summons and Complaint			19.02
11/28/2018 Excess copies Provide file stamped copies of Civil Cover Sheet, Summons, Complaint, Amended Summons, and Amended Complaint to defendants. Print copy for our file.	372	0.15	55.80
11/29/2018 Certified mail - Service of file stamped copies of Civil Cover Sheet, Summons, Complaint, Amended Summons, and Amended Complaint			29.53

Courtesy discount of \$600 applied. See below.

.....
Please remit payment to Carroll Law Offices, P.A. at 107 Pendleton Street N.W., Aiken, SC 29801. If you have any questions concerning this invoice, contact Natalie McPherson at (803) 514-2557 or at natalie@carroll-law-offices.com. Thank you for your business!

SUBTOTAL	3,187.02
DISCOUNT	-600.00
TOTAL	2,587.02
PAYMENT	2,587.02
BALANCE DUE	\$0.00

Other issues

- \$ 928

\$ 1,659.02

\$1,346 Attorneys fees
\$ 313.02 COSTS

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[Print](#) | [Close Window](#)

Subject: Aiken County Common Pleas Court - E-Filings Receipt
From: noreply@portal.sc.gov
Date: Fri, Nov 16, 2018 5:10 pm
To: Undisclosed recipients::

Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

Receipt Contact Information

Contact Name Aiken County Common Pleas Court
Contact Email
Contact Url
Contact Phone 803.642.1596
Contact Address P.O. Box 583
 Aiken, SC 29802

Transaction Summary

Description	Amount
Aiken County - Common Pleas - E-Filings	\$175.00
SC.GOV TOTAL	\$180.32

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name Natalie McPherson
Company Name Carroll Law Offices, P.A.
Local Reference ID F_1232282_5689
Receipt Date 11/16/2018
Receipt Time 05:10:23 PM EST

Payment Information

Payment Type Credit Card
Credit Card Type VISA
Credit Card Number *****0507
Order ID 65318490
Billing Name Natalie McPherson

Billing Information

Billing Address 107 Pendleton Street N.W.
Billing City, State Aiken, SC
ZIP/Postal Code 29801
Country US
Phone Number 803-514-2557
Fax Number
This receipt has been emailed to the address below.
Email Address dione@carroll-law-offices.com

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CERTIFIED MAIL® RECEIPT
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OFFICIAL USE

Certified Mail Fee \$3.45
Postage \$3.31
Total Postage and Fees \$6.76

Extra Services & Fees (check box, add fee as appropriate)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postmark Here
0652 13
11/27/2018

Sent To: Donna Young
100 Georgia Avenue
North Augusta, SC 29841

PS Form 3800, April 2015 PSN 7525-02-000-9042 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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OFFICIAL USE

Certified Mail Fee \$3.45
Postage \$3.31
Total Postage and Fees \$6.76

Extra Services & Fees (check box, add fee as appropriate)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postmark Here
0652 13
11/27/2018

Sent To: Mayor Pettit - City Council
100 Georgia Avenue
North Augusta, SC 29841

PS Form 3800, April 2015 PSN 7525-02-000-9042 See Reverse for Instructions

AIKEN
307 LAURENS ST NW
AIKEN
SC
29801-9998
4501200652
11/27/2018 (800)275-8777 5:06 PM

Product Description	Sale Qty	Final Price
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First-Class Mail	1	\$3.31
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Large Envelope (Domestic)
(NORTH AUGUSTA, SC 29841)
(Weight: 0 Lb 11.90 Oz)
(Estimated Delivery Date)
(Thursday 11/29/2018)

Certified	1	\$3.45
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(®USPS Certified Mail #)
(70151730000183518158)

Return Receipt	1	\$2.75
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First-Class Mail	1	\$3.31
------------------	---	--------

Large Envelope (Domestic)
(NORTH AUGUSTA, SC 29841)
(Weight: 0 Lb 11.90 Oz)
(Estimated Delivery Date)
(Thursday 11/29/2018)

Certified	1	\$3.45
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(®USPS Certified Mail #)
(70151730000183518141)

Return Receipt	1	\$2.75
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(®USPS Return Receipt #)
(9590940101075225404825)

Total	\$19.02
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Credit Card Remitd	\$19.02
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(Card Name: VISA)
(Account #: XXXXXXXXXXXX0507)
(Approval #: 027941)
(Transaction #: 666)
(AID: A0000000031010 Chip)
(AL: VISA CREDIT)
(PIN: Not Required)

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit www.usps.com USPS Tracking or call 1-800-222-1811.

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Refunds for guaranteed services only
Thank you for your business

HELP US SERVE YOU BETTER

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06 11/27/2018

8/21/18
 #11/27/2018
 November 2018

*Abraham
billed
Inv # 1218
November
11/29/18*

AIKEN
307 LAURENS ST NW
AIKEN
SC

29801-9998
4501200652

11/29/2018 (800)275-8777

3:52 AM

1730 0001 8351 8165

CERTIFIED MAIL® RECEIPT		Domestic Mail Only	
For delivery information, visit our website at www.usps.com			
OFFICIAL USE			
Certified Mail Fee	\$3.45	0652	
Extra Services & Fees (check box, add fee as appropriate)	\$7.75	13	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00		
<input type="checkbox"/> Return Receipt (electronic)	\$0.00		
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00		
<input type="checkbox"/> Adult Signature Required	\$0.00		
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00		
Postage	\$7.25		Postmark Here
Total Postage and Fees	\$13.45		11/29/2018
Sent To:	Mayor and City Council of North Augusta		
Street and Apt. No.:	100 Georgia Avenue		
City, State, ZIP+4®:	North Augusta, SC 29841		
PS Form 3800, April 2015 PSN 7530-02-000-9000		See Reverse for Instructions	

Product Description	Sale Qty	Final Price
PM 2-Day (Domestic) (NORTH AUGUSTA, SC 29841) (Weight: 1 Lb 5.30 Oz) (Expected Delivery Date) (Monday 12/03/2018)	1	\$7.25
Certified (USPS Certified Mail #) (70151730000183518172)	1	\$3.45
Return Receipt (USPS Return Receipt #) (9590940101075225404801)	1	\$2.75
PM 2-Day (Domestic) (NORTH AUGUSTA, SC 29841) (Weight: 1 Lb 5.60 Oz) (Expected Delivery Date) (Monday 12/03/2018)	1	\$7.25
Certified (USPS Certified Mail #) (70151730000183518165)	1	\$3.45
Return Receipt (USPS Return Receipt #) (9590940101075225404795)	1	\$2.75
First-Class Mail Large Envelope (Domestic) (ROCK HILL, SC 29730) (Weight: 0 Lb 1.80 Oz) (Estimated Delivery Date) (Saturday 12/01/2018)	1	\$1.21
First-Class Mail Large Envelope (Domestic) (AUGUSTA, GA 30901) (Weight: 0 Lb 2.80 Oz) (Estimated Delivery Date) (Saturday 12/01/2018)	1	\$1.42

Total \$29.53

Credit Card Remitd \$29.53

(Card Name: VISA)
(Account #: XXXXXXXXXXXX0507)
(Approval #: 029362)
(Transaction #: 564)
(AID: A0000000031010 (Chip)
(AL: VISA CREDIT)
(PIN: Not Required)

Includes up to \$50 insurance
Text your tracking number to 28777 (USPS) to get the latest status.
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SPS Tracking or call 1-800-222-1811.

Save this receipt as evidence of insurance. For information on filing an insurance claim go to:

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CARROLL
LAW OFFICES, P.A.

INVOICE

BILL TO

Dr. Perry Holcomb, PhD

INVOICE # 1234

DATE 01/22/2019

DUE DATE 01/22/2019

TERMS: Due on receipt

December 2018 Time

12/3/2018 [REDACTED]	0.30	90.00	27.00
12/12/2018 [REDACTED]	0.10	350.00	35.00
12/13/2018 Draft correspondence to client.	0.10	350.00	35.00
12/13/2018 Conference with client regarding filing of Proof of Service.	0.10	350.00	35.00
12/14/2018 Review Answer. Inform client regarding same.	0.10	350.00	35.00
12/23/2018 Review court docket for roster entry.	0.10	350.00	35.00
12/29/2018 [REDACTED]	0.10	350.00	35.00

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N.W., Aiken, SC 29801. If you have any questions concerning this invoice,
contact Natalie McPherson at (803) 514-2557 or at natalie@carroll-law-
offices.com. Thank you for your business!

