THE STATE OF SOUTH CAROLINA
In The Supreme Court

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.; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Petitioners

v.

Town of Summerville and Town of Summerville Board of Architectural Review,

Respondents

Appellate Case No. 2020-000334

Appeal from Dorchester County
Edgar W. Dickson, Circuit Court Judge

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S.C. SUPREME COURT

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ARGUMENT

This should be a simple matter of an appeal from decision of a board or architectural review. In jurisdictions where they have been established, these volunteer boards diligently serve their communities and provide an important role of trying to preserve, maintain and harmonize the aesthetics of new construction, modifications, and demolitions. Their decisions are often subjective as they relate to matters of aesthetics. They are not courts of law hearing formal testimony, yet they receive information and make, either explicitly or implicitly, findings of fact and apply the standards of their board. The standard of review in appeals from decisions of architectural review boards is virtually outcome-determinative, and properly so. The local board of architectural review is in the best position to look at the drawings, hear the presentations, and understand the unique local characteristics of the area where the project is located. Reversals are typically reserved for decisions in which the Board's comments show a denial was based on things which had nothing to do with aesthetics. Cf. Seabrook Island Prop. Owners Ass'n v. Marshland Trust, Inc., 358 S.C. 655, 661, 596 S.E.2d 380, 383 (Ct. App. 2004) (it was improper for the BAR to refuse to consider any plan because their erroneous interpretation of the covenants barred on all construction). The findings of fact by a board of architectural review shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence. See S.C. Code Ann. § 6-29-930; Austin v. Board of Zoning Appeals, Town of Hilton Head Island, 606 S.E.2d 209 (S.C. Ct. App. 2004); see also Heilker v. Zoning Bd. of Appeals for City of Beaufort, 552 S.E.2d 42, 44 (S.C. Ct. App. 2001). In this regard, it is well-settled that "the factual findings of the jury will not be disturbed unless a review of the record discloses there is *no evidence* which reasonably supports the jury's findings." S.C. Code Ann. § 6-29-930, specifically provides

"the findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence.... In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law."

The Summerville Board of Architectural Review (sometimes Board or BAR) has broad discretion under both the Summerville Town Code and the law of South Carolina to approve or disapprove demolitions of existing structures and construction of new buildings. Town of Summerville Code of Ordinances §§ 32-175(f) & 32-176(h).

A decision of a board of architectural review is to be given "great deference," such that it must remain undisturbed if the propriety of that decision is even "fairly debatable." Knowles v. City of Aiken, 407 S.E.2d 639 (S.C. 1991). Instead of a standard of great deference, Petitioners seek to establish a glue trap of technicalities able to stop any project before it starts. They also propose radical interpretations of FOIA inconsistent with any prior decision, ordinary practice, or common sense.

I. THE BOARD DID NOT VIOLATE FOIA OR "OTHER STATUTES OR ORDINANCES" (Response to Petitioners' #1)

There were several gatherings of less than quorum of Board members to look at the project drawings with the developer present. These are not reflected in the record on appeal, but the Respondents have never tried to deny they happened. No decisions were made at those meetings. These gatherings were not noticed to the public or open to the public. The Petitioners contend these were violations of the South Carolina Freedom of Information Act ("FOIA") or "other statutes or ordinances." The Court of Appeals aptly and correctly dealt with this issue by holding the public meeting provisions of FOIA apply to meetings of quorums of a public body. They do not apply to meetings of less than a quorum.

First, it is not necessary for the Court to reach this ruling to dispose of this appeal. This appeal involves the decision that came from a series of public BAR meetings which involved substantial debate among board members, public comment, thoughtful consideration, rejection of portions of the proposed project, and then approval of the project conditioned on certain additional approvals, and then final approval. Even if there was a FOIA violation by virtue of these two sets of meetings between the developer and less than a quorum, case law has not declared the remedy for a meeting in violation of FOIA is barring the officials from forever considering the same or related issues. The proper remedy would be a public meeting, public consideration of the proposal, and a public vote. Because that is exactly what happened after the gatherings of less than a quorum, the alleged FOIA violation is not grounds for reversing the decision the BAR. To be clear, this is not a situation where there was a mere ratification of some action taken in a non-public meeting. Simple ratification was rejected as sufficient basis to validate an illegal decision made in private in Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995) (rejecting the validity of an ordinance with no discussion simply confirming a decision reached in an hour-long executive session), affirmed on other grounds, Piedmont Pub. Serv. Dist. v. Cowart, 324 S.C. 239, 478 S.E.2d 836 (S.C. 1996). In this case, where were literally hours of public meetings that happened after these private meetings where there was debate, discussion, and where the project was scaled back and changed.

