

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 25 2020

SC Court of Appeals

Herman Perry Holcomb,

Respondent,

v.

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

Appellants.

FINAL BRIEF OF RESPONDENT HERMAN PERRY HOLCOMB

Dionè C. Carroll
S.C. Bar 78185
Carroll Law Offices, P.A.
107 Pendleton Street N.W.
Aiken, South Carolina 29801
(803) 514-2557
Attorney for the Respondent

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
STANDARD OF REVIEW	10
PERTINENT PRINCIPLES OF STATUTORY CONSTRUCTION	12
ARGUMENTS.....	14
I. THE CIRCUIT COURT WAS CORRECT AS A MATTER OF LAW IN CONSTRUING THE AMENDMENT OF THE “AGENDA 050718 COMPLETE” BY THE CITY TO ADD THE NEW SAVANNAH BLUFF LOCK AND DAM PROJECT AS AN ITEM “ADDED TO THE AGENDA” IN A MANNER THAT VIOLATED THE STATE FREEDOM OF INFORMATION ACT (“FOIA”).....	14
II. THE CIRCUIT COURT WAS CORRECT IN FINDING AND CONCLUDING THAT THE DOCUMENT POSTED ONLINE AT A LINK CALLED THE “AGENDA 050718 COMPLETE” AND HAVING A COVER ENTITLED “REGULAR AGENDA OF MAY 7, 2018” CONSTITUTED THE MEETING “AGENDA” FOR PURPOSES OF FOIA.	19
III. THE CIRCUIT COURT DID NOT ERR AS A MATTER OF LAW IN PERMANENTLY ENJOINING THE CITY “FROM FUTURE SIMILAR VIOLATIONS.”	20
IV. THE CIRCUIT COURT WAS WITHIN ITS DISCRETION IN ITS AWARD OF ATTORNEY’S FEES.	22
CONCLUSION.....	31

TABLE OF AUTHORITIES

Cases

<i>Barnacle Broad., Inc. v. Baker Broad., Inc.</i> , 343 S.C. 140, 538 S.E.2d 672 (Ct. App. 2000)	11
<i>Bellamy v. Brown</i> , 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991).....	13
<i>Brock v. Town of Mount Pleasant</i> , 411 S.C. 106, 115–16, 767 S.E.2d 203, 207 (Ct. App. 2014), <i>aff'd as modified</i> , 415 S.C. 625, 785 S.E.2d 198 (2016).....	11, 14
<i>Burton v. York County Sheriff's Dept.</i> , 358 S.C. 339, 347, 594 S.E.2d 888, 892-93 (Ct. App. 2004).....	13, 20
<i>Campbell v. Marion Cty. Hosp. Dist.</i> , 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003) 10,11,13,19	
<i>Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.</i> , 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993)	12
<i>Cockrell v. Trs. Of Dist. 20 Constituent Sch. Dist.</i> , 299 S.C. 155, 156, 382 S.E.2d 923, 924 (1989)	16, 24, 28
<i>Crary v. Djebelli</i> , 329 S.C. 385, 496 S.E.2d 21 (1998)	10
<i>Denman v. City of Columbia</i> , 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010)	11
<i>DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce</i> , 423 S.C. 295, 301, 814 S.E.2d 513, 516 (2018)	14
<i>Donohue v. City of N. Augusta</i> , 412 S.C. 526, 531 (2015).....	4, 20
<i>Evening Post Publ'g Co. v. City of North Charleston</i> , 363 S.E. 452, 457, 611 S.E.2d 496, 499 (2005)	13
<i>Felts v. Richland Cty.</i> , 303 S.C. 354, 400 S.E.2d 781 (1991).....	10
<i>Fields v. J. Haynes Waters Builders, Inc.</i> , 376 S.C. 545, 555, 658 S.E.2d 80, 85–86 (2008).....	11
<i>Fowler v. Beasley</i> , 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996).....	13, 14
<i>Glassmeyer v. City of Columbia</i> , 414 S.C. 213, 218, 777 S.E.2d 835, 838 (Ct. App. 2015)	10

<i>Grosshuesch v. Cramer</i> , 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005)	11
<i>Harkins v. Greenville County</i> , 340 S.C. 606, 533 S.E.2d 886 (2000)	11
<i>Hodges v. Rainey</i> , 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)	12
<i>Kiriakides v. Sch. Dist. of Greenville Cty.</i> , 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009)	26, 30
<i>Lambries v. Saluda Cty. Council</i> , 409 S.C. 1, 10–11, 760 S.E.2d 785, 789–90 (2014)	12
<i>Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense</i> , 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008)	12
<i>Layman v. State</i> , 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008)	26, 30
<i>Litchfield Plantation Co. v. Georgetown Cnty. Water & Sewer Dist.</i> , 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994)	25, 29
<i>Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue</i> , 388 S.C. 138, 148, 694 S.E.2d 525, 529 (2010)	12
<i>Okatie River v. Southeastern Site Prep</i> , 353 S.C. 327, 577 S.E.2d 468 (Ct. App.2003)	10
<i>Perry v. Bullock</i> , 409 S.C. 137, 140, 761 S.E.2d 251, 252–53 (2014)	10
<i>Prevatte v. Asbury Arms</i> , 302 S.C. 413, 416, 396 S.E.2d 642, 644 (Ct. App. 1990)	passim
<i>Sloan v. Friends of the Hunley, Inc. (Friends II)</i> , 393 S.C. 152, 711 S.E.2d 895 (2011)	25, 26, 29, 30
<i>Sloan v. S.C. Dep't of Revenue</i> , 409 S.C. 551, 555, 762 S.E.2d 687, 689 (2014)	25, 29
<i>South Carolina Tax Comm'n v. Gaston Copper Recycling Corp.</i> , 316 S.C. 163, 447 S.E.2d 843 (1994)	10
<i>Sparks v. Palmetto Hardwood, Inc.</i> , 406 S.C. 124, 750 S.E.2d 61 (2013)	12
<i>Strategic Res. Co. v. BCS Life Ins. Co.</i> , 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006)	11

<i>Travelers Indem. Co. v. Auto World</i> , 334 S.C. 137, 511 S.E.2d 692 (Ct. App. 1999)	10
<i>Voelker v. Hillock</i> , 288 S.C. 622, 344 S.E.2d 177 (Ct. App. 1986).....	24, 29
<i>Wiedemann v. Town of Hilton Head Island</i> , 344 S.C. 233, 542 S.E.2d 752 (Ct. App. 2001)	10

Statutes

S.C. Code Ann. § 30-4-10 <i>et seq.</i>	2, 4, 12
S.C. Code Ann. § 30-4-100.....	passim
S.C. Code Ann. § 30-4-15.....	13
S.C. Code Ann. § 30-4-60.....	14
S.C. Code Ann. § 30-4-80.....	14, 15, 18
S.C. Code Ann. §§ 30-4-80, -90	14
S.C. Code Ann. § 30-4-70.....	14

Rules

Rule 220, SCACR.....	32
Rule 52, SCRCP.....	2
Rule 59, SCRCP.....	3

Regulations

S.C. Code Ann. Regs. 12-604.3 (2011)	7
--	---

STATEMENT OF THE ISSUES ON APPEAL

- I. WHETHER THE CIRCUIT COURT WAS CORRECT AS A MATTER OF LAW IN CONSTRUING THE AMENDMENT OF THE “AGENDA 050718 COMPLETE” BY THE CITY TO ADD THE NEW SAVANNAH BLUFF LOCK AND DAM PROJECT AS AN ITEM “ADDED TO THE AGENDA” IN A MANNER THAT VIOLATED THE STATE FREEDOM OF INFORMATION ACT (“FOIA”).
- II. WHETHER THE CIRCUIT COURT WAS CORRECT IN FINDING AND CONCLUDING THAT THE DOCUMENT POSTED ONLINE AT A LINK CALLED THE “AGENDA 050718 COMPLETE” AND HAVING A COVER ENTITLED “REGULAR AGENDA OF MAY 7, 2018” CONSTITUTED THE MEETING “AGENDA” FOR PURPOSES OF FOIA.
- III. WHETHER THE CIRCUIT COURT WAS CORRECT AS A MATTER OF LAW IN PERMANENTLY ENJOINING THE CITY “FROM FUTURE SIMILAR VIOLATIONS.”
- IV. WHETHER THE CIRCUIT COURT WAS CORRECT IN ITS AWARD OF ATTORNEY’S FEES.

