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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Unpublished Opinion No. 2026-UP-358 (S.C. Ct. App. Filed July 8, 2026)
Appellate Case No: 2026-002040

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.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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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. 0043). 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. 0008-0009). Venue was transferred by a consent order to Dorchester County in April 2015 and the file was given case number 2015-CP-18-00713. (R. 0008-0009).

The plaintiffs filed a motion for partial summary judgment on April 13, 2015. (R. 0630 - 0662). This motion would later be withdrawn.

In May 2015, 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. As to the appeal from the Board of Architectural Review, the circuit court affirmed the decision of the Board. 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 then 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. 0663 - 0693) and their third motion for partial summary judgment was filed December 1, 2015.

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.

(R. 0694 - 0737). These motions were heard by the Honorable Edgar W. Dickson, who issued an Order on December 12, 2016.² (R. 0011 - 0027). Plaintiffs filed for reconsideration on January 11, 2017. (R. 0738 - 0745). Judge Dickson denied Plaintiffs' Motion to Reconsider on April 4, 2017. (R.0026 - 0028). After the matter was placed on the jury trial roster in January 2022, the plaintiffs agreed to dismiss the individual defendants (R. 0746), then filed a consent order of dismissal pursuant to Rule 40(J) as to the Town defendants. (R. 0032 - 0034).

This case was restored by order on September 28, 2022, and was given case number 2022-CP-18-01494. (R. 0035 - 0037). The plaintiffs would go on to file several additional motions for partial summary judgment under the new case number. On November 15, 2022, plaintiffs filed a motion for partial summary judgment raising 44 enumerated reasons the Court should find the Dorchester project void ab initio. (R. 0747 - 0756). A first amended motion for summary judgment was filed on January 26, 2023, claiming 117 enumerated grounds. (R. 0757 - 0780). 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. 0781 - 0813).

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 on August 1, 2023. (R. 0004). 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 in August 2023. Defendants' motion to dismiss the case was set

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

for a hearing on 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 72 of the Plaintiffs' second amended motion for partial summary judgment in this action. (R. 0794).

The Defendants filed a memo in support of their motion to dismiss and in opposition to the 167 enumerated grounds raised in plaintiffs' second amended motion for partial summary judgment. (R. 0852 - 0873). The day before the hearing, plaintiffs withdrew their motion for summary judgment. (R. 0959, 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. 0038 - 0040) and a formal order was filed on February 23, 2024. (R. 0003 - 0007). This appeal was timely filed thereafter and was eventually heard by the Court of Appeals. The Court of Appeals rendered a decision on July 8, 2026, affirming the decision of the circuit court to dismiss the case on the grounds of mootness and found no exception applicable. The plaintiffs filed a petition for rehearing that the Court of Appeals denied on August 18, 2026. Following the denial, the plaintiffs filed their Petition for Writ of Certiorari on July 22, 2026. This return 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. 0960 - 0969, PPPA pp. 1-10). The PPPA

was entered on July 9, 2014. (R. 0960, 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. 0960 - 0969, PPPA pp. 1-10). The developer would also sell private condominiums. Applegate and the Town of Summerville and the newly formed Summerville Redevelopment Corporation³ (“SRC”) entered the PPPA which provided terms for development of the project and future operation of the project. (R. 0973 - 1000, 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. 0963, PPPA, p.4). The SRC also agreed to provide a “gap loan” to developer help finance the project. (R. 0962, PPPA, p.3).

However, in November 2015, it became apparent the previously estimated costs of construction of “PUBLIC IMPROVEMENTS” were incorrect through no fault of the Town. (R. 0925, Affidavit of Lisa Wallace ¶3). Applegate promoted the idea of the Town increasing the contractual limit, but Town Council never agreed to increase the \$5.2 million dollar maximum. (R. 0925, Affidavit of Lisa Wallace ¶3).

