

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Court Case No. 2024-000438
Unpublished Opinion No. 2026-UP-358

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,

Respondent.

PETITION FOR REHEARING

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Jul 22 2026

SC Court of Appeals

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Pursuant to Rule 221(a) of SCACR, Appellants respectfully petition for rehearing of the Court’s unpublished opinion dated July 8, 2026. The Petition identifies two points Appellants respectfully submit were overlooked or misapprehended. Appellants do not seek to relitigate the merits of every allegation in the Second Amended Complaint; rather, they request reconsideration of the conclusion that abandonment of the Dorchester project rendered the entire action moot.

ARGUMENT

I. The Opinion overlooks the dispositive distinction between the prior architectural-review appeal and this action for declaratory and prospective injunctive relief.

The Opinion relies in part on *Croft v. Town of Summerville*, 433 S.C. 473, 480–81, 860 S.E.2d 352, 356–57 (2021), which held that abandonment of the same development rendered moot an appeal challenging the Board of Architectural Review’s project-specific approvals. That decision turned on whether the developer could build the project under those approvals. Once the developer abandoned the project, invalidating those approvals could have no practical legal effect.

This appeal presents a materially different controversy. The operative complaint sought declarations regarding the Town’s and its entities’ authority and compliance with governing statutes and ordinances in creating and implementing a public-private redevelopment arrangement, together with prospective relief to prevent repetition of the challenged conduct. The Circuit Court’s February 23, 2024 dismissal ended the action without adjudication of those claims. Appellants preserved this distinction in their Initial Brief and Final Reply Brief: the requested declaratory and prospective relief did not depend solely on halting construction of the abandoned Dorchester project.

The Opinion states that Appellants sought “guidance regarding actions of the Town and private developers,” yet affirms the dismissal by treating the project’s abandonment as dispositive of the entire action. Respectfully, that approach does not address whether a declaration concerning the legality of governmental actions already taken, or prospective relief directed to the governmental

defendants' future use of the challenged processes, would settle legal rights or otherwise have practical legal effect. Under the Declaratory Judgments Act, courts may declare "rights, status, and other legal relations whether or not further relief is or could be claimed." S.C. Code § 15-53-20.

Appellants recognize that a declaratory judgment may not issue merely to provide an advisory opinion. But the requested declarations concern completed governmental actions and the legal limits of the Respondents' authority and processes—not a hypothetical dispute about a future developer's as-yet-unidentified project. The abandonment of one development eliminated the project-specific request to halt construction; it did not resolve the preserved dispute over the legality of the challenged governmental conduct or the request for prospective compliance. Rehearing is warranted so the Court may address that distinction before applying the 2021 *Croft* decision to dispose of the entire action.

II. Alternatively, the Opinion does not address Appellants' application of each recognized exception to mootness.

The Opinion correctly recognizes that *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001), identifies three general circumstances under which an appellate court may consider an otherwise moot controversy: (1) the issue is capable of repetition yet evades review; (2) the question is of imperative and manifest urgency to establish a rule for future conduct in a matter of important public interest; or (3) the trial-court decision may affect future events or have collateral consequences. Id.

The Opinion cites those standards but does not address Appellants' preserved arguments that this record satisfies them. Appellants argued that challenges to a municipality's rapid development and procurement processes can become unreviewable once a project is completed or abandoned, even as the municipal entity continues to maintain the legality of its conduct and remains able to use the same processes again. Appellants further argued that the claims concern public transparency, public-private development, procurement, and statutory limits on local governmental action—subjects for which a

rule for future conduct would serve an important public interest.

The Supreme Court has decided a completed public-procurement controversy under the public-interest exception because the question was likely to recur and would otherwise evade review. *Sloan v. Department of Transportation*, 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005). It has likewise applied the capable-of-repetition-yet-evading-review principle where the challenged governmental conduct was likely to recur but would ordinarily be completed before judicial review. *S.C. Pub. Interest Found. v. S.C. DOT*, 421 S.C. 110, 121, 804 S.E.2d 854, 860 (2017).

Appellants respectfully submit that their exception arguments should have been applied to the record, rather than resolved solely by citation to the standards and to the 2021 project-approval appeal. If the Court concludes that the abandonment rendered the project-specific relief moot, rehearing remains warranted to determine whether the claims should nevertheless be resolved under one or more of the *Curtis* exceptions.

RELIEF REQUESTED

For these reasons, Appellants respectfully request that the Court grant rehearing, withdraw its July 8, 2026 opinion, reverse the Circuit Court's dismissal, and remand the case for further proceedings. Alternatively, Appellants request that the Court reconsider whether the asserted claims should be decided under the recognized exceptions to mootness.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Rehearing in the above referenced case has been served upon the following by emailing a digital copy this 22nd day of July, 2026 to counsel listed below:

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