

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

RECEIVED

Aug 21 2020

SC Court of Appeals

Herman Perry Holcomb,

Respondent,

v.

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

Appellants.

RECORD ON APPEAL
VOLUME 2

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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

Civil Action No. 2018-CP-02-02705

RECEIVED
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SC Court of Appeals

Herman Perry Holcomb,

Respondent,

v.

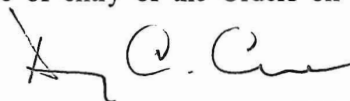
City of North Augusta and Mayor
and City Council of North Augusta,

Appellants.

NOTICE OF APPEAL

City of North Augusta and Mayor and City Council of North Augusta appeal the Order of Clifton B. Newman, South Carolina Circuit Court Judge, dated October 8, 2019, and the Order of Clifton B. Newman, South Carolina Circuit Court Judge, dated December 30, 2019, denying Appellants' timely motions to alter or amend judgment and for a new trial under Rules 52 and 59, SCRCP. Appellants received written notice of entry of the Orders on October 8, 2019, and December 30, 2019, respectively.

January 17, 2020



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State of South Carolina) In the Court
County of Aiken) Of Common Pleas

Docket Number: 2018-CP-02-02705

Herman Perry Holcomb,)
Plaintiff,)

vs.)

Transcript of Record

City of North Augusta, and)
Mayor and City Council of)
North Augusta,)
Defendants.)

January 15, 2019
Aiken, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge.

A P P E A R A N C E S:

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Brenda J. Sigwald, Circuit Court Reporter
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P.O. Box 206, Jackson, South Carolina 29831

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1 THE COURT: All right. We have the case of Holcomb
2 v. City of North Augusta and Mayor and City Council of
3 North Augusta.

4 MR. CROWE: Good morning. Your Honor, I'm Danny
5 Crowe for the defendants.

6 THE COURT: Hello, Mr. Crowe, good to see you
7 again.

8 MR. CROWE: Good to see you, sir.

9 With me is Kelly Zier, City Attorney for City Of
10 North Augusta.

11 THE COURT: Okay.

12 MS. CARROLL: Good morning, Your Honor, I'm Dion`
13 Carroll, I'm the attorney for Perry Holcomb, Herman Perry
14 Holcomb. He's the plaintiff in this matter and he's here
15 with me.

16 THE COURT: All right.

17 (There was a pause in the proceedings.)

18 THE COURT: All right. We are ready to go. Good
19 morning.

20 All right. We received last week some pleadings
21 and request for a hearing pursuant to S C code 30-4-100(A),
22 filed by Mr. Crowe on behalf of the defendants and we may
23 have received some other things as well.

24 Madam Plaintiff, did we -- yeah, request for
25 hearing. Today is as a request from both parties.

1 All right. So who do we start with? The plaintiff
2 or the defense? Plaintiff?

3 MS. CARROLL: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MS. CARROLL: I think that would be appropriate.
6 We did request a hearing in our complaint.

7 THE COURT: Right.

8 MS. CARROLL: And it's consistent with the type of
9 action that we're here on. This is a FOIA cause of action.
10 The FOIA statute allows for an expedited hearing and we are
11 here today because we would like to address that to you.

12 I feel like when we filed the complaint, we
13 attached to that complaint a number of documents which
14 comprise the largest substance of the issues in this
15 matter. I do feel like there is -- it is appropriate to --
16 I would like to have and present for you one witness, my
17 client, to sort of explain the nature of the documents.

18 But I otherwise think it's basically an undisputed
19 case. I also have here a bench memo and memorandum of law
20 to support what our position is and with our position I
21 would hand that to opposing counsel and up to Your Honor.

22 THE COURT: Okay. Very good.

23 (The documents were handed to the Court and
24 opposing counsel.)

25 MS. CARROLL: Your Honor, would you prefer a moment

1 to look that over or would you like for me to proceed.

2 THE COURT: Just a moment.

3 MS. CARROLL: Yes, Your Honor.

4 (There was a pause in the proceedings.)

5 THE COURT: All right. Ms. Carroll.

6 MS. CARROLL: Thank you, Your Honor.

7 If I may approach with one more thing, I would hand
8 you a copy of the statute which is the central feature of
9 our argument.

10 THE COURT: All right.

11 MS. CARROLL: I apologize, the print's a little
12 small. I'm struggling with this.

13 (The document was handed to the Court.)

14 MS. CARROLL: However, the statute in question is
15 section 30-4-80, notice of meetings of public bodies. And
16 it is part of the freedom of information act.

17 On or about May 3rd, we contend, of 2018, an agenda
18 was published and that agenda contained on it resolution
19 2018-11, and that resolution proposed a number of projects
20 that the sales tax would be used on when voted on in a
21 referendum of 2018, or proposed to be at the City of North
22 Augusta.

23 There was a meeting. That agenda that was
24 published, it was put on the website, it was otherwise sent
25 out properly, was for the May 7, 2018 meeting of the City

1 of North Augusta city council. At that city council
2 meeting, a decision was made to amend, to change the list
3 of projects to add to the list of projects a very
4 substantial project that had previously not been discussed
5 in meeting. It had not been previously on the agenda, that
6 was never before voted on in the City of North Augusta City
7 Council meetings and final action was taken on that day.

8 Mr. Holcomb, my client, the evidence would show, is
9 a citizen of the City of North Augusta. He has lived there
10 for many, many years. He's very active in city politics
11 and concerned about the welfare of his city and people,
12 citizenry of the city. He went, attended. He studies the
13 agendas, he went and got them. He looked at the agendas
14 ahead of time and, Your Honor, I am proffering this, this
15 is what the evidence will show when I have the opportunity
16 to have Mr. Holcomb examined for you.

17 And he'll say he went to the website. He looked
18 there. And on the website there's a link there that says
19 Agenda 050718 Complete, that if you click into there, there
20 is a document there called Regular Agenda of May 7, 2018.
21 And he had every reason to believe that that was the agenda
22 and he relied upon it.

23 At the city meeting, however, the city took the
24 position that it wanted to amend the list of projects that
25 I described for you and add a very substantial project

1 without any notice, no notice to citizenry, no notice to
2 anybody. There really did not appear to have been any
3 prior discussion of this matter. Mr. Holcomb is very
4 active in these matters and he had studied ahead of time to
5 make sure that he truly understood that.

6 In so doing, is city violated 30-4-80 of the
7 statute when they --

8 THE COURT: What -- before you get to that. You
9 said the city had a very substantial project?

10 MS. CARROLL: Yes, Your Honor.

11 THE COURT: And --

12 MS. CARROLL: It's called the New Savannah Bluff
13 Lock and Dam Project.

14 THE COURT: Okay. And in what way is that a
15 substantial project?

16 MS. CARROLL: Well, the project -- what this lists
17 was -- and if Your Honor has the complaint, attached is
18 Exhibit 1, you can see that this is their. But there was a
19 resolution that says, you know, we're passing this
20 resolution so that when they continue the sales tax that
21 these projects on this list, they can use the sales tax to
22 pay for those. And to this were some on there and this,
23 this New Savannah Lock and Dam Project was not on there,
24 and our understanding is that the amount of sales tax is on
25 the order of maybe hundreds of thousands, maybe more, of

1 dollars that would go to it.

2 So it is substantial in a monetary aspect. Without
3 that support, I don't know that -- what would be -- you
4 know, how it would affect that project, but it's hundreds
5 of thousands of dollars of impact.

6 So when it was amended on there, it violated
7 statute because according to 30-4-80, you cannot add to an
8 agenda an item unless you give 24 hours notice. It says
9 you can do that at the meeting if it's done by two-third's
10 vote of those present and voting, and the body makes a
11 finding of either an emergency or exigent circumstances.

12 In this case we freely admit that they met the
13 first prong. They voted two-thirds, I believe unanimously,
14 two-thirds or better to amend and add this to the list.
15 However, they did not make a finding of an emergency or
16 exigent circumstances. So in doing this, they have managed
17 to evade public review.

18 The purpose of FOIA is to protect the public. The
19 purpose of FOIA is to give the public access, make sure the
20 government's not done in private. They have a right to
21 know. They have a right to not be surprised about what's
22 going to be on their agenda. I would suggest to you that
23 the City of North Augusta will say to you Ack, that's not
24 an agenda. That's an agenda packet; that we can do
25 whatever we want with that. We're allowed to amend

1 resolutions. You know, we have to have that kind of
2 flexibility.

3 And I would assert to you, Your Honor, that that is
4 wrong. When an ordinary person of ordinary intelligence
5 looks at it and believes it's an agenda, it says on the
6 website, Agenda 050718 Complete. Wouldn't you look at the
7 complete agenda before you went to a meeting? When you
8 click on that to look on that agenda and you see Regular
9 Agenda of May 7, 2018, you'd believe that agenda is an
10 agenda. So when the city says it's an agenda, twice, and
11 they treat it in that manner, then they have to stick with
12 what -- you know, they have to treat it as what they call
13 it.

14 And according to the statute, it's necessary for
15 them to make this finding they did not make. So with that,
16 Your Honor, I would suggest that the documents that are
17 attached to our complaint demonstrate, you know, what was
18 the public notice. I would suggest that I would put
19 Mr. Holcomb up for the purpose to walk us through the
20 process of how one sees that notice on the website and
21 explains what he did and how he was impacted by it. And
22 with that mostly undisputed, I think it's something similar
23 to a summary judgment. It's very nearly that, that nearly
24 all the material facts are not in dispute and that with
25 that small variation of Mr. Holcomb involved, Your Honor

1 could and should decide that the city violated the Freedom
2 of Information Act and that you should award declaratory
3 and injunctive relief. We would just like to make sure
4 this doesn't happen again in this future and doesn't
5 continue in this manner.

6 THE COURT: And the addition to the agenda at the
7 meeting, was what portion of this exhibit that you are
8 referring to?

9 MS. CARROLL: If you'll go the Exhibit 2, Your
10 Honor, it is the minutes of the meeting, the May 7, 2018.
11 And on or around the first couple of pages this, this is a
12 description of how -- I'm sorry just give me one moment and
13 I'll tell you exactly what page it is.

14 (There was a pause in the proceedings.)

15 MS. CARROLL: Yes, Exhibit 2, and it says minutes
16 of May 7, 2018, order of business, regular meeting. And if
17 you go to Item Number 2, Finance, Resolution Number
18 2018-11, it's a resolution identifying North Augusta
19 projects for the Aiken County Capital Projects, Sales Tax
20 IV. And what that is, Your Honor, is a continuation of the
21 prior sales tax. So they were sending up to the higher-ups
22 which projects they wanted to see the sales tax spent on
23 for City of North Augusta.

24 And this document indicates, on motion by Council
25 Member Brooks, seconded by Council Member McGee, Council

1 considered a resolution identifying North Augusta projects
2 for the Aiken County Capital Projects Sales Tax IV. On
3 motion by Mayor Pettit, seconded by Council Member
4 Carpenter, a motion to amend the list of projects to add,
5 quote, New Savannah Bluff Lock and Dam under the list of
6 projects, under the public works and transportation
7 projects title was unanimously passed. Vote was then taken
8 on the original resolution as amended and unanimously
9 passed. The resolution text is as follows. And just after
10 that is the resolution.

11 So, Your Honor, they voted to amend by adding the
12 New Savannah Bluff Lock and Dam Project and then they
13 unanimously passed it. However, what they failed to do was
14 to make a finding of exigent or emergency circumstances.
15 Under 330-4-8, to add something to an agenda, it's
16 necessary to have that finding, if you do it on the day at
17 the meeting. And that's what they did. They won't -- it's
18 in -- these are their minutes. They won't contest that it
19 happened that day at the meeting.

20 I would suggest they won't contest that it wasn't
21 noticed separately. I would suggest what they will say to
22 you is, well, it was a resolution, it wasn't the agenda.
23 But that's not the way it was represented to the public and
24 if the public relied on that active reliance and what they
25 thought was the agenda and they thought that resolution was

1 going to be reviewed, maybe tinkered with, maybe amended,
2 but not a new major item added that did not exist on it
3 before, that specifically violates the language of this
4 statute. And it's simply not fair.

5 The public ought to be able to look at Agenda and
6 know what they're going to be considering. It was
7 represented to Mr. Holcomb on the website as the agenda and
8 he had no reason to believe that that wasn't it.

9 THE COURT: All right.

10 MS. CARROLL: Thank you, Your Honor.

11 THE COURT: Mr. Crowe?

12 MR. CROWE: Your Honor, if I could, I do not have a
13 memorandum to hand up. I do have a couple of documents and
14 if I could have a moment of oral argument.

15 Your Honor, the FOIA issue in this case is the
16 procedure at council meeting. The only legal authority
17 cited by the plaintiff in his complaint, amended complaint,
18 is Section 30-4-80 that was handed up to Your Honor, that
19 would be Subsection A, which deals with adding items to an
20 agenda. The operative allegations of the amended complaint
21 are in paragraphs 15, 16, 18, and 19. Those allegations
22 are that at the council meeting in May of 2018, the council
23 quote, amended the agenda item. And that's what Ms.
24 Carroll mentioned when she said they changed the list of
25 projects that were an exhibit to a resolution that was

1 listed on the agenda.

2 30-4-80, subsection A addresses quote, adding items
3 to the agenda, not amending an agenda item. The FOIA does
4 not extend as the plaintiff alleges to amending an agenda
5 item. The minutes in this case, the minutes of the council
6 meeting, which are the definitive evidence of what occurred
7 at the council meeting showed that the agenda was not
8 amended. The description of the agenda item on the agenda
9 was not amended. The first page that I handed up, the one
10 in color, is reproduced in black and white on page 3 of
11 Exhibit 1 of the plaintiff's amended complaint. This is
12 the agenda. This one page is the agenda. That's the
13 position we took in our answer. That continues to be our
14 position.

15 The -- that one page follows the traditional,
16 plain, ordinary meaning and understanding of an agenda.
17 The remainder of the documents in Exhibit A are what are
18 called the agenda packet or agenda memo. And I handed up
19 to Your Honor the definition of agenda packet from the
20 South Carolina Code of Regulations, public records,
21 municipal section, as well as the Black's Law dictionary
22 definition of agenda, as the list of things to be
23 considered.

24 As Your Honor knows in interpreting this statute,
25 30-4-80, the Court is obliged to -- our appellate courts

1 have held that words used in a statute are to be given
2 there plain and ordinary meaning. The instructions to the
3 Court, as Your Honor knows is that courts must apply the
4 terms of the statute to it's literal meaning without resort
5 to subtle or forced construction in an attempt to limit or
6 expand the scope of the statute.

7 Where the language of the statute is clear and
8 explicit, the Court cannot rewrite the statute and inject
9 matters into it which are not in the legislature's
10 language.

11 The case of Lee versus Thermal Engineering, a 2002
12 decision of the Court of appeals, at 572, SE 2d, 298,
13 provided that where a word is not define in a statute, our
14 appellate courts have looked to the usual dictionary
15 meaning to supply it's meaning. That was the reason I
16 handed up the Black's Law Dictionary definition of agenda
17 as a list because the Freedom of Information Act does not
18 define agenda.

19 Giving that word it's plain and ordinary meaning,
20 and we would offer as well through the testimony of Donna
21 Young, former clerk of the City of that the one page
22 document handed up to Your Honor is the agenda. Everything
23 else is the agenda packet.

24 The allegation of the complaint is that the city
25 counsel at its meeting amended the agenda item. Here that

1 would be Item 6 on the printed agenda: Finance, Resolution
2 Number 2018-11. That is what the plaintiff complains of.
3 Section 30-4-80 does not address amending items that are on
4 the agenda because the public has notice of those items.
5 30-4-80(a) addressed adding items to the agenda that were
6 not previously on the agenda. Because the purpose of that
7 -- one of the purposes of the FOIA, as Your Honor knows is
8 to give the public fair notice of what will be considered.

9 The City provided that fair notice with its one
10 page agenda which showed the item to be considered --
11 excuse me, to be considered. It takes -- the plaintiff's
12 argument is based on a mistaken belief that the entire
13 agenda packet is an agenda item. And that a exhibit
14 attached to a resolution that was an agenda item could not
15 be altered. As Your Honor knows, legislatures, like the
16 city council have the authority to amend ordinances and
17 resolutions that come before them. The FOIA, including
18 Section 30-4-808 does not prohibit the amendment by city
19 council of an ordinance or resolution. The notice
20 requirements of the FOIA are satisfied if that resolution
21 or ordinance is listed on the agenda. 30-4-80 only
22 addresses adding new items to an agenda. And that's, I
23 think the relevant portions of 30-4-80 beginning about the
24 seventh sentence that starts, Once an agenda for a regular,
25 called, special, or rescheduled meeting is posted pursuant,

1 to following. I believe three sentences all talk about
2 item, No items may be added to the agenda, they do not talk
3 about amending an agenda item as the plaintiff complains of
4 in this case.

5 So in the City's view, we have a simple issue here.
6 The FOIA does not reach that issue. Prohibition to the
7 FOIA on adding items to the agenda are not the same as
8 amending an agenda item as complained of by the plaintiff.

9 So we have a fallacious argument based on mistaken
10 belief and we would submit that this is a clear matter for
11 the Court and that's one of the reasons we requested the
12 initial hearing as provided in the 30-4-100, Your Honor.
13 Thank you.

14 THE COURT: All right. Ms. Carroll?

15 MS. CARROLL: Yes, Your Honor, may I have a little
16 brief rebuttal?

17 South Carolina's FOIA was designed to guarantee the
18 public reasonable access to certain activities of the
19 government. That 's from Fowler V Beasley 322 South
20 Carolina 463. Last minute agenda changes are inconsistent
21 with this obligation. FOIA creates an affirmative duty on
22 the part of the bodies to disclose information. That's
23 Bellamy and it's Campbell.

24 And the purpose of the FOIA is to protect the
25 public by providing the disclosure of information. FOIA is

1 remedial in nature and should be liberally construed to
2 carry out the purpose mandated by the legislature. You can
3 find that in *Burton v York County Sheriff's Department*, 358
4 South Carolina 339.

5 So this liberal construction, this liberal
6 construction talked about in *Burton v York* is for the
7 benefit of the public. It's for the benefit of people like
8 Mr. Holcomb here. Now the city now, now calls the
9 documents attached to our complaint the agenda packet.
10 That is not what they called it before the meeting. That
11 is not what they call it on their website. That is not
12 what they call it on the cover page of the documents
13 provided.

14 THE COURT: The page that Mr. Crowe handed up, it
15 says Agenda Regular City Council Meeting; Call to Order,
16 Invocation; Roll Call; Approval of Minutes; Unfinished
17 Business; New Business; Recognizing Visitors and
18 Adjournment.

