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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2024-000438

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

v.

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

INIITAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. Did the lower court err in dismissing as moot this declaratory and injunctive relief case about "The Dorchester" project when the project is not proceeding forward and all collateral litigation has been resolved?

II. Did the lower court err in dismissing this case as moot where none of the three exceptions to the mootness doctrine apply?

STATEMENT OF THE CASE

This is a case about a failed development project called "The Dorchester" which was to be built in the Town of Summerville.

This action was originally filed in December 2014 as matter 2014-CP-10-7739 in Charleston County. (R. _). Defendants moved to change venue to Dorchester County as the location of the property pursuant to S. C. Code § 15-7-10 and because all decisions of public officials were made in Dorchester County.[1] (R. __) Venue was transferred by a consent order to Dorchester County in April 2015 and the file was given case number 2015-CP-18-713. (R. __)

The plaintiffs filed an initial motion for partial summary judgment on April 13, 2015, (R p. __). This motion would later be withdrawn.

The next legal development that happened chronologically was in May 2015 when these same plaintiffs initiated an appeal to the circuit court from the decision of the Board of Architectural Review approving the project. That appeal raised many of the same grounds raised in the lawsuit and challenged not only the decision-making process of the Board of Architectural Review, but also the validity of the Dorchester Project itself. (The circuit court affirmed the decision of the Board of Architectural

[1] A very small portion of the Town of Summerville extends into Charleston County, but this project and Summerville Town Hall are in Dorchester County.

Review. The Court of Appeals affirmed in Croft v. Town of Summerville, 428 S.C. 576, 837 S.E.2d 219 (Ct. App. 2019). The Supreme Court vacated the Court of Appeals decision and dismissed the case as moot in Croft v. Town of Summerville, 433 S.C. 473, 860 S.E.2d 352 (2021)).

The plaintiffs second motion for partial summary judgment was filed October 21, 2015, (R. __) and their third motion for partial summary judgment was filed December 1, 2015. (R. __) These motions were heard by the Honorable Edgar W. Dickson. Judge Dickson issued an Order December 12, 2016.[2] (R. __) Plaintiffs filed for reconsideration on January 11, 2017. (R. __). Judge Dickson denied Plaintiffs' Motion to Reconsider on April 4, 2017. (R. _) After the matter was placed on the jury trial roster in January 2022, the plaintiffs agreed to dismiss the individual defendants (R. _) and then filed a consent order of dismissal pursuant to Rule 40(J) as the Town defendants. (R. __)

This case was restored by order of September 28, 2022, and was given new case number 2022-CP-18-1494. (R. __) The plaintiff would go on to file several more motions for partial summary judgment under the new case number. On November 15, 2022, plaintiff filed a motion for partial summary judgment raising 44 enumerated reasons the Court should grant find the Dorchester project void ab initio. (R._) A first amended motion for summary judgment filed January 26, 2023, claiming 117 enumerated grounds. (R.__). Finally, on May 8, 2023, the plaintiffs filed a second amended motion for partial summary judgment claiming 167 enumerated reasons why "The Dorchester" project should be declared improper and void ab initio. (R._)

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[2] Due to the original order being mailed back to counsel prior to being filed with the Clerk, this Order was not filed to until January 11, 2017.

In July 2023, the Town of Summerville and Applegate and Company agreed to resolve all claims and cross-claims for the sum of Fifty Thousand Dollars ($50,000) paid by the Town of Summerville. The parties entered into a mutual release and the lawsuit was dismissed with prejudice August 1, 2023. (R. _) Defendants filed a motion to dismiss as moot on August 3, 2023, citing the resolution of the Applegate & Co. v. Town of Summerville matter in July 2023 and the dismissal with prejudice on August 1, 2023.