A public meeting is not required for a meeting of less than a quorum. Any contrary rule would be inconsistent with FOIA, common sense and good government. If meetings of less than quorum of a public body trigger a public meeting, two or three members of a city council, a county council, an airport authority, a public service district or a legislative

committee would be prohibited from meeting privately to discuss concerns, issues and ideas.

As applied specifically to boards of architectural review across the state, it is neither common nor rare for an applicant or his design professional or contractor to discuss a plan with one or more board members especially if there is concern about aspects of the project. It is not unheard of for a couple of board members to go to the site of a project before a hearing with plan in hand to discuss how the project might look on the site. It is not unheard of for one board member to call another to discuss a design concern and to solicit another member's support for a change. Boards of architectural review, like other public bodies listed in FOIA are not courts of law bound to communicate only with both parties present and in a public meeting.

The public meeting rules of FOIA clearly do not require all public business to take place in public meetings. If the Legislature wanted to enact such a broad rule, it would have done do. But it did not and likely for the obvious reason that it would be entirely unworkable for public officials to only discuss matters at public meetings. Instead, the Legislature required meetings of quorums to be public. Quorums are important because a quorum has the ability to make the actual decision, there and then. A quorum means there are enough votes to bind the body. Regardless of whether an actual decision is made, meetings of a quorum should be public.

Numerous jurisdictions throughout the country hold meetings of groups of less than a quorum do not violate FOIA or open meetings requirements. See, *e.g.*, City of Gary v. McCrady, 851 N.E.2d 359 (Ind. Ct. App. 2006) ("The legislature has specifically defined 'meeting' under the Open Door Law as requiring a majority of the governing body; thus, without a majority present, no meeting occurs for purposes of the Open Door Law.");

Hispanic Educ. Comm. v. Houston Indep. Sch. Dist., 866 F. Supp. 606 (S.D. Tex. 1995) (school district board of trustees, meeting in numbers less than quorum, did not violate Open Meetings Act; "limiting board members' ability to discuss school district issues with one another outside formal meetings would seriously impede the board's ability to function," reasoning that "with fewer than a quorum present, nothing can be formally decided; without a formal decision, no act is taken. Without action, there is no illegality"); Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983) ("it is important that the rule not be so restrictive as to lose the public benefit of personal discussion between public officials"); Britt v. County of Niagara, 82 AD.2d 65 (N.Y. Sup. Ct. 1981) (the statutory requirement of a quorum is paramount; where no quorum was present at the meetings, there was no violation of the law).

Nor is a meeting of less than a quorum in violation of Town ordinance 32-176(e) which provides that a quorum shall be required for the BAR to transact business or 32-176(d) providing all BAR meeting shall be open to the public. Meetings of less than a quorum are not meetings of the BAR. They are meetings of several members of the Board. They were not by law or ordinance required to be public.

The argument has been made by Petitioners that S.C. Code § 30-4-70(c) somehow applies. That section states "No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of the requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." This is not language preventing less than a quorum from meeting without public notice. That language prevents members from using a chance encounter or a social gathering to convene a quorum of members for secret discussion. This provision also addresses impermissible use of electronic means to

circumvent FOIA. Thus, it would be improper to have a quorum of the public body to discuss a matter at a social gathering, on a private conference call or video chat conference.

The Petitioner's reliance on Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2s 862 (2001) is misplaced. In that case, an advisory committee was formed to review tow contracts. The entire advisory committee met in secret and made decisions and recommendations in secret. The Court determined the advisory committee was a "public body" and, therefore, its meetings were subject to FOIA. This is an entirely different question from the issue of whether less than a quorum of a public body can meet (with or without a third party) to discuss important matters within their jurisdiction.