BALANCE DUE

~~350.00~~
- # 91 -
\$140

Natalie C. Carroll, Esq.
natalie@carroll-law-offices.com
www.carroll-law-offices.com
107 Pendleton St. NW

T 803-514-2557
F 803-514-2557

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CARROLL
LAW OFFICES, P.A.

Invoice

BILL TO

Dr. Perry Holcomb, PhD

INVOICE # 1244

DATE 02/14/2019

DUE DATE 02/14/2019

TERMS Due on receipt

January 2019 Time

1/2/2019 Review docket. Research. Begin drafting Affidavit of Service. (FOIA Lit.)	0.10	350.00	35.00
1/3/2019 Research. Prepare Affidavit of Service. (FOIA Lit.)	0.40	350.00	140.00
1/4/2019 [REDACTED]	0.10	350.00	35.00
1/7/2019 [REDACTED]	0.10	350.00	35.00
1/7/2019 E-file Affidavit of Service. (Paralegal time) (FOIA Lit.)	0.30	90.00	27.00
1/9/2019 Review and respond to correspondence from client. Confirm options for getting a hearing. (FOIA Lit.)	0.10	350.00	35.00
1/9/2019 Review and respond to correspondence from client. (FOIA Lit.)	0.10	350.00	35.00
1/9/2019 [REDACTED]	0.10	350.00	35.00
1/9/2019 Draft correspondence to client regarding process for the hearing. (FOIA Lit.)	0.10	350.00	35.00
1/9/2019 Calls to Aiken County courthouse and judge's office to obtain a hearing date. Confer with attorney. (Paralegal time) (FOIA Lit.)	0.40	90.00	36.00
1/14/2019 Research. Prepare for hearing and meeting with client. (FOIA Lit.)	1	350.00	350.00
1/14/2019 Conference with client to prepare him for giving his testimony at the hearing. Prepare client for hearing. (FOIA Lit.)	1.70	350.00	595.00
1/14/2019 Prepare for hearing. Calls to consultant. (FOIA Lit.)	1	350.00	350.00
1/14/2019 Prepare for hearing. Prepare exhibits. Review Attorney General opinions. Prepare Memorandum of Law in support. Research. (FOIA Lit.)	6	350.00	2,100.00
1/15/2019 Assist in preparation for hearing. Inquire about needing a court reporter. (Paralegal time) (FOIA Lit.)	0.40	90.00	36.00
1/14/2019 Confer with attorney. Obtain court reporter. (Paralegal time) (FOIA Lit.)	0.50	90.00	45.00
1/15/2019 Prepare for and participate in trial. (FOIA Lit.)	6	350.00	2,100.00
1/18/2019 Draft correspondence to client. (FOIA Lit.)	0.10	350.00	35.00
1/18/2019 Review and respond to correspondences from court reporter.	0.10	350.00	35.00

oné C. Carroll, Esq.
me@carroll-law-offices.com
www.carroll-law-offices.com
7 Penn Station St. NW

T 803-514-2557
F 866-954-0184

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Call to client regarding same. (FOIA Lit.)			
1/18/2019			
	0.10	350.00	35.00
1/19/2019			
1/22/2019	0.10	350.00	35.00
Review and respond to correspondence from court reporter regarding transcript. (FOIA Lit.)	0.10	350.00	35.00
1/25/2019	0.10	350.00	35.00
Review and respond to correspondence from court reporter. Draft correspondence to client regarding same. (FOIA Lit.)	0.20	90.00	18.00
1/25/2019	0.20	90.00	18.00
Confer with attorney regarding transcript, correspondences, Order, and case requirements. (Paralegal time) (FOIA Lit.)	0.60	350.00	210.00
1/28/2019	3	350.00	1,050.00
Work on draft Order. (FOIA Lit.)	0.10	350.00	35.00
1/29/2019	2.30	350.00	805.00
Continue preparing draft proposed Order. Draft correspondence to client regarding same. (FOIA Lit.)	0.10	350.00	35.00
1/29/2019	0.10	350.00	35.00
Conference with client. (FOIA Lit.)	0.10	350.00	35.00
1/29/2019	169	0.10	16.90
Revise and finalize proposed Order. Conferences with client. Correspondence to client, Judge and opposing counsel. (FOIA Lit.)			
1/31/2019			
Brief review of draft Order from defendants. (FOIA Lit.)			
1/31/2019			
Conference with client. (FOIA Lit.)			
Excess copies 169 pages - Transcript and Email correspondences from Thanksgiving to January 25, 2019. (FOIA Lit.)			
Courtesy discount of \$1,000.00 applied. See below.			

Please remit payment to Carroll Law Offices, P.A. at 107 Pendleton Street N.W., Aiken, SC 29801. If you have any questions concerning this invoice, contact Natalie McPherson at (803) 514-2557 or at natalie@carroll-law-offices.com. Thank you for your business!

SUBTOTAL	8,438.90
DISCOUNT	-1,000.00
TOTAL	7,438.90
BALANCE DUE	7,438.90

Unrelated issues — \$175

\$7,263.90

\$7,247.00 Attorneys fees
 \$16.90 costs

Invoice

BILL TO

Dr. Perry Holcomb, PhD

INVOICE # 1263

DATE 03/12/2019

DUE DATE 03/12/2019

TERMS Due on receipt

ELECTRONICALLY FILED - 2019 Oct 18 6:53 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

February 2019 Time

2/1/2019 Work on client's comments on Proposed Order.	2.20	350.00	770.00
2/1/2019 [REDACTED]	0.50	90.00	45.00
2/1/2019 [REDACTED]	0.50	90.00	45.00
2/1/2019 Revise comments on Proposed Order. Conference with client.	0.60	350.00	210.00
2/1/2019 Make final revisions to Plaintiff's comments on Defendants' Proposed Order. Conference with client. Review comments of Defendants. Send comments to Judge and opposing counsel with correspondence.	0.50	350.00	175.00
2/4/2019 Draft correspondence to Judge Newman et al. enclosing hearing transcript. Inform client regarding same.	0.10	350.00	35.00
2/5/2019 [REDACTED]	0.10	350.00	35.00
2/6/2019 [REDACTED]	0.10	350.00	35.00
2/11/2019 [REDACTED]	0.30	350.00	105.00
2/11/2019 [REDACTED]	0.20	90.00	18.00
2/11/2019 [REDACTED]	0.20	350.00	70.00
2/11/2019 [REDACTED]	1	350.00	350.00
2/14/2019 [REDACTED]	0.10	350.00	35.00
2/15/2019 [REDACTED]	0.10	350.00	35.00
2/19/2019 [REDACTED]	0.30	350.00	105.00
2/21/2019 [REDACTED]	0.10	350.00	35.00
1/25/2019 Request original transcript from January 15, 2019 hearing.			370.00

Jioné C. Carroll, Esq.
jione@carroll-law-offices.com
www.carroll-law-offices.com
07 Pendleton St. NW
Aiken, SC 29801

T: 803-514-2557
F: 866-954-0184

Please remit payment to Carroll Law Offices, P.A. at 107 Pendleton Street
N.W., Aiken, SC 29801. If you have any questions concerning this invoice,
contact Natalie McPherson at (803) 514-2557 or at natalie@carroll-law-
offices.com. Thank you for your business!