Litigation commenced between Applegate and the Town. There were claims by Applegate of breach of contract and quantum meruit and counterclaims by the Town. (R. 0925, Aff. of L.W. ¶3). The PPPA contained an arbitration clause. (R. 0968 - 0969, PPPA p. 10). Applegate sued the Town and the SRC in circuit court and demanded arbitration. The Town and Applegate did not

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.

move forward with litigation in light of the dispute over the validity of the PPPA. Eventually, in February 2019, Applegate and the Town stayed the case of Applegate and Co. v. Town of Summerville and Town of Summerville Redevelopment Corporation, 2017-CP-18-279 until the disposition of this Croft case. While the project was dead at that time, it was still believed that this Croft case would most likely determine whether the PPPA was valid and, thus, whether the arbitration clause contained therein was valid. 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. 0928 - 0929). A stipulation of dismissal with prejudice of claims and counterclaims in Applegate and Company v. Town of Summerville was filed August 1, 2023. (R. 0004).

Based on the settlement of the matter of Applegate and Co. v. Town of Summerville and the Summerville Redevelopment Corporation, the Town and SRC promptly filed their motion to dismiss the present case as moot. (R. 0814 - 0851). Not only was “The Dorchester” project dead, but the litigation with Applegate was now entirely settled and dismissed. Further, the Town-owned property that was part of the project had been sold to a different developer to create a different project. (R. 0925 - 0926, Aff. L.W. ¶4). That project had already cleared significant

design approvals as of the time of the hearing on the motion to dismiss as moot.⁴ Also, the Town had dissolved the Summerville Redevelopment Corporation which had entered into no other contracts or projects apart from the PPPA. (R. 0925 – 0926, Aff. L.W. ¶¶4-5). At the time of the hearing on the issue of mootness, there were no pending or contemplated public-private partnership agreements by the Town of Summerville relating to any other development. (R. 0926, Aff. L.W. ¶6). As will be discussed further in the argument section of this brief, even the predicate objections – regarding the Town’s processes before the PPPA contract was entered into – had all been changed by the time of the hearing to dismiss this case as moot.

ARGUMENT

I. THIS DECLARATORY AND INJUNCTIVE RELIEF CASE ABOUT “THE DORCHESTER” PROJECT WAS MOOT AFTER THE PROJECT FAILED AND LITIGATION WITH THE DEVELOPER WAS RESOLVED

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 Petitioners’ position is that they would still like a determination they were correct because the Town has never agreed the Croft plaintiffs were correct and because the Petitioners claim there is some remote possibility the Town could take similar actions on future projects. However, the Petitioners’ sincere desire for validation of their legal positions is not sufficient reason for the judicial system to expend time and resources answering moot questions. The remote possibility a similar future project will arise does not rise to the level of creating a justiciable case or controversy, particularly

⁴ As of the time of writing this opposition to the petition for writ of certiorari, the developer who purchased the property from the Town is nearing completion of Phase One of a mixed use residential and commercial development called Bonaire Park. <https://www.bonaire-park.com/>. The developer plans to apply for certificates of occupancy for 11 commercial and 10 residential units in January 2027.

where the record shows that no 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 rule in 2021 that appeal of the Board of Architectural Review matter was moot. Croft v. Town of Summerville, 433 S.C. 473, 860 S.E.2d 352 (2021). That case raised many of the very same issues that are being raised in this action.

However, after the unfortunate death of Arthur Applegate due to cancer, the Town and Applegate and Company's lawyers 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. 0928 - 0929) (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. 0924) (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. Not only was the project long dead, but with the resolution of the lawsuit and arbitration, there was now no relevancy to whether the contract's arbitration clause was valid or invalid. The Defendants accordingly moved for summary judgment on the grounds of mootness.

To be clear, 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:

- 1) the Town had sold its property that would have been in the PPPA to a different developer (R. 0925 - 0926, Affidavit of Wallace p. 2-3);
- 2) the different developer was pursuing an entirely different project (R. 0924 – 0927, 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. 0925 – 0926, Affidavit of Wallace p. 2-3);

Further, the Town Council dissolved the Summerville Redevelopment Corporation in June 2021, (R. 0935 - 0936, Ordinance 21-807). Therefore, the plaintiff's many arguments relating to the creation of the SRC and its rights to enter into the PPPA were entirely moot. Although the plaintiffs claim the legal problems they asserted against "The Dorchester" could be repeated by the Town in some other project or time there is no other project public-private partnership or similar development or contemplated. (R. 0924 - 0927, Aff. Lisa Wallace). And since the time of the circuit court's decision, no other public-private partnership has been entered or proposed.