II. THE CIRCUIT COURT DID NOT IMPROPERLY CONSIDER WHAT THE PETITIONERS CALL "ADDITIONAL EVIDENCE "(Response to Respondents' # 4)

The Petitioners claim the Circuit Court relied upon "additional evidence". This appears to be a reference to the "Decision of the Board of Architectural Review, Including Findings of Fact and Conclusions of Law" which the Board signed at a subsequent meeting after the appeal was initiated. The Appellants' argument also appears to relate to an e-mail with attachments from Respondents' counsel to the Circuit Court (and properly copied to opposing counsel). The e-mail and attachments were solely related to a motion for injunction which the Appellants sought from the Circuit Court to stop the project.

A. The Written Decision of the Board Was Not Additional "Evidence."

The BAR signed an order on August 11, 2015 which included finding of facts and conclusions of law. Appellants claim this amounted to the submission of "additional evidence." Of course, the decision of a board o6666r, for that matter, a court of law, is not

evidence. The decision of a board (or court of law) is based on evidence, but is not itself evidence. The order of a board or commission may set forth conclusions which were drawn from the evidence. That evidence must ultimately be in the record in order for the finder of fact's written decision to be sustained on review. In the present case, there is clearly sufficient evidence in the record to support the BAR's decision.

The Appellants' objection that the order was signed after the appeal is not persuasive. One option of the Circuit Court is to remand the matter for a rehearing to prepare an order with findings. That option is expressly offered in S.C. Code § 6-29-920. However, this is not for a rehearing de novo. A remand to prepare an order is merely to allow the board to express its findings and conclusions. Given the complexity of the issue and the amount of opposition, it was entirely reasonable for the Board to sign an order prior to the Circuit Court's hearing the matter. If the Circuit Court has a duty to force the Board to prepare an order explaining its decision if the reasons are not apparent from the transcripts, how can it be in error for the Board to provide this information to the Court? And where is the prejudice to Appellants from the Board preparing its findings of fact and conclusions of law for the reviewing court prior to being asked by the Circuit Court? If there is evidence in the record that supports the decision of the Board, the reviewing court is required to affirm. If there is not information in the record to support a point, then the written order of the Board cannot save a lack of evidence.

In Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892, (Ct. App. 2000), the Court considered and rejected an order signed after the appeal, but rejected it principally because it was not the decision of the body as a result of a meeting with a quorum, but instead was the unilateral decision of the Board Chairman acting in conjunction with the Secretary. In the present case, the BAR's order

was signed in a public meeting after all board members reflected on the Order and gave authority to the Chairman to sign the document based on a proper motion and vote.

At best, even if Petitioners' argument were correct, the BAR's order is a nullity. If the Board's order is a nullity, this Court would be obliged to review the record to see if there was evidence to support the Board's decision. With or without the order, the BAR's decision must be affirmed because there is ample evidence in the record to support the Board's decision.

Boards of architectural review and similar design boards typically meet only once a month in most jurisdictions. The Petitioners' view is that somehow the Board would have to prepare its return with findings of fact and conclusions (presumably without groups of less than a quorum meeting or discussing the matter) with 30 days or it would not be able to have any type of additional return prepared other than transmittal of the materials in the file. The circuit court in most complex cases is going to request some kind of return or order of the board. It would be absurd to handcuff the BAR from making such a return at its next meeting or at a following meeting. The Petitioners' argue this allows a board to "unfairly" address the points raised by an appellant. But that is good, not bad. We should want the issues on appeal to be fairly raised, properly responded to, with as full a record as is possible taking into account the limitations of citizen boards, all without undue delay or waste of judicial resources. The Board preparing a return to the appeal in this case was not improper.

B. The Affidavits and E-Mail Were Not Additional Evidence.

The Appellants make the argument the circuit court was improperly sent Affidavits dated July 8, 2015 and July 9, 2015. These affidavits were submitted to the Court solely to address a then pending request for an injunction appellants sought from the circuit

court to stop construction of the project. These affidavits had nothing to do with the issues related to the BAR appeal. Indeed, Respondent has not even included the affidavits themselves in the record, making it impossible for this Court to meaningfully consider the issue.