STATEMENT OF THE CASE

Respondent Herman Perry Holcomb (“Holcomb”) filed an Amended Complaint seeking declaratory and injunctive relief pursuant to the State Freedom of Information Act (“FOIA”), S.C. Code Ann. § 30-4-10 *et seq.*, along with attorney’s fees and costs, on November 28, 2018 (“Amended Complaint”) (R. pp. 24-84). The Amended Complaint sought a declaration that the City Council and Mayor of the City of North Augusta (collectively the “City”) violated FOIA by amending a City Council Agenda to add a new item without following proper procedures; an injunction from certain future violations; and attorney’s fees and costs.

The City answered the Amended Complaint (R. pp. 85-89) on December 14, 2018, and a hearing was held on January 15, 2019. The parties were directed to submit proposed orders, and a final Order in the matter was filed on October 8, 2019 (R. pp. 10-19).¹

In the Order dated October 8, 2019 (R. pp. 10-19), the Court held in favor of Holcomb and declared the conduct of the City in adding an item to the agenda, without adequate process, to be in violation of the Freedom of Information Act (“FOIA”), S.C. Code Ann. § 30-4-10 *et seq.* The Court also enjoined the City from future similar violations, and awarded Holcomb reasonable attorney’s fees and costs.

On October 18, 2019, Holcomb filed a Motion to Determine the Amount of Attorney’s Fees and Costs (“Attorney’s Fees Motion”) (R. pp. 109-150). In that motion, Holcomb requested a Judgment from the Court awarding him attorney’s fees in the amount of \$10,518.00; costs in the amount of \$699.92; and any other relief the Court deemed appropriate, just and proper.

¹ The October 8, 2019 Order replaced an October 7, 2019 Order (R. pp. 1-9) e-filed in error.

Also on October 18, 2019, the City filed a Motion for Alteration and Amendment of Findings and Judgment or, Alternatively, for a new Trial, Pursuant to Rules 52 and 59(a)(2) and (e), SCRCP (“Motion for Reconsideration”) (R. pp. 92-108) attacking the Order dated October 8, 2019. The Motion for Reconsideration included, among other things, argument as to the appropriateness of the award of fees and costs and objection to the injunction. Holcomb filed a Memorandum Response in Opposition to Defendants’ Motion for Reconsideration on October 31, 2019 (R. pp. 155-166).

The Court below held a hearing on December 5, 2019 and addressed both outstanding motions. Counsel for both parties made arguments for the Court’s consideration with respect to the City’s Motion for Reconsideration (R. pp. 92-108) and Holcomb’s Attorney’s Fees Motion (R. pp. 109-150).

On December 30, 2019, the Circuit Court issued an Order denying the City’s Motion for Reconsideration and awarding Holcomb attorney’s fees in the amount of \$10,518.00 and costs in the amount of \$699.92 (R. pp. 20-23). The Appellant City filed a Notice of Appeal of the October 8, 2019 Order and the December 30, 2019 Order (R. p. 167).

STATEMENT OF FACTS

Holcomb is a citizen and resident of the City of North Augusta, County of Aiken, South Carolina. Amended Complaint at 1 (R. p. 25), ¶ 1; Merits Hearing Transcript (“M.H. Tr.”) at 43:7-9 (R. p. 210:7-9). As of the date of the Merits Hearing, Holcomb had lived there for fifty-eight (58) years, and he is active and outspoken in matters of great importance to his local and statewide community. Amended Complaint at 1 (R. p. 25), ¶ 1; M.H. Tr. at 43:10-11 (R. p. 210:10-11) and 44:2-19 (R. p. 211:2-19).

Appellant City of North Augusta is a municipal corporation of the State of South Carolina located in Aiken County, with a history of prior Freedom of Information Act violations. *See Donohue v. City of N. Augusta*, 412 S.C. 526, 531 (2015).² Amended Complaint at 1 (R. p. at 25), ¶ 2. Appellant the Mayor and City Council of North Augusta, is a public body subject to the South Carolina Freedom of Information Act (“FOIA”), S.C. Code Ann. § 30-4-10 *et seq.* Amended Complaint at 1 (R. p. 25), ¶ 3. Appellants are referred to collectively herein as the City.

The action by Holcomb against the City came before the Circuit Court for an initial hearing, pursuant to Respondent’s Amended Complaint brought under the South Carolina Freedom of Information Act (“FOIA”) as codified in §§ 30-4-10 to 30-4-165 of the South Carolina Code, including § 30-4-100, which requires an initial hearing within 10 days of service on all the parties in FOIA cases. Order dated October 8, 2019 at 1 (R. p. 10). Respondent’s Amended Complaint sought declaratory and injunctive relief associated with alleged inconsistencies with FOIA arising from the May 7, 2018 meeting of the Appellant City of North Augusta City Council, along with the associated attorney’s fees and costs. *Id.*

The Circuit Court held a hearing on January 15, 2019 (hereinafter “Merits Hearing” or “M.H.”) (R. pp. 168-241). Order dated October 8, 2019 at 2 (R. p. 11). The Respondent Holcomb was present at the Merits Hearing and represented by his attorney. *Id.* The Appellants were also represented by attorneys. *Id.* Both sides presented testimonial and documentary

² When Holcomb filed this case against Defendants to enforce his rights under the FOIA, the City totally stopping the long-standing practice of putting the Agenda Complete on the web site before City Council meetings to the detriment of its citizens. *See* Response to Motion for Reconsideration, Exhibit 2, February 1, 2019 email from City Administrator (R. p. 164-165).

evidence for the Court's consideration, and counsel for both Respondent and Appellants made argument with respect to the issues raised. *Id.*

At the hearing, it was evident that the City does not have a policy regarding the composition of City agendas, *see* M.H. Tr. at 70:16-71:20 (R. pp. 237:16 – 238:20); Order dated October 8, 2019 at 2 (R. p. at 11), and FOIA does not contain a definition for "agenda."

Respondent Holcomb contends in this case that "Regular Agenda of May 7, 2018," which was Plaintiff's Merits Hearing Exhibit 6 (R. pp. at 292-323), constitutes the complete agenda for the May 7, 2018 City of North Augusta City Council meeting. *See* M.H. Tr. at 6 (R. p. at 173); M.H. Tr. at 49-52 (R. pp. at 216-219); Order dated October 8, 2019 at 2-3 (R. pp. at 11-12). It is the document that could be found on the City's website at a link called "Agenda 050718 Complete." On the stand at the January 15, 2019 Merits Hearing, Holcomb explained why. Relevant testimony from Holcomb is as follows:

Q And I observe that at the top of Plaintiff's 4, it says Document Central and then it appears that there's a series of links that kind of show us how we got there. So it looks like you clicked on Document Central then city clerk, then counsel agenda's 2018 and then May 18 and that got you to this page. If you wanted to know what was happening in a City of North Augusta meeting, you wanted to see the agenda, what would you look at on this page? Which link would you click in order to do so?