Plaintiffs motion for partial summary judgment and Defendants' motion to dismiss case were set for a hearing August 24, 2024, together with plaintiffs' motions for summary judgment and to dismiss in Harbeson v. Town of Summerville, 2022-CP-18-01819, a case which raises issues relating to the Town not hiring a new Town Administrator in June 2011 and the Mayor exercising all or some of those powers in the absence of the Town Administrator until the end of his term after the November 2015 elections. The failure of the Town to replace the Town Administrator was also raised as enumerated reason 73 of the Plaintiffs' second amended motions for partial summary judgment in this action. (R. __)

The Defendants filed a memo in support of their motion to dismiss and in opposition to the 167 enumerated grounds raised in plaintiff's second amended motion for partial summary judgment. (R. __) The day before the hearing, plaintiffs withdrew their motion for summary judgment. (R. __, Email of Andrew Gowder to Judge McCoy of 8/23/2023). The Honorable Jennifer McCoy heard the Defendants' motion to dismiss as moot. The Judge signed a form 4 order granting the motion to dismiss on February 12, 2024 (R. _) and formal order was filed on February 23, 2024. (R. _). This appeal was timely filed thereafter.

STATEMENT OF FACTS

This case arises from what was called a "public-private partnership agreement" ("PPPA") to develop "The Dorchester," a boutique hotel, meeting/event space, condominiums, and a parking garage in downtown Summerville, South Carolina. (R.__, PPPA p 1-10) The PPPA was entered on July 9, 2014. (R. _, PPPA p.1) The plan was for a private developer, Applegate and Company, to construct the entire project. The private developer would own and operate a boutique hotel on private land which the developer had an option on and for the Town of Summerville to own the event/meeting space and the parking garage on adjacent land owned by the Town. (R. __, PPPA p 1-10). The developer would also sell private condominiums. Applegate and the Town of Summerville and the newly formed Summerville Redevelopment Corporation[3] entered the PPPA which provided terms for development of the project and future operation of the project. (R.__, PPPA, Exhibit B, Operation Agreement) Among other terms, the PPPA called for a maximum construction cost to the Town and SRC of $5.2 million dollars for the "public improvements" as that term was detailed in the contract. (R. __, PPPA, p.4) The Summerville Redevelopment Corporation also agreed to provide a "gap loan" to developer help finance the project. (R. __, PPPA, p.3)

However, in November 2015, it became apparent previously estimated costs of construction of "PUBLIC IMPROVEMENTS" were incorrect through no fault of the Town. R. __, Affidavit of Lisa Wallace para 3). Applegate promoted the idea of the Town

[3] S.C. Code section 31-10-10 et seq., authorizes municipalities to create "redevelopment" corporations or commissions upon certain findings and after creation of a "redevelopment plan" which must contain certain things. One power of a redevelopment corporation is extending credit, whereas municipalities cannot.

increasing the contractual limit, but Town Council never agreed to increase the $5.2 million dollar maximum. (R.__, Affidavit of Lisa Wallace para 3).

Litigation commenced between Applegate and the Town, which included claims and counterclaims of breach of contract and quantum meruit. (R. __, Aff. of L.W.,para 3) The PPPA contained an arbitration clause. (R. __, PPPA p. 10) And Applegate and the Town also demanded arbitration but did not move forward with it in light of the dispute over the validity of the PPPA. The parties officially stayed the Applegate v. Town of Summerville and Town of Summerville Redevelopment Corporation, 2017-CP-18-279 n February 22, 2019, until the disposition of this Croft case.

Although the project was clearly dead when litigation was filed, this Croft case was in a position to potentially invalidate the PPPA which, in turn, would invalidate the arbitration clause. Thus, a decision invalidating the contract would likely cause the Applegate versus Town dispute to be heard in circuit court as to causes of action other than breach of contract whereas a decision validating the contract would have caused Applegate and the Town to proceed forward in with arbitration. However, as time passed, this Croft case did not result in a determination whether the PPPA was either valid or invalid.

