

RECEIVED

Sep 15 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

FROM THE SOUTH CAROLINA COURT OF APPEALS
Appeal from Dorchester County
The Honorable Jennifer B. McCoy,
Circuit Court Judge

Unpublished Opinion No. 2026-UP-358 (S.C. Ct. App. Filed July 8, 2026)
Appellate Court Case No. 2024-000438
Civil Court Case No. 2022-CP-18-01494

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,

Petitioners,

v.

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

Respondents.

PETITION FOR WRIT OF CERTIORARI

W. Andrew Gowder, Jr.
Austen & Gowder, LLC
1629 Meeting St Ste A
Charleston, SC 29405
Phone: 843-727-2229
andy@austengowder.com

Michael T. Rose
Mike Rose Law Firm, PC
409 Central Avenue
Summerville, SC 29483
(843) 871-1821
mike@mikeroselawfirm.com

Counsel for Petitioners

TABLE OF CONTENTS

Table of Authorities	ii
Certification of Counsel.....	iii
Question Presented for Review.....	1
Statement of the Case	1
Special and Important Reasons Supporting Review	2
I. The decision below warrants review because it does not address the decisive distinction between the 2021 project-approval appeal and this declaratory and prospective-relief action.....	2
II. The decision below materially conflicts with this Court’s application of the established exceptions to mootness.....	3
III. This case provides an appropriate vehicle for clarification	5
Conclusion	6

TABLE OF AUTHORITIES

CASES

<i>Croft v. Town of Summerville</i> , Op. No. 2026-UP-358 (S.C. Ct. App. filed July 8, 2026)	1, 2, 3, 6
<i>Curtis v. State</i> , 345 S.C. 557, 567–68, 549 S.E.2d 591, 596 (2001)	4, 5, 6
<i>S.C. Pub. Interest Found. v. S.C. Dep’t of Transp.</i> , 421 S.C. 110, 121–22, 804 S.E.2d 854, 860–61 (2017)	4, 5
<i>Sloan v. Dep’t of Transp.</i> , 379 S.C. 160, 166–68, 666 S.E.2d 236, 239–40 (2008)	5
<i>Sunset Cay, LLC v. City of Folly Beach</i> , 357 S.C. 414, 423–25, 593 S.E.2d 462, 466–67 (2004)	3

STATUTES

Rule 242, SCACR	1, 2
Rule 220(b), SCACR	2, 3
S.C. Code Ann. § 15-53-20	3

CERTIFICATION OF COUNSEL

I certify that a petition for rehearing was made and ruled on by the Court of Appeals on August 18, 2026.

s/W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr.

Counsel for Petitioners

Petitioners respectfully petition this Court, pursuant to Rule 242, SCACR, for a writ of certiorari to review the Court of Appeals' decision in *Croft v. Town of Summerville*, Op. No. 2026-UP-358 (S.C. Ct. App. filed July 8, 2026). The Court of Appeals denied Petitioners' Petition for Rehearing on August 18, 2026. This Petition is timely filed within thirty days of that ruling. Rule 242(c), SCACR.

QUESTIONS PRESENTED FOR REVIEW

- I. Did the Court of Appeals err by affirming the dismissal of Petitioners' declaratory-judgment action as moot, when the operative complaint sought adjudication of the legality of the Town's completed conduct in creating and implementing a public-private redevelopment arrangement, along with prospective injunctive relief against recurrence, rather than only project-specific relief concerning the now-defunct Dorchester Project?
- II. Alternatively, did the Court of Appeals err by declining to apply the recognized exceptions to mootness when the claims concern municipal public-private development, procurement, transparency, and statutory compliance; the Town has not conceded the challenged conduct was unlawful; and the challenged conduct is capable of repetition, may evade meaningful review, and may affect future events or carry collateral consequences?

STATEMENT OF THE CASE

This action was initiated in December 2014. The operative Second Amended Complaint alleges violations of the South Carolina Community Development Law, the Local Government Comprehensive Planning Enabling Act, the Freedom of Information Act, the Uniform Declaratory Judgments Act, and Town ordinances in connection with the Town's public-private redevelopment arrangement for the Dorchester Project. **R. pp. 318–442.**

The operative complaint seeks declaratory relief regarding the legality of the Town's and its entities' conduct and prospective injunctive relief, as well as project-specific relief. **R. pp. 318–442.** Respondents moved to dismiss the entire action as moot after the Dorchester Project did not proceed.

R. pp. 814–851. Petitioners opposed the motion, explaining that the action also sought prospective relief and an adjudication concerning governmental conduct that had not been resolved on the merits.

