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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

CASE NO. 20-CP-22-00600
CASE NO. 20-CP-22-00601

Sunset Lodge, LLC, ...Appellant,

v.

Town of Pawleys Island, ...Respondent.

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie
Preservation Trust, ...Appellant,

v.

Town of Pawleys Island, ...Respondent.

RECORD ON APPEAL
(Including Stipulation and Certificate of Counsel)
VOL. I of IV

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September 11, 2020 Form 4 order denying Town motions to dismiss, for priority and for Ten Million (\$10,000,000.00) Dollar bond.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200600

Sunset Lodge Llc
PLAINTIFF(S)

Pawleys Island Town Of
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, is DENIED.
Defendant's Motion for Priority and Order Requiring Plaintiff to Post Bond is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/11/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

Case Caption: Sunset Lodge Llc VS Pawleys Island Town Of

Case Number: 2020CP2200600

Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-09-11 13:51:28 page 3 of 3

October 21, 2020 order continuing October 30 hearing of summary judgment and other motions.

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00600
	)	
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	ORDER
v.	)	OF CONTINUANCE
	)	
TOWN OF PAWLEYS ISLAND,	)	
	)	
Defendant.	)	
_____	)	

THIS MATTER IS BEFORE THE COURT upon the Motion for Continuance, filed by counsel for Defendant, of the motions scheduled for hearing on October 30, 2020.

Based upon the grounds set forth in the Motion for Continuance, good cause exists to continue the pending motions in this case, namely: Motion for Summary Judgment filed by Plaintiff; Motion for Protection from Discovery filed by Defendant; and, Motion to Compel and for Expenses filed by Plaintiff. It is therefore

ORDERED that the motions in this case which are presently scheduled for hearing on October 30, 2020 be continued until ~~December 4, 2020~~. *the next available term of court.*