Because the Petitioners chose to seek an injunction from the circuit court to stop construction of the project, the respondent was entitled to present information as to the harm that would have resulted from an injunction. There would be no reason for anyone to present evidence to the BAR relevant only to an injunction in including the harm to the parties and amount of bond for an injunction. The affidavits only addressed the harm that would come of an injunction. They did not attempt to supplement the record in any way relative to the design or other BAR considerations. And there is no indication the circuit court relied on these affidavits in any way in deciding the issue of the BAR appeal.

III. THE BAR DID NOT VIOLATE STATE STATUTES AND TOWN ORDINANCES (Response to Petitioners # 3)

The Petitioners attempt to use this section to claim they did not have an opportunity to inspect or copy records of the Board. The Court of Appeals held this was not properly preserved by 59(d) motion, but it is also unsupported by the record. The only support in the record for this is Petitioner's own assertions in its briefs. The Respondents maintain they did provide reasonable access to the applications and related materials. If someone was available in the office who could assist, they would be provided with access to the applications. Some petitioners and others involved in opposing the project were making a variety of FOIA requests related to various aspects of the project including matters related to the economics of the underlying contract. These were responded to within the time provided by FOIA. Various members of the public spoke against this project in detail

during at least four of the Board meetings showing that a substantial amount of information was in the hands of those opposing the project. However, for the sake of argument, even if some person were not allowed to inspect some record they wished to view, this would not be a basis to reverse a decision of the Board of Architectural Review. There has never been a case that had held a pending FOIA request or other request for information by a member of the public would be a basis for undoing or reversing action of a public body due to lack of access. Legislation and other government actions could be stopped in its tracks simply by persons making various successive requests information and could claim they still needed more information before a public body could decide a matter.

The Petitioners also try to use this section to make the case that one meeting abridged FOIA because it used the Board's regular meeting room which was not able to accommodate the number of persons who wanted to attend the meeting on that date. Petitioners allege some persons had to stand out in the hall or potentially left. This is unsupported by the record, but Respondents concede there was one meeting of the BAR which was standing room only and where some persons stood in the hall around the open door. This is clearly not a FOIA violation. No law including FOIA gives all citizens a right to sit or stand in the room where the decision is being made. If there was a right to universal attendance for the meetings and decisions of all public bodies, anyone opposing an action of a public body would only need to muster enough bodies to exceed the number of seats and standing room. Appellants cite Wiedmann v. Town of Hilton Head, 330 S.C. 532 (1998) which involved whether a city council could meet outside the jurisdiction. The Court refused to adopt a blanket prohibition on such meetings. This is very different from an issue of whether too many people want to attend the same meeting.

The particular meeting that resulted in overflow crowds in this case was in a reasonably large conference room, not a broom closet. Petitioners' assertion that a deliberate decision was made to have the meeting in a room too small is not supported in any way by the record. It was simply the Board's regular meeting room.

Plaintiff makes a third argument in this section that the notices for the BAR meetings should have had a notice stating the public could speak. First, the Comprehensive Planning Act governing the operation of boards of architectural review and boards of zoning appeals do not guarantee the public a right to speak at all hearings. In this case, the record shows that there were multiple meetings with ample persons who did in fact speak. October 6, 2014 has public comment from Appendix page 217 to 251, November 3, 2014 has public comment from Appendix page 340 to 369, April 6, 2015 has public comment from page 549 to 546. The "right" to public comment under the Town ordinances only applies to demolition requests. No members of the public expressed any issue any prior or subsequent meetings over the demolition of the non-historic gas station structure and a home with vines growing in the walls which were the only buildings approved for demolition on January 5, 2015. On that same date, the project received conceptual approval, but was still the subject of multiple meetings afterwards including the April 6, 2016 meeting where the public did provide pages of public comment in the printed transcript.

IV. THE COURT DID NOT ERR IN EXLCUDING CERTAIN MATERIAL PETITIONERS DESIRE TO INCLUDE IN THE APPEAL RECORD (Response to Petitioners' #2).