R. pp. 874–881.

On February 23, 2024, the Circuit Court dismissed the action. **R. pp. 3–7.** Petitioners appealed. The Court of Appeals affirmed under Rule 220(b), SCACR, citing *Croft v. Town of Summerville*, 433 S.C. 473, 860 S.E.2d 352 (2021), and the general mootness authorities. *Croft v. Town of Summerville*, Op. No. 2026-UP-358 (S.C. Ct. App. filed July 8, 2026). The Court of Appeals recognized Petitioners’ argument that the action sought guidance concerning the conduct of the Town and private developers but nevertheless treated the project’s defunct status as dispositive. It also concluded that none of the recognized mootness exceptions applied. Petitioners raised the same two issues in their final appellate briefing and Petition for Rehearing.

SPECIAL AND IMPORTANT REASONS SUPPORTING REVIEW

Rule 242 makes certiorari discretionary and identifies, among other considerations, novel questions of law and conflicts with prior Supreme Court decisions as grounds that may warrant review. This petition presents both: a substantial question concerning the justiciability of a declaratory action seeking prospective relief after the subject development project ceases, and a material tension between the summary decision below and this Court’s decisions applying the three established exceptions to mootness.

I. The decision below warrants review because it does not address the decisive distinction between the 2021 project-approval appeal and this declaratory and prospective-relief action.

The 2021 *Croft* decision concerned a markedly narrower controversy. Petitioners there sought invalidation of the Board of Architectural Review’s approvals for the particular Dorchester Project. This Court held the appeal moot because the developer had abandoned the project, leaving no

practical relief available as to those approvals. *Croft*, 433 S.C. at 479–81, 860 S.E.2d at 355–57.

This case does not seek merely to invalidate the former project approvals. The Second Amended Complaint alleges that the Town and its entities engaged in unlawful conduct in conceiving and implementing a public-private redevelopment arrangement, including alleged violations of state enabling laws, procurement requirements, transparency requirements, and Town ordinances. **R. pp. 318–442.** Petitioners sought declarations as to those completed governmental actions and prospective injunctions against future violations, in addition to relief directed to the Dorchester Project. **R. pp. 318–442.** Petitioners’ final brief specifically explained that the project’s abandonment affected only the project-specific injunction request; the declaratory and prospective-relief claims remained. **R. pp. 318–442; Final Brief of Appellants pp. 5–10.**

The distinction is legally consequential. The Uniform Declaratory Judgments Act authorizes courts to declare “rights, status, and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20. And this Court has explained that declaratory relief is available to settle a real and substantial controversy without requiring parties to await further injury or breach. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423–25, 593 S.E.2d 462, 466–67 (2004).

The Court of Appeals’ Rule 220(b) disposition contains no analysis of whether the requested declarations and prospective injunctions would settle continuing legal rights or govern future conduct. Instead, it treats the cessation of the project as resolving the entire action, notwithstanding the distinct relief requested and the distinction pressed in Petitioners’ appellate briefs and rehearing petition. The issue has substantial importance for declaratory challenges to governmental conduct that ends, changes, or is abandoned before a court reaches the merits.

II. The decision below materially conflicts with this Court’s application of the established exceptions to mootness.

This Court recognizes three exceptions to mootness: (1) issues capable of repetition yet

evading review; (2) questions of imperative and manifest urgency requiring a rule for future conduct in a matter of important public interest; and (3) decisions that may affect future events or have collateral consequences for the parties. *Curtis v. State*, 345 S.C. 557, 567–68, 549 S.E.2d 591, 596 (2001).

Petitioners preserved an application of each exception. **R. pp. 874–881; Final Brief of Appellants pp. 10–15; Petition for Rehearing pp. 2–3.** The Court of Appeals cited *Curtis* but did not explain why the specific features of the asserted claims—the continuing legal dispute over the Town’s authority and process, absence of a concession of illegality, prospective municipal conduct, and the public character of the alleged statutory and ordinance violations—do not satisfy any exception.

A. Capable of repetition yet evading review

This Court has held that an issue may be reviewed after the particular controversy is complete when the governmental conduct can recur and ordinarily becomes moot before it can be judicially reviewed. *S.C. Pub. Interest Found. v. S.C. Dep’t of Transp.*, 421 S.C. 110, 121–22, 804 S.E.2d 854, 860–61 (2017). In that case, the challenged bridge inspections had ended, but review remained appropriate because the agency maintained its conduct was lawful, stated it would conduct similar inspections again, and the inspections ordinarily were completed before judicial review could occur.