IT IS SO ORDERED.

~~~*Judge's Signature Page to Follow*~~~



Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Continuance

Chief Administrative Judge  
Court of Common Pleas, 15th Judicial Circuit  
s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-10-21 09:19:52 page 2 of 2

January 8, 2021 Judge Nettles Form 4 order preliminarily granting Landowner summary judgment.

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200600

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Motion for Summary Judgment by Attorney Stanton is Granted. Formal Order to follow.  
Motion for Protection from Discovery by Attorney Durant is Moot.  
Motion to Compel and for Expenses by Attorney Stanton is Settled.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/08/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-01-08 12:08:40 page 3 of 3

January 20, 2021 Judge Nettles 24-page order granting Landowner summary judgment.

|                           |                                   |
|---------------------------|-----------------------------------|
| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN )    | CIVIL ACTION NO. 2020-CP-22-00600 |
| Sunset Lodge, LLC, )      |                                   |
| Plaintiff, )              | ORDER                             |
| v. )                      |                                   |
| Town of Pawleys Island, ) |                                   |
| Defendant. )              |                                   |

---

|                       |                                  |
|-----------------------|----------------------------------|
| PRESIDING JUDGE:      | The Honorable Michael G. Nettles |
| DATE OF HEARING:      | December 4, 2020                 |
| TIME OF HEARING:      | 2:00 p.m.                        |
| PLACE OF HEARING:     | Judge's Virtual Courtroom        |
| PLAINTIFF'S ATTORNEY: | M. Baron Stanton                 |
| DEFENDANTS' ATTORNEY: | N. David DuRant, Sr.             |
| COURT REPORTER:       | Grace Hurley                     |

### I. THE MATTER BEFORE THE COURT

This matter came before the Court upon a Motion for Summary Judgment filed by the Plaintiff for an Order declaring the inability of the Defendant, Town of Pawleys Island, to condemn Plaintiff's property, forbidding same, quashing the condemnation notice and associated papers served upon the Plaintiff, and permanently prohibiting the filing thereof.

Plaintiff's Motion for Summary Judgment was heard via WebEx on December 4, 2020. The motion was filed on August 21, 2020, along with the Affidavit of M. B. Stanton.

Plaintiff is the owner of an oceanfront real estate property located at 746 Springs Avenue, Pawleys Island, SC 29585.

Defendant, Town of Pawleys Island, is a municipal corporation organized and existing pursuant to the laws of South Carolina.

The Court took this matter under advisement and has carefully considered the issues presented by the parties' respective memorandums and applicable legal theories. For the reasons set forth herein, Plaintiff's Motion for Summary Judgment is hereby GRANTED.

## **II. NATURE OF THE ACTION**

The present action was preceded by the Defendant's commenced, still pending, but unfiled, and stayed, "condemnation action." The present action is a separate action pursuant to S.C. Code Ann. §28-2-470 to invalidate the Town's subject condemnation action, which is stayed by statute while the instant action is pending.

In the subject condemnation action, the Town seeks to condemn an oceanfront "easement" on Plaintiff's oceanfront land, which is improved with a beach house. The easement described in the subject Condemnation Notice is described by Plaintiff as one for perpetual public access and beach "renourishment." There are two other similar condemnation attempts by the Town against other owners and similar corresponding challenge actions like this one, and the three were heard together.

The Plaintiff's objections to the easement, before and after the commencement of the condemnation action, have been directed in large part to the terms and location of the easement described in the condemnation papers.

## **III. THE STANDARD FOR SUMMARY JUDGMENT**

A party seeking to recover upon a claim may, at any time after the expiration of 30 days from the commencement of the action, move with or without supporting affidavits for summary judgment in his favor as to all or any part thereof. Rule 56(a), SCRPC.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Rule 56(e), SCRCP.

The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. Rule 56 thus does not include within the materials to be considered, unsworn statements of counsel in a brief, and papers not listed in Rule 56(c), whether or not attached to a brief. As indicated in Rule 56(e), statements in an affidavit which are hearsay, not stated on personal knowledge, or stated by a witness not competent to testify to them, are not properly considered.

When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in the Rule, must set forth specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCP. If he does not so respond, summary judgment, if appropriate, shall be entered against him. Id.; Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); Wogan v. Kunze, 366 S.C. 583, 591, 623 S.E.2d 107, 112 (Ct. App. 2005).

Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Dawkins, 354 S.C. at 58. “Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence.” Dawkins, 354 S.C. at 69.

“In determining whether any triable issue of fact exists, the evidence and all inferences

which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” Quail Hill, LLC v. Cty. of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). “However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). Although the record must be reviewed in a light most favorable to the nonmoving party, “[a] court cannot ignore facts unfavorable to that party and [i]t must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” Bloom v. Ravoir, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (citation omitted).

#### IV. PROCEDURAL HISTORY

The procedural history of issue development and discovery in the case includes an August 3, 2020 motion of the Town to dismiss this challenge action pursuant to Rule 12(b)(6), SCRCPP, requesting that attorney’s fees be assessed against Plaintiff. Both parties briefed the motion.

On August 12, 2020, Plaintiff served interrogatories and requests for production.

On August 21, 2020, Plaintiff filed the instant motion for summary judgment, with accompanying affidavit.

On September 11, 2020, a hearing was held, and the Court denied the Town’s motion to dismiss and its two other motions, which were a motion to expedite the case overall and a motion to require Plaintiff to post a bond for ten million dollars. Plaintiff’s instant motion for summary judgment was not heard.

Plaintiff had opposed a motion of the Town to prohibit discovery against the Town and had moved to compel responses to first interrogatories, but those motions were not heard on September 11.

On or around October 6, 2020, the Town served interrogatories and requests for production, to which Plaintiff later filed a motion for enlargement of time to respond.

A hearing of pending motions scheduled for October 30, 2020, was continued at the Town's request.

On October 30, 2020, Ryan Fabbri, Town Administrator, signed an affidavit.

On November 20, 2020, the Town filed the October 30 affidavit of Ryan Fabbri.

The motion to compel and the motion for protection from discovery were still pending on December 4, 2020, and are addressed by a separate order of this Court. The motions included Plaintiff's request to compel the Town to swear to October 26, 2020 answers to interrogatories that were served by Plaintiff August 12, 2020, and to answer certain interrogatories contended to have not been answered or not answered fully.

The parties confirmed at oral argument on December 4, 2020, that the appraiser hired by the Town to place a value on the easement sought to be condemned has been deposed.

The Town acknowledged at oral argument that on October 16, 2020, the Town served separate and additional condemnation notices on Plaintiff in the preset action and on the plaintiffs in the two related cases on the same subject matter, to which Plaintiff and the others have filed corresponding additional challenge actions, 2020CP2200930, 931 and 932.

## V. BACKGROUND

A review of the materials submitted by the parties pursuant to Rules 56(c) and 56(e) indicates that there is no genuine dispute of the following facts.

The easement the Town seeks in the subject action, according to the proposed easement's actual, written terms, which are stated in the condemnation papers served,<sup>1</sup> subjects the affected part of the owner's land to "public use and access." (See, e.g., Stanton Aff. ¶¶33 and 37.)

These written terms also subject the affected part to 1.) "operation of a public beach" on the owner's land, 2.) "patrolling" on the owner's land, 3.) restriction of the owner's access to the owner's land and right of access to the ocean, 4.) destruction of existing and future owner improvements, and 5.) limitations on future access structures, as well as other features. (See, e.g., Stanton Aff. ¶¶33 and 37.)

The Town, when soliciting similar easements from other owners, described what it seeks as being for "beach renourishment," with no reference to the other objected-to encumbrances. (See, e.g., Stanton Aff. ¶¶3(a), 3(c), 5(a), 5(b)(iv), 5(c)(i)-(iv), 5(c)(vi)-(vii), 18-22, 31, 33, 38-56, 58-69, 71-90, and 94-99.)

While there are suggestions in the Town's oral and written argument that the easement sought in the condemnation notice is a construction easement for sand placement, it is undisputed that the written terms of the easement provide that it is perpetual, it is for depositing and leaving dredged sand permanently on Plaintiff's land, and is "together with the right of public use and access" throughout the easement area.

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<sup>1</sup> The Town served a condemnation notice (see Exh. D to the Town's brief), which referred to an accompanying document describing the easement. The notice instructed that if the tender of purchase price stated in the notice was accepted, the condemnee was to sign the accompanying granting document and return it to the condemnor within the deadline.



The map in the condemnation papers locates the easement area, spatially, two feet from homes, and in cases, envelopes owner improvements.

The Town began requesting the easements before renourishing, but the renourishment has now been done. The right of public use and access, if granted or taken, is perpetual and not stated to be dependent upon renourishment occurring, occurring again, or occurring on any particular frequency. This perpetual right is also not stated to be dependent on the public, when exercising this right, assisting in doing the renourishment work.

The Town's brief and the affidavit of Mr. Fabbri do not mention public access or destruction of owner improvements or unreasonable proximity. They explain that the easement and their descriptions of it are sufficient and accurate because it is not unreasonable to expect that a renourishment project may require "safe and suitable access" to the worksite (TOP brf. at 4), the ability to add "sand fencing and planting beach grass" (TOP brf. at 5), and the ability to undertake "all activities related to construction and maintenance of the renourished beach" (TOP brf. at 5).

The Town represented that "[t]he easement is required solely for activities related to the construction and maintenance of the project, including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project." (TOP brf. at 5 (emphasis added).)

However, the Town provided in the easement, in addition to the grant of permission to place sand on the beach, groom it, move equipment, add erosion control, plant vegetation, etc., a provision that the grant was "together with the right of public use and access." (Stanton Aff., e.g., ¶37(b).)

The Town started out with the above representations as to the sole activities the easement would allow, and that what the Town sent to be signed stated that the rights granted were “together with the right of public use and access,” among other things. (TOP brf. at 5, admitting representation.)

Similar easements were sought in this manner for only about half of the Town’s overall renourishment project. The easements were sought only for the limited part on the south end of the island, on which the Town had engaged in discussions and conditional agreements to get present and future assistance from the U.S. Army Corps of Engineers. (Stanton Aff. ¶¶16 and 17.) The rest of the project did not involve financial contribution by the Corps or any request for easements.

No such assistance was to be involved in the other part of the project, in the part north of where there might be Corps involvement, and no such easements have been proposed to Town Council members or other owners in that part. (Stanton Aff. 12,15-17, 24, 30, 32, 48(c)-(h), and 81-84.)

In 2019, all three condemnees provided to the Town signed deeds of easement. The easements they provided granted the Town the following:

A. The right to engage solely in activities related to the construction and maintenance of the project, including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project (compare TOP brf. at 5, stating this was the purpose of the easement);

B. The ability to establish safe and suitable access to the worksite (compare TOP brf. at 4, stating this was a requirement of the easement);

C. The ability to add sand fencing and plant beach grass (compare TOP brf. at 5, stating this was a requirement of the easement); and

D. The ability to undertake all activities related to construction and maintenance of the renourished beach (compare TOP brf. at 5, stating this was a requirement of the easement). (Stanton Aff. ¶¶34(b), 34(c), 34(e), 34(f), 35, 36, 48(b), 54, 59, 60, 61, 62, 66, 67, 69, 72, 74, 92, 99, 112, 113, and 126.)

Condemnee Stanton's signed easement was rejected by the Town. (Stanton Aff. ¶¶35 and 36.) Condemnee Beattie's signed easement was rejected by the Town. (Stanton Aff. ¶¶ 35 and 36.) Condemnee Sunset Lodge, LLC's easement was recorded by Sunset Lodge and remains of record but has been rejected by the Town. (Stanton Aff. ¶¶ 35 and 36.)

After obtaining easements from numerous other owners in the manner described above, the Town proceeded to complete the actual overall renourishment without the involvement of the Corps. (Stanton Aff. ¶¶26-28.)

The renourishment is done. (Stanton Aff. ¶28.) The Town did this without any easement from two comdemnees<sup>2</sup> and other owners from whom the Town had not obtained easements or whose easements the Town rejected. (Stanton Aff. ¶¶35, 25-28.) The Town rejected the easements after publicly determining easements were "not necessary." (Stanton Aff. ¶27.)<sup>3</sup>

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<sup>2</sup> Condemnee Sunset Lodge, LLC provided, and recorded, an easement, but inasmuch as the Town sued Sunset to condemn an easement, it is assumed the recorded easement was rejected.

<sup>3</sup> There do not appear to be any Rule 56(c) or 56(e) materials establishing at what time, if ever, the renourishment necessarily would be done again. However, the Court is aware of statements in briefs or other papers in the Courthouse file, in which various descriptions of the conditions of the potential federal alliance are described as including periodic renourishment, if needed and if funded, and "eligibility" for other federal assistance in the event of storm damage, if funded. The Court is also aware of the allegations of the Amended Complaint referencing public records of the Town which estimate a minimal or negative long term erosion rate of the beach and other records which estimate, in decades, the time before which renourishment would be needed again. It does not appear necessary for purposes of this order, to determine all the facts on these matters or determine which facts are undisputed.

After the renourishment was completed, the Town Council voted May 18, 2020, to condemn easements from remaining owners, describing the easements authorized to be condemned only as “renourishment easements,” without describing the above objected-to encumbrances. (Stanton Aff. ¶¶33-48; see also ¶¶49-99.)

There is a full, official recording of the meeting, and before the condemnation action was served, there was no public record of Town Council considering the specific objections of the proposed condemnees to the easement requested. (Compare Fabbri Aff., devoid of any evidence of any such consideration.) There is also no public record of Town Council discussing, mentioning, or acknowledging that the three condemnees had provided the Town with signed easements providing the things in A-D, above, and more. (Compare Fabbri Aff., devoid of any evidence of any such discussion by Town Council.)

For purposes of the thus approved condemnation of a “renourishment easement,” the Town then procured an appraisal report without describing these objected-to encumbrances to the appraiser. (Stanton Aff. ¶¶105, 106, 107, 111, 112, 113, 114, 115, 116, 128, and 129.) The appraiser was not given a copy of the language of the proposed easement that fully disclosed the scope of the easement. (Stanton Aff. ¶¶105, 106, 107, 111, 112, 113, 114, 115, 116, 128, and 129.)