19 You're position is that is not really an agenda or
20 that was not published or?

21 MS. CARROLL: No, Your Honor, we read that it's --
22 that is an agenda.

23 THE COURT: All right.

24 MS. CARROLL: And it is our position and it was
25 always Mr. Holcomb's understanding, which he will testify

1 to, that that was an initial summary agenda. That's on the
2 website. There's an agenda tag and then immediately under
3 that, you'll see there's a link, still there now. And it
4 says Agenda 050718 Complete. Complete, the finished
5 agenda. So Mr. Holcomb always took it as and understood it
6 to be that the first paper is the summary or preliminary
7 agenda and it was completed for the second document.
8 That's what they call it. And if you look at Exhibit 1 to
9 the complaint, I have enclosed the entire tag two, which I
10 said on the website is called the Agenda, with the date,
11 Complete, and it has the North Augusta logo on the top,
12 South Carolina Riverfront, and then it's called Regular
13 Agenda of May 7, 2018.

14 They call it the regular agenda. That their agenda
15 is more detailed than some other agendas doesn't make it
16 not an agenda. If they call it an agenda, I suggest to
17 Your Honor that it is an agenda.

18 THE COURT: How many pages does that consist of?

19 MS. CARROLL: I could not say, Your Honor, it's
20 quite large.

21 THE LAW CLERK: 32

22 THE COURT: 22?

23 THE LAW CLERK: The exhibits are 32 pages.

24 THE COURT: 32 pages.

25 MS. CARROLL: Yes, Your Honor.

1 THE COURT: So your position in effect is that
2 everything that is published pertaining to the meeting,
3 that all of the entire posting of things has to be on the
4 agenda or the agenda involved in the posting of items or?

5 MS. CARROLL: It's our position, Your Honor, that
6 this is a detailed agenda and I am not suggesting --

7 THE COURT: The detailed agenda consists of 32
8 pages.

9 MS. CARROLL: Yes, Your Honor, very large.
10 However, I'm not contest -- I'm not suggesting that it
11 couldn't be amended. I'm not suggesting to Your Honor that
12 some of what is in the agenda isn't -- isn't backup
13 material. What I am suggesting, Your Honor, is that it
14 cannot do what it is specifically prohibited by the
15 statute, which is add an entirely new project. This is a
16 detailed agenda, its got its backup and everything, you
17 know, backup. That puts the information about it.

18 THE COURT: So all right. And just a point of
19 discussion as I'm trying to flush out the respective
20 positions of the parties. Are you contending that all
21 matters to be discussed, including all amendments,
22 proposals or things that various council members might
23 interject during the course of discussing a matter that's
24 on the agenda, all of that must be given notice of in
25 advance of a meeting? Or all that's covered by FOIA?

1 MS. CARROLL: No, Your Honor.

2 THE COURT: Yeah, I'm asking that because it says
3 that the New Business: Finance Resolution, A resolution
4 identifying projects of Aiken County Capital Projects Sales
5 Tax IV. So if I'm having that discussion and a council
6 member says, Well, I want to, I don't know, put some new
7 stop signs in my district out of the money, and I want to
8 do this out of the sales tax money or that out of the sales
9 tax money, that cannot be done unless notice is given to
10 Mr. Holcomb of the meeting that those are matters that
11 might come up during the course of a discussion of this
12 resolution?

13 MS. CARROLL: Your Honor, we aren't suggesting that
14 amendments can't be done. That is absolutely not the case.
15 The problem is the addition of an entirely new project --
16 we think, you know, \$500,000 or more never mentioned in a
17 meeting, never suggested by the agenda and resolution,
18 like, this is new wholesale, never before, not in a -- not
19 in a prior agenda, not in a summary agenda, not in a
20 detailed agenda. I think you can tweak the subject
21 matter --

22 THE COURT: Now, I don't know whether it was
23 contemplated prior to the meeting or whether the folks that
24 drafted the agenda knew this matter would come up or
25 whether someone in the body sought to include it as part of

1 the discussions. I'm just trying to get a handle on how
2 far must this notice go and how much leeway people who are
3 participating in the government of North Augusta has with
4 regard to making motions, adding things, or interjecting
5 things or -- to a discussion or must it all be laid out in
6 advance, every item to be discussed.

7 MS. CARROLL: Your Honor, I think that --

8 THE COURT: Or considered.

9 MS. CARROLL: I think that -- and I understand that
10 the City of North Augusta is actually changing now the way
11 that they are doing this, and I hope that they do. The
12 problem -- I believe that the problem that we have here is
13 inadequate notice to the public. I mean that's what FOIA
14 is all about, making sure government's not done in secret.
15 There's no sneak attacks, that everything is up front and
16 out there on the table. And I would suggest the way that
17 it's been done up to this point has not fairly provided
18 notice and this is a demonstrative example.

19 I think that if you look at the summary agenda, all
20 you have is a title of an agenda that's not very
21 informative about what it will address. I think that the
22 complaint agenda, which is also provided, unavailable on
23 the website, gives a more complete list and you think when
24 they called it an agenda and they relied on it and then
25 somebody like Mr. Holcomb goes in and he reads it and he

1 goes, Oh, look, there's, you know, this many hundred
2 thousand dollars project or that many hundred thousand
3 dollars project and there's a \$500,000, I don't see New
4 Savannah Lock and Dam on there, I can feel some comfort, I
5 don't need to prepare, I don't need to speak out about it,
6 because that's not something that I have to worry about.

7 But then, having not raised it in advance, and Mr.
8 Holcomb can testify to this. I'm proffering this to you
9 now, that you know, he had stayed -- he's participating in
10 this and he wanted to know and to the best of our knowledge
11 and his ability to find out, there was nothing about it
12 publically discussed before.

13 So it's fundamentally wrong to have -- to
14 present -- to tell people, this is the agenda, this is
15 what's going to happen and then do something that makes a
16 half million dollar change without any prior notice, with
17 only one meeting, taking final agency action on the night
18 in question. I hope what they will do instead in the
19 future is provide a more detailed agenda. It doesn't
20 necessarily need to be as detailed as what I call the
21 complete agenda at this time, so that people like
22 Mr. Holcomb can know what he will be considering; and know
23 what he needs to be prepared for and be able to speak, in
24 order to project his interests and the interests of other
25 members in the community.

1 MR. CROWE: Your Honor, if I could, two quick
2 points --

3 THE COURT: All right. One second, please.

4 (There was a pause in the proceedings.)

5 THE COURT: Yes, sir.

6 MR. CROWE: Two quick points, Your Honor. The
7 agenda, the one page agenda, does not list any specific
8 projects under Item 6 of the resolution, identifying. So
9 the argument that the new project has been added unknown
10 clearly doesn't advance their position.

11 Additionally on the first page of Exhibit 3 to the
12 amended complaint, Mr. Holcomb states that in a study
13 session prior to this regular meeting, this is
14 Mr. Holcomb's own account, Mayor Pettit introduced an
15 addition of the list of projects to be sent to the County
16 Board of Elections. That new item was to set aside monies
17 from Sales Tax IV for the New Savannah Bluff Lock and Dam.

18 Later in the formal meeting, Council added it to
19 the previously published list that was part of the agenda
20 announced by the City for its consideration. So he was
21 aware prior to the meeting that this item would be added.
22 So to say that it came out of the blue and had not been
23 mentioned before is simply not supported by Mr. Holcomb's
24 own document.

25 MS. CARROLL: Your Honor --

1 THE COURT: Is that New Savannah project that's
2 mentioned within the 32 pages -- 32 page document?

3 MR. CROWE: No, sir, but it was -- according to
4 Mr. Holcomb's two page account on Exhibit 3 to the amended
5 complaint, he was aware of it, of its discussion at a study
6 session prior to the regular meeting.

7 MS. CARROLL: Your Honor, if I may, it was the hour
8 before. The -- the way the study sessions work at the City
9 of North Augusta, is that it is at six o'clock and then the
10 City Council starts at seven o'clock. So absolutely, and
11 if I omitted that --

12 MR. CROWE: But Ms. Carroll's assumption was
13 that --

14 MS. CARROLL: Excuse me, may I finish --

15 MR. CROWE: -- it had never been mentioned before,
16 which is inaccurate.

17 MS. CARROLL: Your Honor, if I failed to indicate
18 it -- I believe I said never before that day had it been
19 mentioned. And if I did not, I apologize. I did not mean
20 to mislead. It's absolutely true that it was in a study
21 session, but those seamlessly run into each other. The
22 study session is the warmup to the meeting. So Mr. Holcomb
23 found out the hour before the meeting. And therefore,
24 didn't have -- and had to walk from the study session to
25 the meeting and did not have an opportunity, therefore, to

1 prepare, because he didn't know about it before that day.

2 And as was admitted here, it appears nowhere. And
3 they managed to put out 32 pages ahead of time with all the
4 stuff that's supposed to tell us what's on the agenda, but
5 they add a half million dollar or more project the night
6 of, never having said a word about it in any of the backup.

7 And if it's not a violation of the failure to go
8 through all the process necessary to add something to the
9 list, then it's a violation because it didn't put them
10 fairly on notice of what was going to happen that night.
11 That is a big project. You should not be able to take an
12 Army Corp of Engineer's project and say, Boom, just
13 tonight, we'll start at the study session at six and we'll
14 have a word about it, we'll ease it on, Claude's your
15 Uncle, Fanny's your, aunt, it's out of here and we're not
16 going to bring it up in a second meeting or a third
17 meeting, it's not going to get voted on again before this
18 letter goes up to the powers that be, that's it. That's
19 where we are.

20 And that's not a fair notice under the Freedom of
21 Information Act.

22 MR. CROWE: Your Honor, with all due respect, Ms.
23 Carroll is rewriting the Freedom of Information Act to suit
24 her own ends. There's no requirement for this in the
25 Freedom of Information Act. What 30-4-80, the only section

1 the amended complaint relies on, provides or addresses is
2 adding items to the agenda, not adding items to the
3 discussion at a meeting.

4 This would go far beyond the notice intent of the
5 FOIA.

6 THE COURT: I'm trying to think of the two words
7 you're using. You're saying adding versus amending?

8 MR. CROWE: Yes, sir.

9 THE COURT: For your argument.

10 MR. CROWE: The amended complaint, in paragraph's
11 15, 16, 18, and 19, complains of the council amending the
12 agenda item. That's said about four times in -- at least
13 once in each of those paragraphs.

14 THE COURT: Okay. You can say what you want to
15 tell me, but I want you to answer my question first.

16 MR. CROWE: Okay, I'm sorry.

17 THE COURT: So the -- your -- is it your argument
18 that you cannot amend, but you can add?

19 MR. CROWE: No, we can add --

20 THE COURT: You can add.

21 MR. CROWE: I'm sorry, I misstated.

22 THE COURT: Okay.

23 MR. CROWE: We can amend.

24 THE COURT: Right.

25 MR. CROWE: But under the FOIA, we cannot add a new

1 item unless certain procedures are followed.

2 THE COURT: You can amend an existing one.

3 MR. CROWE: Yes, sir.

4 THE COURT: And that this project was an amendment
5 to an existing item?

6 MR. CROWE: Yes, sir, that's exactly our argument.

7 THE COURT: So amendment versus add; if I've got
8 that right.

9 MR. CROWE: Yes, sir.

10 THE COURT: Okay. So I'll hear what Ms. Carroll's
11 response to that specific distinction that you've made.

12 MR. CARROLL: Your Honor, it is our position that
13 you can make amendments on an agenda. It can be revised,
14 but when it rises to the level of adding something new, I
15 mean add is the language. And I would submit that adding a
16 project of that scale that had never been raised before,
17 that is adding a new matter. Call it what you will, but
18 the purpose of FOIA, and I'll refer to Campbell v Marion
19 County Hospital District 354 South Carolina --

20 THE COURT: You're referring to -- say again what
21 you're referring to.

22 MS. CARROLL: I'm sorry, Your Honor?

23 THE COURT: I'm trying to follow what you're
24 telling me and you're reading pretty quickly.

25 MS. CARROLL: Oh, I'm sorry. I was just going to

1 say that, that what I am telling you, the idea of being
2 able to add a massive project like that is refuted by a
3 case.

4 THE COURT: All right.

5 MS. CARROLL: And I would refer to the case
6 Campbell v Marion County Hospital District, 354, South
7 Carolina --

8 THE COURT: And what does that tell us?

9 MS. CARROLL: Well, it tells us that the central
10 purpose of the FOIA is to protect the public from secret
11 government activity. It also tells you that FOIA meets the
12 demand for open government while preserving workable
13 confidential -- confidentiality --

14 THE COURT: Well, that's probably undisputed.
15 That's why we have a FOIA law. But what does it tell us
16 about this specific issue?

17 MS. CARROLL: Well, it tells you that FOIA creates
18 an affirmative duty on the part of public bodies to
19 disclose information. And I would submit to you that when,
20 when you don't tell somebody, at all, in any of your notice
21 documents about a massive project being added, that you're
22 now going to fund with the people's taxes, this man's
23 taxes, everybody in the City of North Augusta taxes, then
24 you're violating both the letter of 30-4-80 and the spirit
25 of the entire law.

1 I mean the whole purpose of FOIA is meant to
2 accomplish what Campbell is talking about, making sure that
3 he knows what he's going in there to talk about.

4 THE COURT: Okay. All right. I've had the
5 occasion to hear many FOIA lawsuits over the years and, of
6 course, Mr. Sloan from Greenville filed a number and I've
7 heard some of his. I had a guy in Myrtle Beach, he -- in
8 Myrtle Beach area, he would observe how many stops the
9 police made and then on Monday morning, he would come to
10 the police department and want a copy of all of the arrest
11 warrants from the weekend, and so I've had some of these
12 situations before.

13 Of course, and I disagree with him on FOIA on that
14 case and I agreed with Mr. Sloan in the other case. So
15 FOIA's been around and a lot of litigation is being spawned
16 by it. But has this particular issue been addressed in any
17 of those cases that you're aware of?

18 MS. CARROLL: I'm not aware that it has, Your
19 Honor. Not in this way. We have -- there are cases on the
20 subject of, you know, can you change the -- have you
21 violated the agenda by taking an agenda item and moving it
22 to another time in the -- during the meeting? Like if it
23 was supposed to be before the executive session and then --

24 THE COURT: And a case came out as a result of
25 that?

1 MS. CARROLL: Yes, there was a case and I believe
2 you weren't allowed to do that.

3 THE COURT: You can't move it out of an agenda?

4 MS. CARROLL: To move it in a way -- right -- that
5 took the notice away from the public. It was the little
6 more, you know, more detailed discussion of what it was,
7 but it took notice away interest of the public so they
8 weren't able to know what was going on. They were advised
9 of one thing before the executive session and then they had
10 the executive session and then it took back up something
11 that had been on before and the -- I recall that being a
12 problem. I'm sorry I can't tell you which case that is off
13 the top of my head, but it was one of the many that I read
14 preparing for this.

15 THE COURT: All right. Well, it's just unappointed
16 authority of this amended versus adding versus how big the
17 -- how significant the amendment is, \$500 worth versus
18 \$200, or \$500,000, versus \$5,000.

19 Are there cases that address this specific issue?

20 MR. CROWE: To my knowledge, Your Honor, no. There
21 are no controlling cases on this issue or none that merely
22 touch on this idea of amending an agenda item. So I think
23 we're left with the statute and it's language and that is
24 the reason for my handing up the definition of agenda, the
25 definition of agenda packet, and the actual agenda, the

1 plain and ordinary meaning of the word.

2 THE COURT: Well, as everything stands you're
3 quoting the plaintiff's amended complaint. You both refer
4 to the same law, it seems that you're referencing
5 Mr. Holcomb's representation of the pleading. Are all the
6 -- is any of the facts -- are any of the facts in dispute?

7 MR. CROWE: Your Honor, we disagree with their
8 characterization of the entirety of Exhibit 1 as the
9 agenda.

10 THE COURT: Right.

11 MR. CROWE: We submit it's the agenda packet. I
12 would proffer the testimony of Donna Young, who's here in
13 court, on the issue that the one page that was handed up to
14 Your Honor, that's I believe page 3 of Exhibit 1, is the
15 agenda. The rest is called an, I believe in North
16 Augusta's language, an agenda memo. That is the supporting
17 documentation, the background, the documentary background
18 for the agenda and that the actual agenda is the list of
19 things to be considered by the counsel.

20 So we'd argue, Your Honor, that what the plaintiff
21 has done here is redefined the agenda packet as the agenda
22 and redefined an exhibit to a resolution as an agenda item
23 and that's just really not supported by the plain and
24 ordinary meaning of those words.

25 MS. CARROLL: And, Your Honor, I --

1 THE COURT: So you have one document, which you've
2 handed up to me that's the agenda, Regular City Council
3 Meeting. Then you have the, another 30 page document or so
4 that's referenced as being Regular agenda of May 7th.

5 So --

6 (There was a pause in the proceedings.)

7 THE COURT: The agenda is included within the
8 agenda packet --

9 MR. CROWE: Yes, sir.

10 THE COURT: So -- as far as you're -- you're
11 position, and Ms. Carroll's position is that everything is
12 the agenda.

13 MR. CROWE: That's correct, Your Honor.

14 THE COURT: Okay. And so what I'm driving at is,
15 you know, testimony is being proffered, I'm wondering
16 whether there's any need for testimony because everyone
17 seems to be -- to agree with the facts. It's just a
18 question of interpreting what it all means.

19 MR. CROWE: That would be our position, with that
20 proffer about the -- from the clerk, that would be our
21 position.

22 THE COURT: So do you all accept each other's
23 proffer? Essentially, we don't need testimony?

24 MR. CROWE: If the plaintiff's proffer is that
25 Mr. Holcomb understood the entire thing to be an agenda,

1 I'm fine with that.

2 THE COURT: Okay.

3 MR. CROWE: That evidence. If Ms. Carroll will
4 agree that the city clerk, whose duties are the preparation
5 of the agenda for the council, would testify that the one
6 page document is the agenda, then I would hope she would
7 accept my proffer.

8 THE COURT: Is that -- do you accept the various
9 proffers, Ms. Carroll, or you want to move into another
10 direction of the conversation?

11 MS. CARROLL: May I speak with my client --

12 THE COURT: I'm trying to determine do I need to
13 hear testimony or accept these proffers.

14 MS. CARROLL: May I speak with my client just one
15 moment?

16 THE COURT: Sure, yes.

17 (There was a pause in the proceedings.)

18 MS. CARROLL: Your Honor?

19 THE COURT: Yes, ma'am.

20 MS. CARROLL: I would happily stipulate that the
21 clerk would say that that one piece of paper was the
22 agenda. I think that that's the only thing I've been asked
23 to do. However, I think that that would be conditioned on
24 an understanding, a better understanding of what the City's
25 representations are.

1 I have brought a packet of documents which are
2 additional -- they are all -- I believe they are all from
3 -- other than the cover page, I believe they are all from
4 the City's website. I didn't obtain from any third party.
5 I would be happy to provide them to opposing counsel, to
6 you, maybe we can just stipulate that these are the
7 documents.

