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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, Jr., 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.

FINAL BRIEF OF APPELLANTS

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November 11, 2024

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STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT ERR IN DISMISSING THE PLAINTIFFS' DECLARATORY JUDGMENT CAUSE OF ACTION WHEN THE APPELLANTS' COMPLAINT SOUGHT NOT ONLY TO STOP THE DORCHESTER PROJECT BUT ALSO TO ADJUDICATE FOR FUTURE GUIDANCE THE UNLAWFUL ACTIONS OF THE CITY IN PARTNERSHIP WITH A PRIVATE DEVELOPER?

II. DID THE CIRCUIT COURT ERR IN DISMISSING THE PLAINTIFFS' DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF CAUSES OF ACTION WHEN THE CASE FITS CLEARLY WITHIN THE EXCEPTIONS TO THE MOOTNESS DOCTRINE INCLUDING BEING CAPABLE OF REPETITION YET EVADING REVIEW, RAISING ISSUES OF PUBLIC IMPORTANCE AND AFFECTING FUTURE EVENTS?

STATEMENT OF THE CASE

On December 19, 2014, a group of individual citizens, property owners, and taxpayers joined the Summerville Preservation Society and the Dorchester County Taxpayers Association in filing this action in the Court of Common Pleas in Charleston County¹ against the Town of Summerville, its mayor and town council, the Town of Summerville Redevelopment Corporation, the Town of Summerville Planning Commission, the Town of Summerville Board of Architectural Review and the developers Applegate & Co., The Dorchester, LLC, and Arthur Applegate.² (R. pp. 41-193). The original complaint requested a declaratory judgment challenging a downtown revitalization project undertaken by the Town of Summerville in partnership with a private developer for failing to follow the state's Community Development Law, Comprehensive Planning Enabling Act, state and local procurement laws, FOIA, and several local ordinances governing the development approval process.

The Plaintiffs filed a First Amended Complaint in 2015 and a Second Amended Complaint on March 14, 2018. (R. pp. 318-442). The Second Amended Complaint serves as the

¹ Venue was subsequently transferred to Dorchester County.

² The developer defendants were later dismissed and are not parties to this appeal.

operative complaint in this action.

The Plaintiffs filed a Motion for Summary Judgment on November 15, 2022, and amended the motion in an amended filing on January 26, 2024, and a final amended Motion for Summary Judgment on May 8, 2023 (R. pp. 781-813). The circuit court denied that motion on February 12, 2024.

On August 3, 2023, the Defendants filed a motion to dismiss this case "on the grounds that it is entirely moot." (R. pp. 814-851). On August 23, 2023, the Plaintiffs filed a response in opposition, (R. pp. 874-881), and a hearing was held on August 24, 2023. On February 12, 2024, the Circuit Court issued a Form 4 Order with a Statement of Judgment by the Court granting the City's motion and ordering the Defendants to submit a proposed order within 15 days (R. pp. 38-40). The Defendants submitted a proposed order on February 15, 2024, and the circuit court issued its written order dismissing the Plaintiffs' case on February 23, 2024. (R. pp. 3-7)

The Plaintiffs timely filed their Notice of Appeal on March 18, 2024. (R. pp. 622-625).

STATEMENT OF FACTS

Throughout this case leading up to and following the filing of the Second Amended Complaint in 2018, the Plaintiffs took numerous depositions and reviewed thousands of documents produced by the Defendants. The Plaintiffs' Second Amended Motion for Partial Summary Judgment summarizes much of what was uncovered in that discovery. (R. pp. 781-813).

The Defendants' motion is not fact-dependent, however, and is based on the simple fact that the Dorchester project was abandoned by the Town of Summerville and the developers without regard to any of the allegations of wrongdoing described in detail in the Second Amended Complaint. Consequently, the Appellant, to assist this Court in judging the decision of the lower court to dismiss

the entire case as moot, will briefly review those allegations and the requests for declaratory relief in the Second Amended Complaint.

Allegations of Fact in the Second Amended Complaint

The complaint states a civil action for declaratory and injunctive relief brought for violations and threatened violations of, and to enforce the requirements of, several statutes and ordinances including the South Carolina Community Development Law, S.C. Code Ann. § 31-10-20 *et. seq.*; the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310 *et. seq.*; the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* (“FOIA”); the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; and the Town of Summerville Code of Ordinances. The challenges are to the actions of the Town, its redevelopment corporation, its architectural review board, and private developers in pursuing a large redevelopment project in the historic downtown of Summerville.