BALANCE DUE

\$2,473.00

other issues — \$913

\$1,560

\$1,190 attorneys fees

\$370 costs

ELECTRONICALLY FILED - 2019 Oct 18 6:53 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202705



State of South Carolina
The Circuit Court of the Second Judicial Circuit

Brenda J. Sigwald, Circuit Court Reporter For the Honorable Doyet A. Early III
 P.O. Box 206, Jackson, SC 29831 bsigwald@sccourts.org

INVOICE NUMBER: 2019005

DATE OF HEARING: January 15, 2019

DATE OF BILLING: January 25, 2019

TO: Dion' Carroll
 Carroll Law Offices P.A.
 107 Pendleton Street N.W.
 Aiken, SC 29801

RE: Herman Perry Holcomb v
 City of North Augusta, et al
 2018CP0202705

Payment Due Upon Receipt – Payable to Brenda J. Sigwald

PG/QTY	RATE	DESCRIPTION	COST
74	\$ 5.00	Original of Transcript	\$370.00
		Total	\$370.00
		Deposit Paid	
		Balance Due	\$

NOTE: PURSUANT TO RULE 602(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF \$.75 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO: BRENDA J. SIGWALD

ELECTRONICALLY FILED - 2019 Oct 18 6:53 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

Carroll Law Offices, P.A.
107 Hendricks Street
Aiken, SC 29801

1/22/19 1218

Brenda J. Sigurdson \$ 370.00

Three hundred seventy

Diane Carroll

EXHIBIT B



CARROLL
LAW OFFICES, P.A.

August 16, 2018

Perry Holcomb
1891 Green Forest Drive
North Augusta, SC 29841

Re: Retainer letter

Dear Mr. Holcomb:

This letter is intended to describe the scope of the services the firm has been retained to provide during this engagement as well as the terms and conditions of representation. To that end, I have attached a standard **Terms of Representation**, which sets forth the firm's policies and practices regarding representation of clients and the payment of fees.

Regarding the scope of representation, I understand that you have retained my firm to provide necessary legal advice, recommendations drafting and other services regarding your personal legal needs and needs relating to City of North Augusta governance issues.

You will be billed each month for services rendered. Costs like filing fees will be billed at their actual costs. Billing for services will be done on an hourly basis, generally recording time in six-minute increments. The attorney hourly rate will be \$350, and paralegal rates will be significantly lower. Fees may adjust over time, and notice of same shall be made in advance. Travel time up to four (4) hours round trip will not be charged.

I look forward to representing you in this matter. And, unless otherwise directed, the scope of representation will be limited to providing the legal services necessary to accomplish the foregoing.

I hope that this letter and the attached Terms of Representation adequately explain the scope of services as well as the payment terms for fees. If they do and you are in agreement with them, then please indicate the affirmation by having this letter executed by an authorized representative, and return it to me for our files.

Dionè C. Carroll, Esq.
dione@carroll-law-offices.com
www.carroll-law-offices.com
107 Pendleton St. NW
Aiken, SC 29801

T: 803-514-2557
F: 866-954-0184

ELECTRONICALLY FILED - 2019 Oct 18 6:53 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

I appreciate the opportunity to work with you.

Very truly yours,



Dione C. Carroll, Esq.

Enclosure

The undersigned hereby accepts the terms of this engagement letter:

Signature: 
For: Perry Holcomb

Date: Aug. 16, 2018

Printed Name: Perry Holcomb

TERMS OF REPRESENTATION

Confirmation of Services. Carroll Law Offices, P.A., is pleased to have the opportunity to serve you. The firm's goal is to provide quality legal services on a prompt, efficient basis. The letter accompanying these Terms of Representation sets forth additional terms. If what is set forth in the accompanying letter or in these Terms of Representation does not accurately describe your understanding of the services the firm is to perform or the terms for billing fees and expenses, please advise the signatory of the accompanying letter. Unless notified promptly, the firm will assume that these Terms of Representation and the accompanying letter are acceptable to you.

Scope of Representation. The scope of your representation will be limited to providing only those services that are described in the accompanying letter. Unless otherwise noted, the firm will render those legal services that are necessary to the representation. No other services are intended to be provided without the mutual agreement of you, as the client, and Carroll Law Offices, P.A. Later, if you determine to change materially the scope of representation, it will need to be documented in writing.

Attorneys and Others to Assist in Providing Services. When it is appropriate for your particular matter and when it will serve to reduce costs, the firm intends potentially to assign parts of your work to other attorneys, paralegals, law clerks, and document clerks. In such an event, however, the attorney designated in the accompanying letter is your primary contact with the firm. This attorney will supervise the work and will be responsible to you for the entire matter.

Fees and Hourly Rates. Unless otherwise indicated in the accompanying letter, our fees are based primarily on the time spent by each professional who works on your matter. The hourly rate is based on the individual's expertise and experience. The firm reserves the right to adjust the fee rates on an annual basis and bills for the fees will reflect those adjustments.

Billing Statements. Unless there are circumstances which would indicate otherwise, each month you will receive a computer-generated statement showing a descriptions of the services performed through the end of the preceding month, identifying the attorneys and others who performed the services, and itemizing expenses incurred by us for your work.

Fees Not Contingent and Due within Thirty Days. Except as may be set out in the accompanying letter, fees are not contingent, and payment is due within 30 days of the receipt of the statement. If the firm has not received any comment from you about the statement within 30 days of its receipt, we will assume that you find it acceptable. As a means of encouraging timely payment of your statements, we reserve the right to add a late charge of 1.5% per month to bills which are past due, *i.e.*, statements that remain unpaid for more than 30 days.

Payment is to be made in U.S. dollars, by check, PayPal, credit card, or draft payable to "Carroll Law Offices, P.A."

If any of the firm's statements remain unpaid for more than 90 days, the firm may, consistent with ethical and court-imposed obligations, cease to perform services until satisfactory arrangements have been made for the payment of the unpaid statements and future fees.

Attorney-Client Communication. Statements may contain information protected by the attorney-client privilege. As the privilege could be deemed to have been waived if someone other than the client sees the privileged material, the firm recommends that you keep firm statements, as well as other letters and communications from the firm, in a separate file marked "Attorney-Client Privileged Materials" and keep the file in a secure place.

Termination of Services and Representation. You may terminate the firm's services at any time. Termination of representation does not, however, relieve you from the responsibility of paying those fees and expenses incurred through the date the firm is notified of such termination. Similarly, the firm may withdraw from this representation for reasons including your failure to promptly pay statements; failure to disclose all facts material to representation; failure to act in accordance with legal advice; development of one or more circumstances which, in the firm's judgment, impair the firm's ability to maintain an effective attorney-client relationship; or a developed conflict with a pre-existing client.

Completion of Matter. After a particular matter is completed, the firm does not (unless you specifically request in writing that the firm do so) undertake to continue to review that matter and update you concerning legal developments, such as changes in applicable laws or regulations. If you do ask the firm to review a specific matter on which someone from the firm has previously worked, the firm will consider that to be a new representation. Thus, while someone from the firm may, from time to time, call your attention to issues or legal developments that might be relevant to your operations, we are not undertaking to do so as a part of this representation.

Unless previously terminated, our representation will end upon our sending you our final statement for services rendered with respect to this matter.

Document Retention. If, upon any termination or completion of a matter, you wish to have your documents in the firm's possession delivered to you, please advise the firm. Otherwise, all such documents will be stored pursuant to our records retention program and, after a reasonable amount of time, will be destroyed in accordance with firm policy.

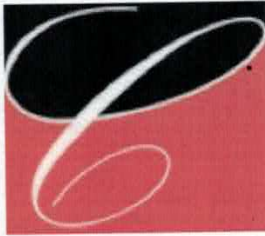
Client Confidences. Your communications with the firm professionals are protected by the attorney-client privilege. In addition, the firm will treat your matter as confidential and will not (unless you specifically grant the authority to do so) discuss or otherwise make available to anyone, including other clients, any information about you, your business, or firm work on your behalf.

Conflicts of Interest. Based on firm customary inquiries, the firm now believes there is no conflict of interest in representation for you in this matter. It is possible, that adverse relationships could develop between you or companies or persons related to you and another client of the firm. You will

be consulted if such arises and the matter will be addressed consistent with all applicable laws and ethical obligations.