After the death of Arthur Applegate from cancer in April 2023, the Town and Applegate and Company were able to discuss potential resolution of the matter. On July 13, 2023, the Town secured a mutual release with Applegate and Company in exchange for Fifty Thousand Dollars ($50,000) paid by the Town to Applegate. (R._). A stipulation of dismissal with prejudice of claims and counterclaims in Applegate and Company v. Town of Summerville was filed August 1, 2023. (R.___)

Based on this, the Town promptly filed its motion to dismiss the present case as moot. (R. __). Not only was "The Dorchester" project dead, the property owned by the Town that was part of the project had been sold to a different developer to create a different project. (R. __, Aff. L.W. para 4). Also, the Town had dissolved the Summerville Redevelopment Corporation which had entered no other contracts or projects other than the PPPA. R. __ Aff L.W., para 4-5). Further, there were no pending or contemplated public-private partnership agreements by the Town of Summerville relating to any other development. (R. __, Aff. L.W., Para 6) As will be discussed further in the arguments section of this brief, even the predicate objections---that is objections made by these plaintiffs to the processes of the Town before the PPPA contract was entered---had all been changed by the time of the hearing to dismiss this case as moot.

ARGUMENT

I. THE CIRCUIT COURT DID NOT ERR DISMISSING THIS MATTER AS MOOT.

The lower court properly dismissed this action as moot. Plaintiffs only requested declaratory and injunctive relief. Passage of time and change of circumstances rendered any declaratory or injunctive relief sought by the Appellants entirely moot. The gist of the Appellants' position in their brief is that they would still like a determination they were correct because the a) Town has never agreed they were correct and b) they think there is some remote possibility the Town could take similar actions on future projects. However, the Appellants' sincere desire for validation of their legal positions is not sufficient reason for the judicial system to expend time and resources answering moot questions. And the remote possibility there will be some future project like this does not rise to the level of creating a justiciable case or controversy, particularly where the record

shows that no other similar project has even been considered in Summerville in the 10 years since the PPPA was first signed.

Generally, courts will not pass on moot and academic questions or make an adjudication where there remains "no actual controversy." Byrd v. Irmo High School, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). A case becomes moot when a judgment rendered by the Court will have "no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

Declaratory judgments are not an exception to the requirement there be a "justiciable controversy." To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. City of Charleston v. Masi, 362 S.C. 505, 508, 609 S.E.2d 301, 303 (2005). A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute. An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act. Power v. McNair, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970).

The lawsuit in this case requested declaratory and injunctive relief as to "The Dorchester" project. At the time of the motion to dismiss, "The Dorchester" project had been dead for a long time. The failure of the project was the basis for the South Carolina Supreme Court to Croft v. Town of Summerville, 433 S.C. 473, 860 S.E.2d 352 (2021). That case raised issues about the Board of Architectural Review's approval of plans for this project.

So, why didn't the defendants move to dismiss for mootness this action immediately after the determination by the Supreme Court that the appeal of the Board of Architectural Review matter was moot? Quite simply, because the parties at that time believed the Croft would still likely determine if the PPPA contract was valid or void ab initio. Appelgate had filed both a demand for arbitration and a lawsuit against the Town defendants in 2017-CP-18-00279. Town defendants filed counterclaims in arbitration and in circuit court. If the contract was valid, the claims and counterclaims between Applegate and the Town defendants would presumably be heard in arbitration. If the contract was invalid, the claims for quantum meruit would be heard in circuit court. In recognition of the impact this Croft case would likely have, that case was stayed on February 22, 2019. (R. _, Consent Order to Restore and Stay 2017-CP-18-279 filed February 22, 2019.)

However, as the Croft litigation dragged into mid-2023, and after the unfortunate death of Arthur Applegate due to cancer, the Town and Appelgate began a conversation about a modest settlement. The Town voted on July 13, 2023, to secure a release from Applegate of all claims and dismissal of the claims and counterclaims of all parties in exchange for Fifty Thousand ($50,000) Dollars. (R ___) (Affidavit of Lisa Wallace of August 2, 2023—Exhibit A.) A stipulation of dismissal with prejudice of the Applegate lawsuit against the Town and the SRC was filed August 1, 2023. (R.__) (Affidavit of Lisa Wallace Exhibit B.)