Pursuant to pages 44-45 of the Appraisal Report, which is Exhibit C to the Town’s brief, the appraiser states:

Although no documents were provided, it is my understanding that the easements will only be used during the beach renourishment project, and only if access to the property is required for the work. I am unaware of the frequency of the planned renourishment work to be performed in the future.

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This appraiser was required by statute to be hired by the Town to value the easement “to determine the amount that would constitute just compensation for its taking.” S.C. Code Ann. §28-2-70(A).

The Town did not make the appraisal report available to Plaintiff before serving the condemnation notice. (Stanton Aff. ¶123.)

The part of the owner’s land subjected to the above-described, objected-to encumbrances – including public access and the ability to remove “obstructions” – under earlier versions of the proposed easement was the entire lot and house. (Stanton Aff. ¶¶37(f) and 37(g).) Under later versions, the subject part is the part running from the owner’s eastern property boundary shown on the plat prepared by the Town (the mean high watermark on the ocean) west (landward) to two feet from the main supports of the main house. (Stanton Aff. ¶¶37(f) and 37(g).)

On or about November 20, 2020, the Town filed an affidavit of Ryan Fabbri. In the Affidavit, Mr. Fabbri, a Town employee, testifies to the intent of Town Council (e.g., Aff. at 4 and 7) and Town Council’s awareness (e.g., Aff. at 5).

## **VI. CLAIMS FOR RELIEF AND REASONS ADVANCED FOR SUMMARY**

### **JUDGMENT**

Turning to Plaintiff’s allegations in the suit and reasons advanced for summary judgment, Plaintiff’s Amended Complaint details in accordance with Rule 9(b), SCRCp, the events and acts of over a year in the context of various statements, provisions, conditions and actions, and sets forth times, places, people, and circumstances. The pleading indicates that a large part of its material allegations are based on the Town’s announcements, solicitations, meeting minutes, appraisal report, condemnation papers, other writings, and public records.

In Plaintiff's brief, Plaintiff set forth about nine sometimes factually overlapping reasons for granting summary judgment. The Court will address the pertinent issues below:<sup>4</sup>

A. Vague, indeterminate, remote future "need" after possibly more than 22 years, is beyond the pale.

B. Excessive scope is proven by the completed project no matter when an easement might be needed in the remote future.

C. Certain features in the condemnation papers have already been agreed to be unnecessary and, in some cases, have been removed for others as unnecessary.<sup>5</sup>

D. The condemnation papers served by the Town exceed the authority granted by Town Council and are ultra vires and invalid.

E. The Town failed to comply with the mandatory provisions of the state Eminent Domain Procedure Act and therefore has not established and cannot establish the power and authorization to condemn under the Act under the subject condemnation papers.

F. The Town is estopped to contend that easements are necessary by the Town's previous public announcement that the one-time renourishment would likely last 22 years or

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<sup>4</sup> The Court does not find it appropriate to address Plaintiff's claims that the Town acted in fraud, bad faith, or related claims.

<sup>5</sup> Plaintiff states that these items included: (1) moving the so-called "Perpetual Easement Line" or "PEL," which is the landward boundary of the proposed easement, further seaward from Plaintiff's house; (2) changing the written description of the easement area so as to not describe the easement as enveloping the entire lot (which description, at least at to Stanton, was stated to so as to include the whole lot in subsequent papers sent to Stanton by the Town; (3) excepting improvements on the owner's land from the ability to destroy them, although not excepting them from public access and use and other features of the easement, and not clarifying the right to maintain, repair or replace them; and (4) limiting the Town's right to exclude anyone from "dune areas" by making it a right only to exclude the public, and not the owner, from "dune areas," although never defining what a dune "area" is.

more, its announcement that easements were “not necessary,” the Town’s proceeding to do and complete the project without any easements, and Plaintiff’s reliance on the Town’s position.<sup>6</sup>

## **VII. RULINGS, FURTHER APPLICABLE LAW, AND ANALYSIS**

This Court finds, based on the undisputed facts, that summary judgment is granted. The Town’s attempt to condemn the easement on Plaintiff’s land, and the condemnation action represented by the subject Condemnation Notice which was served, is therefore prohibited.

This ruling is without prejudice to another attempt and attendant defenses if applicable. This Court concludes at this point that summary judgment is warranted for the following reasons.

### **A. Failure to Comply with Town Council’s Resolution Describing the Easement to be Condemned**

The easement described by the Condemnation Notice used to commence the condemnation action was different and materially greater in scope than the easement discussed by Town Council May 18, 2020, and approved in the Council’s May 18, 2020, resolution. The condemnation action was, therefore, ultra vires and unauthorized.

Although there is no evidence that Town Council knew and understood the language of the easement which was later described in the Condemnation Notice, even if Town Council had specifically referenced the language in its discussion or resolution, Town Council failed to establish legitimate criteria for “a rational decision-making process which is supported by facts” with respect to the numerous material features Plaintiff had objected to.

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<sup>6</sup> Citing Southern Dev. and Golf Co. v. South Carolina Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993)(observing and not disturbing lower appellate court’s conclusion that the condemnation was flawed by failure to conduct a reasoned weighing of all factors, but estopping condemnor from condemning at all based on condemnor’s prior statements that no expansion of power lines was planned which would affect condemnee’s property).

Nor is there evidence that the Town was allowed to delegate<sup>7</sup>, or attempted to delegate, this responsibility to a Town employee, a federal employee, or anyone else, as the Town Council held a meeting and at least purported to consider and decide upon the matter.

**B. Failure to Comply with Statutes Conferring the Power to Condemn**

The Town has previously conceded that its power to condemn and authorization to commence an action for condemnation are derived in part from S.C. Code Ann. §28-2-10 et seq., the Eminent Domain Procedure Act (hereinafter the “Act”). (Town 8/28/20 Mem. at 5-6, stating that the Town is “vested with power” to condemn and “authorized to commence an action to acquire an interest in real property” by, inter alia, S.C. Code Ann. §28-2-10 et seq.) S.C. Code Ann. §28-2-60 allows a condemnor to commence an action under the exclusive procedure of the Act for condemnation of an interest in real property, if necessary.

The provisions of Chapter 2 of Title 28, constituting the Eminent Domain Procedure Act, “constitute the exclusive procedure” for the matters covered thereby. Act §§ 28-2-60 and 28-2-210. The Town’s condemnation attempt is covered thereby. Compliance with the Act is therefore a condition of the power of a political subdivision of the State to condemn. Here, the Town failed to adequately comply with the Act.

“[T]he power of eminent domain may be exercised only on the occasion, and in the mode or manner, prescribed by the Legislature and [] statutes conferring such power must be strictly construed.” Englehaupt v. Village of Butte, 248 Neb. 827, 828, 539 N.W.2d 430, 432 (1995)(holding, without necessity of finding of bad faith, that under statute limiting the taking to

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<sup>7</sup> The legal principle of delegatus non potest delegare generally provides that a municipal council, as the recipient of delegated authority from the state, must exercise that authority itself.

The Town of Pawleys Island has a council form of government. See S.C. Code Ann. §5-11-20 (providing for exercise of all legislative and administrative functions by, in this case, a mayor and four council members, all of equal power and responsibility). All powers of the municipality, which derive from the state, are generally vested in the council. S.C. Code Ann. §5-7-160.



what is “necessary,” condemnation of 11.92 acres for expansion of present water system was more than was presently required, and enjoining the entire attempt).

The taking of private property for public use is against the common right, and authority to do so must be clearly expressed. Delaware L. & W. R. Co. v. Morristown, 276 U.S. 182 (1928). Government takings of private property and the procedures are also subject to protection under the Fourteenth Amendment. Id. (holding that although rail carrier property was used by the public and rail carrier’s property and business were subject to regulation in the public interest, rail carrier’s property was owned by rail carrier and could not be subjected to another source of public use without just compensation).

As the North Carolina Court of Appeals recognized in State Highway Commission v. Matthis, 163 S.E.2d 35, 2 N.C.App. 233 (N.C. App. 1968):

Eminent domain is the power of the State or some agency authorized by it to take or damage private property for a public purpose upon payment of just compensation. 3 Strong, N.C. Index 2d, Eminent Domain, § 1. The General Assembly prescribes the manner in which the power of eminent domain may be exercised. Virginia Electric Power Co. v. King, 259 N.C. 219, 130 S.E.2d 318.

An agency of the State established by act of the General Assembly is not empowered to exercise the State’s inherent right of eminent domain unless such power is expressly granted by the General Assembly. 26 Am.Jur.2d, Eminent Domain, § 5; Hedrick v. Graham, 245 N.C. 249, 96 S.E.2d 129. When the power is expressly granted, the authority is limited to the express terms or clear implication of the act or acts in which the grant of the power of eminent domain is contained. 26 Am.Jur.2d, Eminent Domain, § 18.

This court said in an opinion by Brock, J.:  
 ‘The exercise of the power of eminent domain is in derogation of common right, and all laws conferring such power must be strictly construed. Redevelopment Commission v. Hagins, 258 N.C. 220, 128 S.E.2d 391; Durham & N.R.R. v. Richmond & D.R.R., 106 N.C. 16, 10 S.E. 1041. By the very terms of G.S. 40--12 the Petition must state in detail the nature of the public business and the specific use to which the land will be put. The allegations, we think, are as much jurisdictional in their character as is an allegation of the fact that the petitioner and the respondents have been unable to agree. Durham & N.R.R. v. Richmond & D.R.R., supra.’ Redevelopment Commission v. Abeyounis, 1 N.C.App. 270, 161 S.E.2d 191.

Id., 2 N.C.App. at 238, 163 S.E.2d at 38 (observing jurisdictional nature of requirement that the condemnor plead that prior negotiation occurred).

Similarly, South Carolina's other neighboring state, Georgia, requires strict compliance with eminent domain procedure statutes. Georgia does not simply allow a "do-over" or an after-the-fact-amendment when a condemning entity exercises its condemning authority does not strictly adhere to the statute's procedures.

In City of Marietta v. Summerour, 302 Ga. 645, 807 S.E.2d 324 (2017), the condemnation procedure required that the condemnor provide a summary of the appraisal "before" entering into negotiations.

The city did not. Like the Town of Pawleys Island, the city did not do other things it was required to. Nevertheless, the landowner negotiated, negotiations were unsuccessful, the city condemned, and the landowner later appealed the condemnation.

The Georgia Court of Appeals held the condemnation invalid, based on the fact that the city's failure to follow the procedure of providing the appraisal summary before negotiating was in bad faith.<sup>8</sup> On further appeal, the Georgia Supreme Court held that it was not even necessary that the noncompliance be bad faith. The Georgia Supreme Court held that the condemnation was ultra vires -- beyond the powers of the city to condemn -- simply for failure to follow the simple mandates of the act.

Observing that the purpose of the rules was "to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for property owners, and to promote public confidence in land acquisition practices," 807 S.E.2d at 328, the court stated:

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<sup>8</sup> Bad faith is also recognized in South Carolina as an independent basis for invalidating a condemnor's condemnation attempt.

“A statute draws its meaning from its text.” *Grange Mut. Cas. Co. v. Woodard*, 300 Ga. 848, 857 n.8, 797 S.E.2d 814 (2017) (citation and punctuation omitted). When we read the statutory text, “we must presume that the General Assembly meant what it said and said what it meant,” *Deal v. Coleman*, 294 Ga. 170, 172 (1) (a), 751 S.E.2d 337 (2013) (citation and punctuation omitted), and so, “we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would.” *FDIC v. Loudermilk*, 295 Ga. 579, 588 (2), 761 S.E.2d 332 (2014) (citation and punctuation omitted). “The common and customary usages of the words are important, but so is their context.” *Tibbles v. Teachers Ret. Sys. of Ga.*, 297 Ga. 557, 558 (1), 775 S.E.2d 527 (2015) (citation and punctuation omitted). “For context, we may look to other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question.” *Zaldivar v. Prickett*, 297 Ga. 589, 591 (1), 774 S.E.2d 688 (2015) (citation omitted).

Adopted in response to perceived abuses of eminent domain, Section 22–1–9 is a part of the Landowner’s Bill of Rights and Private Property Protection Act of 2006. See Ga. L. 2006, p. 40. See also Stephen D. Morrison, Jr., *Protecting Private Property: An Analysis of Georgia’s Response to Kelo v. City of New London*, 2 J. Marshall L. J. 51, 70 (2009). Section 22–1–9 sets forth a number of “policies and practices” by which “all condemnations and potential condemnations shall, to the greatest extent practicable, be guided.” When a government seeks to acquire real property, Section 22–1–9 calls for the government to, among other things, pursue negotiations before resorting to the power of eminent domain, obtain an independent appraisal of the real property to establish its fair market value, offer no less than the value established by the independent appraisal, disclose the basis for that valuation to the owner of the real property, and negotiate in good faith.

Id., 302 Ga. at 649-50, 807 S.E.2d at 328.

The South Carolina Eminent Domain Procedure Act similarly requires a process in which the would-be condemnor must first obtain a bona fide third-party appraisal. The appraisal is not undertaken at the landowner’s expense. The requirement that the condemnor obtain a prior, accurate, fair appraisal is for the landowner’s benefit and protection under the Act. The appraisal is required to be an appraisal of the exact same interest in property the condemnor plans to condemn.

The condemnor must then make that appraisal available to the landowner. The condemnor must then offer to buy the property described in the appraisal in good faith negotiations before any papers are served.

If a condemnation notice is later served, the notice is required to offer to purchase the exact same interest in property that was appraised and offer to pay the amount of the pre-service bona fide appraisal of that exact same interest in property.

If the offer is not accepted and nothing else stops the matter, the same notice may then be filed, seeking the exact same interest in property which was appraised, already described in the notice, starting with a deposit into court of the same price already described in the notice.

The Town did not follow this procedure.

For condemnation to occur, the Act requires the Town first to obtain an appraisal of the property interest to be taken and to provide that appraisal to the landowner before initiating a “condemnation action.” This means the appraisal must be obtained and provided before serving a condemnation notice.

To wit, Act §28-2-70(A) states: “(A) Before initiating a condemnation action, the condemnor shall cause the property [interest to be taken] to be appraised to determine the amount that would constitute just compensation and shall make the appraisal available to the landowner”. (Emphases added.) Act §28-2-30(5) defines a “condemnation action” as follows: “(5) ‘Condemnation action’ includes all acts incident to the process of condemning property after service of a Condemnation Notice”. (Emphasis supplied.) Thus, everything that follows service of the notice is an “action,” and the thing that commences the action is service. Everything that must be done “before” commencing an action must be done before serving a condemnation notice.<sup>9</sup>