A I would click the Agenda 050718 Complete.

M.H. Tr. at 48:22-49:6 (R. pp. at 215:22-216:6); Plaintiff's M.H. Exhibit 6 (R. pp. at 292-323). (emphasis supplied). Holcomb went on to testify again later confirming his understanding.

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

A That's correct.

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

A It is the agenda according to its [sic] cover page.

Q Okay. Is that why you think so?

A Yes.

M.H. Tr. at 62:11-20 (R. p. at 229:11-20). (emphasis supplied).

Counsel for the City attempted to confuse the issue several times during his questioning of Holcomb. However, the above testimony is clear. Holcomb believed that the document called Regular Agenda of May 7, 2018, found at City website link Agenda 050718 Complete was the agenda for the May 7, 2018 meeting. It is the agenda according to its cover page. *See* Plaintiff's M.H. Exhibit 6 (R. pp. 292-323).

Holcomb reviewed the materials in advance of the meeting to determine whether it was necessary for him to attend. *See* M.H. Tr. 49-54 (R. pp. 216-221). He decided not to attend because he was satisfied with the projects being considered.

At the Merits Hearing, there was substantial other evidence heard on the issue of what was the scope of the City's Agenda. *See* M.H. Tr. 1-74 (R. pp. 168-241). As discussed above, on the City's web site, the link to the complete agenda document was called Agenda 050718 Complete. *See* Plaintiff's M.H. Exhibit 6 (R. pp. 292-323); M.H. Tr. at 49 (R. p. at 216); Order dated October 8, 2019 at 3 (R. p. at 12). The City contended at the Merits Hearing that Defendants' Merits Hearing Exhibit 1 (R. p. 329) was the "agenda" for the City Council meeting held on May 7, 2018, rather than the Regular Agenda of May 7, 2018 (R. pp. 292-323).

Defendants' M.H. Exhibit 1 is a single page which can be found within Plaintiff's M.H. Exhibit 6 (R. p. at 294), was also submitted at the Merits Hearing. *See* Answer to Amended Complaint at 2, ¶ 8 (R. p. at 86); *see* Plaintiff's M.H. Exhibit 5 (R. pp. 290-291); *see* Defendants'

M.H. Exhibit 1 (R. p. 329); *see* M.H. Tr. at 49 (R. p. at 216); Order dated October 8, 2019 at 2 (R. p. at 11).

Holcomb testified that the City's Exhibit 1 was a less detailed version of the agenda and that to see the full agenda you needed to view the full Agenda 050718 Complete document posted on the City's web site. *See* M.H. Tr. at 49 (R. p. at 216); Order dated October 8, 2019 at 3 (R. p. at 12). The City took an adverse position.

The City asserted at hearing that Holcomb's Exhibit 6 was instead an "agenda packet" within the meaning of S.C. Code Ann. Regs. 12-604.3 rather than an "agenda." *See* Answer to Amended Complaint at 2, ¶ 8 (R. p. 86, ¶ 8); Plaintiff's M.H. Exhibit 5 (R. pp. 290-291); Defendants' M.H. Exhibit 1 (R. p. 329); Order dated October 8, 2019 at 3 (R. p. at 12). It could, however, be found on its web site at a link entitled "Agenda 050718 Complete." Order dated October 8, 2019 at 3 (R. p. at 12).

There is nothing in the exhibit entitled Regular Agenda of May 7, 2018 that calls Holcomb's Exhibit 6 an agenda packet. *See* M.H. Tr. at 50:2-9 (R. p. at 219:2-9); *see* Plaintiff's M.H. Exhibit 6 (R. pp. 292-323); Order dated October 8, 2019 at 3 (R. p. at 12). On its cover page it is called the "Regular Agenda of May 7, 2018." Plaintiff's M.H. Exhibit 6 (R. pp. 292-323); October 8, 2019 Order at 3 (R. p. at 12). It contains a summary agenda and more detail as to agenda items. *See* Plaintiff's M.H. Exhibit 6 (R. pp. 292-323).

Holcomb further contended that the City amended by adding an item to the agenda in violation of FOIA during the May 7, 2018 meeting of the City Council when it added an entirely new project to the complete agenda without adequate notice or findings. M.H. Tr. at 6-8 (R. pp. at 173-175); M.H. Tr. at 56 (R. p. at 223); *see* Plaintiff's M.H. Exhibit 6 (R. pp. 292-323); *see* Plaintiff's M.H. Exhibit 7 (R. pp. 324-328); Order dated October 8, 2019 at 3 (R. p. at 12). The

New Savannah Bluff Lock and Dam Project was added to the list of projects contemplated by Resolution 2018-11 scheduled to be considered at the May 7, 2018 meeting of the City Council on the day of the meeting. M.H. Tr. at 6-8 (R. pp. at 173-175); M.H. Tr. at 49-56 (R. pp. at 216-223); Plaintiff's M.H. Exhibit 7 (R. pp. 324-328); *see* Plaintiff's M.H. Exhibit 6 (R. pp. 292-323); Order dated October 8, 2019 at 3 (R. p. at 12).

The New Savannah Bluff Lock and Dam Project had never before been presented at a City of North Augusta City Council meeting as a possible project to be paid for with the anticipated continuation of the Capital Projects Sales Tax as contemplated by the Resolution 2018-11. *See* M.H. Tr. at 55 (R. p. at 222); Order dated October 8, 2019 at 3 (R. p. at 12). It was discussed for the first time in the City Council's Study Session, which was held shortly before the regular City Council meeting. *See* Tr. at 55 (R. p. at 222); Order dated October 8, 2019 at 3 (R. p. at 12).

Final action was taken on the agenda item at the May 7, 2018 meeting to amend and pass Resolution 2018-11 and submit the list of projects to the Aiken County Sales Tax Commission for inclusion in the 2018 referendum. M.H. Tr. at 54-55 (R. pp. at 221-222); *see* Plaintiff's M.H. Exhibit 7 (R. pp. at 324-328); Order dated October 8, 2019 at 4 (R. p. at 13). The final action taken included adding the previously undiscussed New Savannah Bluff Lock and Dam Project. *See* M.H. Tr. at 54-55 (R. pp. at 221-222); *see* Plaintiff's M.H. Exhibit 6, "Regular Agenda of May 7, 2018," at Resolution 2018-11 (R. pp. at 297-298); *cf.* Plaintiff's M.H. Exhibit 7 (R. pp. 324-328), Minutes of May 7, 2018 (amending the list of projects to add "New Savannah Bluff Lock and Dam" "and passing the Resolution as amended"); Order dated October 8, 2019 at 4 (R. p. at 13).

The City is required to publish City Council Agendas on the web site. M.H. Tr. at 71 (R. p. at 238); Order dated October 8, 2019 at 4 (R. p. at 13). The City presented the Regular

Agenda of May 7, 2019 as a complete agenda on its web site. Order dated October 8, 2019 at 4 (R. p. at 13).

After consideration of the testimony of witness, evidence presented by the parties, and argument of counsel, the Circuit Court found that the City amended the complete agenda when it added the New Savannah Bluff Lock and Dam Project to the list of projects contemplated by Resolution 2018-11. Order dated October 8, 2019 at 4 (R. p. at 13). The Circuit Court further found that the City did so without twenty-four hours prior notice or a finding of emergency or exigent circumstances. M.H. Tr. at 54-56 (R. pp. at 221-223); *see* Plaintiff's M.H. Exhibit 7 (R. pp. at 324-328); Order dated October 8, 2019 at 4 (R. p. at 13). And, final action was taken with respect to the agenda item on May 7, 2018. M.H. Tr. at 55 (R. p. at 222); Plaintiff's M.H. Exhibit 7 (R. pp. 324-328); Order dated October 8, 2019 at 4 (R. p. at 13).