8 I can explain what they are and there might not be
9 a need for testimony. And -- the trouble I'm having, just
10 a little bit, is they have -- they have come up with this
11 idea of an agenda packet. That is not a word that appears
12 anywhere in their notices. That's not a word that appears
13 anywhere in the agenda, the regular agenda, page 2. It
14 sounds very much like it's a great idea that somebody came
15 up with so they could avoid it. But the thing that they
16 call the regular agenda is actually an agenda with a lot of
17 detailed back up in it.

18 I mean I admit that it has a lot of explanatory
19 stuff, but what's being addressed? What is the item? What
20 is under consideration? Something was added, a huge
21 project. And that violates the statute. So these
22 additional documents, if they're not objectionable to
23 anyone, show that they actually call it, you know there's
24 Agenda and then there's Agenda, date, Complete, that, you
25 know, it shows you how you would find that if you were a

1 member of the public looking for it. It would show you
2 that there's no mention of agenda packets. That's a
3 thing --

4 THE COURT: You mean throughout the -- everything
5 you have pulled from the city's website?

6 MS. CARROLL: Yes, Your Honor.

7 THE COURT: All right.

8 MS. CARROLL: That is not -- that's --

9 THE COURT: Nowhere is there in this 30 page
10 document defined or explained as being something other than
11 an agenda?

12 MS. CARROLL: And it's very interesting, you know,
13 they cite the South Carolina Code of Regulations, 12-604.3
14 and the definition of description there is, record of items
15 submitted for municipal council's consideration,
16 information includes meeting, number, date, locale, and
17 time; order and description of proposed business, submit to
18 the agenda packet.

19 Well, what does it sound like to me? It sounds
20 like an agenda plus a notice for the meeting. That's not
21 any different. If this is the State's definition of an
22 agenda packet, it's no great surprise that the public
23 thinks that Agenda 050718 Complete is the agenda when the
24 City tells them that it is.

25 THE COURT: All right. Well, do you agree,

1 Mr. Crowe, that whatever's on the website that she posted
2 can be considered by me?

3 MR. CROWE: Your Honor, I -- in all candor, I
4 haven't seen that before. It hasn't been presented to me
5 before. I haven't had a chance to look at it, verify it,
6 I'm not in a position to agree with that.

7 THE COURT: Well, we'll need to take an opportunity
8 to review it. We have a conference call that we're going
9 to take at 11:30, so we're going to -- it shouldn't take
10 very long, but we'll recess for you to review the item that
11 she is wanting you to look at and let me know whether you
12 agree or disagree.

13 Well, if something's on the city website, then it's
14 on the city website, but I don't know who put it on the
15 website or --

16 MR. CROWE: Again, I don't know anything about it.
17 I'm happy to look at it.

18 MS. CARROLL: To be completely clear for the
19 record, Your Honor, what it is, is not a screen shot of the
20 website, but when you go to the website and you click
21 print, you know, they give you an option to print it, it
22 gives you -- it converts that picture of the screen into
23 text and that text is printable. That's the only way I
24 could print it.

25 THE COURT: So you were searching for a definition

1 on the agenda packet?

2 MS. CARROLL: No, Your Honor, I was looking for the
3 agenda. I did -- what I did was I Googled City of North
4 Augusta, exactly what Mr. Holcomb does, I would proffer,
5 when he goes -- that's how he gets the information, off the
6 website.

7 So I did City of North Augusta, City Council Agenda
8 and what pops up is the first page and that page allows you
9 to click on Document Central. You click on Document
10 Central, that gives you the date, year date 2018. You go
11 to 2018 and then that gives you a month. And then you can
12 click into month. And then after that you see all of the
13 documents provided, the links to all of the documents
14 provided by the City of North Augusta, including --

15 THE COURT: Well, I don't know how much information
16 you want me to look at or if you need me to look at it or
17 -- but Mr. Crowe needs to look at it. I'm trying to settle
18 the record as to --

19 MR. CROWE: Yes, sir.

20 THE COURT: -- what I'll be making a decision based
21 on and so I need y'all to just confer further on this
22 issue. But there's no point in taking the testimony to say
23 everything that you've already said. It's acknowledged
24 that that's what everyone will say.

25 MR. CROWE: Yes, sir. And on the agenda packet, I

1 didn't make up that term, that's a term that's used in the
2 South Carolina Code of Regulations, which is responsible
3 for how -- what records municipalities keep. And the
4 definition of agenda packet speaks to a record, not just a
5 list.

6 THE COURT: So that is a term within the law as you
7 said, under -- so we can find that so we can see it.

8 MR. CROWE: Yes, sir. And also it's a matter of
9 statutory construction. What the plaintiff thinks or what
10 Ms. Carroll thinks a word means is not determinative for
11 the Court's purposes. That's why the Courts interpret the
12 statutes and how the Court's do that is looking at the
13 definition of the words and their plain and ordinary
14 meaning. So I don't know the extent to which that has any
15 probative value here.

16 THE COURT: I understand. We're going to take a
17 break and give y'all a chance to ponder all of that and
18 we'll be back before long.

19 MR. CROWE: Thank you, Your Honor.

20 MS. CARROLL: Thank you.

21 (A brief recess was observed.)

22 THE COURT: All right. Back with you all and back
23 on the record.

24 Where do we stand?

25 MR. CROWE: Your Honor, I have reviewed the

1 plaintiff's exhibits that were provided to me Exhibits 1
2 through 7. I have no objection to those.

3 THE COURT: Okay.

4 MR. CROWE: I had marked as Defendant's Exhibit 1
5 the single sheet that we consider to be a agenda. I don't
6 know if Plaintiff's Counsel has any objection to that.

7 MS. CARROLL: Your Honor, I have a little bit of a
8 concern because I think we, we don't -- neither of us
9 object to the authenticity of these documents, these
10 documents produced by the City of North Augusta, but Your
11 Honor, Counsel informed me when I asked him if he would
12 stipulate that these were documents on the website that the
13 public relied upon in knowing -- getting notice of and
14 knowing whether to go to a meeting, he said he would not
15 stipulate to anything like that.

16 So, so I think that we may just simply need to have
17 a little brief testimony in order the explain what they are
18 and how that --

19 THE COURT: All right. You may proceed.

20 MS. CARROLL: Oh, I may proceed. Thank you.

21 MR. CROWE: And then I have a proffer from
22 Ms. Young. I don't know if Plaintiff's Counsel's going to
23 agree to that. I can state it and see if she agrees before
24 we call her witness.

25 MS. CARROLL: I believe that I agreed earlier that

1 I would accept that Ms. Young would, if she were the
2 testify, would say that that one piece of paper was an
3 agenda.

4 THE COURT: Well, I don't know how you would expect
5 him to agree as to what the public relies on. I mean, you
6 know, how can he stipulate to what this vast public out
7 there relies on, so, I understand. So if you need
8 testimony, let's proceed.

9 MS. CARROLL: I think the question was maybe we
10 don't require Ms. Young's testimony.

11 THE COURT: Yes, we've agreed on that.

12 MR. CROWE: Well, I -- there were some other points
13 that I discussed with Plaintiff's Counsel that I don't
14 think she agrees with.

15 THE COURT: All right. Well, let's proceed.

16 MS. CARROLL: Okay. Your Honor, before I call my
17 first witness here, I would like to make reference to a
18 discussion we had earlier. I had a moment to, while we
19 were recessed there, to look through my documents. And
20 there was an attorney general opinion from June 28, 2018.
21 I don't know -- I believe the case may have ultimately have
22 come out of it.

23 But this is the case that, June 28, 2018, attorney
24 general's opinion, is the one that had the situation where
25 an agenda was changed in a way that moved it around, just

1 for Your Honor's information. It was related to the Town
2 of Mt. Pleasant and interestingly enough, the attorney
3 general, Robert D. Cook in this one, came to the position
4 that FOIA, in 30-4-80 actually also did not allow
5 amendment. If it was in a way that voided FOIA, I think is
6 what I was reading here.

7 THE COURT: Well, I don't accept the attorney
8 general opinions or answers to questions or responses to
9 requests in various -- known to the public as being binding
10 authority on the Court.

11 MS. CARROLL: Yes, Your Honor, I just wanted to
12 give you a complete answer since we'd had that discussion
13 earlier.

14 THE COURT: All right.

15 MS. CARROLL: I'd call to the stand --

16 THE COURT: The attorney generals are lawyers just
17 as you all are lawyers and they have their beliefs and
18 opinions and all that. That's not binding on the Court.
19 If you have some cases then, where the Court's have
20 interpreted something, then I'm bound to follow it.

21 MS. CARROLL: Yes, Your Honor.

22 THE COURT: And I don't necessarily need to hear
23 someone else's opinion -- another lawyer's opinion who have
24 not heard the exact facts and presentation. Even though
25 Mr. Cook's a fine man whose been doing his job a long time.

1 MS. CARROLL: Yes, Your Honor.

2 I would call to the stand, Herman Perry Holcomb.

3 HERMAN PERRY HOLCOMB, was duly sworn

4 THE CLERK: Please have a seat in the witness box
5 and state your full name for the Court.

6 MS. CARROLL: And Your Honor, may I approach with
7 the exhibits?

8 THE COURT: Yes, ma'am.

9 MS. CARROLL: Thank you. I provided a copy to
10 opposing counsel. I have here an original. I just bound
11 all the exhibits I propose to use. They're clipped
12 together, all the exhibits I propose to use.

13 Would Your Honor like an extra copy for your
14 consideration?

15 THE COURT: I thought you asked if you could hand
16 it up. She's not going to read it, she has to do typing.
17 If you want me to look at it.

18 MS. CARROLL: Yes, Your Honor, I was offering --

19 THE COURT REPORTER: Is this one exhibit or is it
20 all exhibits --

21 MS. CARROLL: I have marked them separately. They
22 are premarked and it includes all the exhibits I anticipate
23 bringing into evidence with this witness.

24 THE COURT REPORTER: Okay.

25 ///

Herman Perry Holcomb - Direct Examination by Ms. Carroll**DIRECT EXAMINATION**

BY MS. CARROLL:

Q Mr. Holcomb, please state your name for the record.

A My name is Herman Perry Holcomb.

Q All right. Could you spell that, please?

A H-E-R-M-A-N P-E-R-R-Y H-O-L-C-O-M-B.

Q And where do you live, Mr. Holcomb?

A I live at 1892 Green, the color, Forest Drive in North Augusta, South Carolina.

Q How long have you lived in North Augusta?

A 58 years.

Q And are you retired, Mr. Holcomb?

A I'm sorry?

Q Are you retired or are you working?

A Yes, I am retired.

Q What did you do when you were employed?

A I was a research and development chemist at the Savannah River Site.

Q Could you tell me just a little bit about your background? You're a PhD; is that correct?

A Yes.

Q And what is your educational background?

A I am honored and blessed and grateful to hold a BS in Chemistry from Duke University and my MS and PhD are from Mr. Jefferson's university, the University of

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Herman Perry Holcomb - Direct Examination by Ms. Carroll

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1 Virginia.

2 Q And do you participate in city council meetings?

3 A Yes, I do.

4 Q Are you active in matters relating to great public
5 concern?

6 A Yes, I am.

7 Q Tell me how you participate.

8 A It started a long time ago when I began writing
9 letters to the editor of the North Augusta Star and to the
10 Augusta Chronicle, two local newspapers. It has continued
11 since. I've held various positions on boards of local
12 agencies.

13 I also served on the North Augusta's Planning and
14 Zoning Commission. Since retirement, I've been able to
15 spend much more time devoting myself to how I am governed.

16 Q Do you go to city council meetings?

17 A I do.

18 Q Do you prepare in anticipation of those meetings?

19 A I certainly do.

20 Q How do you prepare?

21 A I prepare by going to the Agenda Complete, which
22 also contains the agenda. But the agenda is only a summary
23 of what the city's going to discuss at the meeting of
24 council.

25 The Agenda Complete also has supporting information

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1 that gives the public an opportunity to study and to find
2 out more about what the agenda items are going to be
3 discussed.

4 Q Do you rely on the Agenda Complete in making a
5 decision about whether or not you go to the meeting or
6 whether or not to comment there?

7 A I sure do, yes.

8 MS. CARROLL: May I approach, Your Honor?

9 THE COURT: Yes.

10 MS. CARROLL: And I'm handing to the witness a
11 packet of documents, which is indicated as Plaintiff's
12 Exhibits and they are individually premarked.

13 BY MS. CARROLL:

14 Q Mr. Holcomb, do you know if -- are you aware of
15 other citizens in the City of North Augusta also rely on
16 the agenda complete in order to make a decision?

17 MR. CROWE: Your Honor, I object to that as
18 hearsay.

19 MS. CARROLL: I asked him if he had the awareness.
20 I didn't ask if he had been told or anything --

21 MR. CROWE: She asked if others relied so that
22 would be testimonial in nature and I object to --

23 THE COURT: I sustain the objection.

24 BY MS. CARROLL:

25 Q Mr. Holcomb, could you flip over the cover page and

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1 look at the first page marked as Plaintiff's Exhibit 1 for
2 identification purposes. What is this?

3 A This is a statement by the City of North Augusta
4 which indicates the time, place, and date of meetings of
5 council. It also states the agenda information is in the
6 city's website on it's Document Central.

7 Q Now, let me stop you for a second. In this piece
8 of paper here, is that printing of the text of what is on
9 the website or not?

10 A Yes.

11 Q Okay. And I see that there's a tab there or a link
12 there called Document Central; is that what you were just
13 telling me about?

14 A Yes.

15 Q If I wanted to find the agenda to a City of North
16 Augusta meeting, would I look in Document Central or would
17 I look somewhere else?

18 A You would go to Document Central.

19 Q Okay.

20 MS. CARROLL: I would offer plaintiff's Exhibit 1
21 into evidence as the information on the web page used to
22 find an agenda.

23 MR. CROWE: I have no objection, Your Honor, to the
24 documents that you've previously noted, I believe were
25 Plaintiff's 1 through 7.

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1 MS. CARROLL: Okay. So in the interest of time,
2 Your Honor. I would move Plaintiff's 1 through 7 into
3 evidence.

4 THE COURT: Okay. I believe he said he has no
5 objection. They're admitted.

6 (Plaintiff's Exhibit Number 1, Number 2, Number 3,
7 Number 4, Number 5, Number 6, Number 7 was entered into
8 evidence.)

9 MS. CARROLL: Thank you, Your Honor.

10 BY MS. CARROLL:

11 Q So Mr. Holcomb, we got to this Plaintiff's Exhibit
12 1 where you clicked on Document Central, would that take
13 you to Plaintiff's Exhibit 2?

14 A Yes, it would.

15 Q What does that show?

16 A This shows the years for the city council agendas
17 that are posted on Document Central.

18 Q Okay. If I wanted to find a particular month and a
19 particular year, would I click on that year?

20 A You would click on the year, yes.

21 Q And that would take me to Plaintiff's Exhibit 3; is
22 that correct?

23 A Correct.

24 Q And that shows us the different months in the year
25 2018; is that correct?

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1 A That's right.

2 Q And we're here about a meeting that was held on May
3 7th in 2018; is that correct?

4 A That's correct.

5 Q So if I wanted to find the agenda for that meeting,
6 what would I do when I was on this page, which is
7 Plaintiff's Exhibit 3?

8 A I'm sorry?

9 Q What would I do to find the agenda? Would I click
10 on the May 0518 tag?

11 A I --

12 Q Mr. Holcomb, there's a list of months there --

13 A Oh, yes.

14 Q -- if I wanted to get a certain agenda, would I
15 click --

16 A I would click -- I understand your question.

17 I'm sorry, Your Honor.

18 I would click on May for that year, yes.

19 Q Okay. And that would take you to Plaintiff's
20 Exhibit 4; is that right?

21 A That is correct.

22 Q And I observe that at the top of Plaintiff's 4, it
23 says Document Central and then it appears that there's a
24 series of links that kind of show us how we got there. So
25 it looks like you clicked on Document Central then city

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1 clerk, then counsel agenda's 2018 and then May 18 and that
2 got you to this page. If you wanted to know what was
3 happening in a City of North Augusta meeting, you wanted to
4 see the agenda, what would you look at on this page? Which
5 link would you click in order to do so?

6 A I would click the Agenda 050718 Complete.

7 Q Why? Why would you look in there?

8 A Because that's where the information is for the
9 public to read prior to any meeting of council. It is the
10 information -- it's detail, it's more detailed information
11 that allows the public to read to see more about what is
12 going to be discussed at the council meeting.

13 Q And there's another link on there that's called
14 Agenda 050718. How do you -- why would you look at the
15 complete one instead of this one?

16 A I wouldn't look at that one because that agenda is
17 actually part of Agenda 050718 Complete.

18 Q Okay. So let's assume for a minute that you
19 clicked into Agenda 050718 Complete. That would take you
20 to Plaintiff's Exhibit 6, right? We'll skip '05 -- I mean
21 Plaintiff's 5. But that would take you to Plaintiff's 6;
22 is that correct?

23 A That is correct.

24 Q And is that what you did in advance of the May 7,
25 2018 meeting?

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1 A Yes, it was.

2 Q And did you review the packet?

3 A I did.

4 Q Is there anything in this exhibit entitled Regular
5 Agenda of May 7, 2018, that calls it an agenda packet?

6 A No.

7 Q Have you ever read on the website anything that
8 calls any item an Agenda packet?

9 A No.

10 Q Have you heard the term packet used before?

11 A I have.

12 Q When was that used and how?

13 A The -- I've heard the word, packet, used in the
14 study sessions of council when council and the city
15 administrator and the mayor made comments to Council about
16 some of the questions that they had that -- the council
17 members had on the material to be discussed. I heard,
18 especially from the city administrator, the word -- or
19 actually, That was in your packet.

20 Q And you -- but you always understood that to be
21 something that's provided to the city council, not
22 necessarily --

23 MR. CROWE: Object to the form of leading, Your
24 Honor.

25 THE COURT: You can't lead the witness.

Herman Perry Holcomb - Direct Examination by Ms. Carroll

1 BY MS. CARROLL:

2 Q Did you understand -- how did -- who did you
3 understand for that information provided to is called a
4 packet?

5 A I learned in the study session that the packet was
6 delivered by a member of the city's public safety
7 department directly to each member of city council.

8 Q So did you look at the items in Plaintiff's Exhibit
9 6 with respect to Resolution 2018-11?

10 A I did.

11 Q And how did that information inform your decision
12 if it did inform your decision about whether or not to
13 prepare or comment at the meeting?

14 A I was not prepared to comment at the meeting and I
15 did not.

16 Q Why not.

17 A Because the Exhibit A, which is the list of items
18 that the city requested financing from the Capital Projects
19 Sales Tax IV were -- they were fine with me. I didn't have
20 any dispute with any of their selections.