No Guarantee. The firm will perform professional services on your behalf to the best of the firm's ability, but the firm cannot make and has not made any guarantees regarding the outcome of work on this project. Any expressions by representatives of the firm about the outcome of this project are best professional views only and are limited by the firm's factual knowledge at the time they are expressed.

EXHIBIT C



CARROLL LAW OFFICES, P.A.

Dionè C Carroll has practiced law since 1994. She practices in the areas of environmental law, Native American and American Indian law, equine law, family law, alternative energy law, public interest law, commercial law, business law, criminal law, open government law, civil rights law, government affairs, gaming law, entertainment law, lobbying affairs, litigation and appeals.

For 6 1/2 years of her career, Ms. Carroll served with distinction as General Counsel to the Miccosukee Tribe of Indians of Florida, and has spent the vast majority of her career representing the interests of Native Americans and Native American Tribes and environmental public interest groups.

Ms. Carroll resigned her position as General Counsel in February of 2009 to launch Carroll Law Offices, P.A. In her capacity as sole owner and principal attorney to the firm, she continues to represent Native Americans, Native Businesses and Tribal Nations, as well as other varied, primarily business clients. For the last several years, she has dedicated a large portion of her time to meeting the legal needs of the Catawba Indian Nation, the only federally recognized tribe in the State of South Carolina. She acts as outside General Counsel to several other businesses, including but not limited to an athletic products company and a waste management company. Carroll Law Offices, P.A., has its primary business office in idyllic downtown Aiken, South Carolina.

Ms. Carroll holds a Bachelor of Science in Economics, Cum Laude, from the University of South Alabama and was graduated Cum Laude from the Florida State University College of Law. At FSU, she was Articles and Notes Editor for the Journal of Land Use and Environmental Law, on the University's Moot Court Team (Mock Trial Division), and a member and President of the Phi Delta Phi fraternity and honor society. Ms. Carroll is a distinguished member of the Florida Bar, South Carolina Bar, Eleventh Circuit Court of Appeals, Federal Southern District Court of Florida Bar, Federal Middle District Court of Florida Bar, Federal District Court of South Carolina Bar and the United States Supreme Court Bar. Also she has practiced extensively in other various tribal and state courts.

Ms. Carroll's accomplishments do not end in the legal sphere. She is an accomplished musician, horse rider and horse trainer as well as a competitor and foxhunter. She is staff (Whipper-In) to Saxonburg Hounds and Aiken Hounds and is very involved in the hunting, care and management of the foxhound packs. She has also attained the rank of 4th degree black belt in Yoshukai Karate. Ms. Carroll was also made a Shihan (teacher of teachers) by her World Yoshukai Karate and Kobudo Organization and is therefore among the elite leaders of this style of karate. Her training and competing includes full-contact fighting, breaking and the use of weapons such as bo staff, nunchaku, sai and katana (samurai long) sword. She is very happily married to Desmond A. Hughes, who is originally from Northern Ireland. They live together at Striking Horse Farm, their horse farm in Aiken, South Carolina.

dione@carroll-law-offices.com

107 Pendleton St. NW, Aiken, SC 29801

T: 803-514-2557 – C: 305-807-2082 – F: 866-954-0184

Dionè C. Carroll, Esq.

Carroll Law Offices, P.A.
107 Pendleton St., NW
Aiken, SC 29801

dione@carroll-law-offices.com
Phone: 803-514-2557
Cell: 305-807-2082
Fax: 866-954-0184

PROFESSIONAL PROFILE

Aggressive attorney advocate, litigator and problem solver with broad experience and success in business, environmental, land use, governmental, Native American tribal, contracting, gaming, sports product and entertainment, cultural preservation, open government, lobbying, construction, transportation, government financing, intergovernmental relations, employment law, family law, education law and other issues of great public and private importance. Licensed in both South Carolina and Florida.

PROFESSIONAL LEGAL EXPERIENCE

Carroll Law Offices, P.A., Principal Attorney, 02/09-present.

- President and Principal Attorney for Carroll Law Offices, P.A.
- Primarily responsible for all activities of Carroll Law Offices, P.A. Focusing on Native American, family law, Indian Child Welfare Act, state, federal and local government, commercial gaming, entertainment, environmental, governmental affairs, Violence Against Women Act, economic development, cultural preservation, Head Start, employment and tribal housing issues.

University of South Carolina Aiken, Adjunct Professor, 10/09 and invited for 2010.

- Lecturer to Learning for Life program on Native Americans and the Law for October 2009 lecture series.
- Invited to lecture to Learning for Life program on Environmental Law for 2010 lecture series.

Miccosukee Tribe of Indians of Florida, Miami, FL, General Counsel, 10/02-02/09.

General Counsel for federally-recognized Indian Tribe residing in the Florida Everglades.

- Chief in house legal advisor for major legal matters pertaining to the Tribe.
- Prepared and reviewed and/or supervised hundreds of contracts each year.
- Coordinated representation by in house and outside counsel on diverse legal matters.
- Responsible for legal representation on business, environmental, Tribal sovereignty, cultural protection, trust land applications, contracts, employment, litigation, lobbying, law enforcement, education, gaming, governmental functions, funding and trust obligations and other policy related issues.

- Responsible for Indian Child Welfare Act ("ICWA") compliance matters.
- Planned, coordinated and hosted four annual Miccosukee Indian Law Conferences, including the first, and participated substantially in the fifth.
- Saved millions of dollars for the Tribe through advocacy.
- Secured important protection and recognition of tribal government and tribal sovereignty in countless ways, including recognition by courts, boards, businesses and agencies around the State of Florida and throughout the nation. *E.g.*, Tribal implementation of criminal sentences on the Reservation that were entered in other jurisdictions.
- Counsel to Tribal representative on the National Criminal Justice Association board (NCJA).
- Obtained concurrence of the Bureau of Indian Education (BIE) in the development of the first independent Tribal definition of Adequate Yearly Progress (AYP) ever developed under the No Child Left Behind Act.
- Representation in major Court Clean Water Act cases. *E.g.* Supreme Court Clean Water Act case, *South Florida Water Management District v. Miccosukee Tribe of Indians*, 124 S.Ct. 1537 (2004).
- Aggressive litigator for the Tribe, with extensive practice in State courts, Federal courts, Tribal courts and before the Governor and Cabinet.

Kozyak Tropin & Throckmorton, P.A., Miami, FL, Attorney, 7/00-9/02.

- Litigator for innovative and successful Miami litigation firm specializing in complex commercial litigation and bankruptcy.
- Responsible for both state and federal litigation, including class action litigation, and appellate work representing numerous and varied clients such as lending institutions, telecommunications companies, health care providers, and Native American tribes.

Lehtinen, O'Donnell, Vargas and Reiner, P.A., Miami, FL, Attorney, 9/95-6/00.

- Responsible for: administrative, federal and state court litigation, including environmental, commercial, open government, and other litigation involving complex issues; consultation on a wide array of gaming issues; appellate practice before courts and the Governor and Cabinet; legislative and executive lobbying; firm and client legislative and executive lobbyist registration and reporting; commercial contract preparation and review; acquisition of environmental and other permits for research, construction and other activities; construction contract management for major development; additional practice before the Ethics Commission, the Elections Commission, the South Florida Water Management District (SFWMD), the Department of Environmental Protection, military courts and tribal courts; and various other practice.
- Learned critical lawyering skills from Dexter Lehtinen, former U.S. Attorney for the Southern District of Florida, former state Representative and Senator and husband to Congresswoman Ileana Ros-Lehtinen.

- Opposed and prevented the widening of U.S. 1 into the environmentally sensitive Florida Keys.
- Trench Tribal attorney for high profile Everglades litigation to prevent continued water quality degradation, involving approximately one month every year of my time with the firm in judicial hearings and formal evidentiary proceedings.
- Won cutting edge Federal District Court victory against the SFWMD for declaratory and injunctive relief under the Clean Water Act.
- Litigated and settled very favorably a ground breaking open meetings case under Florida's Government in the Sunshine law.