In its Order of October 8, 2019, the Court found the City to be in violation of FOIA and enjoined the City from other similar violations. *See* Order dated October 8, 2019 at 9 (R. p. at 18). The Court denied the City's motion for post-trial relief and granted Holcomb's motion for attorney's fees and costs. Order dated October 8, 2019 at 9 (R. p. at 18).

Having prevailed entirely in his case, Holcomb applied for his fees to be quantified on October 18, 2019 in an Attorney's Fees Motion (R. pp. 109-154). In support of the Attorney's Fees Motion, Holcomb submitted two Affidavits. *See* Affidavit of Kenneth R. Moss with respect to opinion as to reasonableness of fees asserted by Attorney Dionè C. Carroll ("Moss Affidavit") (R. pp. 151-154); *see also* Affidavit of Dionè C. Carroll, Esq. in support of attorney's fees and costs ("Carroll Affidavit") (R. pp. 112-150). Both affidavits provide support for the fee application in terms of all the 6 factors considered when determining the reasonableness of fee awards.

The City filed its Motion for Reconsideration the same day. Both motions were ultimately heard in a hearing held on December 5, 2019, where the lower Court fully heard the matters and fully and fairly considered the necessary issues and factors and determined to leave the Order dated October 8, 2019 undisturbed and quantify the fees and costs that were awarded to Holcomb. *See* discussion *supra* in the Statement of the Case; Order dated December 30, 2019 (R. pp. 20-23).

STANDARD OF REVIEW

Declaratory judgments in and of themselves are neither legal nor equitable. *See Felts v. Richland Cty.*, 303 S.C. 354, 400 S.E.2d 781 (1991); *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003); *Wiedemann v. Town of Hilton Head Island*, 344 S.C. 233, 542 S.E.2d 752 (Ct. App. 2001). The standard of review for a declaratory judgment action is therefore determined by the nature of the underlying issue. *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. at 279, 580 S.E.2d at 165; *see also Goldston v. State Farm Mut. Auto. Ins. Co.*, 358 S.C. 157, 594 S.E.2d 511 (Ct. App. 2004), *Travelers Indem. Co. v. Auto World*, 334 S.C. 137, 511 S.E.2d 692 (Ct. App. 1999) (suit for declaratory judgment is neither legal nor equitable, but is determined by nature of underlying issue).

A declaratory judgment action under the FOIA to determine whether certain information should be disclosed has been determined to be an action at law. *See South Carolina Tax Comm'n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 843 (1994); *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 165 (Ct. App. 2003). The determination of the proper interpretation of a statute is a question of law, which the appellate court reviews *de novo*. *Perry v. Bullock*, 409 S.C. 137, 140, 761 S.E.2d 251, 252–53 (2014); *Glassmeyer v. City of Columbia*, 414 S.C. 213, 218, 777 S.E.2d 835, 838 (Ct. App. 2015).

In an action at law tried without a jury, the appellate court standard of review extends only to the correction of errors of law. *Crary v. Djebelli*, 329 S.C. 385, 496 S.E.2d 21 (1998); *Okatie River v. Southeastern Site Prep*, 353 S.C. 327, 577 S.E.2d 468 (Ct. App.2003); *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 165–66 (Ct. App. 2003). “[T]he trial court's factual findings will not be disturbed on appeal unless a review of the record discloses that there is no evidence which reasonably supports the judge's findings.” *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 165–66 (Ct. App. 2003)(citations omitted); *see also Harkins v. Greenville County*, 340 S.C. 606, 533 S.E.2d 886 (2000); *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 538 S.E.2d 672 (Ct. App. 2000); *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 165–66 (Ct. App. 2003).

“Actions for injunctive relief are equitable in nature.” *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005); *Brock v. Town of Mount Pleasant*, 411 S.C. 106, 115–16, 767 S.E.2d 203, 207 (Ct. App. 2014), *aff'd as modified*, 415 S.C. 625, 785 S.E.2d 198 (2016). “In equitable actions, an appellate court may review the record and make findings of fact in accordance with its own view of the preponderance of the evidence.” *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010); *Brock v. Town of Mount Pleasant*, 411 S.C. 106, 115–16, 767 S.E.2d 203, 207 (Ct. App. 2014), *aff'd as modified*, 415 S.C. 625, 785 S.E.2d 198 (2016). The determination of whether statutory attorney fees should be awarded may be treated as one in equity also.

“An order granting or denying an injunction is reviewed for abuse of discretion.” *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). “An abuse of discretion occurs when the trial court's decision is *based upon an error of law* or upon factual

findings that are without evidentiary support.” *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 555, 658 S.E.2d 80, 85–86 (2008) (*emphasis supplied*).

PERTINENT PRINCIPLES OF STATUTORY CONSTRUCTION

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). “The determination of legislative intent is a matter of law.” *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 529 (2010) (citations omitted).

If a statute is ambiguous, the courts must construe its terms. *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 750 S.E.2d 61 (2013); *Lambries v. Saluda Cty. Council*, 409 S.C. 1, 10–11, 760 S.E.2d 785, 789–90 (2014). “A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.” *Sparks v. Palmetto Hardwood, Inc.*, at 128, 750 S.E.2d at 63 (citations omitted).

“In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *Id.* (citations omitted).

“Where the statute's language is [however] plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. at 148, 694 S.E.2d at 530 (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)); *Lambries v. Saluda Cty. Council*, 409 S.C. 1, 10–11, 760 S.E.2d 785, 789–90 (2014). “In construing a statute, this Court will [nonetheless] reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.” *Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).

In addition to the ordinary rules of statutory construction applicable when interpreting a state statute, there are special considerations when interpreting the South Carolina Freedom of Information Act (“FOIA”), S.C. Code Ann. § 30-4-10 *et seq.* Specifically, the FOIA says:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15.

“South Carolina's FOIA was designed to guarantee the public reasonable access to certain activities of the government.” *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 347, 594 S.E.2d 888, 892-93 (Ct. App. 2004), citing, *Fowler v. Beasley*, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996). FOIA creates an affirmative duty on public bodies to disclose information. *Burton v. York County Sheriff's Dept.*, 358 S.C. at 347, citing, *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991); *Campbell v. Marion County Hospital District*, 354 S.C. 274, 281, 580 S.E.2d 163, 166 (Ct. App. 2003).

Furthermore, the purpose of the FOIA is to protect the public by providing for the disclosure of information. *Id.* The Act is remedial in nature and should be *liberally construed* to carry out the purpose mandated by the legislature. *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 347, 594 S.E.2d 888, 892-93 (Ct. App. 2004) (*emphasis supplied*), citing, *Campbell v. Marion County Hospital District*, 354 S.C. at 281, 580 S.E.2d at 166. Any exception to FOIA's applicability must be narrowly construed. *Evening Post Publ'g Co. v. City of North Charleston*, 363 S.E. 452, 457, 611 S.E.2d 496, 499 (2005).

ARGUMENTS

I. **THE CIRCUIT COURT WAS CORRECT AS A MATTER OF LAW IN CONSTRUCTING THE AMENDMENT OF THE “AGENDA 050718 COMPLETE” BY THE CITY TO ADD THE NEW SAVANNAH BLUFF LOCK AND DAM PROJECT AS AN ITEM “ADDED TO THE AGENDA” IN A MANNER THAT VIOLATED THE STATE FREEDOM OF INFORMATION ACT (“FOIA”).**

[A] public body must provide advance notice of all meetings and keep written minutes, which include statutorily specified information. S.C. Code Ann. §§ 30-4-80, -90. In addition, FOIA provides that a citizen of the State may seek a declaratory judgment and injunctive relief to enforce the provisions of FOIA. S.C. Code Ann. § 30-4-100.

DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce, 423 S.C. 295, 301, 814 S.E.2d 513, 516 (2018).

Last minute agenda changes are inconsistent with the obligation imposed by FOIA to guarantee the public reasonable access. *See Fowler v. Beasley*, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996); *see also* Order dated October 8, 2019 at 5. Order dated October 8, 2019 at 5. Pursuant to the FOIA, every meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of the FOIA Chapter. S.C. Code Ann. § 30-4-60.

Furthermore, although FOIA did not always, FOIA now requires agendas for regularly scheduled meetings and sets forth a specific procedure for amending agendas once an agenda has been posted. S.C. Code Ann. § 30-4-80(A); *see Brock v. Town of Mount Pleasant*, 415 S.C. 625, 629 n.4, 785 S.E.2d 198, 201 (2016); Order dated October 8, 2019 at 6.

South Carolina Code § 30-4-80(A) requires of a public body in part that, An agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings. . . . Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be

added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda.

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

The City admits an agenda was posted in advance of the meeting. *See Answer to Amended Complaint.* The statute also requires that the agenda be posted on a website maintained by the City. The City posted both a summary agenda and what it represents as an “Agenda 050718 Complete” on its website. Neither the complete agenda posted by the City nor the shorter document the City identified at the Merits Hearing as its “agenda” included any reference to the New Savannah Bluff Lock and Dam Project. *See Plaintiff’s M.H. Exhibit 6, the “Regular Agenda of May 7, 2018” (R. pp. 292-323).*

The Act requires twenty-four hours notice of the agenda. *See S.C. Code Ann. § 30-4-80(A).* No new or additional notice as contemplated by the statute was given before the May 7, 2018 hearing. Under the statute, if a municipality fails to give proper notice, after the meeting begins, an item upon which final action can be taken may only be added to the agenda by a two-thirds vote and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda. *See S.C. Code Ann. § 30-4-80(A).*

Although the first prong, a two-thirds vote, appears to have been satisfied in the instant case, no finding was made by the body that an emergency or an exigent circumstance existed as would be necessary to add an item to the agenda. *See Plaintiff’s M.H. Exhibit 7, Minutes of May 7, 2018 (R. pp. 324-328).* Without satisfying both prongs, the amendment attempted by the City at the May 7, 2018 City Council meeting violates FOIA, entitling Holcomb to declaratory and

injunctive relief and consequently attorney's fees and costs. *Cockrell v. Trs. Of Dist. 20 Constituent Sch. Dist.*, 299 S.C. 155, 156, 382 S.E.2d 923, 924 (1989).

Holcomb was awarded all three, and the lower court correctly did so because neither the agenda nor the "Agenda 050718 Complete" (having a cover page indicating it was the "Regular Agenda of May 7, 2018") made any reference to the New Savannah Bluff Lock and Dam Project. Instead, an item was added to the agenda when the City added the New Savannah Bluff Lock and Dam Project to the complete agenda and voted that the project should be sent up to the state to be funded. *See* Plaintiff's M.H. Exhibit 7 (meeting minutes) (R. pp. 324-328). If the City did not want the Agenda 050718 Complete/Regular Agenda of May 7, 2018 to be treated as an agenda, it should not have called it an agenda.

On the face of the minutes, a vote was taken as New Business at the meeting to add the New Savannah Bluff Lock and Dam Project to the list. *See* M.H. Tr. at 54 (R. p. at 221). It is not reasonable to expect Holcomb would have been informed of the City's consideration of the project at the meeting based on the documents posted as agenda.

Holcomb reviewed the materials in advance of the meeting to determine whether it was necessary for him to attend to comment. *See* M.H. Tr. 49-54 (R. pp. 216-221). He decided he was satisfied with the projects being considered and did not need to prepare or comment, although he did attend. This is confirmed by Holcomb's testimony on direct examination.

Q . . . If you wanted to know what was happening in a City of North Augusta meeting, you wanted to see the agenda, what would you look at on this page? Which link would you click in order to do so?

A I would click the Agenda 050718 Complete.

Q Why? Why would you look in there?

A Because that's where the information is for the public to read prior to any meeting of council. It is the information -- it's detail, it's more detailed information that

allows the public to read to see more about what is going to be discussed at the council meeting.

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

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

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

A That is correct.

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

A Yes, it was.

Q And did you review the packet?

A I did.

....

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

Q Why not.

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

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

A Yes, I would.

Q How would you have felt in that event?

A The New Savannah Bluff Lock and Dam is a project that is run by the U.S. Army Corp of Engineers. It is below the City's of North Augusta and Augusta on the Savannah River. There's been much concern about the maintenance, upkeep, and other items for that 81 year old facility by the Congress of the United States, to begin with.

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

A I would use the word disturbed.

Q Why would you –

A Because -- I'm sorry.

Q Why would you use that word?

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

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

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

M.H. Tr. at 49:2– 2:23 (R. p. at 216:2-23).

Plaintiff's Merits Hearing Exhibit 7 is the minutes of the May 7th, 2008 regular meeting of the North Augusta City Council. It confirms at page 2, Item 2 that there was a motion to amend the list of projects to add the New Savannah Bluff Lock and Dam Project, which passed. Plaintiff's M.H. Exhibit 7 at 2 (R. p. at 325); M.H. Tr. at 54:22-24 (R. p. at 221:22-24). No exigent circumstances were documented to justify the failure to follow the procedures required by the FOIA. *See* Plaintiff's M.H. Exhibit 7 at 2 (R. p. at 325). By adding a new item for the City's consideration to a document called by the City variously an "Agenda 050718 Complete" and the "Regular Agenda of May 7, 2018" (on its cover page), the City violated both the letter and the spirit of the FOIA as they did not give adequate notice or make a finding to justify the action as exigent or an emergency. *See* S.C. Code Ann. § 30-4-80(A). The City has, therefore, violated FOIA, and the lower court ruling should be affirmed in its entirety.

II. THE CIRCUIT COURT WAS CORRECT IN FINDING AND CONCLUDING THAT THE DOCUMENT POSTED ONLINE AT A LINK CALLED THE “AGENDA 050718 COMPLETE” AND HAVING A COVER ENTITLED “REGULAR AGENDA OF MAY 7, 2018” CONSTITUTED THE MEETING “AGENDA” FOR PURPOSES OF FOIA.

When a City like the City of North Augusta presents its agenda in a way that misleads, it undermines FOIA. The City made up a detailed agenda it called “Regular Agenda of May 7, 2018.” *See* Plaintiff’s M.H. Exhibit 6 (R. pp. 292-323); *see also* discussion *supra*. The City put the Regular Agenda of May 7, 2018 on the City website under a tab called “Agenda 050718 Complete.” *Id.* The City included in this complete agenda an apparent comprehensive list of projects, never mentioning any other project that might be added, and never having a prior publicly noticed meeting where the possibility of the New Savannah Lock and Dam Project being added was discussed until the hour before the City Council meeting. *Id.* By doing this, the City gave Holcomb and other members of the public confidence that they knew what was on the agenda, thus providing comfort that the decision that was being made was clear and not a secret. Order at 8-9 (R. pp. at 17-18); *see also* Plaintiff’s Exhibit 6 (R. p. at 298), M.H. Tr. at 62:18 (“It’s the agenda according to its cover page.”) (R. p. 229:18); *see also* discussion *supra*.