The settlement of the Applegate litigation and arbitration eliminated the last possible relevancy of this lawsuit and any issues relating to "The Dorchester" project or the PPPA. The Defendants accordingly moved for summary judgment as it no longer mattered for any purpose whether the PPPA was valid or invalid.

The failure of “The Dorchester” project and the settlement of the underlying litigation was all that was needed for the court to find this matter moot. However, the irrelevancy of the Plaintiffs’ arguments actually went several steps further. By the time of the hearing to dismiss as moot, not only was the project dead:

1) the Town had sold its property that would have been in the PPPA to a different developer (R. _ , Affidavit of Wallace p. 2-3)

2) the different developer was pursuing an entirely different project (R. __ Affidavit of Wallace)

3) the new developer had as of the time of hearing already secured initial approval from the BAR as to the new project without lawsuits or appeals. (R. _, Affidavit of Wallace p. 2-3)

Given the changes above, not only was “The Dorchester” project dead, but it was also impossible for this project or any other on this site to be resurrected. And with the dissolution of the Summerville Redevelopment Corporation in June 2021, (R. __, Ordinance 21-807), there could not even be the same kind of project structure at any other location---at least not without going through all the steps necessary to create a new Summerville Redevelopment Corporation—something that has not been considered in any way since its 2021 dissolution.

Although the plaintiffs claim the legal problems they asserted against “The Dorchester” could be repeated by the Town in some other project, there is no other project public-private partnership or similar development or contemplated. (R_, Aff. Lisa Wallace). Of course, if there ever is a future project, the merits of the Plaintiffs’ legal arguments should be reviewed in light of the facts and circumstances of THAT project. The doctrine of mootness is not simply a matter of conservation of judicial resources.

There are very few things in the law that are always one way or another. For almost every rule, there is an exception. Quite simply, the facts of cases matter!

The plaintiffs' argument that their objections might apply to some future project misses the point that the laws also change. In fact, the laws changed with respect to some of the very issues raised by the plaintiffs. The plaintiffs claim the Town improperly allowed the Mayor to exercise all or some of the duties of the Town Administrator and failed to hire a new Town Administrator. In fact, the Plaintiffs filed a separate declaratory judgment related to this same point. But in the instant action, Plaintiffs claim the absence of a Town Administrator and increased power of the Mayor as a ground for invalidating the PPPA per argument 73 of the Plaintiffs' Second Amended Motion for Summary Judgment. But by the time of the hearing, all of the ordinances the Town utilized to create the temporary condition of the Mayor exercising all or some of the powers of the Town Administrator had been repealed or changed. (R. __, Amended Affidavit of Lisa Wallace Paragraphs 8-9). In fact, as of the time of the hearing, the Town hired three different Town Administrators starting in April 2016 and continuously filling that position thereafter. (R. _, Amended Affidavit of Lisa Wallace) The Town also created the position of Assistant Town Administrator to be able to serve in the absence of the Town Administrator. (R. _ , Amended affidavit of Lisa Wallace). So, both the facts and law changed with respect to those issues.

Even many of the Plaintiffs' 167 grounds for invaliding the PPPA have fundamentally changed by passage of time and circumstances. For example, the plaintiffs claimed the PPPA was invalid because of activities leading up to the creation and adoption of a "Vision Plan" which was approved by the Planning Commission and adopted as an amendment to the Comprehensive Plan by Town Council. The Vision

Plan also serve as the base for creating a "redevelopment plan" which is required to create a municipal "redevelopment corporation." As to the Vision Plan, plaintiffs' objections went all the way back to hiring a private company to assist with the creation of the "Vision Plan." Plaintiff's arguments related to the activities leading up to the "Vision Plan" and the adoption of the Vision Plan as an amendment to the Comprehensive Plan included reasons 4-12, 37-39, 70, 74-90, and 93 of Plaintiffs' Second Amended Motion for Partial Summary Judgment. (R. __, ___, __,) However, the entire Comprehensive Plan was redone[4] and the new Plan was formally adopted October 8, 2020 (R. __ and __, Affidavit of Lisa Wallace p. 3-4 and Ordinance of October 8, 2020) Not only is the Dorchester Project dead, but the Vision Plan and the entire comprehensive plan has was entirely redone.