The Croft plaintiffs had also claimed that the PPPA should be invalidated because it was entered into during a time when the Town had not replaced its City Administrator who had resigned and while the Mayor at the time, William Collins, was performing the functions of the Town Administrator pursuant to a Town Ordinance that authorized the Mayor to take action in the absence of the Town Administrator. The plaintiffs argued that invalidated the PPPA because they asserted the Town was required to have a Town Administrator. However, as of the hearing on the motion to dismiss as moot, Mayor Collins was no longer the Mayor and the Town had a City Administrator. In fact, so much time had passed by the time of the hearing that Mayor Collins successor, Mayor Wiley Johnson, served his entire four-year term and Johnson's successor, Mayor Ricky Waring,⁵ was nearly three years into his four-year term. Likewise, as of the hearing on the motion to dismiss, Summerville had hired a succession of Town Administrators.⁶ But by the time of the hearing before the circuit court, 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. 0939, Amended Affidavit of Lisa Wallace ¶¶8-9). In fact, as of

⁵ Mayor Waring decided not to run for re-election and Russ Touchberry took office in January 2024.

⁶ As of the time of writing this response to the Petition, the Town has had a City Administrator. City Administrator Lisa Wallace retired in 2024 and Scott Slatton was promptly hired to replace her.

the time of the hearing, the Town hired three different Town Administrators starting in April 2016 and continuously filling that position thereafter. (R. 0937 - 0940, Amended Affidavit of Lisa Wallace).

Not only have there been several changes in Mayor and City Administrator, but some of the ordinances have also changed as to the very issues raised by the plaintiffs. The ordinance that allowed the Mayor to exercise the powers of Town Administrator has been completely re-written to allow the Mayor to appoint an interim Town Administrator rather than the Mayor assuming the duties of the Town Administrator. Code of Ordinances, Town of Summerville, South Carolina § 2-4.

Even many of the Plaintiffs' 167 grounds for invalidating 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 Plaintiffs also claimed the Vision Plan could not be used to create the "redevelopment plan" which is required to create a municipal "redevelopment corporation." These were reasons 4-12, 37-39, 70, 74-90, and 93 of Plaintiffs' Second Amended Motion for Partial Summary Judgment. (R. 0782 – 0784, 0788 – 0789, 0793, 0794 - 0798).

However, as of the hearing on the motion to dismiss, the entire Comprehensive Plan was redone and the new Plan was formally adopted October 8, 2020 (R. 0926 - 0927, Affidavit of Lisa Wallace p. 3-4 and Ordinance of October 8, 2020). There was no legal challenge to the process of the Comprehensive Plan being redone.

These Plaintiffs' stubborn 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 still 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. 0781 - 0813, Second Amended Motion for Summary Judgment).

There is no judiciable controversy in this case. The Dorchester Project has been abandoned. The lawsuit with the developer was settled. The Town land where the Dorchester was to be built has been sold and a new development is nearing completion in its place. The SRC has been dissolved. The Vision Plan has been replaced. The BAR has continued to function without another lawsuit raising the same or similar issues as raised by the Plaintiff. The Town has had several Mayors since Mayor Collins. The Town has hired a succession of Town Administrators and has even changed the ordinance that allowed Mayor Collins to take on the duties of the Town Administrator. There has not been another Public Private Partnership Agreement nor are there any plans to do so. The issues that were raised by the Plaintiffs long ago are now entirely irrelevant and purely hypothetical. Any ruling regarding specific aspects of the Public Private Partnership Agreement or the Dorchester Project would provide nothing more than an advisory opinion.

II. NO EXCEPTIONS TO THE MOOTNESS DOCTRINE ARE APPLICABLE.

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.” 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. It would have a different succession of events leading up to any such contract.

Matters of this type are not “evading review” either. A new public-private partnership agreement or 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 construction 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 2021 Croft Supreme Court 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 the 2021 Supreme Court decision as to the BAR appeal from this Croft case---it is the same project. If there was sufficient concern that this same project could be repeated, then the Supreme Court would not have dismissed the BAR appeal case.