Governor's Commission for a Sustainable South Florida, Coral Gables, FL, Research Analyst, 6/94-9/95.

- Research analyst for a forty-two member, executively created, commission.
- Facilitated and coordinated meetings to improve coordination regarding activities and information impacting the Everglades Ecosystem, encourage public input, and submit a comprehensive report to the Governor and Cabinet recommending actions and strategies to achieve a sustainable South Florida society, economy and healthy Everglades Ecosystem.

Florida House of Representatives Committee on Natural Resources, Tallahassee, FL, Legislative Intern and Part-time Analyst, 6/93-5/94.

- Legislative Intern and part-time legislative analyst, responsible for preparing reports for the Committee concerning potential legislation, drafting bills, analyzing bills, providing information to the Representatives and, occasionally, the public.
- Handled Everglades and Florida Bay restoration issues for '93-'94 legislative session.
- Staff analyst for the Everglades Forever Act, which has been the plan and basis for State of Florida restoration of the Everglades ever since its adoption.

Apgar and Theriaque, Tallahassee, FL, 8/92-5/93.

- Law clerk for private land use, administrative and environmental law firm.

Professor Mark Seidenfeld, Tallahassee, FL, 1/93-5/93.

- Research assistant for FSU College of Law Professor of media, administrative, and environmental law.

1000 FRIENDS OF FLORIDA (employment and pro bono), Tallahassee, FL, Summer 1992.

- Legal intern (funded through a public interest grant) for not-for-profit affordable housing advocate and environmentalist organization researching, writing, and consulting on memoranda of law, pleadings, and legal articles.

OTHER WORK AND PRO BONO HISTORY AVAILABLE UPON REQUEST

EDUCATION

Florida State University College of Law, Tallahassee, FL

J.D. received April 1994.

Graduated With Honors (.01 from High Honors)

Other Activities and Honors:

- Moot Court Team, Mock Trial Division
- FSU 1993 Mock Trial Intramural Champion
- Articles and Notes Editor, Journal of Land Use and Environmental Law
- Magister (President) '92/'93, Phi Delta Phi, legal honor society and fraternity
- Environmental Law Society

University of South Alabama, Mobile, AL

B.S., Economics received May 1991.

Graduated With Honors

Other Academic Activities and Honors:

- Dean's list for academic excellence
- Presidential Scholarship 1987 - 1991
- Awarded one year of college credit for scholastic aptitude
- Activities Coordinator for Jaguar Productions

PROFESSIONAL ASSOCIATIONS AND BOARDS

- United States Supreme Court Bar Association
- South Carolina Bar Association
- Certified for Trial Practice in South Carolina Under Rule 403 (Trial Experience)
- United States District Court for South Carolina
- Florida Bar Association
- United States District Court for the Southern District of Florida
- United States District Court for the Middle District of Florida
- United States Court of Appeals for the Eleventh Circuit
- American Bar Association
- Dade County Bar Association (fmr.)
- Aiken County Bar Association
- Environmental Section of the Florida Bar
- Florida Association of Women Lawyers (fmr.)
- Nova Southeastern University, College of Law, Community Service Advisory Board (fmr.)
- BNI, Aiken Networks Chapter, Membership Committee (fmr.)
- South Carolina Family Law Bench Bar Committee (for Catawba Indian Nation)
- ISWA Development Corporation Board of the Catawba Indian Nation (fmr.)
- Board of Directors, American Indian Chamber of Commerce of South Carolina (fmr.)
- Green Boundary Club, First Vice President, Board of Governors

OTHER INTERESTS, HOBBIES AND SKILLS

- Yoshukai Karate and Kobudo (Weapons) Organization, Shihan (teacher of teachers) and Black Belt (4th degree)
 - Full Contact Fighter
 - Equestrian
 - Staff/Whipper-in, Saxonburg Hounds and Aiken Hounds
 - Singer/Pianist
 - Strong, but not yet fluent, Spanish
-

SPEAKING ENGAGEMENTS, LECTURES, AWARDS AND PUBLICATIONS

Authored article entitled "Secondary Impacts in Environmental Resource Permitting: Yesterday, Today and Tomorrow" for the Florida Bar Environmental Section Reporter. March 1998.

Occasional substitute Adjunct Instructor for Dexter Lehtinen (Former Acting U.S. Attorney for the Southern District of Florida and former state legislator) at the University of Miami School of Law, Federal Indian Law.

Interviewed Live on Native American Calling Radio Program on the subject of Restoring the Everglades, which can be heard on over 30 tribal radio stations around the country. March 17, 2003.

Guest Appearances on Miccosukee Magazine Television Program, regarding Native American Issues, aired on Cable Access Stations around the country and for guests at the Miccosukee Resort and Convention Center.

Instructor at Florida Chamber of Commerce's 17th Annual Environmental Permitting Summer School in Marco Island, Florida. Spoke alongside Neil McAliley & Lloyd Pike on "Using NEPA & U.S. Environmental Law to Shape CERP and other Federal Projects." July 16-18, 2003.

Lecturer at the Water Law Seminar in Fort Lauderdale, Florida on June 20, 2003, sponsored by the Environmental and Land Use Law Section of the Florida Bar. Presentation title "Has NPDES Gone Too Far? The Cases," presented by Dionè Carroll, James Nutt, Terry Cole & Kenneth G. Spillias.

Speaker at the Everglades Coalition 19th Annual Conference in Miami, Florida. Everglades Restoration: Providing the Leadership, Renewing the Partnership. Lunch and Panel Discussion entitled "The S-9 Lawsuit: From the Everglades to the U.S. Supreme Court". Speakers present: James Nutt, Dionè Carroll, David Reiner (moderator), John Childe, David Guest, Michelle Diffenderfer. January 21-25, 2004.

Speaker at the Florida Water Law Conference - Supply, Regulation, Conservation & Quality in Tampa, Florida on May 12, 2005. Presentation title "NPDES Permitting for Water Transfers - Recent Developments," presented by Dionè Carroll & James Nutt. May 12-13, 2005.

Speaker at the Indian Country Law Conference in Miami, Florida. Presentation on "Indians and Criminal Justice - Assuming and Retroceding Criminal Jurisdiction" in conjunction with Kevin Washburn. February 10-12, 2005.

Speaker at the National Foundation for Women Legislators 66th Annual Conference in Sarasota, Florida. Lunch Forum entitled "Criminal Jurisdiction in Indian Country," speakers included: Thomas Heffelfinger, Governor Roland Johnson, Sam Winder, Keller George and Dionè Carroll. November 18-22, 2005.

Speaker at the Public Interest Conference in Gainesville, Florida. Presentation on the Environmental Opposition to the widening of U.S.1. into the Florida Keys and the anticipated primary and secondary impacts in conjunction with Richard Grosso & Lloyd Pike.

Speaker at the Indian Country Law Conference "The State of Our Nations" in Miami, Florida. Panel with Sonia O'Donnell entitled "Protecting Our Land & Water: An Environmental Update." February 23-25, 2006

Panelist for Florida International University Professionalism day. Introducing new students to Ethics, Civility & Professionalism. August, 2006.

Speaker at the 3rd Annual Miccosukee Indian Law Conference "Getting Justice For and In Indian Country" in Miami, Florida. Presentation on "Sovereignty, Immunity, Jurisdiction: Recent Developments in the Law" in conjunction with Sonia O'Donnell and Dexter Lehtinen. Moderator of Roundtable discussion entitled "What are the Threats to Tribal Sovereignty and What Can Be Done About Them?" March 29-31, 2007.

Speaker at the Key Environmental Issues in U.S. EPA Region 4 Conference, held by the American Bar Association, Section of Environment, Energy & Resources. Presentation on Permitting Water Transfers - Update on Water Transfer Litigation. Omni CNN Center - Atlanta, Georgia - May 17, 2007.

Speaker at the Florida Water Law Supply and Quality: Issues, Challenges and Solutions Conference. Presentation on NPDES Permitting Overview and Litigation Update. Hyatt Regency - Tampa - May 21-22, 2007.