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<sup>9</sup> In the action commenced by service of the notice, the Town is referred to as the “condemnor,” rather than as the plaintiff. Although the Town has served the Condemnation Notice, initiating the action, the Town has not yet filed the Condemnation Notice because the condemnation action has been stayed by statute. The condemnation papers in the pending, stayed action therefore are not on file with a file number as such.

Under the mandatory procedure, one of the things which must be done before serving the condemnation notice is to provide the landowner an accurate appraisal of the interest in property the condemnor is seeking. Another is to engage in a period of good faith negotiation with respect to the appraisal.

The Act requires the Town, before initiating a condemnation action (before serving the notice), to negotiate for the purchase of that same interest in real property based on the appraisal of that interest in real property. Act §28-2-70(B).

Act §28-2-280(C)(7) requires that, if served, the condemnation notice must offer the amount of the appraisal of the property interest, which §28-2-70(A) requires to be appraised prior to service.

Section 28-2-280(C)(3) requires that the notice must contain “an appropriate legal description of the interest to be taken.” Thus, the interest appraised must be the same interest that is to be taken.

Section 28-2-280(C)(4) requires that the notice must contain a statement of compliance with §28-2-70(A). That section, Section 28-2-70(A), requires that the pre-service appraisal described by §28-2-70(A) was obtained and made available pre-service.

These statutes are designed to assure, among other things, that the condemnor neither presents, nor is perceived to present, the landowner with a unilateral arbitrary or aggressive offer under circumstances of duress. It would seem to be inappropriate for the condemnor to appraise one interest in property, and then seek to condemn another interest.

For example, the condemnor could not have ten acres on the west side appraised, offer \$20,000 for it, and then serve a condemnation notice for 100 acres running all the way from the

same west side, all the way to the east side, and offer in the notice to pay \$20,000, calling it “the amount of the appraisal.”

Nor would it make sense for the condemnor to certify in the notice, as a condition of condemning the interest described in the condemnation notice, that the appraisal of the appraised interest was provided and that the condemnor attempted to buy the appraised interest, when a different interest is sought in the condemnation notice.

Thus, the §28-2-70(B) negotiation must be attempted before serving a condemnation notice, the negotiation must be with reference to the value stated in the appraisal and be with reference to the interest described in the appraisal, and any condemnation notice which is later served must describe the same interest in property which was appraised and which was the subject of the negotiation, rather than some different interest.

For condemnation to occur, the Act then – if pre-service negotiation is unsuccessful -- requires the Town to serve a condemnation notice which (a) must describe the same “interest to be taken” which was previously appraised and (b) must offer to pay the same amount as stated in the appraisal of the same “interest in real property” to be acquired.

Service, if it occurs, is generally followed by either a challenge action, acceptance of payment in the amount of the appraisal, or a waiting period of at least 30 days and further negotiations before the condemnation notice may be filed.<sup>10</sup>

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<sup>10</sup> The statutory procedure specifically authorizes the instant separate action as an early response to the Town’s condemnation action. S.C. Code Ann. §28-2-470 and see id. §28-280(C)(7)(stating the that the condemnation notice must contain conspicuous notice of availability of challenge action).

The separate action allows the landowner to take up matters which the statutes do not allow to be litigated in the Town’s condemnation action if it were to go forward. By statute, the instant action stays the commenced, pending, but unfiled, condemnation action.

S.C. Code Ann. §28-2-510(A) contemplates a challenge action as a challenge of the condemnor’s right to take “all or part” of the interest in property the condemnor describes in the condemnation papers which were served to commence the condemnation action.

If the offer is not accepted, if no other negotiation is successful, and if no challenge action is timely filed, the Act then allows and requires the condemnor to file the condemnation notice.

As required by the Act, the Town did not obtain an appraisal of the property interest the Town later described in the Condemnation Notice. Instead, the Town obtained an appraisal of an easement which was materially different and less onerous; the Town did not provide such an appraisal or any other appraisal before serving a condemnation notice; the Town did not, before serving a condemnation notice, offer to purchase in light of a fair appraisal of the property described in the Condemnation Notice.

The Town, in serving the Condemnation Notice, either did not offer to pay the amount of the appraisal of the correct interest in property (the property actually described in the Notice), or the Town did not describe in the notice, the correct interest in property (the interest which was appraised). In a condemnation action, the condemnee may disagree over value, i.e., the price to be paid, but is not required to argue, and is not allowed to argue, over what the property is which is being taken before being able to argue over value. Unequivocally, the condemnor, must only seek to condemn the same thing the condemnor has appraised, and must only appraise what the condemnor seeks to condemn. This requirement has not been met.

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The condemnation papers were required to have been served only after providing an appraisal of the accurately described interest in land, making an offer to purchase, and engaging in a period of good faith negotiation.

Under the statutory framework, as opposed to the procedure in some other states and procedures of long ago, the condemnor's right to take all or part of the interest in land described in the condemnation papers cannot be litigated in the "condemnation action" if it were to go forward. In order to have this issue adjudicated, Plaintiff therefore had to file a challenge action. Such a challenge therefore necessarily stays the "condemnation action" until these issues are resolved and the statute so provides. S.C. Code Ann. §28-2-470.

Here, the Town sought to condemn an easement of greater scope than authorized by Town Council, and greater scope than appraised, but to pay an amount for the easement based on a different description. That is, the Town proceeded by having only the simplistic “sand on the beach” easement authorized by Council appraised, but then seeking to condemn the more onerous easement as described in the early proposals sent to Plaintiff, in the exchanges between Plaintiff and the Town Administrator before the May 18, 2020, Council Meeting, and in the Condemnation Notice.

The Town served a condemnation notice describing the interest in property differently than in the appraisal. The property in the Condemnation Notice was different from the property described in the appraisal report in adding the objected-to material encumbrances previously described.

It is undisputed that the Town served the condemnation notice without providing the appraisal.

In the notice, the Town stated the statutory deadlines for the owner to react or not. The Town represented in the notice that the price offered in the notice was the price determined by an appraisal of the interest in property described in the notice.

With one landowner, Stanton, the text of the notice itself contained an easement description reciting numerous material details of previous concern. However, with two other landowners, the text of the notice contained only a description of the whole lot, followed by an additional description of only the location of the proposed easement. The interest in property was described only as an “easement” for the purpose of a certain “renourishment project.”<sup>11</sup>

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<sup>11</sup> The disparities, alone, among the notices served on Sunset Lodge, LLC, Franklin D. Beattie, as trustee, and M. Baron Stanton, demonstrate the burdens or features included in one description which are not included in another. The main texts of the notices to Sunset and Beattie include virtually none of the objected-to features included in the main text of the Stanton notice, because the main texts of the Sunset



All three condemnation notices, however, were accompanied by a separate proposed easement granting document. The text of the notice stated that a separate granting document was attached and should be signed and sent back within the 30-day deadline if the offer was accepted.<sup>12</sup> The property interest described in the granting document would have to match the property interest described in the text of the notice. The granting document was not something the Town was allowed to unilaterally alter in order to unilaterally change the nature of what was being condemned.<sup>13</sup>

The Town failed to furnish the appraisal before serving a condemnation notice, and failed to provide in the notice “an appropriate legal description of the interest to be taken,” as the Town did not describe in the condemnation notice the same interest which was appraised.

Whether described as jurisdictional defects or incurable failures to satisfy elements necessary to state a cause of action for condemnation, the defects in the way the Town went about initiating and pursuing its condemnation action require the action to be invalidated, dismissed, and prohibited. Therefore, summary judgment dismissing the Town’s Condemnation Notice and the associated action is granted.

---

and Beattie notices contain almost no description of the terms of the easement. Of interest would be a comparison of the attached proposed granting documents, which are referenced in paragraphs 150 and 151 of the Amended Complaints of Sunset (Case ending 600), Beattie (601), and Stanton (602), and according to those respective paragraphs, contain some burdens for Sunset and Beattie which are excepted for Stanton, although the Stanton Amended Complaint goes on to allege in paragraph 153 that the Town subsequently sent Stanton another granting document containing the “maximum defects.”

<sup>12</sup> Plaintiff stated at an earlier stage that Plaintiff did not see this sentence and mistakenly stated in the Amended Complaint that the additional document was not referenced in the condemnation notice. It was. Plaintiff stated that Plaintiff withdrew that part of that allegation and stated the need to amend.

<sup>13</sup> It appears that with one landowner, Stanton, the Town did subsequently write and state an intent to change the easement description to one more onerous than the previous one served. (See Stanton Aff. ¶37(g) n.2)(describing paralegal’s written withdrawal of clarification expressly limiting easement area to shaded area on map).) Plaintiff admits that a full exposition of this fact did not make its way into the Stanton Affidavit, but it is alleged at Am. Cmplt. ¶¶153 and 154; it has not been disputed.

## VIII CONCLUSION

For the foregoing reasons, Plaintiff's motion for summary judgment is granted. The Town's Condemnation Notice is quashed and the action commenced by it is hereby declared ended without prejudice in the respect described hereinabove. Any request for fees should be presented by separate petition/motion in this action.

And it is so ordered.

---

Michael G. Nettles  
Circuit Judge

Date [or see ensuing page for electronic signature]: \_\_\_\_\_



## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-01-20 13:03:37 page 25 of 25

January 27, 2021 Judge Price order granting Landowner motion to compel.

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200600

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Enlarge Time is moot. Plaintiff's Motion to Compel and Expenses is granted.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/27/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## **Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-01-27 10:14:18 page 3 of 3

February 2, 2021 Judge Price amended order granting Landowner motion to compel.



|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

**AMENDED ORDER (AMENDING PREVIOUS FORM 4) GRANTING  
MOTION TO COMPEL**

PRESIDING JUDGE: The Honorable Bentley D. Price  
DATE OF HEARING: January 20, 2021  
TIME OF HEARING: 1:30 p.m. on docket  
PLACE OF HEARING: Teleconference  
PLAINTIFF'S ATTORNEY: M. Baron Stanton  
DEFENDANTS' ATTORNEY: N. David DuRant, Sr.  
COURT REPORTER: Natalie Dahl

Plaintiff's motion to compel and for expenses was heard by teleconference on January 20, 2021. Counsel advised that shortly before the hearing, supplemental responses were provided by Defendant. Counsel discussed remaining requests of Plaintiff with respect to the supplemental responses received, counsel agreed on the record as to those matters, and they are hereby made an order of this Court as follows:

Within ten to fifteen days from January 20, 2021, Defendant will supplement as follows:

1. Provide sworn verification of all responses and supplemental responses not previously sworn;
2. Produce captured, portable, storable versions of the video-recorded pertinent meetings of Town Council, including the May 18, 2020 meeting and the October 12, 2020 meeting, as well as any others that exist, such as the ones in which the Town Council discussed Corps delays, doing the project without waiting for the Corps, contracting for the maximum amount of sand and how long the sand would last, that easements were not necessary if the Town

did not wait for the Corps, the status of easements received and not received, how long the appraiser's deposition took, etc. I.e., produce them in the form in which the Town maintains them for its own records or in a form which can be transmitted to Plaintiff and be stored.

3. State in one answer, all of the answer to question 22, including the remaining information requested in the question 22, i.e., the detail of by what document or other means the communication first providing which Corps wording to use occurred. It has been stated that the communication was by e-mail 11-15-28. If it was by such a document, state, in addition to the part of the question already answered, who the sender(s) and receiver(s) were. If the communication was in-person, state who the participants were. In either case, identify the particular document which was provided on that occasion containing the desired wording, rather than another document judged to be the same or similar.

4. State in one answer, all of the answer to question 23, including the remaining information requested in the question, i.e., the detail of the date and by what document or other means the communication first explaining the meaning of Corps wording occurred. It has been stated that the meaning of the wording was first explained by John Hinely and his contact information has been provided. State, in addition to the part of the question already answered, the date he explained the meaning of the wording and whether he explained it in writing or in person. If he did so in writing, identify the particular document in which he explained it, including the date, type of document and parties included. If he did so in another manner, such as in person or telephonically, provide the detail of those circumstances, including who else participated and where the exchange occurred.

AND IT IS SO ORDERED.

---

Bentley D. Price  
Presiding Circuit Court Judge

Date: \_\_\_\_\_[or see electronic signature page]



Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Compel

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-02-02 13:01:11 page 3 of 3

February 8, 2021 Form 4 order noting withdrawal of Town motion to disqualify.

**FORM 4**

**STATE OF SOUTH CAROLINA**  
**COUNTY OF** Georgetown  
**IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO.** 2020CP2200600

Sunset Lodge Llc  
 PLAINTIFF(S)

Pawleys Island Town Of  
 DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

The Motion to Strike by Attorney Stanton has been Withdrawn by Attorney Stanton.

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/08/2021 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

## **Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Electronic Form 4

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2021-02-08 11:15:31 page 3 of 3

April 1, 2021 Form 4 order partially granting Town motion for protection from discovery.



## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200600