21 Q So would you have felt differently if the New
22 Savannah Bluff Lock and Dam was on the list?

23 A Yes, I would.

24 Q How would you have felt in that event?

25 A The New Savannah Bluff Lock and Dam is a project

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1 that is run by the U.S. Army Corp of Engineers. It is
2 below the City's of North Augusta and Augusta on the
3 Savannah River. There's been much concern about the
4 maintenance, upkeep, and other items for that 81 year old
5 facility by the Congress of the United States, to begin
6 with.

7 Q Did you feel misled that it came up without you
8 previously being notified that that was something that they
9 might consider?

10 A I would use the word disturbed.

11 Q Why would you --

12 A Because -- I'm sorry.

13 Q Why would you use that word?

14 A Because I was not prepared to speak on that
15 particular item. I did not know from the material in
16 Document Central in the agenda complete that it would even
17 be discussed. So I had no means of preparing to address
18 that particular item at the council meeting.

19 Q Do you understand this project to be significant in
20 scale?

21 A Yes, because the city assigned a value of \$500,000
22 to -- of the Capital Projects Sales Tax IV funds to go
23 toward that specific project.

24 Q Now, let me draw your attention back to Plaintiff's
25 Exhibit 5. You understand this to be what the defendants

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1 are calling the agenda; is that correct?

2 A Yes.

3 Q And is it your understanding that the item of
4 interest is in the section called New Business; is that
5 right?

6 A Yes.

7 Q Did you understand it to be New Business?

8 A Yes.

9 Q Had you ever heard it brought up in meeting before?

10 A No.

11 Q Do you attend very many of these meetings?

12 A Yes.

13 Q Are you the sort of person who would be in a
14 position to know if the City had given this any real
15 consideration prior to this meeting at -- publically?

16 A Yes.

17 Q And to your knowledge that was not the case; is
18 that right?

19 A That's right.

20 Q Okay. And when -- let me draw your attention now
21 to Plaintiff's Exhibit 7. What do you understand this to
22 be?

23 A I'm sorry, Your Honor. I'm not really sure where
24 that is in this 32 page document.

25 Q Oh, I'm sorry. It is about five pages from the

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1 back. I put them together thinking it would make things
2 easier. I'm sorry. That may have been a mistake.

3 A Seven?

4 Q Yes.

5 A I'm at -- finally I'm at Exhibit 7.

6 Q And what do you understand Exhibit 7 to be?

7 A Exhibit 7 is the minutes of the May 7th, 2008
8 regular meeting of the North Augusta City Council.

9 Q Let me draw your attention to page 2 of Exhibit 7,
10 Item 2. Do you understand that that minute entry to relate
11 to the issue we are here discussing today?

12 A Yes.

13 Q And do you believe that the minutes fairly reflect
14 what occurred at the meeting?

15 A I do.

16 Q And is it your understanding that -- that the
17 agenda item was amended and that the list of projects added
18 the New Savannah Lock and Dam Project to this resolution?

19 A Yes.

20 Q Did you understand it to be an addition to the
21 agenda or not?

22 A The minutes of the meeting call it a motion to
23 amend the list of projects to add the New Savannah Bluff
24 Lock and Dam.

25 Q And when is the first time you heard of the New

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1 Savannah Lock and Dam project?

2 A The project itself I've known for several years.

3 Q And in terms of public discussion, did you hear it
4 at any time before the study session that day?

5 A No, not that day.

6 Q Okay. But you did -- is it correct that you did
7 hear about it in the study session the hour before the city
8 council meeting?

9 A I did hear about it in the study session before
10 council -- the actual council meeting, yes.

11 Q It was not noticed 24 hours before the meeting; is
12 that correct?

13 A That is correct.

14 Q Mr. Holcomb, is it your understanding that even
15 though this project listed as new business that it was
16 still final action taken on May 7, 2018?

17 A I know that final action was taken on May 7, 2008
18 for this particular item.

19 Q Mr. Holcomb, what would you like to see His Honor
20 do today with respect to this matter?

21 A Your Honor, what I would like to see done is to
22 have the tenets of the FOIA act, the South Carolina FOIA
23 Act, which has actually been called the People's Act, I
24 would like to see withheld so that the public may have more
25 availability of information about the way the cities do

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1 this business. In my case, that would be the City of North
2 Augusta.

3 Q Are you basically saying that you want a situation
4 where you're not surprised by what the City is going to
5 consider and decide?

6 MR. CROWE: Objection, Your Honor.

7 THE COURT: Don't lead the witness.

8 MS. CARROLL: I'm sorry, sustained the objection,
9 Your Honor?

10 THE COURT: Yes.

11 BY MS. CARROLL:

12 Q And Mr. Holcomb, is surprise a factor that
13 motivated you to bring this lawsuit or not?

14 A It was -- it was one factor. The primary factor
15 was that I, a member of the public, was not given the
16 opportunity to address this last minute addition to a -- to
17 the city council so that I could properly discuss it during
18 the discussion of this item itself.

19 MS. CARROLL: Thank you, Your Honor. I have
20 nothing further for this witness at this time, Your Honor.

21 THE COURT: Mr. Crowe?

CROSS-EXAMINATION

22
23 BY MR. CROWE:

24 Q Mr. Holcomb, I'm also a graduate of Duke
25 University.

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1 A Congratulations, sir.

2 Q Thank you, congratulations to you.

3 Let me direct your attention to Plaintiff's Exhibit
4 1 that you've identified.

5 A Yes, sir.

6 Q The second paragraph refers to Agendas of City
7 Council meetings are generally posted the Friday before
8 each Monday meeting or study session. Do you recall what
9 was posted before this particular meeting in May of 2018?

10 A I do not know what was posted. I only know what
11 was posted by the Friday on it's official website.

12 Q The next sentence refers to agenda attachments.
13 What -- do you know what agenda attachments are?

14 A Well, it says the agenda attachments are available
15 for review at the city clerk's office on the third floor of
16 the municipal center, 100 Georgia Avenue.

17 Q All right.

18 A So, no, I haven't -- I've never visited the city
19 clerk's office.

20 Q All right. So just reading the phrase, agenda
21 attachments, do you think that would be something in
22 addition to an agenda?

23 A Yes, because I realize that in the agenda complete,
24 those attachments are a part of that agenda complete.

25 Q Well, there's something in addition to the agenda;

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1 isn't that correct?

2 A It's an explanation of what is to be put before the
3 city council.

4 Q As I recall your testimony when you started, you
5 said an agenda complete also contains the agenda; is that
6 correct?

7 A That's correct.

8 Q All right. So agenda complete means something in
9 addition to the agenda?

10 A I'm only calling it what the city calls it.

11 Q Well, I'm asking you a question about your
12 understanding of your testimony, an agenda complete
13 includes the agenda, but it includes other things as well,
14 correct?

15 A That's correct.

16 Q So agenda complete is something more than just an
17 agenda?

18 A That's correct.

19 Q All right. And I think you said the agenda is only
20 a summary of what's to be discussed; is that right?

21 A That's right.

22 Q All right. Look at Plaintiff's Exhibit 4 -- I'm
23 sorry, Plaintiff's Exhibit 5.

24 A Yes, sir.

25 Q What is that document?

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1 A At the top it reads Agenda, Regular City Council
2 Meeting.

3 Q All right. Go back to Plaintiff's Exhibit 1. We
4 talked about agenda attachments a minute ago. Look further
5 down under next city council meeting, and it says, Agenda
6 information is available in our Document Central. What
7 does agenda information mean?

8 A It means that it contains information regarding the
9 items that will be discussed at the city council meeting.
10 It's additional information that better explains what the
11 items are to be discussed at that meeting.

12 Q And by additional information, you mean information
13 in addition to what?

14 A It's information additional to what the City calls
15 the agenda.

16 Q All right. You don't call it an agenda?

17 A No.

18 Q Even though it says agenda?

19 A It's part -- the agenda is part -- it's headed by
20 the word, Agenda in the Document Central.

21 Q All right. So you -- you -- do you wish to
22 acknowledge, Mr. Holcomb, that Agenda Complete means
23 something in addition to the agenda?

24 A I can only assume by reading what the city steeds.

25 Q Well, I'm asking, you testified to it. You said

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1 Agenda Complete also contains the agenda, right?

2 A Right.

3 Q Okay. So there's a thing called an agenda that's
4 included in the agenda complete, right?

5 A That's right.

6 Q Good. The agenda is a summary of what's going to
7 be discussed, correct?

8 A Correct.

9 Q The agenda complete contains additional detail,
10 additional information; is that correct?

11 A I'll have to explain my answer, Your Honor.

12 Q Well, let me rephrase. Is agenda complete
13 something greater than the document called the agenda?

14 A Yes.

15 Q Okay. Thank you. Those are all the questions I
16 have.

17 THE COURT: All right. Anything further?

18 MS. CARROLL: Yes, Your Honor.

REDIRECT EXAMINATION

19
20 BY MS. CARROLL:

21 Q Plaintiff's Exhibit 6, it has a couple of pieces of
22 papers in it that has notes on it for somebody to take
23 notes in; is that correct? I refer you to that last page
24 before Exhibit 7, where it says notes and it's got some
25 lines and stuff.

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1 A I'm sorry, Your Honor, I want to make sure I'm at
2 the right place.

3 THE COURT: Okay. You can show him what you're
4 trying to get him to look at.

5 MS. CARROLL: I'm sorry, Your Honor?

6 THE COURT: You can show him what you're trying to
7 get him to look at.

8 MS. CARROLL: May I approach?

9 THE COURT: Yes, ma'am.

10 BY MS. CARROLL:

11 Q Okay. Mr. Holcomb, I'm showing you here at the end
12 of, if you see here, it's the last two pages of Plaintiff's
13 Exhibit 6. You can look at mine, these are the same.
14 There's some lines on that and there are notes, for
15 somebody to take notes on at the meeting?

16 A That's correct.

17 Q Okay. You wouldn't say that was part of the
18 agenda, right? Am I correct?

19 A No.

20 Q Okay. So when you told us earlier that the
21 complete agenda had some stuff in it that was not part of
22 the agenda, the notes page like that would be part of it
23 right?

24 MR. CROWE: Your Honor, this is leading. Perhaps
25 Ms. Carroll could just testify. Would that be easier?

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1 THE COURT: He's suggesting that you just testify
2 if you're going to tell him what to say.

3 MS. CARROLL: Well, Your Honor, I would be happy to
4 rephrase.

5 BY MS. CARROLL:

6 Q When you testified earlier that there were things
7 in the complete agenda that weren't part of the agenda, was
8 or was not this page, which shows notes and blanks, part of
9 what you were talking about?

10 A Yes, it was part of what I was talking about.

11 Q Okay. And then you talked about the agenda and you
12 indicated, I believe, earlier, that the agenda was what the
13 City called -- what you have called for me the summary
14 agenda, correct?

15 A That's correct.

16 Q Okay. And is it your understanding that a complete
17 agenda is still an agenda or not?

18 A It is the agenda according to it's cover page.

19 Q Okay. Is that why you think so?

20 A Yes.

21 Q Okay. Is there other stuff in there that makes you
22 think that it is still an agenda and just the complete
23 agenda or not?

24 A As I have stated, there is a lot more information
25 in the complete agenda than there is in the agenda, yes.

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1 Q And does that help to inform you about what is
2 going to be in the meeting?

3 A It most certainly does.

4 Q Do you think that it is consistent with the Freedom
5 of Information Act to give an agenda of this type? Or not?

6 A I think it is -- I think it is good for public
7 information to know the details of what is going to be
8 discussed at the city council meeting, yes.

9 Q You discussed the Document Central and opposing
10 counsel asked you some questions about whether there were
11 other documents in there. When you told us that there were
12 other documents in the Document Central than the agendas,
13 did you or did you not mean to include minutes?

14 A Yeah, yes, minutes. I meant to include minutes
15 because they're very important.

16 Q Okay. Are minutes in Document Central?

17 A I'm sorry?

18 Q Do they have minutes in Document Central?

19 A Yes, they do.

20 Q Okay. You're not suggesting that when minutes
21 appear along with other documents that those are the agenda
22 -- excuse me, that those are the agenda, they're minutes?

23 A Correct, they're minutes.

24 Q Okay.

25 MS. CARROLL: I have nothing further for this

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witness at this time, Your Honor.

THE COURT: All right. Anything further?

MR. CROWE: Yes, very briefly.

RECROSS EXAMINATION

BY MR. CROWE:

Q Mr. Holcomb, would you look at Plaintiff's Exhibit 6?

A Yes, sir, I'm there.

Q All right. Could it be this? Could this be what Exhibit 6 means? Title page followed by a page for notes, followed by the agenda, followed by agenda information, followed by agenda attachments?

A I'm not sure of your question, sir. I'm sorry.

Q Is all that the complete agenda?

A Yes.

Q Okay. All right. That's all I have.

MR. CROWE: Thank you, Your Honor.

THE COURT: All right. Thank you, sir. No more questions.

THE WITNESS: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. CROWE: Your Honor the defendant would call -- reserving all objections that could be made at the end of the plaintiff's case, with the Court's permission, we'd call Donna Young.

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Donna Young - Direct Examination by Mr. Crowe

1 THE COURT: Okay.

2 DONNA YOUNG, was duly sworn

3 THE CLERK: Please have a seat in the witness box
4 and state your full name for the Court.

DIRECT EXAMINATION

5
6 BY MR. CROWE:

7 Q Ms. Young, what was your position -- were you
8 employed by the City of North Augusta in May of 2008?

9 A My name is Donna B. Young. I think she'd asked me
10 to say that.

11 Was I -- yes, sir. Employed in May of 2008, yes,
12 sir, I was.

13 Q Okay. What was your position of employment?

14 A The city clerk.

15 Q All right. And as the city clerk, did you have any
16 responsibility in connection with city council meetings?

17 A I did.

18 Q What were your responsibilities?

19 A As far as the city council meetings, I prepared the
20 agenda for the city council meetings and I took the minutes
21 for the city council meetings and attended those meetings.

22 Q All right. Let me hand you what's been premarked
23 as Defendant's Exhibit 1 and ask if you can identify that?

24 A Yes, sir. That's the May 7, 2018 --

25 Q First, can you identify it?

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Donna Young - Direct Examination by Mr. Crowe

1 A Yes, I can identify it.

2 Q What is it?

3 A It is the May 7th, 2008 agenda.

4 Q All right.

5 MR. CROWE: Your Honor, I'd offer it into evidence
6 as Defendant's 1, the agenda.

7 MS. CARROLL: No objection, Your Honor.

8 THE COURT: All right.

9 (Defendant's Exhibit Number 1 was entered into
10 evidence.)

11 BY MR. CROWE:

12 Q Let me show you on Plaintiff's Exhibit 1, is
13 indicated as coming from the city website; is that correct?

14 A Yes, sir.

15 Q It refers to agendas. Do you -- were you involved
16 in preparation of the information that's reflected in this
17 Plaintiff's Exhibit 1?

18 A Yes, sir.

19 Q All right. So when Plaintiff's Exhibit 1 refers to
20 agendas, what's it talking about?

21 A I'm sorry, say that again.

22 Q What is the document that this, Plaintiff's Exhibit
23 1 is referring to when it says Agenda's of City Council
24 Meetings?

25 A Okay. That would be the regular agenda and it

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1 would also -- could be the study session agenda.

2 Q All right. And would that be a document like
3 Defendant's Exhibit 1?

4 A Okay. This exhibit is the regular agenda.

5 Q All right. This page refers to agenda attachments
6 as available for review. What are agenda attachments?

7 A Okay. Those are every item, if this is an
8 attachment, would -- like an ordinance here in exhibit --
9 here in Number 5, it's referring to Ordinance Number
10 2018-06. That would be labeled Attachment 5 and would be
11 included at the back of the agenda.

12 Q All right. Is an agenda attachment something in
13 addition to the agenda?

14 A Yes.

15 Q All right. This Plaintiff's Exhibit 1 also refers
16 to agenda information is available on documents central.
17 What is that, agenda information?

18 A Agenda information is additional information. When
19 I post in Document Central, I will post an agenda, I will
20 post an agenda memo, and then I post a document that is
21 entitled, Agenda, whatever the date would be, which in this
22 case would be 050718 Complete. And that document is
23 actually a link. We store our information in our, a
24 program called Laser Fish. I create that document in order
25 to distinguish that we have an agenda, an agenda memo and

Donna Young - Direct Examination by Mr. Crowe

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1 then a complete. And the complete just means that this is
2 all of the attachments to the back of the agenda and the
3 agenda memo. And it has a title page and it has notes and
4 actually those notes are more for my benefit to just be
5 able to take notes during the meeting.

6 Q All right. What do you call these other documents
7 that accompany the agenda on the website. Do you have a
8 name for those?

9 A What do I call the documents? That's the agenda
10 packet that would go out to the mayor and council and
11 directors. In order to be more transparent, we started
12 including that on the website in order for the citizens to
13 be able the look at any attachments to the agenda.

14 Q All right. Is it your understanding -- -- are you
15 familiar with the Freedom of Information Act in connection
16 with your job?

17 A Yes, sir.

18 Q And I didn't establish, you're retired now,
19 correct?

20 A I am.

21 Q Are you enjoying your retirement?

22 A I am.

23 Q All right. Does the Freedom of Information Act, to
24 your knowledge require posting of an agenda of a regular
25 council meeting of city council?

Donna Young - Direct Examination by Mr. Crowe

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1 A Yes, sir.

2 Q All right. And where does it require that agenda
3 to be posted?

4 A It requires that it be posted on a bulletin board.
5 We post it on a door outside. We tried to make sure that
6 it was everywhere possible so that the citizens could see
7 it.

8 We also post it on the website and we -- you know,
9 on the website, it's entitled Agenda, Agenda Memo and
10 Agenda Complete. And that complete is just one that has
11 the attachments to it.

12 Q All right. When you post on the door of the
13 meeting room, what do you post?

14 A The one page agenda here.

15 Q All right. So for example, for this particular
16 meeting in May, what would you have posted on the door of
17 the city council chambers or meeting place to satisfy the
18 Freedom of Information Act requirement?

19 A I would have posted this one page agenda.

20 Q All right. Thank you Ms. Young. Please answer any
21 questions that the Court or the Plaintiff 's attorney may
22 have?

23 A Uh-huh.

24 ///

25 ///

Donna Young - Cross-Examination by Ms. Carroll

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CROSS-EXAMINATION

BY MS. CARROLL:

Q Good afternoon, Ms. Young.

A Good afternoon.

Q And you gave us a discussion of how you understand the agenda complete to be comprised. Is that discussion on the website anywhere?

A Do I have or do I put on the website how I prepare that agenda complete?

Q No, ma'am, I guess what I'm saying is, if you look at the website, there's nothing on the website that says that -- what the agenda complete is agenda plus attachments. That's just the way you described it today; is that correct?