Petitioners argue the Circuit Court erred in excluding information from the record they first proposed be filed with the Court of Appeals in an initial designation of matter to be included in the record on appeal. The Respondents moved to strike this material from

the Appellant's designation of matter on the grounds it was not material submitted to the Circuit Court and was particularly improper when the circuit court itself was acting as an appellate court to the decision of the BAR. The Court of Appeals properly struck this information from the record and required the Appellant to file a brief without reference to this material. Petitioners now again try improperly inject this material into this case, even though it was not part of the record of the Circuit Court or the Court of Appeals.

Through a subpoena issued in a related companion case, Petitioners obtained the private notes of one board member—John Kwist---who voted against the project. These notes contained Kwist's versions of certain discussions by two board members in the presence of the developer when there was a gathering of less than a quorum. Those board members have denied the accuracy of Kwist's notes. These notes were not discussions of the Board or even notes of a meeting of a quorum of the Board. It is axiomatic that the record on appeal can only contain those materials which were presented to the lower tribunal. Rule 210(c), SCACR. This is also true where the Circuit Court sits in an appellate capacity over the decision of the Board of Architectural Review. The only matters that should be included are those matters submitted to the Board. The findings of fact by a board of architectural review shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence. See S.C. Code Ann. § 6-29-930; Austin v. Board of Zoning Appeals, Town of Hilton Head Island, 606 S.E.2d 209 (S.C. Ct. App. 2004) (review is strictly limited to the record and the circuit court is expressly forbidden from considering any new facts.)

Petitioner's argument is that somehow the notes were not included and should have been included with the Board's transmittal of the record to the Circuit Court. The Petitioners even go so far as to suggest this was a deception by the Board in preparing

its return. However, because they were notes of a single member he retained and further because they were not even the notes of a meeting of the BAR, the notes were not part of the Board's file or otherwise in possession of the Petitioners or their counsel. It is also important to note Petitioner Summerville Preservation Society has a right to make an appointment to the BAR (subject to City Council approval) and the author of the notes (Kwist) was the Petitioner's designated appointee to the BAR. Petitioners complain at length that they could not raise what they did not know about. But nothing prohibited any Petitioner or other person from discussing with Quist what had happened. Nothing prohibited Quist from raising at a public meeting the issue of what was discussed at a gathering of less than a quorum. Nothing prohibited Quist from asking that his notes be marked as part of the official records of the Board. That would have allowed the Board as a whole to address his contentions. That would have made the notes part of the record. But none of that happened.

V. THE COURT OF APPEALS DID NOT IMPROPERLY SHIFT A BURDEN TO THE APPELLANT-PETITIONERS (Response to Petitioners' #6)

The Petitioners contend there is some error related to the Court of Appeals improperly shifting a burden of providing a record on appeal to the Petitioners. This relates principally to the argument of Petitioners that the BAR application was untimely. This is an entirely unsupported statement. There is literally no support in the record (or outside of the record) that the application was not timely made. Petitioners assert this is based on "circumstantial evidence." But the "circumstantial evidence" is simply that the BAR does not date stamp documents with a receipt date, thus they claim the record does not show the BAR application was timely. Petitioners then assert proof of timeliness is then a "requirement" for the BAR to have addressed. This is true even though no one at

any hearing asserted an untimely application.

There would be no reason for the BAR to have heard evidence during its meeting of such things as whether the correct number of copies were submitted or whether a filing fee was actually paid. Petitioner's position is that the BAR record has file a record based on what was actually heard by the BAR as to refute any issue it raises. It is the BAR's duty to submit a return to the appeal. That is very different from stating that it has a duty to refute any point raised in the appeal. The Court of Appeals statement that the Appellant bears the burden of demonstrating error is still true.

In this section, Petitioners also argue the BAR had to affirmatively show the public was given a right to speak at each meeting and not just an item on the agenda or an ability to ask to be recognized by the chair to speak. First, the Comprehensive Planning Act governing the operation of boards of architectural review and boards of zoning appeals do not guarantee the public a right to speak at all hearings. In this case, the record shows that there were multiple meetings with ample persons who did in fact speak. October 6, 2014 has public comment from Appendix page 217 to 251, November 3, 2014 has public comment from Appendix page 340 to 369, April 6, 2015 has public comment from page 549 to 546. The "right" to public comment under the Town ordinances only applies to demolition requests.