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion for Protection from Discovery is PARTIALLY GRANTED to the extent that discovery is limited to plaintiff's pending claim for attorney fees and costs.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/01/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2021-04-01 15:15:27 page 3 of 3

April 5, 2021 Form 4 order denying Town motion to reconsider except noting addition of footnote to order granting summary judgment.

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 20-CP-22-00600**

Sunset Lodge, LLC,

Town of Pawleys Island,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: M. Baron Stanton

Attorney for : ☒ Plaintiff ☐  
Defendant  
or  
☐ Self-Represented Litigant

Disposition Type (Check One)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ STAYED DUE TO BANKRUPTCY

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's motion to reconsider is denied, with the exception that a revision to page 9 is made by adding a footnote; the substitute final order will be filed herewith.

**ORDER INFORMATION**This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

This order ends the merits portion of the case, but a fee petition is still pending.

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                              | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                                                                                           |                                          |                                                          |
|                                                                                                           |                                          |                                                          |
|                                                                                                           |                                          |                                                          |
| If applicable, describe the property, including tax map information and address, referenced in the order: |                                          |                                                          |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

**FOR ELECTRONIC SIGNATURE**

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

M. Baron Stanton, Esquire  
P.O. Box 245

Columbia, SC 29202

William C. Dillard, Jr., Esquire  
P.O. Box 96  
Columbia, SC 29202

**ATTORNEY(S) FOR THE PLAINTIFF(S)****ATTORNEY(S) FOR THE DEFENDANT(S)****CLERK OF COURT****Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy**





Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Judgment Amended and Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-04-05 13:26:09 page 4 of 4



April 5, 2021 Judge Nettles final formal order granting Landowner summary judgment.

|                           |                                   |
|---------------------------|-----------------------------------|
| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN )    | CIVIL ACTION NO. 2020-CP-22-00600 |
| Sunset Lodge, LLC, )      |                                   |
| Plaintiff, )              | ORDER                             |
| v. )                      |                                   |
| Town of Pawleys Island, ) |                                   |
| Defendant. )              |                                   |

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|                       |                                  |
|-----------------------|----------------------------------|
| PRESIDING JUDGE:      | The Honorable Michael G. Nettles |
| DATE OF HEARING:      | December 4, 2020                 |
| TIME OF HEARING:      | 2:00 p.m.                        |
| PLACE OF HEARING:     | Judge's Virtual Courtroom        |
| PLAINTIFF'S ATTORNEY: | M. Baron Stanton                 |
| DEFENDANTS' ATTORNEY: | N. David DuRant, Sr.             |
| COURT REPORTER:       | Grace Hurley                     |

### I. THE MATTER BEFORE THE COURT

This matter came before the Court upon a Motion for Summary Judgment filed by the Plaintiff for an Order declaring the inability of the Defendant, Town of Pawleys Island, to condemn Plaintiff's property, forbidding same, quashing the condemnation notice and associated papers served upon the Plaintiff, and permanently prohibiting the filing thereof.

Plaintiff's Motion for Summary Judgment was heard via WebEx on December 4, 2020. The motion was filed on August 21, 2020, along with the Affidavit of M. B. Stanton.

Plaintiff is the owner of an oceanfront real estate property located at 746 Springs Avenue, Pawleys Island, SC 29585.

Defendant, Town of Pawleys Island, is a municipal corporation organized and existing pursuant to the laws of South Carolina.

The Court took this matter under advisement and has carefully considered the issues presented by the parties' respective memorandums and applicable legal theories. For the reasons set forth herein, Plaintiff's Motion for Summary Judgment is hereby GRANTED.

## **II. NATURE OF THE ACTION**

The present action was preceded by the Defendant's commenced, still pending, but unfiled, and stayed, "condemnation action." The present action is a separate action pursuant to S.C. Code Ann. §28-2-470 to invalidate the Town's subject condemnation action, which is stayed by statute while the instant action is pending.

In the subject condemnation action, the Town seeks to condemn an oceanfront "easement" on Plaintiff's oceanfront land, which is improved with a beach house. The easement described in the subject Condemnation Notice is described by Plaintiff as one for perpetual public access and beach "renourishment." There are two other similar condemnation attempts by the Town against other owners and similar corresponding challenge actions like this one, and the three were heard together.

The Plaintiff's objections to the easement, before and after the commencement of the condemnation action, have been directed in large part to the terms and location of the easement described in the condemnation papers.

## **III. THE STANDARD FOR SUMMARY JUDGMENT**

A party seeking to recover upon a claim may, at any time after the expiration of 30 days from the commencement of the action, move with or without supporting affidavits for summary judgment in his favor as to all or any part thereof. Rule 56(a), SCRPC.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Rule 56(e), SCRCP.

The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. Rule 56 thus does not include within the materials to be considered, unsworn statements of counsel in a brief, and papers not listed in Rule 56(c), whether or not attached to a brief. As indicated in Rule 56(e), statements in an affidavit which are hearsay, not stated on personal knowledge, or stated by a witness not competent to testify to them, are not properly considered.

When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in the Rule, must set forth specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCP. If he does not so respond, summary judgment, if appropriate, shall be entered against him. Id.; Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); Wogan v. Kunze, 366 S.C. 583, 591, 623 S.E.2d 107, 112 (Ct. App. 2005).

Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Dawkins, 354 S.C. at 58. “Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence.” Dawkins, 354 S.C. at 69.

“In determining whether any triable issue of fact exists, the evidence and all inferences

which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” Quail Hill, LLC v. Cty. of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). “However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). Although the record must be reviewed in a light most favorable to the nonmoving party, “[a] court cannot ignore facts unfavorable to that party and [i]t must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” Bloom v. Ravoir, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (citation omitted).

#### **IV. PROCEDURAL HISTORY**

The procedural history of issue development and discovery in the case includes an August 3, 2020 motion of the Town to dismiss this challenge action pursuant to Rule 12(b)(6), SCRCPP, requesting that attorney’s fees be assessed against Plaintiff. Both parties briefed the motion.

On August 12, 2020, Plaintiff served interrogatories and requests for production.

On August 21, 2020, Plaintiff filed the instant motion for summary judgment, with accompanying affidavit.

On September 11, 2020, a hearing was held, and the Court denied the Town’s motion to dismiss and its two other motions, which were a motion to expedite the case overall and a motion to require Plaintiff to post a bond for ten million dollars. Plaintiff’s instant motion for summary judgment was not heard.

Plaintiff had opposed a motion of the Town to prohibit discovery against the Town and had moved to compel responses to first interrogatories, but those motions were not heard on September 11.

On or around October 6, 2020, the Town served interrogatories and requests for production, to which Plaintiff later filed a motion for enlargement of time to respond.

A hearing of pending motions scheduled for October 30, 2020, was continued at the Town's request.

On October 30, 2020, Ryan Fabbri, Town Administrator, signed an affidavit.

On November 20, 2020, the Town filed the October 30 affidavit of Ryan Fabbri.

The motion to compel and the motion for protection from discovery were still pending on December 4, 2020, and are addressed by a separate order of this Court. The motions included Plaintiff's request to compel the Town to swear to October 26, 2020 answers to interrogatories that were served by Plaintiff August 12, 2020, and to answer certain interrogatories contended to have not been answered or not answered fully.

The parties confirmed at oral argument on December 4, 2020, that the appraiser hired by the Town to place a value on the easement sought to be condemned has been deposed.

The Town acknowledged at oral argument that on October 16, 2020, the Town served separate and additional condemnation notices on Plaintiff in the preset action and on the plaintiffs in the two related cases on the same subject matter, to which Plaintiff and the others have filed corresponding additional challenge actions, 2020CP2200930, 931 and 932.

## V. BACKGROUND

A review of the materials submitted by the parties pursuant to Rules 56(c) and 56(e) indicates that there is no genuine dispute of the following facts.

The easement the Town seeks in the subject action, according to the proposed easement's actual, written terms, which are stated in the condemnation papers served,<sup>1</sup> subjects the affected part of the owner's land to "public use and access." (See, e.g., Stanton Aff. ¶¶33 and 37.)

These written terms also subject the affected part to 1.) "operation of a public beach" on the owner's land, 2.) "patrolling" on the owner's land, 3.) restriction of the owner's access to the owner's land and right of access to the ocean, 4.) destruction of existing and future owner improvements, and 5.) limitations on future access structures, as well as other features. (See, e.g., Stanton Aff. ¶¶33 and 37.)

The Town, when soliciting similar easements from other owners, described what it seeks as being for "beach renourishment," with no reference to the other objected-to encumbrances. (See, e.g., Stanton Aff. ¶¶3(a), 3(c), 5(a), 5(b)(iv), 5(c)(i)-(iv), 5(c)(vi)-(vii), 18-22, 31, 33, 38-56, 58-69, 71-90, and 94-99.)

While there are suggestions in the Town's oral and written argument that the easement sought in the condemnation notice is a construction easement for sand placement, it is undisputed that the written terms of the easement provide that it is perpetual, it is for depositing and leaving dredged sand permanently on Plaintiff's land, and is "together with the right of public use and access" throughout the easement area.

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<sup>1</sup> The Town served a condemnation notice (see Exh. D to the Town's brief), which referred to an accompanying document describing the easement. The notice instructed that if the tender of purchase price stated in the notice was accepted, the condemnee was to sign the accompanying granting document and return it to the condemnor within the deadline.

The map in the condemnation papers locates the easement area, spatially, two feet from homes, and in cases, envelopes owner improvements.

The Town began requesting the easements before renourishing, but the renourishment has now been done. The right of public use and access, if granted or taken, is perpetual and not stated to be dependent upon renourishment occurring, occurring again, or occurring on any particular frequency. This perpetual right is also not stated to be dependent on the public, when exercising this right, assisting in doing the renourishment work.

The Town's brief and the affidavit of Mr. Fabbri do not mention public access or destruction of owner improvements or unreasonable proximity. They explain that the easement and their descriptions of it are sufficient and accurate because it is not unreasonable to expect that a renourishment project may require "safe and suitable access" to the worksite (TOP brf. at 4), the ability to add "sand fencing and planting beach grass" (TOP brf. at 5), and the ability to undertake "all activities related to construction and maintenance of the renourished beach" (TOP brf. at 5).

The Town represented that "[t]he easement is required solely for activities related to the construction and maintenance of the project, including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project." (TOP brf. at 5 (emphasis added).)

However, the Town provided in the easement, in addition to the grant of permission to place sand on the beach, groom it, move equipment, add erosion control, plant vegetation, etc., a provision that the grant was "together with the right of public use and access." (Stanton Aff., e.g., ¶37(b).)



The Town started out with the above representations as to the sole activities the easement would allow, and that what the Town sent to be signed stated that the rights granted were “together with the right of public use and access,” among other things. (TOP brf. at 5, admitting representation.)

Similar easements were sought in this manner for only about half of the Town’s overall renourishment project. The easements were sought only for the limited part on the south end of the island, on which the Town had engaged in discussions and conditional agreements to get present and future assistance from the U.S. Army Corps of Engineers. (Stanton Aff. ¶¶16 and 17.) The rest of the project did not involve financial contribution by the Corps or any request for easements.

No such assistance was to be involved in the other part of the project, in the part north of where there might be Corps involvement, and no such easements have been proposed to Town Council members or other owners in that part. (Stanton Aff. 12,15-17, 24, 30, 32, 48(c)-(h), and 81-84.)

In 2019, all three condemnees provided to the Town signed deeds of easement. The easements they provided granted the Town the following:

A. The right to engage solely in activities related to the construction and maintenance of the project, including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project (compare TOP brf. at 5, stating this was the purpose of the easement);

B. The ability to establish safe and suitable access to the worksite (compare TOP brf. at 4, stating this was a requirement of the easement);

C. The ability to add sand fencing and plant beach grass (compare TOP brf. at 5, stating this was a requirement of the easement); and

D. The ability to undertake all activities related to construction and maintenance of the renourished beach (compare TOP brf. at 5, stating this was a requirement of the easement). (Stanton Aff. ¶¶34(b), 34(c), 34(e), 34(f), 35, 36, 48(b), 54, 59, 60, 61, 62, 66, 67, 69, 72, 74, 92, 99, 112, 113, and 126.)

Condemnee Stanton's signed easement was rejected by the Town. (Stanton Aff. ¶¶35 and 36.) Condemnee Beattie's signed easement was rejected by the Town. (Stanton Aff. ¶¶ 35 and 36.) Condemnee Sunset Lodge, LLC's easement was recorded by Sunset Lodge and remains of record but has been rejected by the Town. (Stanton Aff. ¶¶ 35 and 36.)

After obtaining easements from numerous other owners in the manner described above, the Town proceeded to complete the actual overall renourishment without the involvement of the Corps. (Stanton Aff. ¶¶26-28.)

The renourishment is done.<sup>2</sup> (Stanton Aff. ¶28.) The Town did this without any easement from two condemnees<sup>3</sup> and other owners from whom the Town had not obtained easements or whose easements the Town rejected. (Stanton Aff. ¶¶35, 25-28.) The Town rejected the easements after publicly determining easements were “not necessary.” (Stanton Aff. ¶27.)<sup>4</sup>

<sup>2</sup> Here, by “renourishment” this Court refers to completing the placement of the approximately 1.1 million cubic yards of additional sand on the entire 2.7 mile subject stretch of beach.