Panelist for Florida International University Professionalism day. Introducing new students to Ethics, Civility & Professionalism. August, 2007.

Speaker at the 4th Annual Miccosukee Indian Law Conference "Government to Government Relations & Tribal Sovereignty" in Miami, Florida. Moderated Roundtable Discussion: "What are the most Important Issues and Threats to Indian Tribal Sovereignty?" March 13-15, 2008.

Featured in Florida State University, College of Law, Environmental Law Brochure, for fascinating career and accomplishments in the Environmental field, with an emphasis on Indian Law. 2008.

"Consulting with Tribal Nations" symposium, hosted by the United States Army Corps of Engineers, Jacksonville District, at the Miccosukee Resort and Gaming facility, Miami, Florida, to train Corps personnel from throughout the Nation on issues relating to government to government consultations with tribes. 2008.

Speaker at Native American Fish and Wildlife Society South East Region Conference. Presentation on "Environmental Law in Indian Country" in Miami, Florida. June 16th-18th, 2008.

Speaker at the Florida Bar Environmental Section Update. Presentation on jurisdiction and Waters of the United States, at Amelia Island Plantation, Florida. August 21-22, 2009.

Speaker at the Miccosukee Indian Law Conference. Moderator and Presentation on Indian Tribes and Commercial Activities. March 17-19, 2009

Speaker at the South Carolina Bar CLE Seminar for Family Lawyers regarding ICWA. March 20, 2009:

Adjunct Professor, University of South Carolina Aiken, Native Americans and the Law, learning for life lecture series, Fall 2009.

Invited, Adjunct Professor, University of South Carolina Aiken, Environmental Law, learning for life lecture series, 2010.

Lectured Volunteer Guardians Ad Litem for Aiken County regarding the application of Indian Child Welfare Act DSS cases and related issues of Native American law and history, 2011.

Selected by peers for inclusion in the 2011 - 2017 editions of *The Best Lawyers in America*[®] in the practice area of Native American Law.

Board of Directors, The Green Boundary, Aiken, South Carolina, Fall 2012 *et seq.* First Vice President, Fall 2016 *et seq.*

Continuing Legal Education lecturer regarding The Indian Child Welfare Act. December 2012.

Board of Directors, ISWA Housing Development Board, January 2013 – November 2013.

Board of Directors, South Carolina American Indian Chamber of Commerce of South Carolina, 2013 through mid-2015.

South Carolina Family Law Bench Bar Committee, 2013 - present.

Speaker, South Carolina Bar Association Meeting, "The Indian Child Welfare Act of 1978, An Overview, I'll Take Indian Child Welfare Act for \$1000," January 25, 2014.

Speaker, Appleseed CLE, "The Indian Child Welfare Act of 1978," April 11, 2014.

Committee Representative for Catawba Indian Nation. Joint State of South Carolina Department of Social Services/CIN committee for trial consultation under P.L. 113-183, Preventing Sex Trafficking and Strengthening Families Act and the Indian Child Welfare Act, 25 U.S.C. §1901 *et seq.*, September 2014 – present.

Lecturer and Trainer for South Carolina Department of Social Services and South Carolina Children's Law Center (in Columbia, Charleston, Greenville, Florence and Rock Hill Training Sessions), Indian Child Welfare Act and the Child Welfare Practice, November 2015 – March 2016.

Lecturer, South Carolina Foster Parent Association 2016 Annual Training Conference, "Serving Indian Children: What Every Foster Parent Needs to Know," April 2016.

Lecturer and Panelist, Federal Bar Association 2016 Annual Meeting and CLE Program for Civil & Criminal Practitioners at Harrah's Cherokee Casino Resort, "When a Tie is a Win: *Dollar General Corporation v. Mississippi Band of Choctaw Indians* and issues of Tribal Jurisdiction for all Practitioners," December 2, 2016.

Speaker at the South Carolina Department of Social Services CLE Seminar regarding the Indian Child Welfare Act. February 17, 2017.

Speaker at the South Carolina Family Court Judges' Conference regarding New Regulations and Guidelines for the Indian Child Welfare Act. April 28, 2017.

STATE OF SOUTH CAROLINA)	
COUNTY OF AIKEN)	
) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)
)
) CASE NO.: 2018-CP-02-02705
HERMAN PERRY HOLCOMB,)	
)
Plaintiff,)	
) AFFIDAVIT OF KENNETH R MOSS
) with respect to opinion as to
VS.)) reasonableness of fees asserted by
) Attorney Dionè C. Carroll
CITY OF NORTH AUGUSTA)	
and MAYOR AND CITY)	
COUNCIL OF NORTH)	
AUGUSTA,)	
)
Defendants.)	
_____)	

I, Kenneth R. Moss, Esq., swear or affirm, depose and state:

1. My name is Kenneth R. Moss. I am older than eighteen years of age. The statements in this Affidavit are based upon my own personal knowledge.
2. I have worked with Dionè C. Carroll professionally in the past.

PROCEDURAL HISTORY OF THE CASE AND NATURE OF THE CLAIMS WITH RESPECT TO THE FINAL ORDER

3. This action came before the Court pursuant to Plaintiff's Amended Complaint brought under the South Carolina Freedom of Information Act ("FOIA") as codified in sections 30-4-10 to 30-4-165 of the South Carolina Code.

4. The Amended Complaint seeks declaratory and injunctive relief associated with alleged inconsistencies with FOIA arising from the May 7, 2018 meeting of the City of North Augusta City Council.
5. The Judge ruled in favor of the Plaintiff, Herman Perry Holcomb. See Order dated October 8, 2019.
6. In his Order, Judge Newman awarded the Plaintiff reasonable attorney's fees and costs.
7. Attorney, Dione C. Carroll, prepared an affidavit in support of Mr. Holcomb's reasonable attorney's fees and costs.
8. I have had an opportunity to review Ms. Carroll's Affidavit and found it reasonable based on my knowledge of the nature, extent, and difficulty of the case; the time necessarily devoted to the case; the professional standing of counsel; contingency of compensation; the beneficial results obtained; and customary legal fees for similar services.
9. Ms. Carrol informs that she has approximately thirty (30) hours of time devoted to this case and that she normally charges a rate of three-hundred fifty dollars (\$350.00) per hour. That time devoted and billing rate would correspond to an award of attorney fees in the amount \$10,500.00. I have had similar cases in Horry County and am of the opinion that \$10,500.00 is a fair and reasonable amount of attorney fees in this case.

10. I have great respect for Ms. Carroll both professionally and personally. And, her professional standing more than justifies the rate charged.
11. The attorney's fees requested by Ms. Carroll are more than fair.

MY PROFESSIONAL STANDING

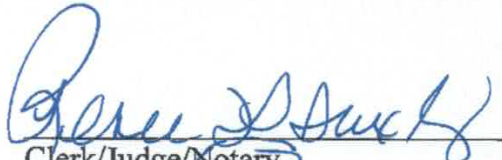
12. I am an attorney in good standing, licensed to practice law by the State of South Carolina since 1998.
13. I am a member of the Horry County Bar Association.
14. I graduated from the University of South Carolina, School of Law in 1997.
15. I have practiced law for 21 years. My practice areas include real estate development, real estate closings, personal injury, estate planning, workers compensation, DUI and traffic matters, criminal law, and general civil litigation. I have also litigated numerous claims under the South Carolina Freedom of Information Act cases.
16. I became a Circuit Court Mediator in 2012.

FURTHER THE AFFIANT SAYETH NAUGHT.



Kenneth R. Moss, S.C. Bar 15520
Attorney for Defendant David Chambers
Wright, Worley, Pope,
Ekster, & Moss, PLLC
628-A Sea Mountain Highway
North Myrtle Beach, SC 29582
Telephone: 843-281-9901
Fax: 1-843-281-9903
Email: kennethmoss@wwpemplaw.com

Sworn to me in Horry County, South Carolina this 18th day of
October 2019.