The complaint details how Mayor Collins aimed to build a hotel project in the historic district of downtown Summerville and set about to accomplish that by approaching several developers who refused to undertake the project because they believed it was not economically feasible (SAC, 146- 148). The Town then contracted with a consultant to create a master plan for downtown Summerville, later called a "Vision Plan." (SAC 149). Following that, the Town issued a Request for Proposal (RFP) that failed to satisfy its ordinances or the state’s statutes, to which Applegate, the eventual development partner, was the only respondent (SAC, 151-154).

Applegate also included in his package 34 high-end condominiums that were not called for in the RFP and were unresponsive to that request. Despite that, the Town awarded Applegate the project, violating the procurement laws (SAC 156-165).

The Town entered into a public-private partnership agreement with Applegate to develop the Dorchester project without a public hearing or vote of or public discussion by the Town (SAC 166).

On May 14, 2014, the Town advanced the boutique hotel project by introducing as a first reading an ordinance to create a "redevelopment commission" called the "Town of Summerville Redevelopment Commission," under SC Code Section 31-10-30, discussing a "proposed economic development project," which was "code" for the boutique hotel project, in an executive session that lasted 51 minutes and passing a second and final reading of an ordinance to rezone the property to facilitate the hotel/condominium use. Those actions were taken without the public being aware that their purpose was to arrange, advance, and finance the boutique hotel project and other projects the Town Council decided to implement through the mechanism of the redevelopment corporation. (SAC 166-167).

A couple of weeks later, at a special meeting, the Council established the Redevelopment Corporation, and then, immediately, the same day, the first meeting of that RDC was held. The council made various findings without informing the public that these actions were calculated to pursue the hotel project (SAC 171-172).

With little or no public input or notice, as the Community Development Law requires, the RDC adopted the consultant's "Vision Plan" as an amendment to the Town's Comprehensive Plan (SAC 173-193).

The town's board of architectural review began reviewing the plans after that. The complaint details many secret meetings between BAR members, the developer's designers, representatives, and other violations of the state's open meetings laws (SAC 206-214).

The complaint detailed violations of the state constitution (SAC 229(A-M), the Community Development Law (SAC 230(C) 1-23), the Comprehensive Planning Act (SAC 230(D)1-4), town ordinances and FOIA, (SAC 230(E) 1-3 and (F)1-23) and requested declarations of illegality under the DJA for numerous failures to abide by these laws.

In addition to these many requests for declarations under the DJA (SAC, Relief Requested

(A)), the Plaintiffs requested injunctive relief to stop the project from proceeding, given the many alleged violations of these laws (SAC, Relief Requested (B)(1)(2)). Given the project's abandonment, this is the only requested relief in the SAC that the court cannot now grant effectively. The requests to enjoin future conduct in violation of the numerous cited statutes and ordinances (B)(3)-(10) and the request for declaratory relief are not affected by the abandonment of the Dorchester project.

STANDARD OF REVIEW

Though the Defendants' motion is styled a "motion to dismiss" and the court's decision is characterized as a "motion to dismiss," no rule is cited in either the motion or the order.

If it is a motion to dismiss under Rule 12(b)(1), SCRCPC, the movant challenges the power of the court over the subject matter, and "[t]he question of subject matter jurisdiction is a question of law for the court" and "this court is free to decide questions of law with no deference to the trial court." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

If it is a motion to dismiss under Rule 12(b)(6), the trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN DISMISSING THE PLAINTIFFS' DECLARATORY JUDGMENT CAUSE OF ACTION WHEN THE APPELLANTS' COMPLAINT SOUGHT NOT ONLY TO STOP THE DORCHESTER PROJECT BUT ALSO TO ADJUDICATE FOR FUTURE GUIDANCE THE UNLAWFUL ACTIONS OF THE CITY IN PARTNERSHIP WITH A PRIVATE DEVELOPER.

A. While the Dorchester project is terminated, the underlying legal issues regarding the Town's processes and decision-making remain unresolved.

Courts may only consider cases where a justiciable controversy exists. See *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "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." *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). "Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable." *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001).

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Curtis*, 345 S.C. at 567, 549 S.E.2d at 596 (quoting *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)).

In this case, the fact that the developers and the Town did not proceed with their public-private partnership to build the Dorchester project does not resolve the issues brought by the Appellants. The Appellants have spent much time and resources bringing to the Court the Town's failure to abide by the laws outlined in the Second Amended Complaint in pursuit of this project. These issues are not made moot even if the project is not going forward because the Town has not conceded it did anything wrong, the violations may be repeated in future projects, and the issue of the violations of these statutes is very much in controversy.