The City’s cavalier manner of amending the materials it called an agenda complete, without providing statutorily required notice, harmed and deceived the public. All the City needed to do was to make it clear that the Agenda 050718 Complete was not an agenda to insulate itself from liability. Since Defendants told the public on the City website there was a complete agenda, by calling the document the Agenda 050718 Complete, it was only reasonable for the public to rely on that document in preparing for a meeting. In fairness, and in the spirit of the liberal construction required when applying FOIA, the City must treat what they call an “agenda” on their website as an agenda for FOIA purposes. *See Campbell*, 354 S.C. at 281, 580 S.E.2d at 166

(FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature); *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 347, 594 S.E.2d 888, 892-93 (Ct. App. 2004); Order dated October 8, 2019 at 5 (R. pp. at 14).

The complete agenda was amended by the Appellants at the City Council meeting when it added the New Savannah Bluff Lock and Dam Project. Twenty-four hours notice was not given, and no finding that an emergency or an exigent circumstance existed was made. The City has, therefore, violated FOIA and is subject to declaratory and injunctive relief.

III. THE CIRCUIT COURT DID NOT ERR AS A MATTER OF LAW IN PERMANENTLY ENJOINING THE CITY “FROM FUTURE SIMILAR VIOLATIONS.”

The Order dated October 8, 2019 makes it clear that the City should not repeat the specific behavior it pursued that gave rise to this suit. *See* Order dated October 8, 2019 at 9 (R. p. at 18). The City of North Augusta has made a habit of abusing FOIA. *See* Amended Complaint at 1 (R. p. at 25); *see also Donahue v. City of N. Augusta*, 412 S.C. 526 (2015). Attempting to avoid compliance with FOIA by claiming confusion makes it appear the City, once again, has no intention of changing that behavior, regardless of what the Court’s Order says.

Any violation of FOIA must be considered irreparable injury. *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. at 355. A violation was found in this case. The Court found that final action taken at the May 7 City Council meeting included adding the brand new New Savannah Bluff Lock and Dam Project to the complete agenda of the meeting. Order dated October 8, 2019 at 4 (R. p. at 13). “[The City] did so without twenty-four hours prior notice or a finding of emergency or exigent circumstances” as required by FOIA. *Id.*

The Court acknowledged in its Order that last minute agenda changes are inconsistent with FOIA’s design to guarantee the public access to certain activities of the government, *id.*,

that FOIA requires an agenda be posted on a public website for regularly scheduled meetings and that no items may be added inconsistent with the advance notice requirement without a two-thirds vote and finding of emergency or exigent circumstances. *Id.* at 6; S.C. Code Ann. § 30-4-80(A). The City failed to follow FOIA’s requirements.

The Court further explained what it was prohibiting and why, indicating that since the City,

told the public on the City website there was a complete agenda, by calling the document agenda 050718 complete, it was only reasonable for the public to rely on that document in preparing for a meeting. . . . Defendants must treat what they call an “agenda” on their website as an agenda for FOIA purposes. The complete agenda was amended by the Defendants at the City Council meeting when it added the New Savannah Lock and Dam Project.

Order dated October 8, 2019 at 8(R. p. 17). The addition of the item was done without following FOIA procedures. The conduct subjected them to declaratory and injunctive relief.

Order dated October 8, 2019 at 7 and 8 (R. pp. at 16 and 17).

The Court concluded by explaining that the public had a right to know how their government is functioning and attend public meetings, among other things. *Id.* at 8 (R. p. at 17). The Court further explained how the City’s conduct misled the public by giving Holcomb and other members of the public [false] confidence that they knew what was on the City’s agenda, thus providing comfort that the decision that was being made was “clear and not a secret.” *Id.* at 9 (R. p. at 18).

In short, the injunction prohibits the City from calling something posted by the City an agenda and then failing to treat it with the procedures FOIA requires for agendas. The purpose of making this injunction requirement is to protect the public from the harms described in the Court order, which acknowledges a FOIA violation. FOIA violations always constitute

irreparable harm. Any conduct of this kind is prohibited by the injunction. *See* Order dated October 8, 2019 at 9 (R. p. at 18).

The City's behavior has failed to improve. When Holcomb filed this case against Defendants to enforce his rights under the FOIA, instead of reflecting on their behavior and improving their processes, they abused Plaintiff and the other citizens of the City of North Augusta stopped the long-standing practice of putting the Agenda Complete on the web site before City Council meetings. *See* Response to Motion for Reconsideration, Exhibit 2, February 1, 2019 email from City Administrator (R. pp. at 164-165). There is no vagueness in the Order nor abuse of discretion. There is simply Defendants' continuing efforts to avoid their obligations under the law, regardless of the consequences. If the City calls it an agenda, it simply has to treat it like an agenda.

IV. THE CIRCUIT COURT WAS WITHIN ITS DISCRETION IN ITS AWARD OF ATTORNEY'S FEES.

Holcomb requested fees in his Complaint "[t]hat this Court order Defendants to pay the Plaintiff his reasonable attorney fees and other costs and litigation expenses incurred in pursuing this case pursuant to S.C. Code Ann. Section 30-4-100." Amended Complaint at 4, ¶c. He prevailed entirely in his case, receiving both declaratory and injunctive relief and a recognition of his entitlement to attorney fees. *See* Order dated October 8, 2019 (R. pp. 10-19).

The Order dated October 8, 2019, made findings extensive findings relevant to the nature, extent and difficulty of the case and the time necessarily devoted to the case. Order dated October 8, 2019 (R. pp. 10-19). It awarded Holcomb all the substantive relief he requested, thus demonstrating the beneficial results obtained. *See* Order dated October 8, 2019 (R. pp. 10-19);

see also Amended Complaint (R. pp. 24-84). And, through the Order dated October 8, 2019, the lower Court ordered attorney's fees (R. pp. 10-19).

Having prevailed entirely in his case and having had his right to fees acknowledged, Holcomb applied for his fees to be quantified on October 18, 2019 in a Motion to Determine the Amount of Attorney's Fees and Costs ("Attorney's Fees Motion") (R. pp. 109-111). In support of the Attorney's Fees Motion, Holcomb submitted two Affidavits. *See* Affidavit of Kenneth R. Moss with respect to opinion as to reasonableness of fees asserted by Attorney Dionè C. Carroll ("Moss Affidavit") (R. pp. 151-154); *see also* Affidavit of Dionè C. Carroll, Esq. in support of attorney's fees and costs ("Carroll Affidavit") (R. pp. 112-150).

Both affidavits provide support for the fee application in terms of all the 6 factors considered when determining the reasonableness of fee awards. *See Prevatte v. Asbury Arms*, 302 S.C. 413, 416, 396 S.E.2d 642, 644 (Ct. App. 1990)(identifying 6 relevant factors to be considered when determining reasonableness of fees); *see* Moss affidavit at 2 (R. pp. 151-154), ¶8 (applying the facts of the affidavit to the 6 factors); *see also* Carroll affidavit (R. pp. 112-150) (organized and discussing facts according to the 6 factors).

On December 5, 2019, the lower Court held a motions hearing where the issue of quantification of attorney's fees and costs was heard, along with Motion for Reconsideration. The City had every reasonable opportunity to respond and contest the request for fees. Furthermore, the Court heard argument and questioned counsel for Holcomb at the Motions Hearing very extensively on the appropriateness of attorney fees. *See* Motions Hearing ("Motions H.") Tr. at 21:19 – 42:5 (R. p. at 262:19 – 283:5).³

³ Examination of Counsel for Holcomb covered a wide array of matters relevant to the 6 factors, including but not limited to: counsel's usual and customary rate, Motions H. Tr. at 26:20-25 (R. p. 297:20-25); counsel's professional standing revealed by experience, including extensive

At the end of the Motions Hearing, the lower Court discussed his reasoning and rationale for awarding fees in the case by deliberating on the record in open court and discussing the reasonableness of the fees. *See* Motions H. Tr. at 40: 12-42:4 (R. pp. 281:12 – 283:4). In so doing, the Court in its discretion denied Holcomb’s request for additional fees relating to the City’s Motion for Reconsideration hearing, acknowledging the reasonableness of the City’s decision to make the Motion for Reconsideration particularly due to an administrative error that had occurred but was corrected. *See* Motions H. Tr. at 40:22-41:14 (R. p. 281:22 – 282:14). By Order dated December 30, 2019 (R. pp. 20-23), the Court quantified the fees and costs and found the application for fees and costs to be reasonable and appropriate, in addition the order of award and findings articulated in the Order dated October 8, 2019 (R. pp. 10-19).