A Yes.

Q Okay. There's not a policy book or anything like that that says the agenda complete is an agenda plus attachments? That's correct, right?

A There's no policy book regarding, as far as agendas and myself, no, ma'am.

Q So there's no way that the public could look to see, to know that the -- you intended the agenda complete to be an agenda plus attachments; is that correct?

A The agenda complete was originally never meant for, you know, for the public. That was the packet that would

Donna Young - Cross-Examination by Ms. Carroll

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1 be sent out to council and to the directors.

2 Q I understand. But my question to you was, there is
3 nowhere that the public could look to see that that is what
4 an agenda complete is; is that correct?

5 A Correct.

6 Q Okay. Thank you.

7 And you indicated that there were a number of
8 places that you were required to publish the agenda and you
9 indicated that you published on the website. Isn't it true
10 that you are legally required to put it on the website
11 under the Freedom of Information Act?

12 A Yes.

13 Q So that is a legally required publication; is that
14 correct?

15 A Yes.

16 MS. CARROLL: And I have nothing further for this
17 witness, Your Honor.

18 MR. CROWE: Nothing in reply, Your Honor.

19 THE COURT: All right. Thank you. Any further
20 witnesses?

21 MR. CROWE: No, Your Honor.

22 THE COURT: All right. Well, both sides have had a
23 full opportunity to present your cases. I'm going to have
24 you submit competing proposed orders and share the proposed
25 orders with each other. Every side will have an

1 opportunity to comment on the proposed order submitted by
2 the other party.

3 How many days do you need to submit these proposed
4 orders?

5 MS. CARROLL: Ten, maybe, Your Honor?

6 MR. CROWE: Would two weeks be possible?

7 THE COURT: All right. 14 days, submit your
8 proposed order and you'll have three days thereafter to
9 comment on the other person's submission. You submit it by
10 e-mail to me and to my law clerk: cnewmanj@sccourts.org;
11 cnewmanj, all judges, first initial, last name J at
12 sccourts.org. And the law clerk's e-mail is the same:
13 cnewmanlc@sccourts.org.

14 MR. CROWE: Your Honor, I believe I speak on behalf
15 of both attorneys. We appreciate your time and patience
16 today. We didn't know going in how long it would take, but
17 we appreciate you remaining on the bench and listening to
18 the entire case.

19 THE COURT: Oh, that's no problem.

20 Now, the statute that you reference is that -- is
21 there -- there must be an expedited hearing. Should there
22 also be an expedited opinion or decision?

23 MS. CARROLL: No, Your Honor.

24 THE COURT: Just an expedited hearing?

25 MS. CARROLL: Yes, Your Honor.

1 THE COURT: All right. So we'll respond timely,
2 so. Thank you all.

3 MS. CARROLL: Thank you very much for your time,
4 Your Honor.

5 * * * * * END OF TRANSCRIPT * * * * *

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of Common Pleas in and for
12 the State of South Carolina on the 15th day of January
13 2019.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 25th day of January 2019.

18
19
20
21
22 Brenda J. Sigwald
23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020

State of South Carolina) In the Court of Common Pleas
County of Aiken) Second Judicial Circuit
2018-CP-02-02705

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

December 5, 2019
Aiken, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

A P P E A R A N C E S:

Dionè C. Carroll, Esquire
Attorney for Plaintiff

Danny C. Crowe, Esquire
Attorney for Defendants

Maryann S. Nevers, CVR-M-CM, RVR
Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter

I N D E X

Proceedings 4

Certificate Page. 43

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits marked during proceeding.

(Whereupon, the proceeding was commenced at 10:07 a.m.)

MR. CROWE: Yes. Thank you, Your Honor. Your Honor, Danny Crowe, on behalf of the defendants. With me are Kelly Zier, city attorney for North -- North Augusta. And behind us is North Augusta Mayor Robert Pettit.

THE COURT: Okay.

THE COURT: Yes, sir.

MR. CROWE: And we appreciate your doing that. As Your Honor may recall, this is a Freedom of Information Act

1 action about the alleged amending of an agenda at a council
2 meeting. It was heard by Your Honor in January of this
3 year. The Court requested proposed orders submitted by
4 each side.

5 On October 7 Your Honor -- the Court filed the
6 proposed order of the defendants. On October 8 the Court
7 filed the proposed order of the plaintiff. The defendants
8 then filed a motion under Rule 52 and 59, which brings us
9 here.

10 For all the reasons set out in our motion, we would
11 urge the Court to alter/amend/reconsider the previous final
12 order of October 8 and enter judgment on behalf of the
13 defendants.

14 Your Honor, with all due respect, the city urges that
15 the second order filed by Your Honor, the order of October
16 8, is the wrong call, a bad call, and, frankly, bad law.
17 That order expands the meaning of agenda to include the
18 agenda-backup documents. And it expands the words of
19 Section 30-4-80 ---

20 THE COURT: Let -- let me ---

21 MR. CROWE: --- that I ---

22 THE COURT: Let me ---

23 MR. CROWE: --- handed up.

24 THE COURT: --- just interrupt you just for a moment
25 and you get back to that. But as you're giving me these

1 dates of hearings, there also was an additional or second
2 lawsuit.

3 MR. CROWE: Yes, Your Honor.

4 THE COURT: And do you have the dates of those? We
5 were here when? On the ---

6 MR. CROWE: It -- it seems we were here late spring on
7 that. And then Your Honor -- that was a completely
8 separate issue.

9 THE COURT: Oh, I -- I understand that.

10 MR. CROWE: Yes, sir.

11 THE COURT: That issue was a separate issue. But ---

12 MR. CROWE: Yes, sir.

13 THE COURT: --- we're dealing with the same parties
14 and ---

15 MR. CROWE: Yes, sir.

16 THE COURT: --- you're -- you're giving me a -- the
17 litany of -- of dates and times and places. And -- and I
18 wanted to inquire as to when were we here on the second
19 lawsuit that was filed by ---

20 MR. CROWE: All right.

21 THE COURT: --- Mr. ---

22 MR. CROWE: Yes, Your Honor. I -- I did not bring
23 that file with me. I'm sorry.

24 THE COURT: All right.

25 MR. CROWE: Do you have those dates?

1 THE COURT: It was ---

2 MS. CARROLL: Well ---

3 THE COURT: --- July 30th?

4 (Off the record briefly.)

5 THE COURT: Okay. Well, we'll come back to it. I
6 thought you all might've known. We'll ---

7 MR. CROWE: All right. Thank you, Your Honor.

8 THE COURT: --- we can locate it.

9 MR. CROWE: Your Honor's second order, the order of
10 October 8 in this case, expands, as I said, the meaning of
11 the word agenda to include the agenda-backup documents.
12 And it expands the wording of Section 30-4-80 from "no
13 items may be added to the agenda" as if the wording were
14 "no item referenced in the agenda may be amended."

15 Here, the item amended was a backup document. No item
16 was added to the agenda of the particular council meeting.
17 A resolution exhibit was amended. That is, we would
18 submit, not prohibited by the Freedom of Information Act,
19 which does not address amending an agenda item. It
20 addresses adding items to the agenda.

21 Additionally, Your Honor, the order of October 8 is
22 not supported by any legal authority. No supporting cases
23 for the principle that agenda means agenda-backup documents
24 were cited in the order.

25 It is not in accord with the principle of statutory

1 interpretation that words not defined in the statute should
2 be given their usual and customary meaning. The usual and
3 customary meaning of agenda is, as indicated on the copy
4 handed up and cited at the first hearing, from *Black's Law*
5 *Dictionary* as a list of things to be done or considered at
6 a meeting, usually arranged in the order of consideration.

7 Your Honor, finally, the order of October 8 is not
8 supported by the facts that were adduced at the hearing.
9 There were two witnesses, as Your Honor will recall: the
10 plaintiff, Mr. Holcomb; and the defendant's city clerk, Ms.
11 Young. If you would look at the excerpts from the
12 testimony that were handed up, I have yellow-highlighted,
13 both in the copy to Your Honor and the copy to plaintiff's
14 counsel, some pertinent testimony from the plaintiff.

15 He was plainly aware of the difference between and
16 agenda and what they argued was an agenda complete. At
17 page 44 of the transcript, the first page in the hand-up,
18 the yellow-highlighted part is (as read): "He prepares for
19 meetings by going to the agenda complete, which also
20 contains the agenda." That was his testimony.

21 He -- he further testified: "But the agenda is only a
22 summary of what the city's going to discuss at the meeting.
23 The agenda complete also has supporting information that
24 gives the public an opportunity to study, etc." That --
25 those are the backup documents.

1 Similar testimony was on page 49, and it's
2 highlighted. The agenda, he said, is actually part of the
3 agenda. The document he calls the agenda complete. And he
4 acknowledges that the agenda is something different from
5 the agenda complete. And he does that on page 58, 59, and
6 60 of his testimony, as highlighted.

7 The city clerk, Ms. Young, testified about that
8 difference. She testified that the agenda was the one-page
9 sheet that was Defendant's Exhibit 1. It was also
10 Plaintiff's Exhibit 5 and contained within Plaintiff's
11 Exhibit 6.

12 This is the document that she posted prior to the
13 meetings, as required by the Freedom of Information Act.
14 She did not post all 32 pages of the agenda and the agenda-
15 backup items. She explained the use of the term agenda
16 complete in her testimony at page 67 and 68, which is
17 highlighted in the hand-up.

18 She says that (as read): "When I post in Document
19 Central, the web -- the online website for the city, I will
20 post an agenda. I will post an agenda memo. And then, I
21 post a document that is entitled 'Agenda,' whatever the
22 date would be, which in this case would be 05/07/18
23 complete. And that document is actually a link," she said.
24 "I create that document in order to distinguish that we
25 have an agenda, an agenda memo, and then a complete. And

1 the complete just means that this is all of the attachments
2 to the back of the agenda and the agenda memo." And she
3 goes on to explain that in the additional highlighted
4 testimony that I handed up to Your Honor.

5 So what we have here is an argument by the plaintiff
6 that conflates the word agenda with what is an agenda and
7 its backup documents. And based on that conflation, they
8 then argue that the council was prohibited from changing an
9 exhibit to a resolution that was printed in the backup
10 documents at the hearing before the council.

11 There was no amendment at the council hearing to the
12 agenda. The item under which that occurred is listed as a
13 resolution, and the council made no amendment of this
14 agenda at the hearing.

15 So we would submit that this is a -- a wrong call, as
16 we said, and creates the potential for bad law. The order
17 that was presented by the plaintiff and ultimately filed by
18 the Court on October 8, we would submit, Your Honor, is
19 confusing. It is ---

20 THE COURT: And what's confusing about it?

21 MR. CROWE: Well, that conflation of agenda and the
22 agenda backup documents and the argument that distorts the
23 wording of 30-4-80, which addresses adding to the agenda,
24 not amending an attachment to an item that is listed on the
25 agenda.

1 So that order would far expand the Freedom of
2 Information Act beyond anything that the legislature
3 would've attended -- intended using the plain and ordinary
4 meaning of those words. For that reason, Your Honor, we
5 would submit that it's not a well-reasoned order. The
6 reasoning may sound correct. But it is, when read closely,
7 false. And we would submit that it is not an order worthy
8 of Your Honor.

9 I've tried to summarize the points that were made in
10 our motion. We would reiterate all those grounds. The
11 unintended consequences of this order of October 8 would be
12 to discourage local governments -- again, Your Honor's
13 order would apply throughout the circuit. And there's
14 several local governments within the circuit. It would
15 discourage them from putting on their websites any
16 documents other than the single-page agenda for fear that
17 they would be unable at a meeting to take any action that
18 would be construed as an amendment of a backup document.

19 Those are the unintended consequences of the order.
20 We would urge Your Honor to -- just as in a football game,
21 when the referees take a second look at the play, we would
22 urge Your Honor to say -- take a second look at this case,
23 at the evidence -- the transcript is contained in the
24 record -- and determine that the previous -- the order of
25 October 8 was wrong and should be amended and altered.

1 Thank you, Your Honor.

2 THE COURT: All right. Yes, ma'am.

3 MS. CARROLL: Good morning, Your Honor.

4 THE COURT: Morning.

5 MS. CARROLL: I'm -- I'm Dionè Carroll and I have here
6 with my client -- with me my client, Perry Holcomb.

7 Your Honor, the chiding tone of the motion made by
8 defendants was absolutely shocking. Defendants' counsel
9 was here. Esteemed representative of the defendants were
10 here for the -- for the hearing. They had practically
11 unfettered opportunity to put on all the evidence that they
12 wanted to put over several hours, more than half a day.

13 Your Honor was engaged and asking questions and
14 evaluating. You were there. You were part of the
15 proceedings. You had an opportunity to evaluate, and you
16 did.

17 Defendants accuse Your Honor in the motion repeatedly
18 of failing to consider one thing and failing to consider
19 another. And it's just simply not the case.

20 They cannot hear, under Rule 59(e), bring anything
21 new, right? So they are stuck with what -- and that's why
22 they chide this way, I am confident. But it's absolutely
23 absurd to make those kinds of allegations.

24 What is actually happening is sort of a case of
25 revisionist history here. They're -- they keep calling the

1 agenda complete, which is what they call it. Except just
2 simply on the web page, they keep calling it the backup
3 materials of the meeting and the things in the back, which
4 are not the agenda, etc., etc.

5 But I would draw your -- Your Honor's attention to the
6 complaint at Exhibit 1. And in the cover page of this,
7 that, and the other that describe, it's -- calls it the
8 regular agenda of May 7, 2018. So they can call it what
9 they want now. But they called it a regular agenda on May
10 7, 2018.

11 Now, admittedly, it -- they're -- it's understandable
12 how people would be a little confused between their one-
13 page agenda and the other regular agenda, otherwise known
14 on the web page as the agenda complete. And that's the
15 entire problem in this case. They're making kind of a
16 mountain out of a molehill. They're acting like if you
17 make the -- you know, maintain this decision, which you
18 have already made, that if you depart from it, then
19 suddenly, every local government will be wrecked and unable
20 to share.

21 No. They've chosen to do that because they like to
22 punish the citizens for wanting to be involved. And I did
23 attach an e-mail to my response, demonstrating how they are
24 not providing information -- backup information to the
25 public. But that is not the problem.

1 The problem is that they must be clear. If it is an
2 agenda, call it an agenda. If they want to call it backup
3 materials and a backup packet, that'd be great. There is
4 no -- no danger that we're going to confuse the backup
5 packet with the -- the agenda.

6 But they didn't do that in this instant case, in the
7 case that we were dealing with. And because they did not
8 do that, their decision to make an addition -- and by the
9 way, it was an addition. We didn't make any mistake about
10 the law.

11 And for that, I would draw Your Honor's attention to
12 the exhibit that was on the complaint that is the minutes
13 of the meeting in question, the May 7 meeting. And it was
14 Item 2, finance, etc., etc.

15 And in that second paragraph, it says (as read): "On
16 motion by Mayor Pettit, second by Councilmember Carpenter,
17 a motion to amend the list of projects to add 'New Savannah
18 Bluff Lock and Dam' under the list of projects" -- etc.,
19 etc.

20 So any addition is an amendment. This is an addition.
21 They added a \$50-odd million project. And they did it
22 without telling anybody ahead of time to an item that they
23 were calling an agenda. And therefore, it was not done
24 appropriately.

25 Your Honor heard extensive testimony on this. Your

1 Honor appropriately addressed it. The order is, I think, a
2 very good one. And -- and it's certainly no reason that
3 you should depart for -- from it.

4 The standard of review on this is abuse of discretion
5 only. So unless you made an error of law, which you did
6 not, or there is no evidence in the record to support your
7 decision, which is not the circumstance here, then your
8 order is not subject to being reversed, should they choose
9 to appeal it.

10 I would suggest, Your Honor, that what is really
11 happening here is that they're not happy; that there is --
12 there is a sour grapes because the outcome was not the one
13 that they expected. It's not the one that they hoped for.
14 And -- but there is not actually any error in the order.

15 Counsel for defendants makes some substantial argument
16 about, for instance, the definition of the word agenda and
17 how you have to follow that, etc. It was raised during the
18 hearing. I can draw you to the -- even the page of the
19 transcript, where he discussed it at page 14 and
20 thereafter. It was discussed very substantially. Your
21 Honor had a chance to consider this one time before and did
22 so and made his conclusion.

23 Now, the -- *Black's Law Dictionary*, last time that I
24 checked, was absolutely not the authority on how you
25 interpret a statute. It is an item which certainly may be

1 considered. However, *Merriam-Webster's* may be considered,
2 but it is not the driving force.

3 The driving force are the rules of statutory
4 construction. And in this case the legislature has
5 actually been very specific about how we interpret the
6 Freedom of Information Act. And for that I would draw you
7 to a few cases. And I -- and I'll -- and I'll make a
8 couple of references here.

9 "South Carolina's FOIA was designed to guarantee the
10 public reasonable access to certain activities of the
11 government." That's *Fowler v. Beasley*, 322 S.C. 463 at
12 468.

13 "Last-minute agenda items are inconsistent with this
14 organization. FOIA creates an affirmative duty on the part
15 of public bodies to disclose information." That is the
16 *Bellamy* case at 295. These were all cited in full in our
17 response, too, also, Your Honor.

18 And the *Campbell* case: "The purpose of the FOIA is to
19 protect the public by providing for the disclosure of
20 information. FOIA is remedial in nature and should be
21 liberally construed to carry out the purpose mandated by
22 the legislature." That's *Campbell*, and that's *Burton v.*
23 *New York City* -- excuse me -- *York* -- *York County*.

24 "It was also recognized that an exception to FOIA
25 applicability must be narrowly construed." That's *Evening*

1 *Post Publishing Company v. City of North Charleston*, 363
2 S.C. 452.

3 So the point is here that this statute is to be
4 liberally construed to protect people like Mr. Holcomb.
5 Mr. Holcomb got on the stand and explained that the way
6 that they presented this made him to believe that the
7 agenda complete or, as it is called on its cover sheet, the
8 regular agenda of May 7, 2018, was what he thought was the
9 real agenda; that the one page was the summary, a
10 beginning; it was developed; and this is the agenda that
11 was finally arrived at.

12 Because the city created this confusion, they cannot
13 then come in and mislead the public. The statute requires
14 that -- that any interpretation the statute -- the statute
15 be liberally construed to protect Mr. Holcomb and people
16 like him. It creates an affirmative duty for public -- for
17 public entities to disclose information of the kind that
18 they don't disclose well to the public these days.

19 And anything -- and any time you -- you want to
20 construe and exception to FOIA, to openness, to publicness,
21 it has to be done very narrowly. And I would suggest that
22 the remedy for what the city has clearly done wrong is just
23 be clear; make it absolutely clear to the public what
24 they're doing; and then follow the rules.