These Plaintiffs' stubbornness refusal to acknowledge the irrelevancy of their positions has even caused them to attempt to re-litigate the very same issues which were expressly determined to be moot by the Supreme Court in Croft v. Town of Summerville, 433 S.C. 473, 480, 860 S.E.2d 352, 356 (2021). In that case, the Court determined that various objections to the Board of Architectural Review process were moot. Yet, two years after that decision, the Plaintiffs in their Second Amended Motion for Summary Judgment continued to raise the same issues that the Supreme Court had already rejected as moot in arguments related the BAR proceedings 13-19, 30, 34-36 (R. _ , Second Amended Motion for Summary Judgment).

There is no judiciable controversy in this case. The controversy the Appellants allege is purely hypothetical and would not settle any rights of the parties. Now that the

[4] New comprehensive plans are commonplace. S.C. Code § 6-29-510(E) requires an update of the Comprehensive Plan at least every ten years and review every five years.

Dorchester Project underlying this action has been abandoned, there is no basis for judicial review of the underlying factual matters for the sake of the hypothetical, contingent possibility that identical combinations of facts might be at issue in future litigation. The project is dead, the SRC has been dissolved, the land has been sold, and there are no future plans for the Town to enter into a Public Private Partnership Agreement. Additionally, the Public Private Partnership Agreement has been abandoned, it will not be performed by either party, and the breach of contract lawsuit has been settled. Any ruling regarding specific aspects of the Public Private Partnership Agreement or the Dorchester Project would provide nothing more than an advisory opinion in relation to any future Projects.

II. EXCEPTIONS TO THE MOOTNESS DOCTRINE DO NOT APPLY

There are three exceptions to the mootness doctrine, and none apply to the facts of this case. First, if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction. Sloan v. South Carolina Dep't of Transp., 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005). “Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). Third, “if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot.” Id. at 568, 549 S.E.2d at 596. Each exception will be considered below.

A. The “Capable of Repetition, Yet Evading Review” Exception Does Not Apply.

This case fails to meet the standard for “capable of repetition” or “evading review.” The issues in this case are “capable of repetition” only in the broadest sense which is not

what the rule requires. While it is theoretically possible for a future Town Council to enter into some future public-private partnership or other development deal despite the bad experience here, it would have to be about a different property as the Town's property giving rise to this matter has been sold. It would presumably have different terms with different predicate facts leading up any potential contract. There would be entirely different facts which would limit the application of any holding. Matters of this type are not "evading review" either. A municipal construction project could easily be reviewed by a court. Injunctions and stays can be issued as appropriate under the facts of each case. Indeed, litigation is commonplace with public and private projects. The fact Plaintiffs did not complete litigation of their dispute before it became moot does not mean that the issue is "evading review."

The prior Croft decision plainly found that case was not a matter "truly evading review," noting it was the economic decision not to proceed with the project which ended the need for a decision. It is hard to distinguish that Croft case from this Croft case.

As noted by prior Croft case, citing the Byrd v. Irmo High School decision, this "exception is most applicable in situations where the prejudice suffered by the complaining party is temporary and has ended by the time of appellate review." Croft, 433 S.C. at 480, 860 S.E.2d at 356. Byrd involved short term suspensions of a student from school. The student alleged he was not afforded due process and should have had the ability to go to circuit court to stay and review the suspension. Suspensions by that school district and that school would be expected to happen with some degree of regularity. The issues being raised by Byrd related to the opportunity to be heard and a right to stay a suspension. Those issues would be largely the same for any suspended student. But, by the time any appeal could be heard by the Supreme Court, the

suspension would have already been done. Thus, it was entirely appropriate for the courts to exercise jurisdiction under the "capable of repetition, yet evading review" doctrine.