Although § 30-4-100 allows that fees may be awarded at the court’s discretion, under § 30-4-100, the only prerequisite to an award of attorney fees and costs is that the party seeking relief must prevail, in whole or in part. *Cockrell v. Trs. of Dist. 20 Constituent Sch. Dist.*, 299 S.C. 155, 156, 382 S.E.2d 923, 924 (1989). Holcomb prevailed in whole as to the substance of the matter, and the City failed to allege any legitimate invalidity of the fees awarded pursuant to FOIA.

The City’s citation to *Voelker v. Hillock*, 288 S.C. 622, 344 S.E.2d 177 (Ct. App. 1986) is a family law case largely inapplicable to the instant case. *Prevatte v. Ashbury Arms*, 302 S.C. 413; 396 S.E.2d 642 (Ct. App. 1990), also cited by the City, recognizes that “[w]hat constitutes a reasonable fee is a matter for the court to determine as a matter of informed judicial discretion.”

experience with open government law, Motions H. Tr. at 26:16-38:16 (R. p. 267:16); and the nature, extent and difficulty of the case and beneficial results and time necessarily devoted to the case as they related to counsel’s experience and experiences in the case, Motions H. Tr. at 38:17-40:3 (R. p. 279:17 - 281:3). The matter is obviously not a contingency case from the Carroll Affidavit.

Clearly, the lower court determined the fee according to its “informed judicial discretion.” The Order dated October 8, 2019 (R. pp. 20-23) and the Order dated December 30, 2019 (R. pp. 10-19) both discuss the award and make findings. Furthermore, the record provides a judicial discussion of his deliberation and support for all the 6 appropriate factors was provided through both affidavits and testimony on the giving detailed support for the 6 factors. *See Prevette v. Asbury Arms*, 302 S.C at 416-17 (Setting forth the 6 factors).

Even if the City had revised its behavior to attempt to correct his error, Holcomb would have been entitled to his attorney fees. In *Sloan v. Friends of the Hunley, Inc. (Friends II)*, 393 S.C. 152, 711 S.E.2d 895 (2011), a public body had frustrated a citizen's FOIA request to the extent that the citizen was required to seek relief in the courts and incur litigation costs. The court held on appeal that the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation was filed. *See Sloan v. S.C. Dep't of Revenue*, 409 S.C. 551, 555, 762 S.E.2d 687, 689 (2014). As the prevailing party under these circumstances, the court held the trial court erred in not awarding Sloan his reasonable attorney's fees and costs. *Sloan v. S.C. Dep't of Revenue*, 409 S.C. 551, 555, 762 S.E.2d 687, 689 (2014); *see also Litchfield Plantation Co. v. Georgetown Cnty. Water & Sewer Dist.*, 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) (“A governmental agency should not be allowed to stonewall an FOIA request without some penalty for its actions.”).

In the instant case, the City utterly failed to take any actions to correct its violation, but instead punished Holcomb and the other citizens of North Augusta for Holcomb having brought this challenge. *See Response in Opposition to Defendants Motion for Reconsideration* filed October 31, 2019 at 6, ¶8 (R. pp. 155-166) and Exhibit 2, February 1, 2019 email from City

Administrator (R. pp. 164-165). When Holcomb filed his case against the City to enforce his rights, instead of reflecting on the City's practices and attempting to improve access for the people of North Augusta, the City doubled down on its mistreatment of its citizens by totally stopping the long-standing practice of putting the Agenda Complete on the website before City Council meetings, thus further depriving the citizens of access to the process. *See* Response in Opposition to Motion for Reconsideration at Exhibit 2 (R. pp. 164-165)

“[T]he specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” *Kiriakides v. Sch. Dist. of Greenville Cty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009) (quoting *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008)); *see Sloan*, 393 S.C. at 156, 711 S.E.2d at 897 (applying the abuse of discretion standard to an award of attorneys' fees under the FOIA). Fees were determined to be reasonable and appropriate in the Order dated December 30, 2019 (R. pp. 20-23). The findings of fact articulated by the lower court in the October 8, 2019 Order which awarded attorney's fees and costs strongly support the appropriateness of fees quantified in the December 30, 2019 Order, as they include factual findings that strongly support the appropriateness of the fees when considered using the 6 factors. *See* Order dated October 8, 2019 (R. pp. 10-19). Affidavits were submitted on all 6 factors, and the lower Court decided, discussed, deliberated, and inquired about the relevant factors in a transparent manner on the record, with the City present and represented. The City's argument is without merit. The Court has not abused its discretion.

Holcomb requested fees in his Complaint “[t]hat this Court order Defendants to pay the Plaintiff his reasonable attorney fees and other costs and litigation expenses incurred in pursuing this case pursuant to S.C. Code Ann. Section 30-4-100.” Amended Complaint at 4, ¶c. He

prevailed entirely in his case, receiving both declaratory and injunctive relief and a recognition of his entitlement to attorney fees. *See* Order dated October 8, 2019 (R. pp. 10-19).

The Order dated October 8, 2019, made findings extensive findings relevant to the nature, extent and difficulty of the case and the time necessarily devoted to the case. Order dated October 8, 2019 (R. pp. 10-19). It awarded Holcomb all the substantive relief he requested, thus demonstrating the beneficial results obtained. *See* Order dated October 8, 2019 (R. pp. 10-19); *see also* Amended Complaint (R. pp. 24-84). And, through the Order dated October 8, 2019, the lower Court ordered attorney's fees (R. pp. 10-19).

Having prevailed entirely in his case and having had his right to fees acknowledged, Holcomb applied for his fees to be quantified on October 18, 2019 in a Motion to Determine the Amount of Attorney's Fees and Costs ("Attorney's Fees Motion") (R. pp. 109-154). In support of the Attorney's Fees Motion, Holcomb submitted two Affidavits. *See* Affidavit of Kenneth R. Moss with respect to opinion as to reasonableness of fees asserted by Attorney Dionè C. Carroll ("Moss Affidavit") (R. pp. 151-154); *see also* Affidavit of Dionè C. Carroll, Esq. in support of attorney's fees and costs ("Carroll Affidavit") (R. pp. 112-150).

Both affidavits provide support for the fee application in terms of all the 6 factors considered when determining the reasonableness of fee awards. *See Prevatte v. Asbury Arms*, 302 S.C. 413, 416, 396 S.E.2d 642, 644 (Ct. App. 1990)(identifying 6 relevant factors to be considered when determining reasonableness of fees); *see* Moss affidavit at 2, ¶8 (applying the facts of the affidavit to the 6 factors) (R. pp. 151-154); *see also* Carroll affidavit (organized and discussing facts according to the 6 factors) (R. pp. 112-150).