Clerk/Judge/Notary

My Commission expires 12-18-27.

STATE OF SOUTH CAROLINA
 COURT OF COMMON PLEAS FOR COUNTY OF AIKEN
 THE SECOND JUDICIAL CIRCUIT

Herman Perry Holcomb,)
)
 Plaintiff,)
)
 vs.)
)
 City of North Augusta, and Mayor)
 and City Council of North Augusta,)
)
 Defendants.)
 _____)

CIVIL ACTION FILE NO: 2018-CP-02-02705

ELECTRONICALLY FILED - 2019 Oct 31 11:25 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

Comes now the Plaintiff, Herman Perry Holcomb (“Holcomb”) and files this memorandum and responds in opposition (“Response”) to Defendants’ Notice of Motion and Motion for Alteration and Amendment of Findings and Judgment or, Alternatively, for a New Trial, Pursuant to Rules 52 and 59(a)(2) and (e), SCRPC (“Motion”). In support of Plaintiff’s Response in opposition, Plaintiff states as follows:

Defendants, in their Motion, assert that “[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court to ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” Motion at 1 (citing *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9. 21, 602 S.E.2d 772, 778 (2004)). However, Defendants neglect to advise the court that a party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment, but did not. *C.A.H. v. L.H.*, 315 S.C. 389, 392, 434 S.E.2d 268, 270 (1993). Furthermore, the Court’s ruling on Defendants’ Rule 59(e) motion is reviewed with only an abuse of discretion standard. *See Pollard v. Cnty. of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994). And, “[a]n abuse of discretion arises [only] where the judge issuing the order was controlled by an error of law or where the order is based on factual

conclusions that are without evidentiary support." *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 336, 644 S.E.2d 793, 795 (Ct. App. 2007); *see also Reed v. Ozmint*, 374 S.C. 19, 24, 647 S.E.2d 209, 211 (2007) (noting the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony). Nothing in this Court's Order constitutes an error of law or factual allegations that are without evidentiary support, and Defendants' Motion should be rejected.

Though Rule 59(a) does allow a motion for a new trial in an action tried without a jury, the rule indicates that the court "may" provide such relief and does not mandate it. Considering the full and fair hearing provided in this case, no additional trial is necessary or appropriate. *See* Exhibit 1 (Transcript of trial held on January 15, 2019). Defendants' request for a new trial should be rejected.

Plaintiff opposes Defendants' grounds for their Motion on the following bases:

1. Contrary to the grounds in paragraph 1 of the Motion, the Court, in its Order filed on October 8, properly construed the actions of Defendants, complained of in the Amended Complaint, as constituting a violation of S.C. Code § 30-4-80. It is the only reasonable inference from the facts and the only appropriate legal conclusion that there was a violation of FOIA. *See* Exhibit 1.

2. The Court correctly, as a matter of law, in its October 8, 2019 Order concluded that the Act requires twenty-four hours' notice to add items to an agenda. *See* S.C. Code Ann. § 30-4-80(A). No new or additional notice was given before the May 7, 2018 hearing where a very significant addition was made to the agenda complete. This failure to follow procedure constituted a violation of FOIA.

3. Contrary to the absurd suggestion by Defendants that the Court "committed legal error in failing to consider the common and dictionary meaning of 'agenda' and the S.C.

Code of Regulation definition of ‘agenda packet.’” Motion at 2, this Court clearly attended to and considered the arguments of both parties, including Defendants’ arguments on this subject, and made a reasoned decision. *See* Exhibit 1, Trial Tr. 13:15-23 (where counsel for Defendant admits he “handed up to Your Honor the definition of agenda packet from the South Carolina Code of Regulations, public records, municipal section, as well as the Black's Law dictionary definition of agenda, as the list of things to be considered.”); Exhibit 1, Trial Tr. 14 (where Defendants had the opportunity to argue to the Court about meaning of the terms). It is ridiculous to now suggest the Court failed “to consider the common dictionary meaning of ‘agenda’ and the S.C. Code of Regulation definition of ‘agenda packet.’” *See* Motion at 2. Instead, this Court considered Defendants’ arguments and legitimately rejected them as inapplicable.

4. Defendants contest, at numbered paragraph 4, that the Court “failed to rule on, consider or follow the issue raised by Defendants (including at Transcript, pages 12-16, and in their proposed Order) that well-established rules of statutory construction warranted findings, conclusions and judgment in favor of Defendants.” Motion at 4. This specious argument is expressly contrary to the Order of this Court. Instead, this Court held that,

Since Defendants told the public on the City website there was a complete agenda, by calling the document agenda 050718 complete, it was only reasonable for the public to rely on that document in preparing for a meeting. In fairness, and the spirit of the liberal construction required when applying FOIA, Defendants must treat what they call an “agenda” on their website as an agenda for FOIA purposes. The complete agenda was amended by the Defendants at the City Council meeting when it added the New Savannah Bluff Lock and Dam Project. Twenty-four hours notice was not given, and no finding that an emergency or an exigent circumstance existed was made. Defendants have, therefore, violated FOIA and are subject to declaratory and injunctive relief.”

Order at 8 (demonstrating consideration of and application of appropriate statutory construction)(emphasis supplied). Exhibit 1, Trial Tr. at 62:18 (“It’s the agenda according to its

cover page.”) The plain meaning of the FOIA is that an agenda, when amended, must be amended with Twenty-four hours’ notice, unless there is a finding that an emergency or exigent circumstances was made. No such notice was given or finding was made. The Court has applied the very most basic rules of statutory construction, and entered a very reasonable Order implementing them.

And, as the Court aptly observed in its Order,

South Carolina's FOIA was designed to guarantee the public reasonable access to certain activities of the government. See Fowler v. Beasley, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996). Last minute agenda changes are inconsistent with this obligation. FOIA creates an affirmative duty on the part of public bodies to disclose information. Bellamy, 305 S.C. at 295, 408 S.E.2d at 221; Campbell, 354 S.C. at 281, 580 S.E.2d at 166. The purpose of the FOIA is to protect the public by providing for the disclosure of information. Id. FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature. Campbell, 354 S.C. at 281, 580 S.E.2d at 166; Burton v. York Cty. Sheriff's Dep't, 358 S.C. 339, 347, 594 S.E.2d 888, 892-93 (Ct. App. 2004). It has also been recognized that any exception to FOIA’s applicability must be narrowly construed. Evening Post Publ’g Co. v. City of North Charleston, 363 S.E. 452, 457, 611 S.E.2d 496, 499 (2005).

See Order at 5-6. This Court very obviously did consider the applicable statutory construction to be applied to FOIA and correctly applied it to the instant case. A full and fair hearing was conducted, and Defendant participated throughout. *See* Exhibit 1. To the extent Defendants may be now trying to present new arguments, not presented prior to the judgment, such presentation is expressly prohibited as a matter of law and may not be the basis for a Rule 59(e) motion. *See C.A.H. v. L.H.*, 315 S.C. 389, 392, 434 S.E.2d 268, 270 (1993).

5. & 6. Defendants contend the Court “completely overlooked and failed to consider the direct and clear testimony of the Plaintiff that recognized the difference between an ‘agenda’ and an ‘Agenda Complete,’ undercutting the specious wordplay argued by Plaintiff’s attorney and adopted in the October 8 Order.” *See* Motion at 4. Plaintiff doubts very seriously that this Court

overlooked anything presented to this Court in these proceedings, when one considers the long and inclusive hearing the Court allowed and its engagement throughout the hearing.

Instead, Defendants are indulging in an expression of sour grapes because the Court came to a conclusion adverse to Defendants' position. What the Court evidently understood and expressed articulately in its Order was that,

When a City like the City of North Augusta presents its agenda in a way that misleads, it undermines FOIA. Defendants made up a detailed agenda it called "Regular Agenda of May 7, 2018." Defendants put the Regular Agenda of May 7, 2018 on the City website under a tab called "Agenda 050718 Complete." Defendants included in this complete agenda an apparent comprehensive list of projects, never mentioning any other project that might be added, and never having a prior publicly noticed meeting where the possibility of the New Savannah Lock and Dam Project being added was discussed until the hour before the City Council meeting. In this manner, Defendants gave Plaintiff and other members of the public confidence that they knew what was on the agenda, thus providing comfort that the decision that was being made was clear and not a secret.