While Plaintiff and the Town and others have referred to the placement of this sand on the beach over the space of a few months as the “project” (e.g., Stanton Aff. ¶¶ 12-13, 15-16, 21 (quoting Mr. Fabbri re “project”), 37(c), and 50; Fabbri 8/28/20 Aff. ¶3 (“the project consisted of placing one million one hundred thousand (1,100,000) cubic yards of beach-quality sand”), 4 (“[T]he U.S. Army Corps of Engineers (USACE) proposed a memorandum of understanding that would let the USACE finish the project through planting sea oats and installing sand fences and allow the Town’s beach renourishment project to become a federal project (the ‘Partnership Project’) once it is completed”), and in 2019 the Town decided to do the work without the need of easements and without assistance from the Army Corps (Stanton Aff. ¶¶26-28 (referring to “the work”), and later referred to the placement of sand as completed (Stanton Aff. ¶28), the Town contends in its November 24, 2020 brief at 5 that work will also include planting vegetation and installing sand fence on the beach after all the earthwork is complete. (See Stanton Aff. ¶21 (quoting Mr. Fabbri re “project” including the earthwork, installation of sand fence and planting of “beach grass”); and see Fabbri 8/28/20 Aff. ¶4).

The Town also contends that it is pursuing an ongoing program in which the Town will be eligible for assistance from the Army Corps of Engineers, over a period of ensuing decades, for replenishment only on the southern stretch of the beach at certain time intervals if needed or replenishment of that stretch outside those intervals in the case of certain events. (See Stanton Aff. ¶¶ 29-30, 37(k), 46, and 91; and see, e.g., Fabbri Aff. 4 (“In such instance, the Town would be eligible for PL 84-99 post storm rehabilitation and future periodic renourishments”).

This Court is therefore using the word “renourishment” to describe the 2019-2020 placement of the additional 1.1 million c.y. of sand on the beach.

<sup>3</sup> Condemnee Sunset Lodge, LLC provided, and recorded, an easement, but inasmuch as the Town sued Sunset to condemn an easement, it is assumed the recorded easement was rejected.

<sup>4</sup> There do not appear to be any Rule 56(c) or 56(e) materials establishing at what time, if ever, the renourishment necessarily would be done again. However, the Court is aware of statements in briefs or other papers in the Courthouse file, in which various descriptions of the conditions of the potential federal alliance are described as including periodic renourishment, if needed and if funded, and “eligibility” for other federal assistance in the event of storm damage, if funded. The Court is also aware of the allegations of the Amended Complaint referencing public records of the Town which estimate a minimal or negative long term erosion rate of the beach and other records which estimate, in decades, the time before which renourishment would be needed again. It does not appear necessary for purposes of this order, to determine all the facts on these matters or determine which facts are undisputed.

After the renourishment was completed, the Town Council voted May 18, 2020, to condemn easements from remaining owners, describing the easements authorized to be condemned only as “renourishment easements,” without describing the above objected-to encumbrances. (Stanton Aff. ¶¶33-48; see also ¶¶49-99.)

There is a full, official recording of the meeting, and before the condemnation action was served, there was no public record of Town Council considering the specific objections of the proposed condemnees to the easement requested. (Compare Fabbri Aff., devoid of any evidence of any such consideration.) There is also no public record of Town Council discussing, mentioning, or acknowledging that the three condemnees had provided the Town with signed easements providing the things in A-D, above, and more. (Compare Fabbri Aff., devoid of any evidence of any such discussion by Town Council.)

For purposes of the thus approved condemnation of a “renourishment easement,” the Town then procured an appraisal report without describing these objected-to encumbrances to the appraiser. (Stanton Aff. ¶¶105, 106, 107, 111, 112, 113, 114, 115, 116, 128, and 129.) The appraiser was not given a copy of the language of the proposed easement that fully disclosed the scope of the easement. (Stanton Aff. ¶¶105, 106, 107, 111, 112, 113, 114, 115, 116, 128, and 129.)

Pursuant to pages 44-45 of the Appraisal Report, which is Exhibit C to the Town’s brief, the appraiser states:

Although no documents were provided, it is my understanding that the easements will only be used during the beach renourishment project, and only if access to the property is required for the work. I am unaware of the frequency of the planned renourishment work to be performed in the future.

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This appraiser was required by statute to be hired by the Town to value the easement “to determine the amount that would constitute just compensation for its taking.” S.C. Code Ann. §28-2-70(A).

The Town did not make the appraisal report available to Plaintiff before serving the condemnation notice. (Stanton Aff. ¶123.)

The part of the owner’s land subjected to the above-described, objected-to encumbrances – including public access and the ability to remove “obstructions” – under earlier versions of the proposed easement was the entire lot and house. (Stanton Aff. ¶¶37(f) and 37(g).) Under later versions, the subject part is the part running from the owner’s eastern property boundary shown on the plat prepared by the Town (the mean high watermark on the ocean) west (landward) to two feet from the main supports of the main house. (Stanton Aff. ¶¶37(f) and 37(g).)

On or about November 20, 2020, the Town filed an affidavit of Ryan Fabbri. In the Affidavit, Mr. Fabbri, a Town employee, testifies to the intent of Town Council (e.g., Aff. at 4 and 7) and Town Council’s awareness (e.g., Aff. at 5).

## **VI. CLAIMS FOR RELIEF AND REASONS ADVANCED FOR SUMMARY**

### **JUDGMENT**

Turning to Plaintiff’s allegations in the suit and reasons advanced for summary judgment, Plaintiff’s Amended Complaint details in accordance with Rule 9(b), SCRCp, the events and acts of over a year in the context of various statements, provisions, conditions and actions, and sets forth times, places, people, and circumstances. The pleading indicates that a large part of its material allegations are based on the Town’s announcements, solicitations, meeting minutes, appraisal report, condemnation papers, other writings, and public records.

In Plaintiff's brief, Plaintiff set forth about nine sometimes factually overlapping reasons for granting summary judgment. The Court will address the pertinent issues below:<sup>5</sup>

A. Vague, indeterminate, remote future "need" after possibly more than 22 years, is beyond the pale.

B. Excessive scope is proven by the completed project no matter when an easement might be needed in the remote future.

C. Certain features in the condemnation papers have already been agreed to be unnecessary and, in some cases, have been removed for others as unnecessary.<sup>6</sup>

D. The condemnation papers served by the Town exceed the authority granted by Town Council and are ultra vires and invalid.

E. The Town failed to comply with the mandatory provisions of the state Eminent Domain Procedure Act and therefore has not established and cannot establish the power and authorization to condemn under the Act under the subject condemnation papers.

F. The Town is estopped to contend that easements are necessary by the Town's previous public announcement that the one-time renourishment would likely last 22 years or

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<sup>5</sup> The Court does not find it appropriate to address Plaintiff's claims that the Town acted in fraud, bad faith, or related claims.

<sup>6</sup> Plaintiff states that these items included: (1) moving the so-called "Perpetual Easement Line" or "PEL," which is the landward boundary of the proposed easement, further seaward from Plaintiff's house; (2) changing the written description of the easement area so as to not describe the easement as enveloping the entire lot (which description, at least at to Stanton, was stated to so as to include the whole lot in subsequent papers sent to Stanton by the Town; (3) excepting improvements on the owner's land from the ability to destroy them, although not excepting them from public access and use and other features of the easement, and not clarifying the right to maintain, repair or replace them; and (4) limiting the Town's right to exclude anyone from "dune areas" by making it a right only to exclude the public, and not the owner, from "dune areas," although never defining what a dune "area" is.

more, its announcement that easements were “not necessary,” the Town’s proceeding to do and complete the project without any easements, and Plaintiff’s reliance on the Town’s position.<sup>7</sup>

## **VII. RULINGS, FURTHER APPLICABLE LAW, AND ANALYSIS**

This Court finds, based on the undisputed facts, that summary judgment is granted. The Town’s attempt to condemn the easement on Plaintiff’s land, and the condemnation action represented by the subject Condemnation Notice which was served, is therefore prohibited.

This ruling is without prejudice to another attempt and attendant defenses if applicable. This Court concludes at this point that summary judgment is warranted for the following reasons.

### **A. Failure to Comply with Town Council’s Resolution Describing the Easement to be Condemned**

The easement described by the Condemnation Notice used to commence the condemnation action was different and materially greater in scope than the easement discussed by Town Council May 18, 2020, and approved in the Council’s May 18, 2020, resolution. The condemnation action was, therefore, ultra vires and unauthorized.

Although there is no evidence that Town Council knew and understood the language of the easement which was later described in the Condemnation Notice, even if Town Council had specifically referenced the language in its discussion or resolution, Town Council failed to establish legitimate criteria for “a rational decision-making process which is supported by facts” with respect to the numerous material features Plaintiff had objected to.

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<sup>7</sup> Citing Southern Dev. and Golf Co. v. South Carolina Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993)(observing and not disturbing lower appellate court’s conclusion that the condemnation was flawed by failure to conduct a reasoned weighing of all factors, but estopping condemnor from condemning at all based on condemnor’s prior statements that no expansion of power lines was planned which would affect condemnee’s property).

Nor is there evidence that the Town was allowed to delegate<sup>8</sup>, or attempted to delegate, this responsibility to a Town employee, a federal employee, or anyone else, as the Town Council held a meeting and at least purported to consider and decide upon the matter.

**B. Failure to Comply with Statutes Conferring the Power to Condemn**

The Town has previously conceded that its power to condemn and authorization to commence an action for condemnation are derived in part from S.C. Code Ann. §28-2-10 et seq., the Eminent Domain Procedure Act (hereinafter the “Act”). (Town 8/28/20 Mem. at 5-6, stating that the Town is “vested with power” to condemn and “authorized to commence an action to acquire an interest in real property” by, inter alia, S.C. Code Ann. §28-2-10 et seq.) S.C. Code Ann. §28-2-60 allows a condemnor to commence an action under the exclusive procedure of the Act for condemnation of an interest in real property, if necessary.

The provisions of Chapter 2 of Title 28, constituting the Eminent Domain Procedure Act, “constitute the exclusive procedure” for the matters covered thereby. Act §§ 28-2-60 and 28-2-210. The Town’s condemnation attempt is covered thereby. Compliance with the Act is therefore a condition of the power of a political subdivision of the State to condemn. Here, the Town failed to adequately comply with the Act.

“[T]he power of eminent domain may be exercised only on the occasion, and in the mode or manner, prescribed by the Legislature and [] statutes conferring such power must be strictly construed.” Englehaupt v. Village of Butte, 248 Neb. 827, 828, 539 N.W.2d 430, 432 (1995)(holding, without necessity of finding of bad faith, that under statute limiting the taking to

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<sup>8</sup> The legal principle of delegatus non potest delegare generally provides that a municipal council, as the recipient of delegated authority from the state, must exercise that authority itself.

The Town of Pawleys Island has a council form of government. See S.C. Code Ann. §5-11-20 (providing for exercise of all legislative and administrative functions by, in this case, a mayor and four council members, all of equal power and responsibility). All powers of the municipality, which derive from the state, are generally vested in the council. S.C. Code Ann. §5-7-160.



what is “necessary,” condemnation of 11.92 acres for expansion of present water system was more than was presently required, and enjoining the entire attempt).

The taking of private property for public use is against the common right, and authority to do so must be clearly expressed. Delaware L. & W. R. Co. v. Morristown, 276 U.S. 182 (1928). Government takings of private property and the procedures are also subject to protection under the Fourteenth Amendment. Id. (holding that although rail carrier property was used by the public and rail carrier’s property and business were subject to regulation in the public interest, rail carrier’s property was owned by rail carrier and could not be subjected to another source of public use without just compensation).

As the North Carolina Court of Appeals recognized in State Highway Commission v. Matthis, 163 S.E.2d 35, 2 N.C.App. 233 (N.C. App. 1968):

Eminent domain is the power of the State or some agency authorized by it to take or damage private property for a public purpose upon payment of just compensation. 3 Strong, N.C. Index 2d, Eminent Domain, § 1. The General Assembly prescribes the manner in which the power of eminent domain may be exercised. Virginia Electric Power Co. v. King, 259 N.C. 219, 130 S.E.2d 318.

An agency of the State established by act of the General Assembly is not empowered to exercise the State’s inherent right of eminent domain unless such power is expressly granted by the General Assembly. 26 Am.Jur.2d, Eminent Domain, § 5; Hedrick v. Graham, 245 N.C. 249, 96 S.E.2d 129. When the power is expressly granted, the authority is limited to the express terms or clear implication of the act or acts in which the grant of the power of eminent domain is contained. 26 Am.Jur.2d, Eminent Domain, § 18.

This court said in an opinion by Brock, J.:  
 ‘The exercise of the power of eminent domain is in derogation of common right, and all laws conferring such power must be strictly construed. Redevelopment Commission v. Hagins, 258 N.C. 220, 128 S.E.2d 391; Durham & N.R.R. v. Richmond & D.R.R., 106 N.C. 16, 10 S.E. 1041. By the very terms of G.S. 40--12 the Petition must state in detail the nature of the public business and the specific use to which the land will be put. The allegations, we think, are as much jurisdictional in their character as is an allegation of the fact that the petitioner and the respondents have been unable to agree. Durham & N.R.R. v. Richmond & D.R.R., supra.’ Redevelopment Commission v. Abeyounis, 1 N.C.App. 270, 161 S.E.2d 191.

Id., 2 N.C.App. at 238, 163 S.E.2d at 38 (observing jurisdictional nature of requirement that the condemnor plead that prior negotiation occurred).

Similarly, South Carolina's other neighboring state, Georgia, requires strict compliance with eminent domain procedure statutes. Georgia does not simply allow a "do-over" or an after-the-fact-amendment when a condemning entity exercises its condemning authority does not strictly adhere to the statute's procedures.

In City of Marietta v. Summerour, 302 Ga. 645, 807 S.E.2d 324 (2017), the condemnation procedure required that the condemnor provide a summary of the appraisal "before" entering into negotiations.

The city did not. Like the Town of Pawleys Island, the city did not do other things it was required to. Nevertheless, the landowner negotiated, negotiations were unsuccessful, the city condemned, and the landowner later appealed the condemnation.

The Georgia Court of Appeals held the condemnation invalid, based on the fact that the city's failure to follow the procedure of providing the appraisal summary before negotiating was in bad faith.<sup>9</sup> On further appeal, the Georgia Supreme Court held that it was not even necessary that the noncompliance be bad faith. The Georgia Supreme Court held that the condemnation was ultra vires -- beyond the powers of the city to condemn -- simply for failure to follow the simple mandates of the act.

Observing that the purpose of the rules was "to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for property owners, and to promote public confidence in land acquisition practices," 807 S.E.2d at 328, the court stated:

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<sup>9</sup> Bad faith is also recognized in South Carolina as an independent basis for invalidating a condemnor's condemnation attempt.