While the lower court's order cites *Croft v. Town of Summerville*, 433 S.C. 473, 860 S.E.2d 352 (2021), the issues in this case are much broader and more fundamental to municipal governance, distinguishing them from the narrower architectural review appeal issues in the 2021 *Croft* opinion.

Croft was a consolidated appeal of two approvals by the Summerville Board of Architectural Review of building plans submitted by the developer. *Croft*, 860 S.E.2d at 354-355. Those appellants argued that the Summerville board erred in approving those plans for various reasons. By the time the appeal of those building plan approvals came before the Supreme Court, the developer had abandoned the project. When the court explored that fact at oral argument, counsel for both parties had to

concede that the building plan approval appeal was likely moot. *Croft*, 860 S.E.2d at 356.

Very importantly, the only relief sought by the appellants in that case was the invalidation of the building plan approvals granted by the board. "At its core, the fight in this case is over whether the Developer can build the Project as currently approved by the Board, or whether the Developer must return to the Board and obtain new approval before building the Project. This controversy ended when the Developer decided not to build the Project." *Id.* If there was no building project, invalidating the approvals would fit the definition of mootness. "A moot case exists where 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." *Id.*, citing *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).

This case could not be more different. The significant difference between those building approval appeals and this case is that this case is a declaratory judgment action challenging illegal actions by the Town in entering into the public-private partnership with the developers. The Second Amended Complaint seeks review and adjudication by the court of numerous instances of violation of the law by the Town in addition to a separate injunctive relief cause of action seeking to stop the progress of the project and those violations. There is an actual controversy (unless the Town concedes it violated the law, which at this writing, it has not) and much work for the court to do in reviewing these facts and the law and in deciding for future guidance whether the Town violated the law. Those issues are far from moot, and the circuit court erred in prematurely calling an end to this case based on the Town's plea of mootness.

This is not a case like *Sloan*, where the government body not only belatedly complied with its legal obligations after filing the complaint (in *Sloan*, producing the documents, in this case, abandoning the illegal project) but also conceded it was wrong. *Sloan*, 630 S.E.2d at 477-478. In that case, the plaintiff sought a declaratory judgment that the Friends group was an alter ego for the Hunley

Commission and a public body. After filing the complaint, the defendant Friends group not only produced the documents under FOIA but also conceded it was a public body. *Id.* Accordingly, there was no further relief the court could grant. Hunley. "Additionally, since the filing of this appeal, Friends has conceded that it is presently a public body as related to this litigation." *Sloan*, 630 S.E.2d at 478.

Likewise, in *Seabrook v. City of Folly Beach*, 337 S.C. 304, 523 S.E.2d 462 (1999), the plaintiffs brought an action against the city, alleging that the city had no authority to impose conditions upon the development of their land. *Seabrook*, 523 S.E.2d at 462. After the trial court found in favor of the plaintiffs, the city removed the conditions and approved the plat. *Id.* In that case, though, there was a trial, the City was adjudged to have acted wrongly, and the City corrected its error. There has been no adjudication of the Town's wrongful conduct in this case, nor has the Town conceded its violation of the law.

In this case, the Town has not conceded anything, there has been no trial on the merits, and all of the wrongdoing outlined in the Second Amended Complaint remains unaddressed. This Court, in the interest of supporting the rule of law, holding local government accountable to abide by the state enabling legislation and its local ordinances, and avoiding repetition of wrongdoing in the future, should reverse the decision of the circuit court and send this case back for a full trial.

Allowing a local government to avoid the consequences of its wrongdoing through the doctrine of mootness once the wrongdoing is publicly challenged through the initiation of litigation is bad public policy. It could incentivize local governments to terminate controversial projects whenever they are legally challenged to avoid judicial scrutiny and enable repetition of their processes. This, again, is not consistent with the rule of law and should not be supported by the courts of this state.

B. A declaratory judgment could provide guidance on the legality of the Town's actions and prevent similar issues in future projects.

South Carolina's Uniform Declaratory Judgment Act allows challenges to unlawful government conduct in precisely these circumstances.

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

S.C. Code Ann. § 15-53-20. (Emphasis added.)

"The Declaratory Judgment Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships." *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 56 S.E.2d 576 (1949)); S.C. Code Ann. § 15-53-130 (1977).