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 2021 Croft decision by this Court 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 attempt to sidestep this by suggesting that these same issues could happen in other cities and towns, making this a matter of “public importance.” Even if the objections raised were of public importance, there is no “imperative and manifest urgency” to be resolved now. The Appellants, in relying on Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77, 96, 44 S.E.2d 88, 96-97 (1947), do not even attempt to argue that this case involves a question of imperative and manifest urgency but rather focus on the public interest aspect as being sufficient to claim the exception applies. 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. One application of this rule is that when 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).

However, 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. If it had not been settled, then perhaps this case could have such a collateral impact on the related litigation by deciding whether it would be heard in circuit court or by an arbitration panel. However, 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.

III. THERE ARE NO SPECIAL AND IMPORTANT REASONS TO REVIEW THIS ENTIRELY MOOT MATTER AND THIS CASE PRESENTS A POOR VEHICLE TO CONSIDER ANY IMPORTANT LEGAL QUESTIONS.

Of course, Rule 242(b) of the Appellate Court Rules provide that review “will be granted only where there are special and important reasons.” S.C. Ct. App. R. 242(b). The considerations set forth in Rule 242(b) are not present. There was no dissent in the Court of Appeals decision. The Petitioner does not argue there are “substantial constitutional questions.” There is no issue of the opinion conflicting with decisions of the United States Supreme Court on issues of federal law. The decision of the Court of Appeals was not published.

Petitioners do superficially claim this case presents novel issues of law and that the decision below conflicts with prior Supreme Court decisions on grounds that warrant review. However, their petition fails to explain what question is novel or how the decision of the Court of Appeals conflicts with precedent.

The closest the Plaintiffs come to showing a semblance of conflict with prior decisions lies in their analysis of S.C. Public Interest Found. v. S.C. Dep't of Transp., 421 S.C. 110, 804 S.E.2d 854 (2017) involving the SCDOT inspecting private bridges. (R. 0878 – 0879). Plaintiffs claim that decision supports their position that this matter is justiciable because the Town has not conceded it acted improperly. (R. 0874 – 0881). Plaintiff pairs this with a plea of “public importance” without explaining how further litigation of this case would impact any recent or upcoming decision of the Town of Summerville or any other governmental entity in South Carolina.

But Petitioners are not arguing for the right to argue a simple salient point of law. As is established by the record in this case, Plaintiffs withdrew their Second Motion for Partial Summary Judgment on the eve of the hearing. (R. 0959). Their most recent *partial* motion for summary judgment raised **167 separate** reasons why they contended the PPPA was invalid. (R. 0781 - 0813). Therefore, Petitioners want the right to return to circuit court to take testimony and hear arguments about 167 points of law.

This case represents a particularly poor vehicle to attempt to establish important legal precedent – if there were any at all. The agreement at issue was entered into over twelve years ago between Arthur Applegate, who has since passed, and a Mayor who has been out of office for over ten years. Further, the contract involved an entity, the SRC, that has been entirely dissolved

for many years as well as Town staff, the majority of whom have since retired. The matter also involved a very complicated agreement; thus, the likelihood of a similar future agreement is slim.

The suggestion plaintiffs attempt to advance that the mootness claim is saved because of a claim for injunctive relief is simply absurd. Injunctive relief is not necessary to stop a dead project. And, even if a court determined something was done incorrectly in 2014, it would be improper for the Court to issue an injunction attempting to stop the Town or its officials from engaging in future projects that are not yet defined or even proposed. Injunctions must be narrowly tailored and specific to the facts of a case.

The Petitioners are correct that the Town Defendants have never conceded they did anything improper which would render the PPPA invalid. The Town filed a brief responding to each of the 167 enumerated reasons for summary judgment. (R. 0852 – 0873). However, that does not mean the Town or anyone else is poised to enter into another contract with similar terms.

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 given the very specific circumstances of this contract. Further, the plaintiffs want the opportunity to litigate at least 167 separate points of law which they raised in their second partial motion for summary judgment which was withdrawn the day before the hearing on this motion to dismiss on the grounds the case was moot. For these reasons, this Court should not grant further review of this entirely moot matter.

s/Timothy A. Domin

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