“A statute draws its meaning from its text.” *Grange Mut. Cas. Co. v. Woodard*, 300 Ga. 848, 857 n.8, 797 S.E.2d 814 (2017) (citation and punctuation omitted). When we read the statutory text, “we must presume that the General Assembly meant what it said and said what it meant,” *Deal v. Coleman*, 294 Ga. 170, 172 (1) (a), 751 S.E.2d 337 (2013) (citation and punctuation omitted), and so, “we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would.” *FDIC v. Loudermilk*, 295 Ga. 579, 588 (2), 761 S.E.2d 332 (2014) (citation and punctuation omitted). “The common and customary usages of the words are important, but so is their context.” *Tibbles v. Teachers Ret. Sys. of Ga.*, 297 Ga. 557, 558 (1), 775 S.E.2d 527 (2015) (citation and punctuation omitted). “For context, we may look to other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question.” *Zaldivar v. Prickett*, 297 Ga. 589, 591 (1), 774 S.E.2d 688 (2015) (citation omitted).

Adopted in response to perceived abuses of eminent domain, Section 22–1–9 is a part of the Landowner’s Bill of Rights and Private Property Protection Act of 2006. See Ga. L. 2006, p. 40. See also Stephen D. Morrison, Jr., *Protecting Private Property: An Analysis of Georgia’s Response to Kelo v. City of New London*, 2 J. Marshall L. J. 51, 70 (2009). Section 22–1–9 sets forth a number of “policies and practices” by which “all condemnations and potential condemnations shall, to the greatest extent practicable, be guided.” When a government seeks to acquire real property, Section 22–1–9 calls for the government to, among other things, pursue negotiations before resorting to the power of eminent domain, obtain an independent appraisal of the real property to establish its fair market value, offer no less than the value established by the independent appraisal, disclose the basis for that valuation to the owner of the real property, and negotiate in good faith.

Id., 302 Ga. at 649-50, 807 S.E.2d at 328.

The South Carolina Eminent Domain Procedure Act similarly requires a process in which the would-be condemnor must first obtain a bona fide third-party appraisal. The appraisal is not undertaken at the landowner’s expense. The requirement that the condemnor obtain a prior, accurate, fair appraisal is for the landowner’s benefit and protection under the Act. The appraisal is required to be an appraisal of the exact same interest in property the condemnor plans to condemn.

The condemnor must then make that appraisal available to the landowner. The condemnor must then offer to buy the property described in the appraisal in good faith negotiations before any papers are served.

If a condemnation notice is later served, the notice is required to offer to purchase the exact same interest in property that was appraised and offer to pay the amount of the pre-service bona fide appraisal of that exact same interest in property.

If the offer is not accepted and nothing else stops the matter, the same notice may then be filed, seeking the exact same interest in property which was appraised, already described in the notice, starting with a deposit into court of the same price already described in the notice.

The Town did not follow this procedure.

For condemnation to occur, the Act requires the Town first to obtain an appraisal of the property interest to be taken and to provide that appraisal to the landowner before initiating a “condemnation action.” This means the appraisal must be obtained and provided before serving a condemnation notice.

To wit, Act §28-2-70(A) states: “(A) Before initiating a condemnation action, the condemnor shall cause the property [interest to be taken] to be appraised to determine the amount that would constitute just compensation and shall make the appraisal available to the landowner”. (Emphases added.) Act §28-2-30(5) defines a “condemnation action” as follows: “(5) ‘Condemnation action’ includes all acts incident to the process of condemning property after service of a Condemnation Notice”. (Emphasis supplied.) Thus, everything that follows service of the notice is an “action,” and the thing that commences the action is service. Everything that must be done “before” commencing an action must be done before serving a condemnation notice.<sup>10</sup>

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<sup>10</sup> In the action commenced by service of the notice, the Town is referred to as the “condemnor,” rather than as the plaintiff. Although the Town has served the Condemnation Notice, initiating the action, the Town has not yet filed the Condemnation Notice because the condemnation action has been stayed by statute. The condemnation papers in the pending, stayed action therefore are not on file with a file number as such.

Under the mandatory procedure, one of the things which must be done before serving the condemnation notice is to provide the landowner an accurate appraisal of the interest in property the condemnor is seeking. Another is to engage in a period of good faith negotiation with respect to the appraisal.

The Act requires the Town, before initiating a condemnation action (before serving the notice), to negotiate for the purchase of that same interest in real property based on the appraisal of that interest in real property. Act §28-2-70(B).

Act §28-2-280(C)(7) requires that, if served, the condemnation notice must offer the amount of the appraisal of the property interest, which §28-2-70(A) requires to be appraised prior to service.

Section 28-2-280(C)(3) requires that the notice must contain “an appropriate legal description of the interest to be taken.” Thus, the interest appraised must be the same interest that is to be taken.

Section 28-2-280(C)(4) requires that the notice must contain a statement of compliance with §28-2-70(A). That section, Section 28-2-70(A), requires that the pre-service appraisal described by §28-2-70(A) was obtained and made available pre-service.

These statutes are designed to assure, among other things, that the condemnor neither presents, nor is perceived to present, the landowner with a unilateral arbitrary or aggressive offer under circumstances of duress. It would seem to be inappropriate for the condemnor to appraise one interest in property, and then seek to condemn another interest.

For example, the condemnor could not have ten acres on the west side appraised, offer \$20,000 for it, and then serve a condemnation notice for 100 acres running all the way from the

same west side, all the way to the east side, and offer in the notice to pay \$20,000, calling it “the amount of the appraisal.”

Nor would it make sense for the condemnor to certify in the notice, as a condition of condemning the interest described in the condemnation notice, that the appraisal of the appraised interest was provided and that the condemnor attempted to buy the appraised interest, when a different interest is sought in the condemnation notice.

Thus, the §28-2-70(B) negotiation must be attempted before serving a condemnation notice, the negotiation must be with reference to the value stated in the appraisal and be with reference to the interest described in the appraisal, and any condemnation notice which is later served must describe the same interest in property which was appraised and which was the subject of the negotiation, rather than some different interest.

For condemnation to occur, the Act then – if pre-service negotiation is unsuccessful -- requires the Town to serve a condemnation notice which (a) must describe the same “interest to be taken” which was previously appraised and (b) must offer to pay the same amount as stated in the appraisal of the same “interest in real property” to be acquired.

Service, if it occurs, is generally followed by either a challenge action, acceptance of payment in the amount of the appraisal, or a waiting period of at least 30 days and further negotiations before the condemnation notice may be filed.<sup>11</sup>

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<sup>11</sup> The statutory procedure specifically authorizes the instant separate action as an early response to the Town’s condemnation action. S.C. Code Ann. §28-2-470 and see id. §28-280(C)(7)(stating the that the condemnation notice must contain conspicuous notice of availability of challenge action).

The separate action allows the landowner to take up matters which the statutes do not allow to be litigated in the Town’s condemnation action if it were to go forward. By statute, the instant action stays the commenced, pending, but unfiled, condemnation action.

S.C. Code Ann. §28-2-510(A) contemplates a challenge action as a challenge of the condemnor’s right to take “all or part” of the interest in property the condemnor describes in the condemnation papers which were served to commence the condemnation action.

If the offer is not accepted, if no other negotiation is successful, and if no challenge action is timely filed, the Act then allows and requires the condemnor to file the condemnation notice.

As required by the Act, the Town did not obtain an appraisal of the property interest the Town later described in the Condemnation Notice. Instead, the Town obtained an appraisal of an easement which was materially different and less onerous; the Town did not provide such an appraisal or any other appraisal before serving a condemnation notice; the Town did not, before serving a condemnation notice, offer to purchase in light of a fair appraisal of the property described in the Condemnation Notice.

The Town, in serving the Condemnation Notice, either did not offer to pay the amount of the appraisal of the correct interest in property (the property actually described in the Notice), or the Town did not describe in the notice, the correct interest in property (the interest which was appraised). In a condemnation action, the condemnee may disagree over value, i.e., the price to be paid, but is not required to argue, and is not allowed to argue, over what the property is which is being taken before being able to argue over value. Unequivocally, the condemnor, must only seek to condemn the same thing the condemnor has appraised, and must only appraise what the condemnor seeks to condemn. This requirement has not been met.

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The condemnation papers were required to have been served only after providing an appraisal of the accurately described interest in land, making an offer to purchase, and engaging in a period of good faith negotiation.

Under the statutory framework, as opposed to the procedure in some other states and procedures of long ago, the condemnor's right to take all or part of the interest in land described in the condemnation papers cannot be litigated in the "condemnation action" if it were to go forward. In order to have this issue adjudicated, Plaintiff therefore had to file a challenge action. Such a challenge therefore necessarily stays the "condemnation action" until these issues are resolved and the statute so provides. S.C. Code Ann. §28-2-470.

Here, the Town sought to condemn an easement of greater scope than authorized by Town Council, and greater scope than appraised, but to pay an amount for the easement based on a different description. That is, the Town proceeded by having only the simplistic “sand on the beach” easement authorized by Council appraised, but then seeking to condemn the more onerous easement as described in the early proposals sent to Plaintiff, in the exchanges between Plaintiff and the Town Administrator before the May 18, 2020, Council Meeting, and in the Condemnation Notice.

The Town served a condemnation notice describing the interest in property differently than in the appraisal. The property in the Condemnation Notice was different from the property described in the appraisal report in adding the objected-to material encumbrances previously described.

It is undisputed that the Town served the condemnation notice without providing the appraisal.

In the notice, the Town stated the statutory deadlines for the owner to react or not. The Town represented in the notice that the price offered in the notice was the price determined by an appraisal of the interest in property described in the notice.

With one landowner, Stanton, the text of the notice itself contained an easement description reciting numerous material details of previous concern. However, with two other landowners, the text of the notice contained only a description of the whole lot, followed by an additional description of only the location of the proposed easement. The interest in property was described only as an “easement” for the purpose of a certain “renourishment project.”<sup>12</sup>

---

<sup>12</sup> The disparities, alone, among the notices served on Sunset Lodge, LLC, Franklin D. Beattie, as trustee, and M. Baron Stanton, demonstrate the burdens or features included in one description which are not included in another. The main texts of the notices to Sunset and Beattie include virtually none of the objected-to features included in the main text of the Stanton notice, because the main texts of the Sunset



All three condemnation notices, however, were accompanied by a separate proposed easement granting document. The text of the notice stated that a separate granting document was attached and should be signed and sent back within the 30-day deadline if the offer was accepted.<sup>13</sup> The property interest described in the granting document would have to match the property interest described in the text of the notice. The granting document was not something the Town was allowed to unilaterally alter in order to unilaterally change the nature of what was being condemned.<sup>14</sup>

The Town failed to furnish the appraisal before serving a condemnation notice, and failed to provide in the notice “an appropriate legal description of the interest to be taken,” as the Town did not describe in the condemnation notice the same interest which was appraised.

Whether described as jurisdictional defects or incurable failures to satisfy elements necessary to state a cause of action for condemnation, the defects in the way the Town went about initiating and pursuing its condemnation action require the action to be invalidated, dismissed, and prohibited. Therefore, summary judgment dismissing the Town’s Condemnation Notice and the associated action is granted.

---

and Beattie notices contain almost no description of the terms of the easement. Of interest would be a comparison of the attached proposed granting documents, which are referenced in paragraphs 150 and 151 of the Amended Complaints of Sunset (Case ending 600), Beattie (601), and Stanton (602), and according to those respective paragraphs, contain some burdens for Sunset and Beattie which are excepted for Stanton, although the Stanton Amended Complaint goes on to allege in paragraph 153 that the Town subsequently sent Stanton another granting document containing the “maximum defects.”

<sup>13</sup> Plaintiff stated at an earlier stage that Plaintiff did not see this sentence and mistakenly stated in the Amended Complaint that the additional document was not referenced in the condemnation notice. It was. Plaintiff stated that Plaintiff withdrew that part of that allegation and stated the need to amend.

<sup>14</sup> It appears that with one landowner, Stanton, the Town did subsequently write and state an intent to change the easement description to one more onerous than the previous one served. (See Stanton Aff. ¶37(g) n.2)(describing paralegal’s written withdrawal of clarification expressly limiting easement area to shaded area on map).) Plaintiff admits that a full exposition of this fact did not make its way into the Stanton Affidavit, but it is alleged at Am. Cmplt. ¶¶153 and 154; it has not been disputed.

### **VIII CONCLUSION**

For the foregoing reasons, Plaintiff's motion for summary judgment is granted. The Town's Condemnation Notice is quashed and the action commenced by it is hereby declared ended without prejudice in the respect described hereinabove. Any request for fees should be presented by separate petition/motion in this action.

And it is so ordered.

---

Michael G. Nettles  
Circuit Judge

Date [or see ensuing page for electronic signature]: \_\_\_\_\_



## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Judgment Amended and Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-04-05 13:26:01 page 26 of 26

April 5, 2021 Judge Nettles protective order re production of selected billing materials.

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT OF THE       |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT        |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) |                                   |
| Plaintiff,              | ) | <b>PROTECTIVE ORDER FOR</b>       |
| v.                      | ) | <b>PRODUCTION OF DOCUMENTS</b>    |
|                         | ) | <b>RELATING TO PLAINTIFF'S</b>    |
| Town of Pawleys Island, | ) | <b>MOTION FOR ATTORNEY FEES</b>   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
| _____                   | ) |                                   |

WHEREAS, on January 25, 2021, following the grant of summary judgment, Plaintiff filed a fee petition, supported with an 18-page affidavit, and on February 4, 2021, supplemented the petition; and

WHEREAS, the Town requests further documentation pertaining to the fee petition and has moved for an Order requiring production and in camera review of the same; and