In Seabrook v. City of Folly Beach, the plaintiffs brought an action against the city alleging Folly Beach imposed conditions on recording a plat for residential development. 337 S.C. 304, 523 S.E.2d 462 (1999). After the trial court found in favor of the plaintiffs, the city removed the conditions and approved the plat. In reviewing the appeal, the Court found that the issue was moot because Folly Beach voluntarily removed the conditions making any ruling on the issues without practical effect on the parties. *Id.* at 307, 523 S.E.2d at 463. Although it was theoretically possible for Folly Beach to have created similar conditions on other properties or developers, this was not sufficient to trigger the "capable of repetition, yet evading review" exception to the mootness doctrine.

This matter does not fall within the exception for "capable of repetition, yet evading review."

B. The Public Interest Exception Does Not Apply.

Application of the public interest exception requires the question at issue to be (1) of "public importance," and (2) of "imperative and manifest urgency." Sloan v. Greenville County, 361 S.C. 568, 570–71, 606 S.E.2d 464, 465–66 (2004).

As noted, the prior Croft case rejected the application of the public interest exception to at least some of these very same arguments as to the same project. The Court agreed the issues raised as to public participation were "'important," but the court refused to apply the public importance exception because there was "no imperative or manifest urgency requiring this Court to issue an opinion on the application of FOIA and Summerville's ordinances to the Board's activity."

The Plaintiffs now attempt to sidestep the precedential effect of the prior Croft decision by arguing the only relief requested was to overturn the decision of the BAR whereas this matter seeks declaratory relief. This misconstrues the holding of Croft. If the issues met the pubic interest exception, the Court would not have dismissed the case as moot and would have rendered a decision regardless of whether it could have granted meaningful relief in that case. Instead, the Court rejected the application of the doctrine to the issues raised by the Appellants at that time.

There is no information suggesting the very specific issues being raised by the Appellants now are going to be applicable in other cities and towns such that this is a matter of "public importance." Even if the objections raised were of public importance, there is no "imperative and manifest urgency." The Appellants do not even attempt to argue that this case involves a question of imperative and manifest urgency. That Summerville or some other Town might possibly enter some other public-private partnership or other project at some point in the future is the opposite of "imperative and manifest urgency." Because the issue presented in this appeal does not meet both prongs of the public interest exception, it does not apply.

C. The Collateral Consequences Exception Does Not Apply.

Finally, "if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). Despite the recognition of this exception, few, if any, cases have applied the doctrine in this state. For example, our Supreme Court has held that where a conviction has continuing or collateral consequences for a defendant,

he may continue an action for post-conviction relief. Jackson v. State, 331 S.C. 486, 490, 489 S.E.2d 915, 917 n.2 (1997).

The Appellants' brief conflates the collateral consequences exception with the "public interest" exception. The Appellants merely argue a decision in this case could impact how government entities might act in the future. That is not the kind of collateral consequences envisioned by the collateral consequences exception.

A better example of this would be if the Applegate versus the Town litigation had not been settled. This Croft case might have had such a collateral impact on the related litigation between Applegate, the Town and the SRC. But the settlement of all claims and counterclaim in July 2023 eliminated any collateral consequences argument. This is why the Defendants waited until after the Applegate litigation case was resolved to make the motion to dismiss as moot.

CONCLUSION

This case is moot and no exceptions to the mootness doctrine apply. "The Dorchester" project has been abandoned and the Town has no plans to engage in any similar future projects. A judgment on underlying issues related to the project is no longer relevant and any judgment on those issues would not provide any relief to the parties. Any judgment in this case would be purely advisory and would not even necessarily provide meaningful guidance on future hypothetical situations which will involve different facts and circumstances. For these reasons, this Court should affirm the judgment of the circuit court.

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