Petitioners argue this case presents the same central considerations. The Town has not conceded that the alleged conduct in the public-private redevelopment process was unlawful. **R. pp. 814–851; Final Brief of Appellants pp. 6–8.** The issues concern municipal processes that may recur in future development arrangements, and a project may be completed, discontinued, or materially altered before ordinary litigation can produce appellate review. **Final Brief of Appellants pp. 10–13; Petition for Rehearing pp. 2–3.** This Court should decide whether the Court of Appeals properly applied the recurrence-and-evasion inquiry to that record.

B. Important public interest and future guidance

This Court has recognized that questions concerning governmental conduct, public expenditure, and the legal limits of public authority may warrant review where future guidance is needed. *S.C. Pub. Interest Found.*, 421 S.C. at 118–21, 804 S.E.2d at 858–60; *Sloan v. Dep’t of Transp.*, 379 S.C. 160, 166–68, 666 S.E.2d 236, 239–40 (2008). Petitioners’ allegations concern public-private redevelopment, municipal procurement, public transparency, and compliance with statutes governing local governmental action. **R. pp. 318–442.**

The question is not simply whether government transparency is important in the abstract. It is whether the alleged statutory and ordinance violations in the Town’s use of a redevelopment entity and public-private development process present an issue requiring a rule for future municipal conduct. The Court of Appeals’ summary affirmance leaves that substantial question unaddressed.

C. Future events and collateral consequences

Under *Curtis*, an appeal remains justiciable if the trial-court decision may affect future events or have collateral consequences, even if present relief is unavailable. 345 S.C. at 568, 549 S.E.2d at 596. Petitioners assert that the challenged governmental processes and the Circuit Court’s dismissal may affect the Town’s future conduct and the parties’ legal interests in later redevelopment activity. **Final Brief of Appellants pp. 13–15; Petition for Rehearing pp. 2–3.** The Court of Appeals did not analyze this preserved ground separately.

III. **This case provides an appropriate vehicle for clarification.**

The relevant issues were fully developed in the operative pleadings, motion practice, appellate briefs, and Petition for Rehearing. **R. pp. 3–7, 318–442, 814–851, 874–881.** The case presents a clean legal question arising from a dismissal before trial: whether abandonment of the particular development eliminates every claim for declaratory and prospective injunctive relief regarding the governmental conduct used to create and implement that development, and whether the

Curtis exceptions nevertheless require review.

Review would provide needed guidance to circuit courts and local governments regarding the interaction between the Declaratory Judgments Act and mootness where an allegedly unlawful governmental process becomes tied to a project that does not go forward. It would also clarify the scope of the 2021 *Croft* decision, which addressed the availability of relief from project-specific Board approvals rather than the distinct declaratory and prospective claims at issue here.

CONCLUSION

For the foregoing special and important reasons, Petitioners respectfully request that this Court grant a writ of certiorari, designate the questions for review, reverse the Court of Appeals' decision, and remand this matter for further proceedings consistent with this Court's decision.

Respectfully submitted,

s/W. Andrew Gowder, Jr.

W. Andrew Gowder, Jr.
Austen & Gowder, LLC
1629 Meeting Street, Suite A
Charleston, SC 29405
(843) 727-2229
andy@austengowder.com

s/Michael T. Rose

Michael T. Rose
Mike Rose Law Firm, PC
409 Central Avenue
Summerville, SC 29483
(843) 871-1821
mike@mikeroselawfirm.com

Counsel for Petitioners

September 15, 2026
Charleston, South Carolina

RECEIVED

Sep 15 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

FROM THE SOUTH CAROLINA COURT OF APPEALS
Appeal from Dorchester County
The Honorable Jennifer B. McCoy,
Circuit Court Judge

Unpublished Opinion No. 2026-UP-358 (S.C. Ct. App. Filed July 8, 2026)
Appellate Court Case No. 2024-000438
Civil Court Case No. 2022-CP-18-01494

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 Peach; Robert Klinger; Mary Becker; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Petitioners,

v.

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

Respondents.

PROOF OF SERVICE

I certify that Petitioners' Petition for Writ of Certiorari was served upon Respondents via e-mail to counsel of record listed below on September 15, 2026:

Timothy A. Domin
Clawson and Staubes, LLC
126 Seven Farms Dr, Ste 200
Charleston, SC 29492
(843)577-2026
tdomin@clawsonandstaubes.com

G. Waring Parker
Town of Summerville
200 S Main St
Summerville, SC 29483
(843)695-6510
gparker@summervillesc.gov

Counsel for Respondents

/s/ W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr.

Counsel for Petitioners