Dismissing the case as moot frustrates this purpose and is contrary to the intent and purpose of the Declaratory Judgment Act and the policy behind the law of mootness in this state. This case, as pled in the Second Amended Complaint, has not been decided by the abandonment of the Dorchester public-private partnership by the Town. This court should allow the case to proceed to a decision as envisioned by the clear language of the Declaratory Judgment Act in the interest of justice and in support of the rule of law in this state.

By dismissing the case as moot, the court misses an opportunity to clarify the legality and proper implementation of public-private partnerships in South Carolina. This guidance could be valuable for the Town of Summerville and other municipalities considering similar arrangements.

Even if the project is no longer moving forward, the court should still rule on the legality of

the Town's past actions. This could provide accountability and influence the future behavior of municipal officials.

Many of the declarations of violation of law sought by the Appellants are not dependent on whether the case is proceeding or not and should be decided.

The Court is fully capable of providing the relief requested by the Plaintiffs despite the project's failure because whether the Town violated the applicable law cited in the complaint is still very much in controversy. Despite the project's failure, the Town has not conceded that it did anything wrong. As a result, there remains a justiciable controversy for the courts of this state to decide.

II. THE CIRCUIT COURT ERRED IN DISMISSING THE PLAINTIFFS' DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF CAUSES OF ACTION WHEN THE CASE FITS CLEARLY WITHIN THE EXCEPTIONS TO THE MOOTNESS DOCTRINE INCLUDING BEING CAPABLE OF REPETITION YET EVADING REVIEW, RAISING ISSUES OF PUBLIC IMPORTANCE AND AFFECTING FUTURE EVENTS.

As argued above, the declaratory judgment cause of action in the Second Amended Complaint is not moot. Even if the abandonment of the project did render the action moot, however, sound policy reasons, embodied in the exceptions to mootness as developed in this state's jurisprudence, compelling this case to be tried on the merits.

The *Curtis* court identified three general areas of exception to the mootness doctrine in this state. *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). First, a court could take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. Second, a court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of significant public interest. Finally, if a decision by the trial court may affect future events or have collateral consequences for the parties, that decision is not moot, even though the court cannot give effective relief in the present case. *Curtis*, 549 S.E.2d at 596.

Capable of Repetition, Yet Evading Review

An appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. *Curtis*, 549 S.E. 2d at 596, citing *Byrd v. Irmo High Sch.*, 321 S.C. 426, 468 S.E.2d 861 (1996); *Citizen Awareness Regarding Educ. v. Calhoun County Publ'g, Inc.*, 185 W. Va. 168, 406 S.E.2d 65 (W. Va. Ct. App. 1991) (holding an appellate court could consider newspaper's appeal from trial court's injunction compelling newspaper to publish political action advertisement even though case was moot because the issue was capable of repetition yet evaded review).

The nature of public-private partnerships and municipal decision-making processes makes them likely to recur but difficult to litigate before projects are completed or abandoned entirely. This pattern could allow potentially improper practices to continue without judicial review.

The "capable of repetition yet evading review" exception as adopted in *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996) (this case involved short-term school suspensions and established that issues which are inherently short in duration may qualify for this exception) and *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017) (the court applied this exception to a case involving bridge inspections that were too short in duration to be fully litigated before becoming moot) should apply where the Town initiates and then abandons controversial projects before legal challenges can be fully litigated. This practice creates the situation this exception is meant to address by ending the period available for review by unilaterally ending its wrongful behavior once it is challenged in an action filed in court. This deprives citizens of the ability to obtain an effective judicial review of local government action that is challenged as illegal.

Public Importance Exception

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*, 549 S.E. 2d at 596, citing *Berry v. Zahler*, 220 S.C. 86, 66 S.E.2d 459 (1951) (the court recognized that questions of public interest

originally encompassed in an action should be decided for future guidance however abstract or moot they may have become in the immediate contest).

The issues raised in this case, particularly regarding the proper use of public-private partnerships, procurement, and the transparency of local government decision-making, are of significant public importance. These issues could affect future projects and governance in Summerville and other municipalities.

There is a strong public interest in clarifying the legal requirements for major public-private development projects and ensuring government transparency. Even if this specific project is over, a ruling could provide meaningful guidance for future projects. See *Curtis*, 549 S.E.2d at 596 (2001)(outlining the public interest exception); and *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005) (the court applied the public interest exception to address issues of public importance regarding state procurement procedure).