25 Your Honor has appropriately decided in this case.

1 And we recommend and argue that you should support your
2 order and not withdraw from it. Thank you.

3 THE COURT: A response?

4 MR. CROWE: Very quickly, Your Honor. We would
5 submit, respectfully, that Your Honor did err in signing
6 and filing the order of October 8 for all the reasons
7 stated in our motion and in our argument. It's not
8 supported by the evidence, even the plaintiff's own
9 testimony.

10 It's not supported by the language of 30-4-80. It's
11 not supported by the usual and customary meaning of the
12 word agenda. And it's not supported by any specific legal
13 authority. The cases that plaintiff's attorney cites are
14 just general principles of Freedom of Information Act law.

15 It's not sour grapes, Your Honor. We're looking for a
16 good, solid order and would urge the Court to reconsider
17 the previous order filed.

18 THE COURT: Response?

19 MS. CARROLL: Well, Your Honor, they don't cite any
20 specific legal authority for the proposition that an agenda
21 has to be any specific link or specific detail or specific
22 format. You know, all of these -- a -- an agenda is, I
23 think, largely what the city says it is. And they said the
24 agenda complete was an agenda.

25 So when they go forth and amend it and add, as they

1 clearly say they did in the minutes, to the regular agenda
2 of May 7, 2018, which is what they call it on the cover
3 page, the agenda complete, then they violate the Freedom of
4 Information Act, which protects the public, like Mr.
5 Holcomb, and are supposed to be construed in his favor and
6 in the favor of people like him. And we, again, support
7 your order. Thank you.

8 THE COURT: Well, this now is the -- I guess the
9 third, maybe fourth, hearing I've presided over involving
10 the parties. This hearing on this case was January the
11 15th, where we spent hours listening to testimony and
12 arguments.

13 Then on July the 30th, a -- a second case was heard
14 between the parties. In that case the City of North
15 Augusta prevailed, and an order was signed on August the
16 16th. Then on October 7th, the Court erroneously, through
17 our e-filing system, clicked on the wrong order in my queue
18 and noticed that and corrected it the next day.

19 A -- a motion was filed seeming to suggest that the
20 Court was confused in some way. The Court was not
21 confused. The Court did not make its decision as to the
22 prevailing party on October 7th.

23 The hearing was on January 15th. And I considered
24 what I heard and pondered the case from January 15th into
25 months ahead. In fact, I thought I had signed an order

1 because when you -- when you deal with the prevailing
2 party's entitled to attorney fees, that causes some
3 continuation of things on -- the case is not over simply
4 when the Court makes its initial ruling.

5 And I determined, far before October 7th, that the
6 City of North Augusta violated FOIA and the manner in which
7 -- and this agenda was prepared that did not reflect the
8 matters that were considered at the meeting. The
9 additional -- the -- the format of preparing a preagenda
10 and -- but voting on something involving millions of
11 dollars, did not give adequate public notice, and violated
12 FOIA. That determination was made many, many months ago,
13 not on October the 7th.

14 Through our system now of e-filing and by the click of
15 a mouse, you've indicated -- you've forwarded an order --
16 in this instance, the wrong -- the mouse was clicked on the
17 wrong icon. And that put into motion this erroneously
18 filed order that was corrected the next day, which, in
19 part, could've been further exacerbated by the fact that we
20 had this second hearing and second ruling in the interim
21 involving the one in which the city did prevail.

22 But I don't believe that the order signed on October
23 8th is a flawed order. It's a well-reasoned conclusion by
24 the Court based on the evidence and the presentation that I
25 heard on January 15th.

1 And the plaintiff is correct. A hearing of this
2 nature is -- is not to present new evidence, but to have
3 the Court have that opportunity to further consider its
4 decision to determine, as Mr. Crowe said, whether or not
5 there is a need to reverse the -- the call.

6 But I -- I haven't heard anything here today, other
7 than what I've heard previously, that caused me to conclude
8 previously that the city did not comply with the
9 requirements of -- of FOIA in this instance.

10 I don't believe that this result should have any
11 chilling effect on any body that is required to comply with
12 giving appropriate public notice and responding to the
13 requirements of the -- of the law.

14 For all those reasons, the motion for reconsideration
15 is denied.

16 And beyond that, with respect to other submissions to
17 the Court concerning the rights of the prevailing party,
18 what do you have to say, Ms. Carroll?

19 MS. CARROLL: Oh. Your Honor, we have pending before
20 this Court a motion for attorney's fees. I did not
21 understand that to be scheduled for today and -- and
22 thought that perhaps it would be best for me to be -- find
23 out if this order continued to make us the prevailing
24 party.

25 But having said that, the statute -- the only

1 prerequisite for obtaining attorney's fees is that the
2 party be the prevailing party. And since Mr. Holcomb is
3 the prevailing party in every respect, with -- with respect
4 to this specific case, he is entitled to his attorney's
5 fees. Once we were made aware that he was the prevailing
6 party, we did the appropriate motion for attorney's fees;
7 we did appropriate affidavits. These were done timely and
8 correctly.

9 And therefore, his reasonable fees should be awarded
10 without hesitation, to the extent Your Honor agrees that
11 our -- my statement of what the reasonable fees are and
12 support by a third-party attorney who has also submitted an
13 affidavit, those should be the fees awarded. If Your Honor
14 does not agree with that, then, of course, some reduction
15 is -- is available and appropriate. They were requested in
16 our complaint and were appropriately raised and only
17 requested once we were actually at a point that we were
18 entitled to them.

19 And so, Your Honor, I would request that you award our
20 attorney's fees in the amount of -- it's something -- I
21 think a little above \$12,000. I don't actually remember.
22 I wasn't expecting to make this argument today. And
23 however that would be appropriate, we can either have a
24 hearing at a later date or I could refer you to the motion,
25 which has the exact amount.

1 THE COURT: All right. Mr. Crowe?

2 MR. CROWE: Your Honor, Section 30-4-100 contained in
3 the Freedom of Information Act provides in Subpart (B) that
4 (as read): "If a person or entity seeking relief under
5 this section prevails, he may be awarded -- he may be
6 awarded -- reasonable attorney's fees and other costs of
7 litigation specific to the request."

8 We would -- and -- and then, the second sentence
9 refers to the discretion of the Court, should the party
10 prevail in part. We would urge that this statute plainly
11 provides that the award of attorney's fees are
12 discretionary with the Court, not mandatory and automatic.
13 We would submit that the position of the city in this case
14 was substantially justified and that, under the
15 circumstances, the award of attorney's fees and costs would
16 be unjust.

17 This was a novel issue, as has been alluded to by both
18 parties. And at best, it was a technical violation; that
19 is, perhaps the city posted something on its website that
20 the plaintiff contends he relied on in attending a meeting.
21 So it is a -- it is new ground. And we would urge that it
22 would be unfair to penalize the city by an award of
23 attorney's fees.

24 Additionally, with regard to the specifics of the
25 amount alleged, we take issue with the hourly rate of \$350

1 an hour. I would represent to the Court as an officer of
2 the Court that my rate for City of North Augusta in this
3 case is \$200 an hour, which we would submit is a more -- a
4 more appropriate measure of the value of the time,
5 expertise, etc., involved in litigating a Freedom of
6 Information Act case. Thank you, Your Honor.

7 THE COURT: All right.

8 MS. CARROLL: May I respond briefly, Your Honor? Of
9 course, the award of attorney's fees is somewhat in Your
10 Honor's discretion under the statute. That is clearly the
11 case.

12 And I believe that that anticipates a consideration of
13 what is in the interests of justice. And I would suggest
14 to you, Your Honor, that it is absolutely in the interests
15 of justice to award the attorney's fees to Mr. Holcomb.

16 Because the city is playing the innocent party here
17 and -- when, in fact, they -- we addressed this with them
18 several times. We did not race straight to court. We did
19 everything we could to get them to address this. If they
20 had taken any meaningful measures to address Mr. Holcomb's
21 concerns, we would not have been here.

22 But they absolutely declined to do so. And they adopt
23 a very combative strategy against Mr. Holcomb and other
24 people trying to obtain access to the -- the documents and
25 the public -- necessarily public information related to

1 meetings. It is this combativeness that forces us to be
2 here.

3 Mr. Holcomb doesn't want to use his personal money to
4 come in and file lawsuits. But it -- they have a history
5 of not -- of -- of erring absolutely in the other direction
6 from what the statute directs that they're supposed to do.
7 They're supposed to be open. They're supposed to liberally
8 construe this statute in favor of the people and make the
9 things available to them.

10 And Your Honor can refer to *Donahue v. City of North*
11 *Augusta*, where the Supreme Court have -- that a -- State of
12 South Carolina recognize that they -- and that case had --
13 had similarly avoided fulfilling their obligations. I
14 didn't submit it. But I could obtain the information and
15 affidavits on how many times they've been ruled against in
16 this matter. And I will be happy to do it, if Your Honor
17 wants it.

18 The point is that they are -- they are not an -- an
19 innocent party here over a -- a tiny, insignificant little
20 detail. They are a city that actively does things to make
21 it difficult for their people to understand what is
22 happening and fully participate in local government. And
23 the FOIA is meant to bring it into the sunshine. And --
24 and Your Honor should rule that it does by -- by making
25 them pay the attorney's fees when they are not correct in

1 their position.

2 THE COURT: You use the word sunshine. Is that a --
3 in some states, Florida ---

4 MS. CARROLL: Yeah.

5 THE COURT: --- for example, is ---

6 MS. CARROLL: I -- that is a word that comes from the
7 -- in -- in -- in Florida, the -- their freedom-of-
8 information law is called the Sunshine Act. It is very
9 similar to the one here. But that's a word -- and -- and I
10 am admitted to the State of South Carolina and I have
11 argued these case before. This is not my first rodeo on
12 freedom-of-information-type lawsuits.

13 And we typically use that word. And -- and it is a
14 nice allegory for what is actually happening here. We want
15 -- we don't want to allow local governments to -- to hide
16 their decisions, to go into the darkness and make decisions
17 without the irradiating light of the sun. So it -- the
18 Sunshine Act in Florida, but -- but that is what this is
19 meant to do, is to bring decisions into the sunshine.

20 As to my fees being \$350 an hour, that is my usual and
21 customary fee for commercial matters, except that sometimes
22 I do 425 for the much -- whenever we have a -- for
23 instance, a large company with a lot at stake and a one-off
24 instance, a -- a one-time situation. It -- I might charge
25 that rate instead.

1 I -- I'm sure Mr. Crowe gives the city a -- a very
2 reasonable fee because he probably deals in substantial
3 volume for them. And that does change the ordinary fees
4 for something like that. However, you will see from the
5 affidavits submitted, both mine and the -- I had another
6 attorney whom I have tried a case with before who has had
7 the opportunity to evaluate my skills before and who's
8 worked on these type of cases, who indicates that the --
9 the fee and my rate are both reasonable. Thank you, Your
10 Honor.

11 THE COURT: All right.

12 MR. CROWE: Your Honor, if I could very ---

13 THE COURT: Yes, sir.

14 MR. CROWE: --- quickly, we would submit that the
15 arguments of plaintiff's attorneys about her opinions about
16 the city and about volume work are unsupported by the facts
17 and are not true. The case of *Donahue v. City of North*
18 *Augusta* is what Ms. Carroll cites as the history of
19 violation. So it's one case, decided by the Supreme Court
20 in 2015. The citation is 773 S.E.2d 140.

21 It involved, in addition to considering issues of TIF
22 that are unrelated to the FOIA, it considered whether the
23 city violated the FOIA in failing to provide the specific
24 purpose of the executive session when it was announced in
25 open session. So it has nothing to do with documents,

1 nothing to do with hiding documents, as would be alleged,
2 and does not indicate any history of violations by the
3 city. Thank you, Your Honor.

4 THE COURT: All right. Yes, sir.

5 Is there any need for the Court to receive any
6 additional submissions by either side on the issue of
7 attorney fees?

8 MS. CARROLL: I -- I don't believe so, Your Honor. I
9 believe it -- it would probably be appropriate for the
10 client to submit a motion for the time necessary to do this
11 motion for reconsideration. I would probably have to
12 consult with him in that respect.

13 But other than that possibility, no, Your Honor,
14 unless, of course, Your Honor would like more submission on
15 the other instances of violations that we could identify.
16 We did not submit those. If Your Honor feels like he needs
17 to consider them, I would be pleased to do it. But I don't
18 feel compelled to do it.

19 THE COURT: All right. Mr. Crowe?

20 MR. CROWE: Your Honor, we do not, unless plaintiff's
21 counsel would require an affidavit from me for the
22 information I provided to the Court about my hourly rate.
23 If -- if she does not, we see no need to submit an
24 affidavit. And my representation to the Court, hopefully,
25 would be sufficient on that point of fact.

1 Ms. Carroll?

2 MS. CARROLL: I don't -- I -- I believe that if the
3 submission is simply that he charges \$200 to the city per
4 hour, which I believe is what it was, I don't object to
5 that. I -- I don't think counsel is misrepresenting that.

6 I -- I would submit that does not mean that that's
7 what he charges everybody and that Your Honor shouldn't
8 make that conclusion from this affidavit. But the -- if --
9 if all he is saying is that's what he charges the city, I
10 don't have any objection.

11 MR. CROWE: Thank you, Your Honor.

12 Thank you, Ms. Carroll.

13 Thank you, Your Honor.

14 THE COURT: Ms. Carroll, what is the Governor's
15 Commission for a Sustainable South Florida?

16 MS. CARROLL: Your Honor, it was a, I believe, 39-
17 member -- 36- or 39-member commission. And it was -- when
18 I got out of law school, I was -- I wanted to do things to
19 protect the environment. And that was not a big priority
20 for most firms.

21 So I took a project job with the Governor's Commission
22 for a Sustainable South Florida, which was appointed by the
23 governor's office, in order to protect the South Florida
24 ecosystem through implementing sustainability.

25 Sustainability is the concept that we have to strike a

1 balance between work and the environment and economics and
2 all the things that make a community important.

3 South Florida was experiencing a mass intrusion of
4 people coming in. It's exploded. And so the governor's
5 commission was legislators and we had the congresspeople on
6 there and -- and other folks. And it was a public body.
7 And we did have to comply with the government and the
8 Sunshine -- or, as they call it in Florida, which is
9 Freedom of Information Act statute.

10 THE COURT: And the ---

11 MS. CARROLL: Miccosukee ---

12 THE COURT: --- Miccosukee ---

13 MS. CARROLL: --- Tribe of Indians.

14 THE COURT: --- Tribe of Indians of Florida and legal
15 advisor and commercial and land-use and environmental
16 litigation.

17 MS. CARROLL: For Miccosukee Tribe? Yes.

18 THE COURT: Yeah.

19 MS. CARROLL: I -- as I mentioned to you a moment ago,
20 I took sort of a project job for the governor's commission.
21 And what we were doing was producing a report. And it --
22 and that port -- report became the foundation for
23 environmental, education, social, and cultural legislation
24 planning throughout South Florida from the headwaters of
25 the Kissimmee River down through the Florida Keys till

1 today. They built on it for many years thereafter.

2 Anyway, so after that, doing that activity, I -- I
3 then needed a real job. And I spoke to the people on the
4 commission. And one of the members of the commission was
5 the Miccosukee Tribe of Indians of Florida. And I said to
6 them, "Guys, I need a job."

7 So Miccosukee Tribe is a federally-recognized Indian
8 Tribe. It is one of three in Florida. There are -- the
9 other major one is the Seminole Tribe of Florida, which is
10 down in the same general area. Miccosukee is in Miami.
11 Seminole is sort of north of that in Broward County. And
12 then, there's -- there's one that's in Alabama that kicks
13 into Escambia County in the north end of Florida a little
14 bit.

15 In any event, the Miccosukee Tribe said, "We love you.
16 You've done a terrific job on the governor's commission.
17 We're going to tell our law firm to hire you."

18 And then I worked for Lehtinen, O'Donnell, Vargas, and
19 Reiner, it was called at the time, for years. And they
20 were basically out-house counsel or outside counsel for
21 Miccosukee Tribe. I came to do what I think of as all the
22 care and feeding of an Indian Tribe through that process.

23 The tribe viewed my work there so favorably that they
24 eventually hired me as their in-house general counsel. So
25 I became the person responsible both -- for supervising

1 their law firms and reviewing their bills and all that sort
2 of thing, all the general regulatory work, while still
3 maintaining litigation activities, which was a priority to
4 me, because I had been a litigator all the way up into the
5 point when I became their general counsel.

6 As a federally-recognized Indian Tribe, they had many
7 federal grants for many millions of dollars. And they
8 were, at the same time, \$100-million-a-year gaming tribe.
9 So they are still there today. Their reservations are on
10 the Tamiami Trail just in the middle of the Everglades.

11 So they are -- they are very invested in the
12 protection of the environment. And that's how I went from
13 the governor's commission to -- to working for one of the
14 -- the entities that had the same kind of goals and
15 objectives.

16 THE COURT: All right. And then, skipping on over to
17 horse farming?

18 MS. CARROLL: Horse farming. I worked in Miami for
19 about 16 years. I was born and raised -- I first started
20 riding before I was born. There are pictures of my mother,
21 pregnant on a horse with me. And I've always been horsey.

22 And during most of the time I was in Miami, I
23 maintained a horse in an urban barn there. I have to tell
24 you, riding a horse in an area about the size of this
25 courtroom is not as much fun as it sounds.

1 So later in my -- around 2007, I had purchased a farm
2 here in Aiken. Like so many people do with Aiken, I came
3 here for a visit with friends and I went away in love. And
4 it wasn't too long before -- after that visit, rather, that
5 I purchased the farm.

6 In 2008/9 I decided that I did not have to live in
7 Miami, and I did not have to ride my horse in a space the
8 size of this courtroom. And so I moved to the farm. And I
9 hung out my own shingle. And merrily, I continue to
10 practice as a sole practitioner.

11 I have both a local, statewide, and national practice
12 in that capacity. I predominantly -- I -- I think of my
13 practice as commercial, environmental, and Native American
14 Tribal law and all that that involves, tribe to our
15 governments. And they interact with governments on a
16 government-to-government basis when they are federally-
17 recognized tribes.

18 I still represent tribes. I -- Catawba Indian Nation
19 is one of my most significant clients. And I do for them,
20 you know, a great variety of things.

21 THE COURT: And when the Court granted you protection
22 some weeks ago involving a California case ---

23 MS. CARROLL: That is correct ---

24 THE COURT: --- you ---

25 MS. CARROLL: --- Your Honor. I -- I did go to

1 California. And I tried an -- the -- the situation there
2 is that, as I mentioned earlier, one of my areas of
3 practice is -- is commercial practice. I predominantly do
4 it for a couple of industries, one being the equine
5 industry -- I have a quite a few clients in that area --
6 the other one being the sports-nutrition industry, and I
7 guess the third being tribes. Because so often, tribes
8 have commercial enterprises, where I have to work as well.