VI. THE COURT DID NOT ERR BY REQUESTING MINUTES OF MEETINGS OR THE ORDER OF THE BOARD WITHOUT REMANDING FOR A HEARING DE NOVO (Response to Petitioners' #5)

At the hearing on the appeal, the Circuit Court judge requested copies of minutes from various meetings. There were already transcripts of the meetings in the file. The minutes requested were provided to the circuit court as requested. As has been discussed, in Section II (A), the Board had also signed an order setting forth its' findings

and conclusions. The Petitioners make the argument in section 5 of its petition that because the Circuit Court requested minutes and considered the order, the court was required to remand for a rehearing. The Petitioners make the point this would be for a hearing where the Board could reach a different decision, thus they contemplate at the very least a new vote and presumably a hearing de novo.

S.C. Code Ann. § 6-29-930(A) does provide the Circuit Court can remand the matter for a new hearing. However, this does not mean that the only options for the circuit court are to affirm or to require a new hearing. The Circuit Court is sitting as an appellate court. The goal of the appellate body is to have enough information to understand the decision below. In some situations, the Circuit Court may have to remand for a hearing de novo, but certainly it should not have to remand for a new hearing just to review minutes of a meeting where a decision was made in order to assist the court in deciding a voluminous record. Obviously with the transcript provided, the minutes are merely summaries and may provide names or spellings that a transcriptionist did not get. It is unreasonable to suggest that if the Circuit Court wants to review something to assist the court in understanding a voluminous transcript, it should result in the penalty to the applicant of a rehearing de novo. Likewise it is common in this State for the BAR appeal to the Circuit Court only with the file (usually the application materials) and a transcript of the BAR hearing. Sometimes the court will order the Board to prepare an order with findings so that the matter can be more properly reviewed, the same as it would order a magistrate judge to prepare a detailed return setting forth the basis for its decision. It would be unreasonable to take the position that all such matters must be remanded for a rehearing with a new vote and new evidence.

VII. THE COURT OF APPEALS DID NOT ERR IN REFUSING TO CONSIDER ISSUES NOT PROPERLY PRESERVED. (Response to Petitioners' #7)

The Petitioners also request this court to review the portion of the decision of the Court of Appeals which held that the Petitioners had not properly preserved an issue due to failing to ask for a specific ruling from the circuit court through Rule 59(e), The Court of Appeals generally cited uncontroversial case law in this position. Petitioners argue all issues were preserved because the trial court ruled that "none" of their remaining issues had merit.

Regardless, the issue Petitioners are trying to raise relates to alleged lack of access BAR documentation. Regardless of whether the Court of Appeals addressed this as a failure to preserve issue under Rule 59(e) or as a substantive issue, it is not a basis for invalidating the decision of the BAR. First, there is no evidence in record that anyone was improperly denied access to the application or related records. Second, even if a citizen was incorrectly denied access to a document, there is no support in the law for undoing governmental decisions because of a pending FOIA request or a desire for more information to the public. It is unlikely any controversial Legislation would ever be passed if there was such a rule. Third, the plaintiffs in no way describe how the denial of information led them to be unable to articulate their concerns. It is apparent from the transcripts of the hearings that citizens were making pointed arguments about specific design related aspects of the project.

VIII. ADDITIONAL ISSUES ARE NOT PRESERVED.

The Petitioner sets forth seven sections in its petition for writ of certiorari. The final section addresses the Rule 59(e) preservation issue which relates to substantive argument 3 in their brief. However, the Petitioners also drop a footnote in the introduction

of their petition with a laundry list of alleged issues, many of which are not otherwise raised or discussed. The Respondents disagree and submit these assertions are incorrect or not supported by the record. However, the arguments raised by the footnote should not be considered as a proper issue for a petition for writ of certiorari. Generally speaking, a passing reference in a footnote of a brief is insufficient to preserve an issue for further review. Glasscock, Inc. v. United States Fid. & Guar. Co., 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001) (citing Brown v. Theos, 338 S.C. 305, 309 n.2, 526 S.E.2d 232, 235 n.2 (Ct. App. 1999), aff'd, 345 S.C. 626, 550 S.E.2d 304 (2001)) If the Petitioners are not going to give these issues more argument than a list in a footnote, this Court should not consider them as issues for which the Petitioners seek review.

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