In *Sloan v. Greenville Cty.*, 356 S.C. 531, 551-55, 590 S.E.2d 338, 349-51 (Ct. App. 2003), the court found against a mootness argument where the issue was likely to recur but evade review. That case challenged Greenville County's selection of contractors under the procurement code. The court found that, by design, the procurement code's exception allowing the use of design-build source selection accelerates the process of awarding public works contracts and the ultimate completion of the projects themselves. Though the plaintiffs initiated the actions in the present case within one week after the contracts were executed or the County's written determination was filed, construction on all three projects was complete before the beginning of the trial. Because the fundamental inquiry in this case concerns the validity of using an expedited procurement process, the court found that it was improbable that similar challenges could navigate the litigation process before the question became purely academic. The court found an exception to the mootness doctrine and allowed the case to proceed to trial.

In *S.C. Pub. Interest Found. v. S.C. DOT*, 421 S.C. 110, 121-22, 804 S.E.2d 854, 860-61 (2017), the court concluded that the issue of whether the SCDOT could inspect bridges inside private, gated communities is capable of repetition, yet will generally evade review. Just as here, with the City of Aiken, the court found the DOT capable of repeating their actions in the future, “especially since they maintain their conduct was lawful.” The DOT said they would inspect private bridges in the future, the very activity challenged by the Plaintiff. Moreover, the court found that this issue will typically become moot before it can be reviewed because inspection of roadways and bridges can usually be completed long before a court can review the propriety of the action. As a result, even though the court found the activity giving rise to this appeal is moot, the court found the controversy capable of repetition yet generally evading review.

In *Sloan v. DOT*, 365 S.C. 299, 306, 618 S.E.2d 876, 880 (2005), the plaintiff contended the respondents violated S.C. Code Ann. § 57-5-1620 by awarding construction contracts to someone other than the lowest qualified bidder (i.e., using the Design/Build process). The DOT contended it had other statutory authority to use the Design/Build procurement methods, and, in any event, it does not matter because it awarded the contracts to the lowest bidders complying with § 57-5-1620. The court disagreed with that argument. The court found the fact that these three contracts were awarded to the lowest bidder was irrelevant. Though the court found that the issue in this specific case was moot because the contracts had been awarded and fully performed, the court determined it should address the issue of whether the DOT should have followed § 57-5-1620 in awarding other contracts.

In this case, the "public interest" exception supports deciding this case given the allegations of FOIA, ethics, and public contracting violations by the Town in the Second Amended Complaint.

The South Carolina Supreme Court, almost 80 years ago, recognized the need to address matters of public importance in local governance even where the actions complained of in the pleadings might be considered moot:

[T]he case is not an ordinary one; it is not a private controversy between individuals, as such. On the contrary, it is defended by an intended governmental agency which the legislature undertook to create by their enactments; and raised on the record are earnestly argued public questions of importance. The last stated factor brings into play the principle, now generally established, that questions of public interest originally encompassed in an action should be decided for future guidance, however abstract or moot they may have become in the immediate contest.

Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77, 96, 44 S.E.2d 88, 96-97 (1947).

Allowing the City to avoid review under the cloak of mootness could invite future misconduct by this or other municipalities and should not be allowed by this court.

Collateral Consequences

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*, 549 S.E.2d at 596, citing 5 AM. JUR. 2D Appellate Review § 649 (1995).

The order does not address the potential collateral consequences of the failed public-private partnership and related actions. Even though the specific project is abandoned, the decisions and processes challenged in the lawsuit may have ongoing effects. For example, the precedent set by the Town's actions could influence future projects or policies.

Here, the alleged ethics, transparency, and contracting violations have implications for public trust and government integrity beyond just the Town of Summerville or the abandoned Dorchester project and should be litigated for the benefit of this and other local governments in this state.

Although some specific ordinances and practices have been changed, the underlying issues of how municipalities structure large development projects and partner with private entities remain relevant. A declaratory judgment could provide guidance to prevent similar problems in future projects.

CONCLUSION

In summary, dismissing this case before trial frustrates government accountability and transparency regarding development projects, particularly those in which local government is a "partner." This case raises issues of substantial public importance regarding municipal governance, ethics, and compliance with state and local laws that warrant judicial resolution despite the Dorchester project's termination. This declaratory judgment action is an opportunity for guidance. It must be allowed to proceed to trial in the interest of good local governance and the rule of law in this state. For all the reasons stated, this Court should reverse the judgment of the circuit court and remand this case for trial.

Respectfully submitted,

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November 11, 2024