9 Anyway, so in the sports-nutrition industry, I
10 represent the people who develop, distribute, market,
11 package, and -- and otherwise deal with the issues related
12 to sports nutrition and machines. So I -- I -- I -- I
13 represent the lady who did the Bowflex, for instance -- I
14 think it was Bowflex, one of those -- in -- in a recent
15 machine activity.

16 Anyway, I -- I also represent groups that do the
17 protein bars, energy shakes, supplements, etc. We had a
18 breach-of-contract dispute. I went to California; tried
19 that case; got to the end of my case. At the end of the
20 case, a determination was made that -- that there needed to
21 be a settlement.

22 It is confidential. So unfortunately, I may not
23 reveal the terms of that settlement. But I was -- I was
24 there for that purpose ---

25 THE COURT: All right.

1 MS. CARROLL: --- and -- and ---

2 THE COURT: And ---

3 MS. CARROLL: --- tried the case.

4 THE COURT: --- then, over what span of time have you
5 dealt with FOIA-related matters?

6 MS. CARROLL: Well, FOIA is also the name for the
7 federal statute, which relates to this matter. I have
8 dealt with federal FOIA matters for however long I've been
9 practicing, since 1994, whatever that math is, 25 years,
10 basically. And -- and it -- the Florida does -- has what
11 is called the government in the Sunshine Act, which is
12 very, very, very similar to the ---

13 THE COURT: What ---

14 MS. CARROLL: --- FOIA act here.

15 THE COURT: Well, the ---

16 MS. CARROLL: And I've ---

17 THE COURT: Was ---

18 MS. CARROLL: --- dealt with that ---

19 THE COURT: --- 23 years that -- when you submitted
20 this.

21 MS. CARROLL: Twenty-three? Oh, I undercut myself.
22 *Mea culpa*, Your Honor. It feels like 25.

23 No. I -- I would say to -- 25 is -- is closer -- I --
24 well, it would depend on what you mean. For -- for
25 litigating it and advising private clients, it probably is

1 23. But -- but it would be 25 for the fact that when I
2 worked for the governor's commission, I actually had to
3 make sure they stayed in compliance with both -- to the
4 extent it touched federal matters, federal issues, and for
5 government in the Sunshine Act, we actually had to comply
6 with that.

7 We had to make sure that our records were open to the
8 public appropriately; that our -- our meetings were held in
9 the sunshine appropriately. We had meetings every month
10 for long periods of time that moved around the state that
11 -- South Florida to try to make sure that we took into
12 account all of the important areas when they made their
13 recommendation on sustainability for the whole area. So we
14 did compliance at that time.

15 THE COURT: And you've indicated some representation
16 or litigation in the Eleventh Circuit appellate courts?

17 MS. CARROLL: Yes, Your Honor. I don't remember
18 exactly and all of it. The -- I am admitted to South
19 Carolina, Florida, and North Carolina state-court bars; and
20 then, the Southern District of Florida and Middle District
21 of Florida federal courts; and the Eleventh Circuit Court
22 of Appeals, which includes Florida; and the United States
23 Supreme Court.

24 And I -- the Eleventh Circuit Court of Appeals
25 would've been involved in some of my environmental cases,

1 predominantly with respect to NPDES permits and the Clean
2 Water Act. NPDES permits are National Pollutant Discharge
3 Elimination Systems permits. And I had a couple of cases
4 that I think they both went to the United States Supreme
5 Court and they passed through the Eleventh Circuit Court of
6 Appeals on the issue -- I believe what happened -- I'm
7 trying to remember exactly -- is that the two cases were
8 eventually merged into one.

9 And that case made it all the way up. And they were
10 on the issue of what is a point source for purposes of the
11 Clean Water Act? These -- they -- they're sometimes called
12 the water-transfers cases. They actually show up in
13 casebooks, I -- I'm excited to say. And they are about
14 whether you are a point source of pollution when you
15 transfer water from -- of one quality from one water basin
16 to another basin; and/or -- or if being just a transfer
17 that you have not created any pollution and you are
18 therefore not a point source.

19 THE COURT: All right. And does ---

20 MS. CARROLL: I may have ---

21 THE COURT: --- any of that relate to South Carolina's
22 riverfront city?

23 MS. CARROLL: It -- the -- the Clean Water Act has
24 some relationship to it, absolutely. The -- the
25 predominant issues that seem to be being raised in other

1 cases -- and there is a -- an -- an important pending case
2 right now where South Carolina is a party, where the City
3 of Augusta is a party -- I believe City of North Augusta
4 has not chosen to be a party. And I -- I'm -- I don't want
5 to say with confidence, but I believe it is predominantly
6 related to water levels and quantity, rather than quality.

7 They are relating -- related. Anytime you're in any
8 kind of ecosystem where water is important, quality,
9 quantity, timing, and distribution are always at issue.
10 But specifically, I would say that I'm not aware that there
11 are quality issues that are at the forefront right now.

12 THE COURT: All right.

13 MS. CARROLL: They may get there. Because a lot of
14 time, when you change levels like that in the water, those
15 changes in levels can affect the quality of -- of water
16 bodies.

17 THE COURT: And what's the public-policy benefit of
18 awarding attorney fees in a case such as this?

19 MS. CARROLL: Well, the -- the benefit is that to
20 encourage the city to behave correctly; to -- to follow the
21 edict of FOIA to -- to be open and to liberally construe
22 the statute in favor of the -- the member of the public.

23 THE COURT: All right. And how does awarding attorney
24 fees advance the ball forward?

25 MS. CARROLL: For -- well, we hope that it would cause

1 the city to be -- take more seriously when somebody says:
2 "Hey, you have -- you know, we want to know about this.
3 You haven't -- you haven't made this clear on your agenda.
4 You need to have a meeting where this is really vetted
5 properly," so that in the future, they'll -- "Well, gosh,
6 there is an impact. But we lose; it looks bad. Then we
7 have to pay the people that won. So, you know, that's --
8 that's not a good thing. So instead, we'll behave
9 ourselves and we will have meetings where the notice is
10 appropriate on the agenda; or, in the case of documents,
11 why don't we just give them to them? I mean, who's it
12 going to hurt?"

13 My experience -- and this is more related to the other
14 case, I will say now. But the -- the -- the -- the big
15 problem with that case is it was so hard to get them to
16 cooperate. And we had -- we sent letter after letter and
17 response after response. And it was vague and confusing.

18 And I realize we did not prevail in that instance.
19 But -- but that is the -- that is the kind of attitude we
20 get from the city when we try to get compliance with the
21 Freedom of Information Act: that they try to make it as
22 complicated as possible, I think probably -- and it is my
23 speculation -- to try to make us go away so that if there
24 is an impact, if they have to pay a fee, if -- if they are
25 ordered that what they are doing is wrong, then maybe they

1 will think twice before the just try to make us go away
2 instead of following the Freedom of Information Act the way
3 they should.

4 THE COURT: All right. And based on all the questions
5 I have asked you, anything else you want to say on this
6 issue?

7 MS. CARROLL: No, Your Honor. I -- I think you've
8 been very fair with your questions. And I've had a full
9 opportunity to address my concerns.

10 THE COURT: All right. Anything further, Mr. Crowe?

11 MR. CROWE: No, Your Honor.

12 THE COURT: All right. You know, quite often, when I
13 am called upon to review these things as sort of like a
14 deliberation in chambers on the issues, but since we have a
15 little time this morning, I thought I would just do so on
16 the record in -- record in open court.

17 I believe the affidavits submitted and the amount of
18 fees sought are -- it's all fair and reasonable. And I'm
19 going to award attorney fees of \$10,518, as requested, and
20 reimbursement of \$699.92, reimbursement for costs
21 associated with this action.

22 The -- I -- I'm not going to consider any additional
23 fees associated with this hearing. Mr. Crowe has made an
24 excellent argument concerning the -- well, some of the
25 challenges faced by municipalities in conducting its

1 business to -- to the satisfaction of the public and to the
2 satisfaction of inquiring minds who really want to know
3 what's going on behind the curtains.

4 So I believe it's -- the filing of the motion for
5 reconsideration is certainly reasonable, particular
6 considering the misclicking of orders on October 7th and
7 8th and the basis that -- that -- that would raise
8 legitimate concerns by the -- by the city. But I don't
9 believe the city should be penalized for pursuing a further
10 clarification or/and seeking to have things amended. So
11 I'm not going to consider any additional fees that might
12 otherwise -- the plaintiff might otherwise be entitled to,
13 based on having to come today for further -- further
14 hearings and preparation for the hearing today.

15 So I'm going -- but I am going to award the fees
16 originally requested. And counsel has demonstrated that
17 she is eminently qualified. I've been telling people in
18 South Carolina -- one of my former law clerks is the only
19 lawyer who -- who is barred in three states: South
20 Carolina, Florida -- her native Florida, and Georgia. But
21 now I see Ms. Carroll is also barred in three states, which
22 is -- which is quite feat in and of itself to survive the
23 task of studying and passing bars in multiple states. And
24 her record of representation of matters of public interest
25 is well demonstrated through her résumé and through her

1 presentation today.

2 And I am going to approve the fees as requested, if
3 you'll prepare an order indicating that and share a copy
4 with Mr. Crowe.

5 MS. CARROLL: Yes, Your Honor.

6 THE COURT: All right. Anything further?

7 MR. CROWE: No, Your Honor. Thank you for your time
8 today.

9 THE COURT: All right. Thank you all.

10 MS. CARROLL: Thank you, Your Honor.

11 (Whereupon, the proceeding was concluded at 11:08
12 a.m.)

13 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Aiken County, South Carolina, on the 5th day of December, 2019.

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



Maryann S. Nevers, CVR-M-CM, RVR
Official Court Reporter

Columbia, South Carolina
April 4, 2020

ELECTRONICALLY FILED - 2019 Jan 16 12:22 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202705

Judge: Clifton Newman

State/Plf. Atty. Dione C. Carroll

Def's Atty. Danny Crowe

Received of B. Sigwald, Court Reporter for the above case, these exhibits:

[illegible]

Page of

copy court reporter_____

Date _____

10/01/07 csw

City Council Meetings

City Council meetings are held the first and third Monday of the month at 7:00 p.m. in the Council Chambers on the third floor of the Municipal Building, 100 Georgia Avenue. City Council study session meetings are held in the third floor Council Conference room or the Council Chambers depending on number of seats required for the meeting.

Agendas of City Council meetings are generally posted the Friday before each Monday evening Meeting or Study Session. Agenda attachments are available for review in the City Clerk's office on the third floor of the Municipal Center, 100 Georgia Avenue.

City Council meeting minutes are posted as soon as possible after each meeting.

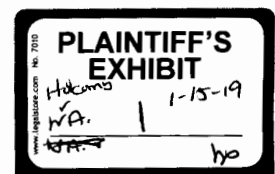
Next City Council Meeting

Agenda information is available in our [Document Central](#).

There will be a study session meeting on Monday, December 17, 2018, at 6:00 p.m.

There will be a regular City Council meeting on Monday, December 17, 2018, at 7:00 p.m.

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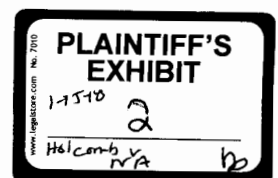
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CITY OF NORTH AUGUSTA

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

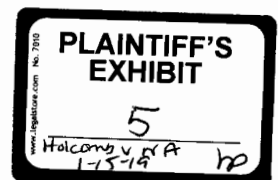
UNFINISHED BUSINESS

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:**

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*Thank you for attending tonight's meeting of the North Augusta City Council.
To assure every citizen's privilege to speak to City Council and to maintain proper decorum
the following sections of the City's Code of Ordinances are reprinted.*

Sec. 2-57. Order and decorum generally.

- (a) By council members. While the council is in session, the members must preserve order and decorum, and a member shall not, by conversation or otherwise, delay or interrupt the proceedings or the peace of the council, or disturb any member while speaking or refuse to obey the orders of the council or its presiding officer, except as otherwise herein provided.
- (b) By other persons. Any person making personal, impertinent, or slanderous remarks or who shall become boisterous while addressing the council shall be forthwith, by the presiding officer, barred from further audience before the council, unless permission to continue be granted by a majority vote of the council.

Sec. 2-62. Addressing council—Permission required; exceptions.

Any person desiring to address the council shall first secure the permission of the presiding officer so to do.

Sec. 2-63. Same—Procedure.

Each person addressing the council shall step up in front of the rail, shall give such person's name and address in an audible tone of voice for the records, and unless further time is granted by the council, shall limit the address to five (5) minutes. All remarks shall be addressed to the council as a body and not to any member thereof. No person, other than the council and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the council, without the permission of the presiding officer. No question shall be asked a council member except through the presiding officer.

Sec. 2-64. Persons authorized to be within rail.

No person, except city officials or their representatives shall be permitted within the rail in front of the council chamber without the express consent of the council.



REGULAR AGENDA

OF

MAY 7, 2018



NOTES

This image shows a single sheet of white paper with horizontal black ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



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

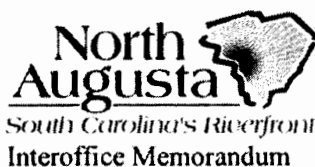
UNFINISHED BUSINESS

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:**

Administration Department



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

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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>

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 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.

Robert A. Pettit, Mayor

ATTEST:

Donna B. Young, City Clerk

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**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 Durham 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.

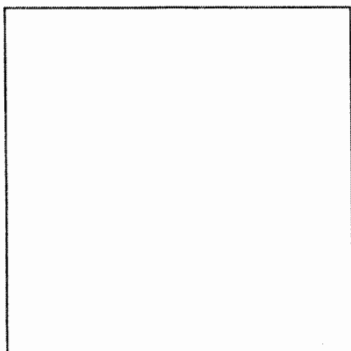
Notary Public for _____

My Commission Expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Alan Tantillo is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Senior Director, National Development of T-Mobile South LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name _____
My commission expires _____

EXHIBIT "A"

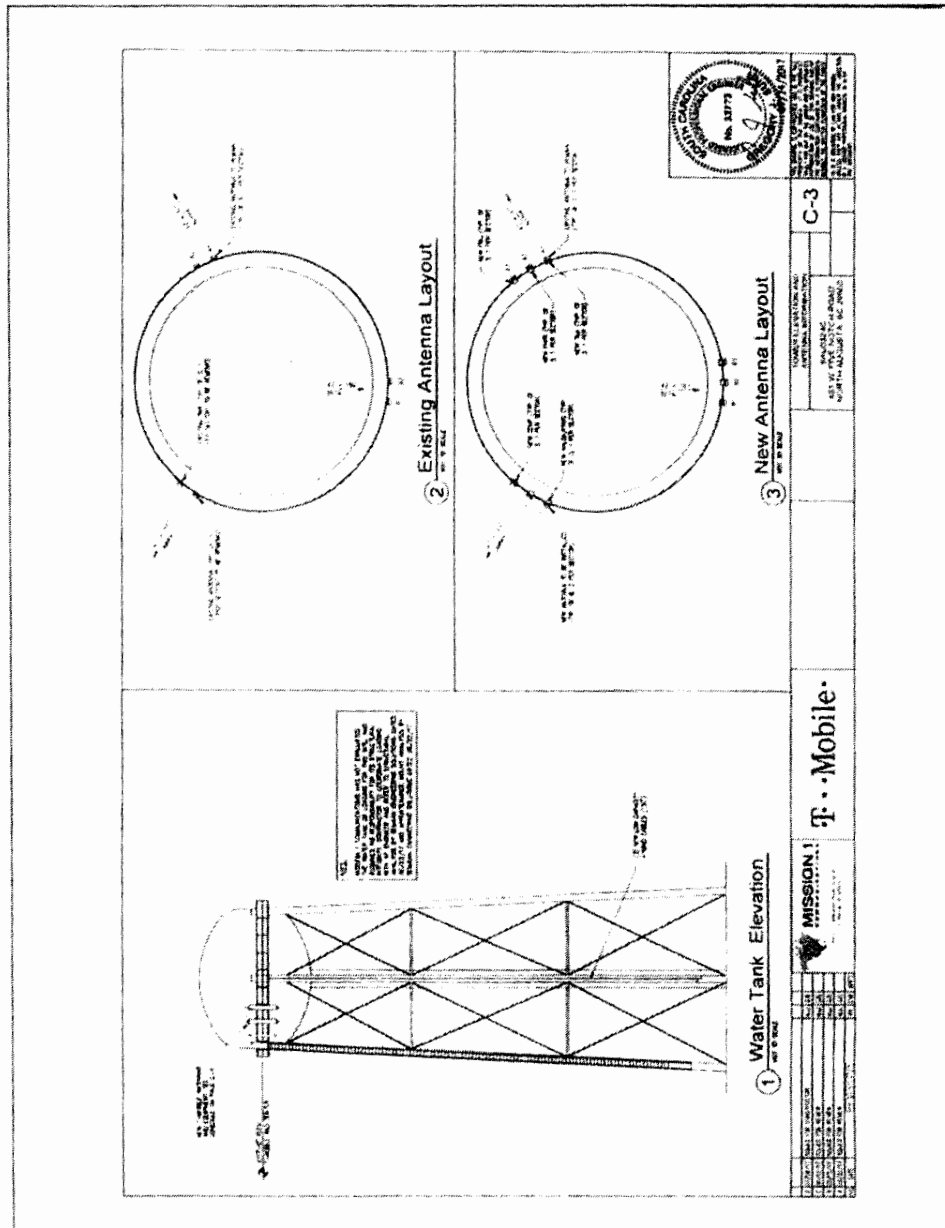
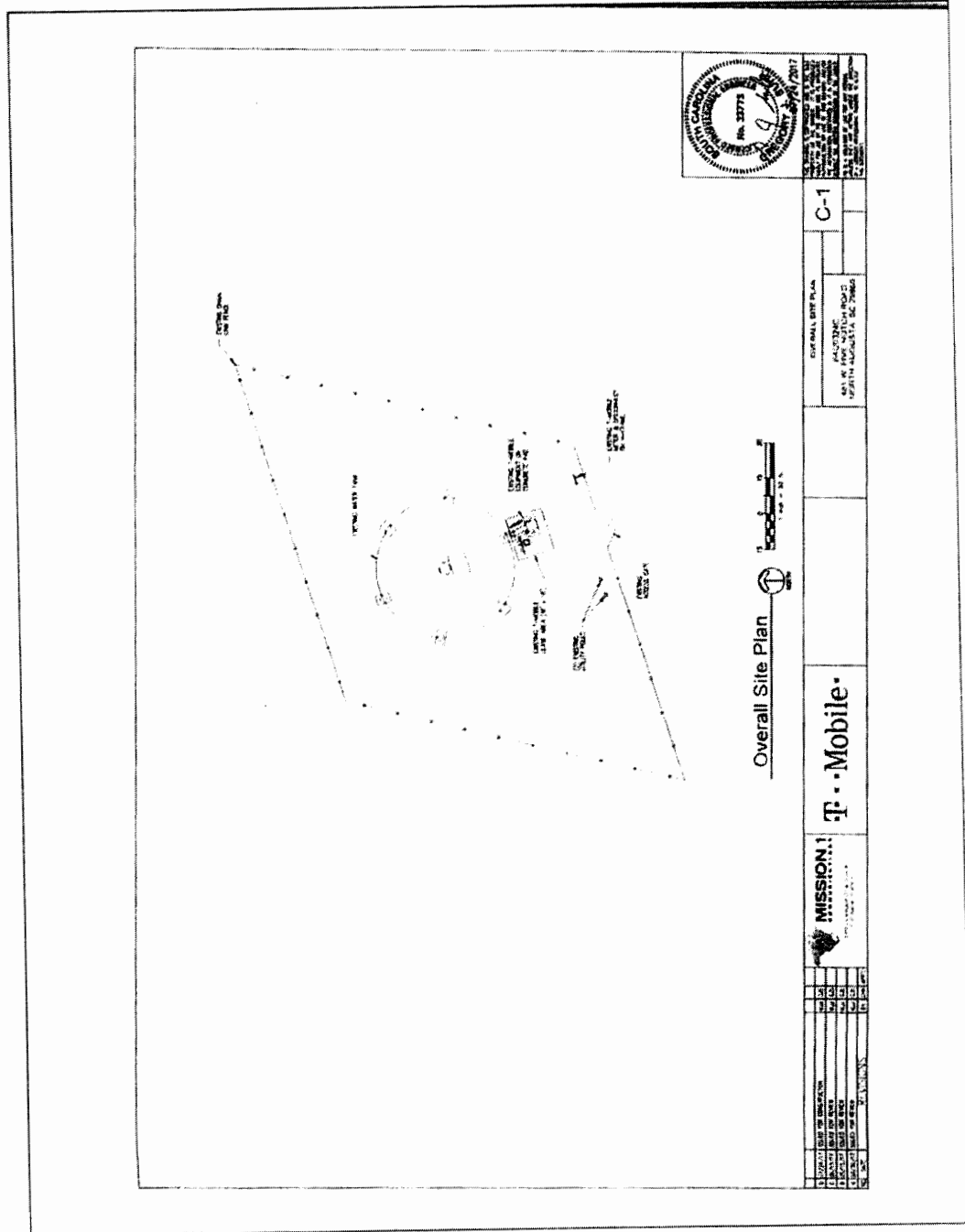
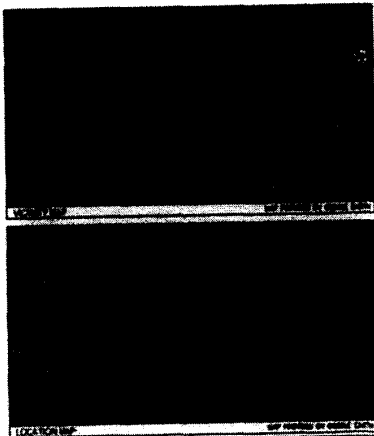