Order at 8-9; *see also* Exhibit 1, Trial Tr. at 62:18 ("It's the agenda according to its cover page.") Defendants' blind commitment to its internal terminology and its cavalier manner of amending the materials it called an agenda complete, without providing statutorily required notice, harmed and deceived the public. All Defendants needed to do was to make it clear that the Agenda Complete was not an agenda to insulate itself from liability.

7. Defendants fail to understand how attorney fees are awarded under FOIA. This is apparent in their argument at paragraph 7 that Plaintiff "showed no sufficient basis for an award of attorney's fees." Motion at 5. Plaintiff requested in his Complaint "[t]hat this Court order Defendants to pay the Plaintiff his reasonable attorney fees and other costs and litigation expenses incurred in pursuing this case pursuant to S.C. Code Ann. Section 30-4-100."

Complaint at 4, ¶c. Under section 30-4-100, the only prerequisite to an award of attorney fees

and costs is that the party seeking relief must prevail, in whole or in part. *Cockrell v. Trs. of Dist. 20 Constituent Sch. Dist.*, 299 S.C. 155, 156, 382 S.E.2d 923, 924 (1989). Plaintiff prevailed in whole, the Court having awarded both declaratory and injunctive relief. This complete victory is the apparent reason for the pending Motion. Once Dr. Holcomb had prevailed, Plaintiff filed a motion to have the amount of fees and costs quantified, with supporting affidavits as required by the rules. *See* Motion to Determine Attorney's Fees filed October 18, 2019. In any event, Defendants cite no authority for their proposition that Mr. Holcomb should not be entitled to his fees. Given the fact that he prevailed, under FOIA, he is entitled to them.

8. Defendants disingenuously argue that they cannot understand what they need to stop doing, pursuant to the injunctive relief awarded, in order to comply with the law. Contrary to Defendants' shocked tone in paragraph 8, the Order makes it clear that Defendants should not repeat the behavior it pursued that gave rise to this suit. *See* Order at 9. The City of North Augusta has made a habit of abusing FOIA. *See* Complaint at 2; *see also* *Donahue v. City of N. Augusta*, 412 S.C. 526 (SC 2015). Such feigned confusion makes it appear Defendants have no intention of changing that behavior, regardless of what the Order says. When Plaintiff filed this case against Defendants to enforce his rights under the FOIA, instead of reflecting on their behavior and improving their processes, they abused Plaintiffs and the other citizens of the City of North Augusta by totally stopping the long-standing practice of putting the Agenda Complete on the web site before City Council meetings. *See* Exhibit 2, February 1, 2019 email from City Administrator (email to Plaintiff announcing new practice). There is no vagueness in the Order nor abuse of discretion. There is simply Defendants' continuing efforts to avoid their obligations under the law, regardless of the consequences.

9. In paragraph 9 of their Motion, Defendants accuse this Court of “[f]ailure to apply an appropriate level of judicial consideration and determination of this lawsuit, constitut[ing] a manifest injustice, and warrant[ing] a new trial.” Defendants’ accusations are absurd. This honorable Court held a lengthy and fair trial, which allowed both sides to present evidence and testimony without significant limitation, except as mandated by the Rules of Evidence and Civil Procedure. It allowed both sides to present competing orders. It further allowed both sides to comment on the proposed orders. The court took time in consideration of all the foregoing, and it withdrew an order issued in error, which reflects a comprehensive awareness of the substance of both orders, otherwise the Court would not have made the effort to correct an obvious clerical error. To argue “manifest injustice” is not credible under the circumstances.

10. Defendants’ request at paragraph 10 exalts form over substance. There is absolutely no reason this court needed to expressly vacate or supersede an Order filed through and administrative error. *See* Exhibit 3, October 8, 2019 email to counsel (explaining clerical error). Defendants cite no authority for their position.

This memorandum responds in opposition to Defendants’ Motion, which includes no affidavits. Plaintiff adopts by reference all the arguments it has previously presented in this case. Nothing in Defendants’ Motion has changed the validity of Plaintiff’s claims. A simple clerical error cannot possibly do that. Nothing new presented by Defendants changes the correctness of the Court’s considered ruling in this matter, and the Court should reject Defendants’ Motion in its entirety.

Respectfully submitted,

s/ Dione` C. Carroll
Dione` C. Carroll, Esq.
S.C. Bar 78185
Carroll Law Offices, P.A.
107 Pendleton St. NW
Aiken, SC 29801
Telephone: 803-514-2557
Fax: 1-866-954-0184
Email: dione@carroll-law-offices.com
Website: carroll-law-offices.com

Attorney for Plaintiff Herman Perry Holcomb

October 31, 2019

Exhibit 1 to Plaintiff's Memorandum in Opposition to Defendants' Motion is the Transcript of the Merits Hearing on January 15, 2019.

This Transcript is set out at pages 168 through 241 of this Record on Appeal.

----- Forwarded Message -----

From: "Glover, Todd" <TGlover@northaugusta.net>

To: "'hpholcomb@yahoo.com'" <hpholcomb@yahoo.com>

Cc: "Lamar, Sharon" <SLamar@northaugusta.net>; "Pettit, Robert" <RPettit@northaugusta.net>; Kelly Zier <Kzier@zierlawfirm.com>

Sent: Friday, February 1, 2019 3:11 PM

Subject: RE: From P. Holcomb

Mr. Holcomb,

I have been forwarded your inquiry to Mrs. Lamar regarding the publishing of the agenda packet. I would point out that our publishing of the agenda packet is a practice, not a policy.

As you are aware, you are challenging us in court as to what constitutes an agenda and until such is settled, we are only publishing what is required by law.

EXHIBIT 2

As Mrs. Lamar is new to her position, we are also taking the opportunity to re-examine how we put together the agenda packet for our future meetings.

Regards,

Todd



B. Todd Glover, MPA, ICMA-CM
City Administrator
P.O. Box 6400
100 Georgia Avenue
North Augusta, SC 29861-6400

tglover@northaugusta.net

803-441-4202 - Office
803-441-4203 - Fax

From: Perry Holcomb [<mailto:>]
Sent: Friday, February 01, 2019 2:41 PM
To: Lamar, Sharon <SLamar@northaugusta.net>
Subject: Quick Question

Hey Sharon,

Is an "agenda complete" planned for publishing on Doc Cen as has been city policy? The "agenda complete" contains the wording and other supporting material of the items to be addressed in the 02/04/19 meeting.

That is necessary information for the public to know in advance so any member can be prepared beforehand to address council on such.

Thanks,

Perry

[Print](#) | [Close Window](#)

Subject: 2018CP0202705: Herman Perry Holcomb vs. City of North Augusta et al
From: Charla Plouffe <CPlouffe@aikencountysc.gov>
Date: Tue, Oct 08, 2019 12:33 pm
To: "'dione@carroll-law-offices.com'" <dione@carroll-law-offices.com>
Cc: "'danny@crowelafave.com'" <danny@crowelafave.com>

Good afternoon,

It has come to our attention that the Order on the Merits and Final Ruling signed by Judge Newman and filed on October 7, 2019 was done in error. Both Orders submitted by the parties were sent to our office having been signed by Judge Newman, and when we realized an Order had already been filed into the case, we asked Judge Newman which Order was meant to be signed. He indicated that the correct Order that needed to be filed was the Order submitted by the Plaintiff.

I will be removing the Order on the Merits and Final Ruling from the public view on the instruction from Judge Newman. The correct Order will be filed, and notification through the e-filing system will be sent out to all parties.

Please let me know if you have any questions.

Thank you,

Charla Plouffe
Aiken County Clerk of Court
Common Pleas/Jury
PO Box 583
Aiken, SC 29801

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EXHIBIT 3