On December 5, 2019, the lower Court held a motions hearing where the issue of quantification of attorney's fees and costs was heard, along with Motion for Reconsideration. The City

had every reasonable opportunity to respond and contest the request for fees. Furthermore, the Court heard argument and questioned counsel for Holcomb at the Motions Hearing very extensively on the appropriateness of attorney fees. *See* Motions Hearing (“Motions H.”) Tr. at 21:19 – 42:5 (R. p. 262:19 - R. p. 283:5).⁴

At the end of the Motions Hearing, the lower Court discussed his reasoning and rationale for awarding fees in the case by deliberating on the record in open court and discussing the reasonableness of the fees. *See* Motions H. Tr. at 40:12-42:4 (R. p. 281:12 - R. p. 283:4). In so doing, the Court in its discretion denied Holcomb’s request for additional fees relating to the City’s Motion for Reconsideration hearing, acknowledging the reasonableness of the City’s decision to make the Motion for Reconsideration particularly due to an administrative error that had occurred but was corrected. *See* Motions H. Tr. at 40:22-41:14 (R. p. 281:22 – 282:14). By Order dated December 30, 2019 (R. pp. 20-23), the Court quantified the fees and costs and found the application for fees and costs to be reasonable and appropriate, in addition the order of award and findings articulated in the Order dated October 8, 2019 (R. pp. 10-19).

Although § 30-4-100 allows that fees may be awarded at the court’s discretion, under § 30-4-100, the only prerequisite to an award of attorney fees and costs is that the party seeking relief must prevail, in whole or in part. *Cockrell v. Trs. of Dist. 20 Constituent Sch. Dist.*, 299 S.C. 155, 156, 382 S.E.2d 923, 924 (1989). Holcomb prevailed in whole as to the substance of the

⁴ Examination of Counsel for Holcomb covered a wide array of matters relevant to the 6 factors, including but not limited to: counsel’s usual and customary rate, Motions H. Tr. at 26:20-25 (R. p. 267:20-25); counsel’s professional standing revealed by experience, including extensive experience with open government law, Motions H. Tr. at 26:16-38:16 (R. p. 267:16 - 279:16); and the nature, extent and difficulty of the case and beneficial results and time necessarily devoted to the case as they related to counsel’s experience and experiences in the case, Motions H. Tr. at 38:17-40:3 (R. p. 279:17 - 281:3). The matter is obviously not a contingency case from the Carroll Affidavit.

matter, and the City failed to allege any legitimate invalidity of the fees awarded pursuant to FOIA.

The City's citation to *Voelker v. Hillock*, 288 S.C. 622, 344 S.E.2d 177 (Ct. App. 1986) is a family law case largely inapplicable to the instant case. *Prevatte v. Ashbury Arms*, 302 S.C. 413; 396 S.E.2d 642 (Ct. App. 1990), also cited by the City, recognizes that “[w]hat constitutes a reasonable fee is a matter for the court to determine as a matter of informed judicial discretion.” Clearly, the lower court determined the fee according to its “informed judicial discretion.” The Order dated October 8, 2019 (R. pp. 10-19) and the Order dated December 30, 2019 (R. pp. 20-23) both discuss the award and make findings. Furthermore, the record provides a judicial discussion of his deliberation, and support for all the 6 appropriate factors was provided through both affidavits and testimony giving detailed support for the 6 factors. *See Prevette v. Ashbury Arms*, 302 S.C. at 416-17 (Setting forth the 6 factors).

Even if the City had revised its behavior to attempt to correct its error, Holcomb would have been entitled to his attorney fees. In *Sloan v. Friends of the Hunley, Inc. (Friends II)*, 393 S.C. 152, 711 S.E.2d 895 (2011), a public body had frustrated a citizen's FOIA request to the extent that the citizen was required to seek relief in the courts and incur litigation costs. The court held on appeal that the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation was filed. *See Sloan v. S.C. Dep't of Revenue*, 409 S.C. 551, 555, 762 S.E.2d 687, 689 (2014). As the prevailing party under these circumstances, the court held the trial court erred in not awarding Sloan his reasonable attorney's fees and costs. *Sloan v. S.C. Dep't of Revenue*, 409 S.C. 551, 555, 762 S.E.2d 687, 689 (2014); *see also Litchfield Plantation Co. v. Georgetown Cnty. Water & Sewer Dist.*, 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) (“A governmental

agency should not be allowed to stonewall an FOIA request without some penalty for its actions.”).

In the instant case, the City utterly failed to take any actions to correct its violation, but instead punished Holcomb and the other citizens of North Augusta for Holcomb having brought this challenge. *See* Response in Opposition to Defendants Motion for Reconsideration filed October 31, 2019 at 6 (R. pp. 155-166), ¶8 and Exhibit 2, February 1, 2019 email from City Administrator (R. pp. 164-165). When Holcomb filed his case against the City to enforce his rights, instead of reflecting on the City’s practices and attempting to improve access for the people of North Augusta, the City doubled down on its mistreatment of its citizens by totally stopping the long-standing practice of putting the Agenda Complete on the website before City Council meetings, thus further depriving the citizens of access to the process. *See* Response in Opposition to Motion for Reconsideration at Exhibit 2 (R. pp. 164-165).

“[T]he specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” *Kiriakides v. Sch. Dist. of Greenville Cty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009) (quoting *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008)); *see Sloan*, 393 S.C. at 156, 711 S.E.2d at 897 (applying the abuse of discretion standard to an award of attorneys' fees under the FOIA). Fees were determined to be reasonable and appropriate in the Order dated December 30, 2019 (R. pp. 20-23). The findings of fact articulated by the lower court in the October 8, 2019 Order which awarded attorney’s fees and costs strongly support the appropriateness of fees quantified in the December 30, 2019 Order, as they include factual findings that strongly support the appropriateness of the fees when considered using the 6 factors. *See* Order dated October 8, 2019 (R. pp. 10-19). Affidavits were submitted on

all 6 factors, and the lower Court decided, discussed, deliberated, and inquired about the relevant factors in a transparent manner on the record, with the City present and represented. The City's argument is without merit. The Court has not abused its discretion.

CONCLUSION

The lower court concluded very clearly why this decision must be affirmed in its final order:

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

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

Then, without warning or adequate legal notice, Defendants suddenly added a very significant project. It did so on the day final action was taken, during a City meeting. And, it amended the list of projects without making a finding of emergency or exigent circumstances. In this manner, Defendants violated FOIA and failed to fulfill their obligations to the public and the Plaintiff. For the foregoing reasons this Court declares the conduct of Defendants in amending a document represented to the public as an agenda to add an item, without adequate process, a violation of FOIA.

Order dated October 8, 2019 (R. pp. 10-19).

For all the foregoing reasons so well stated by the lower Court, and because FOIA must be liberally construed to effectuate its purposes as discussed in this Brief, this

honorable court should affirm the lower court opinion in its entirety. Pursuant to Rule 220(c), SCACR, this honorable Court may affirm the ruling below for any ground appearing on the record, and the record from the lower Court clearly demonstrates that the City violated the South Carolina FOIA when it added an item to a document it represented to the public as an agenda without proper procedures; the injunction is clear, specific and necessary to protect the public from irreparable harm; and the fees and costs are appropriate.

Respectfully submitted,

August 25, 2020

/s/Dionè C. Carroll
Dionè C. Carroll
S.C. Bar 78185
Carroll Law Offices, P.A.
107 Pendleton Street N.W.
Aiken, South Carolina 29801
(803) 514-2557
Attorney for the Respondent

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Aug 25 2020

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2020-000080

Herman Perry Holcomb,

Respondent,

v.

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

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

August 25, 2020

/s/Dionè C. Carroll
Dionè C. Carroll
S.C. Bar 78185
Carroll Law Offices, P.A.
107 Pendleton Street N.W.
Aiken, South Carolina 29801
(803) 514-2557
Attorney for the Respondent