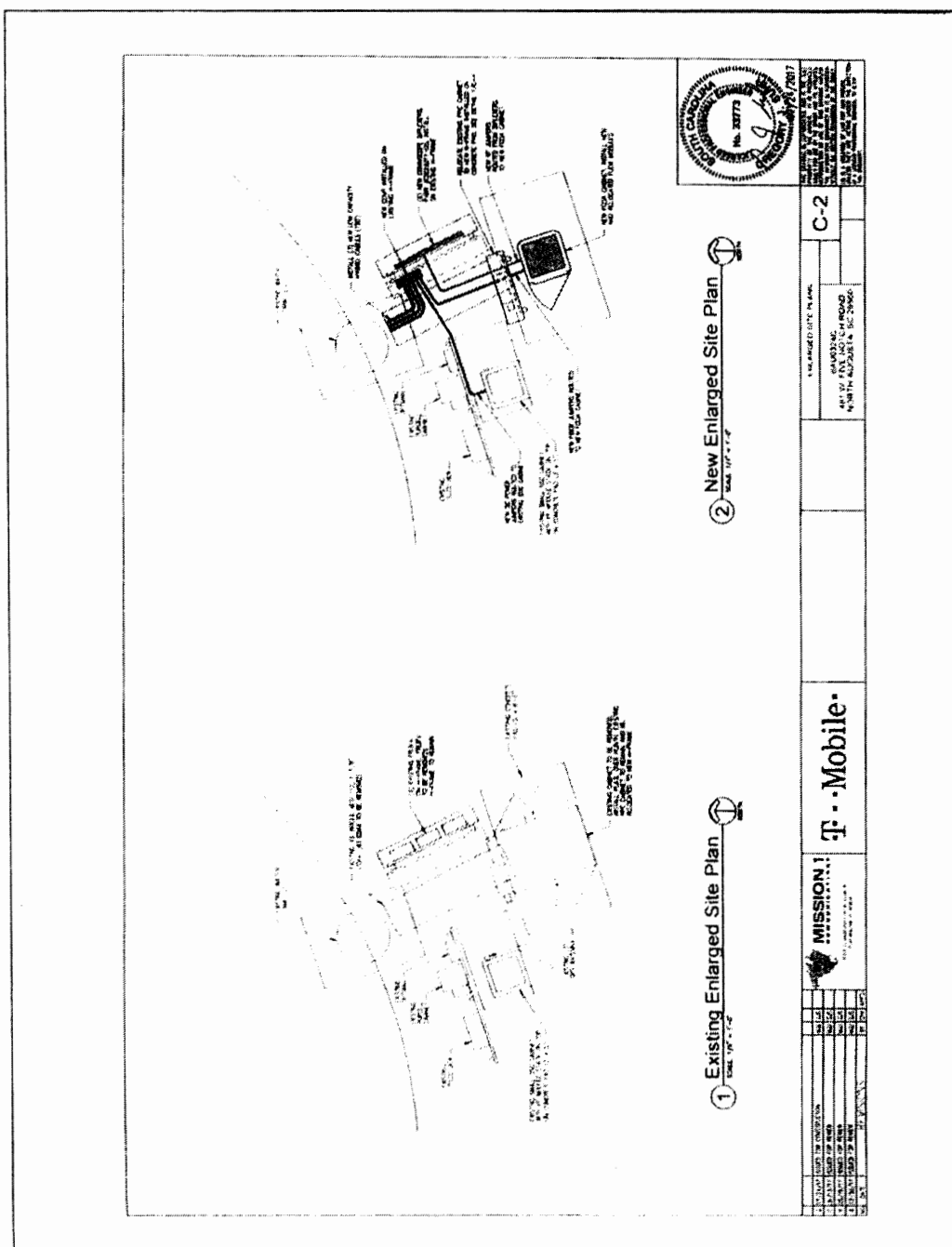
EXHIBIT "B"



Site Name Gregory Lake
Site Number 8AU0324C

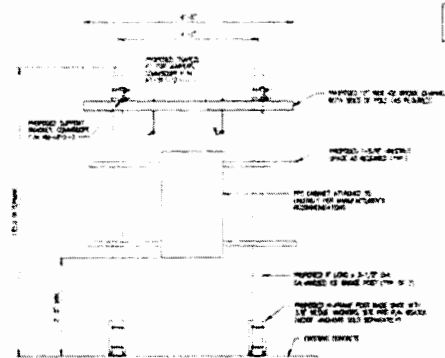
16

PROJECT INFORMATION PROJECT NUMBER: 8AU0324C PROJECT NAME: GREGORY LAKE PROJECT ADDRESS: 481 W. FIVE NOTCH ROAD, NORTH AUGUSTA, SC 29860, AIKEN COUNTY PROJECT DESCRIPTION CELL: 800 SERVICE: T-MOBILE PROJECT TYPE: T-MOBILE L2100 PLAN 2017 LAYOUT: 10' BY 10' 1/2" ANTENNA: 10' BY 10' 1/2" CITY: NORTH AUGUSTA SITE INFORMATION DATE: 10/11/17 CITY: NORTH AUGUSTA DATE: 10/11/17 PROJECT INFORMATION PROJECT NUMBER: 8AU0324C PROJECT NAME: GREGORY LAKE PROJECT ADDRESS: 481 W. FIVE NOTCH ROAD, NORTH AUGUSTA, SC 29860, AIKEN COUNTY PROJECT DESCRIPTION CELL: 800 SERVICE: T-MOBILE PROJECT TYPE: T-MOBILE L2100 PLAN 2017 LAYOUT: 10' BY 10' 1/2" ANTENNA: 10' BY 10' 1/2" CITY: NORTH AUGUSTA SITE INFORMATION DATE: 10/11/17 CITY: NORTH AUGUSTA	8AU0324C GREGORY LAKE 481 W. FIVE NOTCH ROAD NORTH AUGUSTA, SC 29860 AIKEN COUNTY	T-Mobile T-MOBILE L2100 PLAN 2017 CONFIGURATION 87320_TEMP_RUN_OSM U2100 ON GROUND																										
DRAWING INDEX T-1 PROJECT INFORMATION, LOCATION MAPS, AND DRAWING INDEX C-1 OVERALL SITE PLAN C-2 ENLARGED SITE PLAN C-3 TOWER ELEVATION AND ANTENNA INFORMATION C-4 ANTENNA SCHEDULE C-5 GENERAL CONSTRUCTION NOTES G-1 GROUNDING SCHEMATIC AND ONE LINE DIAGRAM G-2 GROUNDING DETAILS		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>REVISION</th> <th>DATE</th> <th>BY</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table> 	REVISION	DATE	BY																							
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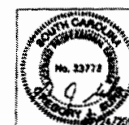


Site Name: Gregory Lake
Site Number: 8AU0324C

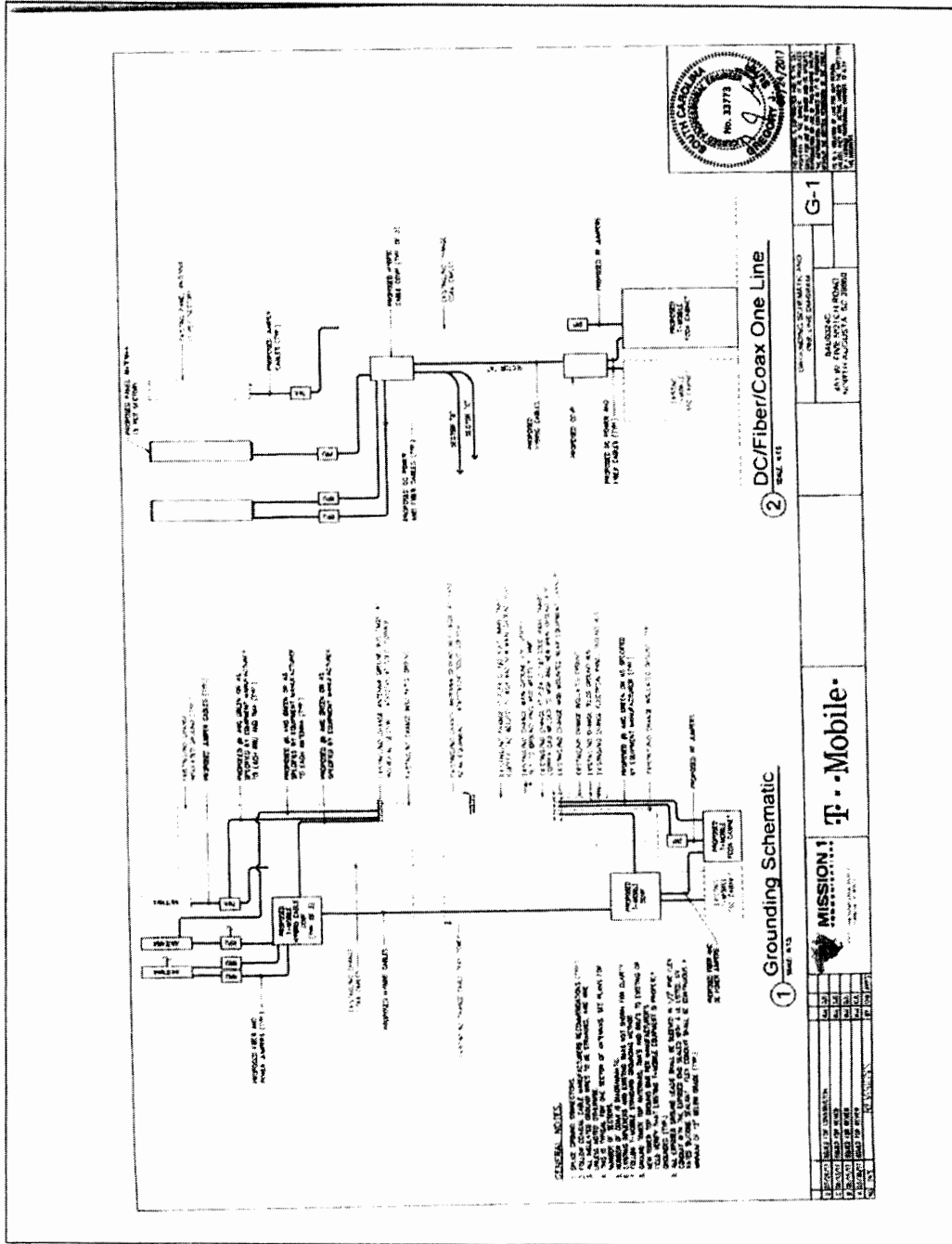
6732D TEMP RUN GSM U2100 ON GROUND - TOWER TOP EQUIPMENT SCHEDULE									
WTRFLY ID	WTRFLY NAME	ANTENNA MODEL	ANTENNA PATTERN	ANTENNA HEIGHT (FEET)	WTRFLY POWER (W)	WTRFLY FREQ (MHz)	WTRFLY MODE	WTRFLY TIME	WTRFLY STATUS
A-102	A2	CHASSIS-100-40-40 (A2) (A2)	800	100	100	100	100	100	100
	A3	CHASSIS-100-40-40 (A3) (A3)	800	100	100	100	100	100	100
	A4	CHASSIS-100-40-40 (A4) (A4)	800	100	100	100	100	100	100
	A5	CHASSIS-100-40-40 (A5) (A5)	800	100	100	100	100	100	100
B-102	B2	CHASSIS-100-40-40 (B2) (B2)	800	100	100	100	100	100	100
	B3	CHASSIS-100-40-40 (B3) (B3)	800	100	100	100	100	100	100
	B4	CHASSIS-100-40-40 (B4) (B4)	800	100	100	100	100	100	100
	B5	CHASSIS-100-40-40 (B5) (B5)	800	100	100	100	100	100	100
C-102	C2	CHASSIS-100-40-40 (C2) (C2)	800	100	100	100	100	100	100
	C3	CHASSIS-100-40-40 (C3) (C3)	800	100	100	100	100	100	100
	C4	CHASSIS-100-40-40 (C4) (C4)	800	100	100	100	100	100	100
	C5	CHASSIS-100-40-40 (C5) (C5)	800	100	100	100	100	100	100
D-102	D2	CHASSIS-100-40-40 (D2) (D2)	800	100	100	100	100	100	100
	D3	CHASSIS-100-40-40 (D3) (D3)	800	100	100	100	100	100	100
	D4	CHASSIS-100-40-40 (D4) (D4)	800	100	100	100	100	100	100
	D5	CHASSIS-100-40-40 (D5) (D5)	800	100	100	100	100	100	100



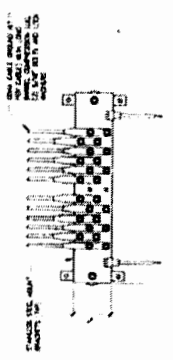
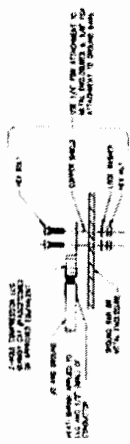
STATION, NAME, AND LOCATION OF SIGNAL				
STATION TOP (Signal Structure)				
TYPE AND QUANTITY	APPROXIMATE QUANTITY	DESCRIPTION	UNIT QUANTITY	TOTAL QUANTITY
1	3	POLE, 40' TALL	1	3
2	4	DRUM CABLE	1	4
3	2	NET	1	2
4	2	TRIP	1	2
5	6	WIRE, 1/2" DIA.	1	6
6	2	TRIP	1	2
7	2	TRIP	1	2
8	1	LOW CAPACITY WIRELESS CABLE	2	2
9	1	TRIP	1	1



Site Name Gregory Lake
Site Number 8AU0324C



Site Name Gregory Lake
Site Number 8AU0324C

		G-2		Mobile		MISSION!		<table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> <td>6</td> <td>7</td> <td>8</td> <td>9</td> <td>10</td> <td>11</td> <td>12</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>		1	2	3	4	5	6	7	8	9	10	11	12												
1	2	3	4	5	6	7	8	9	10	11	12																						
 ① Two Hole Lug Connection Detail SCALE: 1/8" = 1'-0"  ② Compression Connection Detail SCALE: 1/8" = 1'-0"																																	
INSTALLATION NOTES: 1. SEE NOTES ON SHEET G-1 FOR GENERAL NOTES. 2. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1. 3. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1. 4. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1. 5. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1. 6. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1. 7. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1. 8. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1. 9. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1. 10. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1. 11. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1. 12. ALL LUGS SHALL BE INSTALLED IN THE SAME MANNER AS SHOWN ON SHEET G-1.																																	

Site Name Gregory Lake
Site Number 8AU0324C

NOTES

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

NOTES

This image shows a full page of white paper with horizontal black lines, resembling notebook paper. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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.



Minutes of Regular Meeting of 05/07/18

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

Minutes of Regular Meeting of 05/07/18

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.

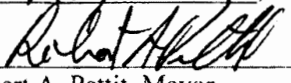
DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS _____ DAY OF _____, 2018.

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

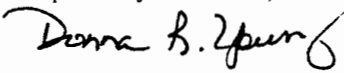
Please see the attached Speaker Forms completed by citizens for the May 7, 2018 Council meeting.

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!



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.

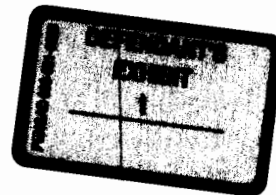
1. **CALL TO ORDER:**
2. **INVOCATION AND PLEDGE OF ALLEGIANCE:**
3. **ROLL CALL:**
4. **APPROVAL OF MINUTES:** Regular and study session meeting minutes of April 16, 2018

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:**



Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.

August 5, 2020

/s/Danny C. Crowe

Danny C. Crowe

S.C. Bar No. 1480

Crowe LaFave, LLC

Post Office Box 1149

Columbia, South Carolina 29202

(803) 724-5728

Attorney for Appellants

RECEIVED

Aug 21 2020

SC Court of Appeals