

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

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

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2022-CP-18-01494

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS AS MOOT**

This is an action challenging a "Public Private Partnership Agreement" (PPPA) entered by the Town of Summerville, the Summerville Redevelopment Corporation (SRC) and Applegate and Co. to construct and operate "The Dorchester" --- a boutique hotel, meeting/event space, condominiums, and a parking garage complex in Summerville, South Carolina. The Town was to own and pay to build the event space and parking garage. The developer would own and operate the boutique hotel and sell the individual condominium units.

Per the affidavit of Lisa Wallace, the Town Administrator, the Dorchester project failed because of unanticipated construction costs that became evident in November

2015. The project lingered as Applegate sought to get the Town to agree to an increase in the contract price. The Town did not agree to a contract increase. Litigation commenced between Applegate on one side versus the Town and SRC. There were claims and counterclaims involving alleged breach of contract, promissory estoppel, and quantum meruit. The trial of the Applegate matter was stayed by consent pending the outcome of this action because the parties to that action believed it was likely the present action would determine whether the PPPA contract was valid. However, the validity of the contract was still undecided and the present action was unresolved as of July 2023. At that time, the Town seized an opportunity to resolve the Applegate matter, a release was signed, and the Applegate case was dismissed with prejudice on August 1, 2023.

The Plaintiffs filed this action a declaration that the public-private partnership was void ab initio on a variety of grounds and further requested the court to issue an injunction related to conduct the Plaintiffs claim contributed to the parties entering the PPPA. The complaint, originally filed in December 2014, sought declaratory and injunctive relief, and attorney's fees should the plaintiffs prevail. The case was twice amended, but still sought only declaratory and injunctive relief, and attorney's fees. The individual City Council members and Mayor were dismissed in July 2019. The case was dismissed under Rule 40(J) in January 2022. It was restored in September 2022. After the settlement of the Applegate case, the Defendants filed a motion to dismiss on the grounds of mootness. The matter was heard by this Court on August 24, 2023.

"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. Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (citing Mathis v. S.C. State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). If there is no actual controversy, the court will not decide moot or academic questions.” Id. In fact, an appeal of the Board of Architectural Review decision relating to this project was dismissed as moot by the South Carolina Supreme Court in Croft v. Town of Summerville, 433 S.C. 473, 480, 860 S.E.2d 352, 356 (2021).

It is the Court’s view that declaratory and injunctive relief would not afford any meaningful relief here. The project is no longer going forward. The lawsuit between the Town and the Developer is resolved. The Town has sold the land it owned that was to be used as part of the project. Even predicate acts which the Plaintiffs contend were done improperly and contributed to the Town entering into the PPPA have become irrelevant. For example, an amendment to the Comprehensive Plan known as a “Vision Plan” which reference the Dorchester project has been replaced by an entirely new Comprehensive Plan. Ordinances and practices the Plaintiffs allege caused the Mayor to have too much power have been repealed and the Town has gone back to having a full-time Town Administrator.

Plaintiffs believe they should be allowed to proceed forward to obtain the declaration because the issues are “capable of repetition, yet evading review” and are of “public importance.” While these are recognized exceptions to the doctrine of mootness, neither of these exceptions to the mootness doctrine apply. It is noteworthy the Supreme Court in the Croft appeal of the Board of Architectural Review matter determined neither

of those exceptions applied to the issues raised in that appeal. And some of the issues the Plaintiffs attempt to raise in this case are the very same issues raised in the appeal Board of Architectural Review case. This includes allegations that the Board of Architectural Review was given an opportunity to review the project in smaller groups of less than a quorum. If those arguments did not cause the Supreme Court to find an exception to the mootness doctrine in the Croft appeal of the Board of Architectural Review decision, then there is no reason to treat these allegations any differently in the present case.

Based on the materials before me, the Defendants' motion to dismiss on the grounds of mootness is GRANTED.

AND IT IS SO ORDERED.

[Judge's Electronic Signature on Final Page]



Dorchester Common Pleas

Case Caption: Faye P Croft , plaintiff, et al VS Summerville Town Of , defendant, et al
Case Number: 2022CP1801494
Type: Order/Dismissal

So Ordered

s/Jennifer B. McCoy #2764