WHEREAS, in producing materials requested by the Town, Plaintiff wishes to redact information Plaintiff asserts should be protected from disclosure and to implement measures to minimize circulation of information produced in unredacted form; and

WHEREAS, the Court heard arguments and positions from counsel for the parties regarding these issues during a February 17, 2021 status conference and a March 19, 2021 hearing conducted via Webex Virtual Courtroom, and has also considered the written positions submitted in the filings of both parties.

NOW, THEREFORE, the Court hereby orders as follows:

1.) Plaintiff will carefully redact as set forth below, in the instance of only one plaintiff out of the three plaintiffs in the three related cases ending 600, 601 and 602, a copy of the plaintiff's private fee agreement and the private billing statements dated 8/5/20, 9/18/20, 10/9/20, 11/18/20

and 1/22/21, and any other billing statements available up to that time. Specifically, Plaintiff may by redaction assert a claim that certain information contained in the billing statements is subject to attorney-client privilege, attorney-impression/work-product protection, or confidentiality under Rule 1.6, SCRProfCond, or should on some other basis be protected from disclosure.

2.) The production of records from a single case as set forth in the preceding paragraph shall be sufficient as to all three referenced cases if the Plaintiff represents in writing to the Court and opposing counsel that (A) *the fee agreement and the bills for the other one-third-fee-seeking plaintiff are the same as that produced in accordance with the preceding paragraph*; (B) *the bills for the other plaintiff not requesting attorney's fees are the same as those produced in accordance with the preceding paragraph*; and (C) *each plaintiff in the three related cases receives a bill for a third of the total recorded time spent on the case and that out-of-pocket expenses are virtually the same, with a minor difference or two, such as a motion filing fee*. To confirm these representations, Plaintiff will also produce the first and last pages of the billing statements for the other two plaintiffs, redacted in the same manner, and the first and last pages of the fee agreement (and any other pages containing unredacted material) of the other one-third-fee-seeking plaintiff redacted in the same manner. However, to the extent that the Plaintiff is not able to make the representations set forth above in this paragraph, and that there are instead differences in the fee agreements and bills other than minor differences in out-of-pocket expenses, Plaintiff shall instead produce records documenting all such differences (subject to the same redaction procedures set forth in this Order).

3.) Within **ten (10) days** of entry of this Order, versions of the bills and fee agreement will be provided to both the Court and the Town's new counsel, but will not be filed, or if filed,

will be filed under seal, except that, as referenced below, pages containing specific items to be referenced may be attached as an exhibit to a memorandum or other filing and not under seal.

4.) The version provided to the Town will be redacted.

5.) The version provided to the Court will be the same, except that in addition, an entire unredacted version will also be submitted, so that the Court can see the underlying material that has been redacted in the redacted copy, in camera. Upon completion of review of the redacted materials, if the Court preliminarily finds or concludes that there are any redacted portions for which there is not apparent good and sufficient reason for redaction, the Court will order them to be unredacted and give Plaintiff opportunity to respond. The unredacted Court version, once filed under seal, will remain under seal as part of the record of the action, including the record in an appeal if some or all of the material is designated for inclusion under seal in the Record on Appeal.

6.) The fee agreement may also be redacted to show only the identity of the client, the basis of the fees or charges, and any contingency or other term affecting the basis, calculation, or client obligation to pay such fees or charges. An unredacted copy of the fee agreement will also be provided to the Court for in camera review of compliance with this paragraph, subject to the full extent of the same protections applicable to unredacted billing statements under this Order.

7.) For clarity and avoidance of doubt, the copies of anything provided to the Court will still be considered part of the record at the actual end of the case, because presented to the Court, and can be used in any appeal in accordance with the terms of this order. Discretion is nevertheless assumed.

8.) If there is any further disagreement by the Town as to leaving any passage on any bill or the fee agreement in redacted form, the Town may, with notice to the Court and Plaintiff,

state with particularity the particular passage, the objection, and any requested remedy, and seek a ruling by the Court at or before the hearing on the fee petition.

9.) No disclosure, inadvertent or otherwise, of the bills and fee agreement, or of items within them, shall operate as a waiver of attorney-client privilege or as any erosion of work-product immunity from disclosure, in this case, in any appeal, in any other case or at any other time, or in any related matters.

10.) The materials will not be unnecessarily filed in toto. If there are specific items to be referenced, the date of the document and the date of the items may be referenced and quoted or the pages containing the items may be attached as an exhibit (even if marked “CONFIDENTIAL as discussed below). It is assumed that the Court, the Town’s counsel and the plaintiff’s counsel can all “read from the same book” in most instances.

11.) The materials produced subject to this order, upon being produced marked “CONFIDENTIAL” shall be subject to the following confidentiality protections (except clocked copies of any materials filed as an exhibit in connection with the fee petition as discussed above):

- a.) The materials will be otherwise provided only to persons who work directly for the Town’s new counsel OR who have expertise on the reasonableness of attorney’s fees in South Carolina, as that issue is the sole purpose of disclosure and addressing that issue is the sole use to which the materials may be put. To clarify, as licensed attorneys who are familiar with the case, the Town’s Town Attorney and other current or former counsel of record in the case meet this qualification, if determined to be needed within the spirit of the succeeding paragraph.
- b.) The materials will not be provided to any person, regardless of employment or expertise, not needed for the Town to have its meaningful opportunity for review.



- c.) The materials will not be used in any deposition, discovery request, motion or questioning at hearing or trial in this or any other case, other than in proceedings in the instant case pertaining directly to the fee award.
- d.) The Town's new attorney shall maintain a record of all persons to whom the materials are provided and as to each, shall have an electronic or other record of the person's agreement to be bound by the order, violation of which is punishable by contempt or other sanction.
- e.) When all proceedings in the instant civil action number are final, the materials will be returned or destroyed.
- f.) If any other or additional similar materials are produced for purposes of the fee petition, they shall be handled in the same manner and be covered by this order.

AND IT IS SO ORDERED.

---

The Honorable Michael G. Nettles,  
Presiding Judge

Date: \_\_\_\_\_



## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Protective Order

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-04-05 13:27:30 page 6 of 6

June 30, 2021 Judge Nettles order redacting designated materials to be produced to Town.

|                           |                                   |
|---------------------------|-----------------------------------|
| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN )    | CIVIL ACTION NO. 2020-CP-22-00600 |
| Sunset Lodge, LLC, )      |                                   |
| Plaintiff, )              | <b>ORDER</b>                      |
| v. )                      |                                   |
| Town of Pawleys Island, ) |                                   |
| Defendant. )              |                                   |

---

This matter came before the Court pursuant to Plaintiff's Motion for Attorney Fees. On January 25, 2021, following the granting of summary judgment, Plaintiff filed a fee petition. In response, the Town requested further documentation pertaining to the fee petition and moved for an order requiring Plaintiff to produce the documentation and for the Court to conduct an *in camera* review of the same.

On April 5, 2021, this Court Ordered that Plaintiff submit to the Court and opposing counsel a redacted copy of Plaintiff's fee agreement and billing statements. Additionally, the Court ordered Plaintiff to submit an unredacted copy of the same to the Court for *in camera* review.

The Court carefully reviewed Plaintiff's proposed redactions, as well as Plaintiff's unredacted documents. After *in camera* review, the Court amended Plaintiff's redactions and mailed Plaintiff's counsel the Court's proposed redactions.

NOW, THEREFORE, the Court hereby Orders that Plaintiff produce a copy of the billing statements with the Court's revised redactions.

IT IS SO ORDERED

---

The Honorable Michael G. Nettles  
Chief Administrative Judge  
Twelfth Judicial Circuit

June 25, 2021  
Florence, South Carolina



Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-06-30 10:46:43 page 3 of 3

October 15 Form 4 order of consolidation.

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-22-00600

Sunset Lodge, LLC  
PLAINTIFF(S)

Town of Pawleys Island  
DEFENDANT(S)

Submitted by: William C. Dillard, Jr.

Attorney for : ☐ Plaintiff ☒ Defendant  
or  
☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Consolidate is GRANTED with the consent of all parties. The cases entitled *Sunset Lodge, LLC v. Town of Pawleys Island* (2020-CP-22-00600), *Franklin D. Beattie v. Town of Pawleys Island* (2020-CP-22-00601), and *M. Baron Stanton v. Town of Pawleys Island* (2020-CP-22-00602) are consolidated under Civil Action No. 2020-CP-22-00600.

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                              | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
|                                                                                                           |                                          | \$                                                          |
|                                                                                                           |                                          | \$                                                          |
|                                                                                                           |                                          | \$                                                          |
| If applicable, describe the property, including tax map information and address, referenced in the order: |                                          |                                                             |



The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note:** In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

### Judge Code

---

**Date**

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

M. Baron Stanton, Esquire

---

P.O. Box 245

---

Columbia, SC 29202

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

William C. Dillard, Jr., Esquire

---

P.O. Box 96

---

Columbia, SC 29202

**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

**Court Reporter:** Natalie Dahl, RPR

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCp.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]



## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-10-15 14:53:02 page 3 of 3

November 23, 2021 Judge Nettles order granting Landowner award of fees.

|                                         |   |                                   |
|-----------------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE CIRCUIT COURT OF THE       |
|                                         | ) | FIFTEENTH JUDICIAL CIRCUIT        |
| COUNTY OF GEORGETOWN                    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
| Sunset Lodge, LLC,                      | ) |                                   |
|                                         | ) |                                   |
| and                                     | ) |                                   |
|                                         | ) |                                   |
| Franklin D. Beattie, as trustee of The  | ) |                                   |
| Franklin D. Beattie Preservation Trust, | ) |                                   |
|                                         | ) |                                   |
| and                                     | ) |                                   |
|                                         | ) |                                   |
| M. Baron Stanton,                       | ) |                                   |
|                                         | ) |                                   |
| Plaintiffs,                             | ) |                                   |
| v.                                      | ) |                                   |
|                                         | ) |                                   |
| Town of Pawleys Island,                 | ) |                                   |
|                                         | ) |                                   |
| Defendant.                              | ) |                                   |
|                                         | ) |                                   |

**ORDER AWARDING  
LITIGATION EXPENSES**

|                       |                                  |
|-----------------------|----------------------------------|
| PRESIDING JUDGE:      | The Honorable Michael G. Nettles |
| DATE OF HEARING:      | October 6, 2021                  |
| TIME OF HEARING:      | 2:00 p.m.                        |
| PLACE OF HEARING:     | Florence County Judicial Center  |
| PLAINTIFFS' ATTORNEY: | M. Baron Stanton                 |
| DEFENDANT'S ATTORNEY: | William C. Dillard, Jr.          |
| COURT REPORTER:       | Natalie Dahl, RPR                |

This matter came before the Court upon petitions for litigation expenses filed by the plaintiffs Sunset Lodge, LLC ("Sunset"), Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust ("Beattie"), and M. Baron Stanton ("Stanton") on January 25, 2021. At the beginning of the hearing, the Court granted the defendant Town of Pawleys Island ("Town")'s motion, with the consent of the plaintiffs, to consolidate the three related cases numbered 2020-CP-22-00600, -00601 and -00602 into a single case with Civil Action No. 2020-CP-22-00600. The plaintiffs' petitions for litigation expenses and attorney fees arose from the Court's grant of summary judgment in their favor on January 20, 2021, in what were at the time three separate condemnation challenge actions.

In support of their petitions the plaintiffs submitted affidavits of their attorney, which were updated and amended several times. The Town submitted a memorandum in opposition to the petitions as well as the affidavits of David G. Pagliarini, an eminent domain practitioner retained to provide an opinion regarding reasonable attorney fees in this matter, Town Attorney N. David Durant, Sr., Mayor Brian Henry, and counsel of record William C. Dillard, Jr. In response, the plaintiffs filed a reply memorandum/exhibit, the affidavits of plaintiff Beattie and Sunset member Charlie Howard, and four reply affidavits of plaintiffs' counsel (Stanton). Redacted copies of the plaintiffs' attorney fee agreements and some of their fee statements were submitted as well. The parties also submitted and referenced other documents as reflected in the record.

At the hearing, the Town put on the record its request, as also set forth in its September 24, 2021, *Pre-Hearing Motion Regard Fee Petition Matters*, that all dollar amounts on the final pages of the plaintiffs' fee statements be unredacted.

### **BACKGROUND**

The plaintiffs in these consolidated cases sought an award of litigation expenses after obtaining summary judgment in their actions challenging condemnations initiated by the Town. In addition to out-of-pocket costs, plaintiffs Sunset and Beattie petitioned for attorney fees in a combined total amount of \$120,396.67 based on proportionate amounts of a total of 950.5 hours of attorney time averred to have been spent on the three matters. Specifically, Sunset sought an award of \$60,198.33 in attorney fees and \$913.33 in costs, Beattie sought an award of \$60,198.33 in attorney fees and \$913.33 in costs, and Stanton sought an award of costs of \$881.59.

At the hearing, Stanton confirmed that he was waiving his own additional claim to \$60,198.33 in attorney fees in the case in which he is the plaintiff, but he also asked the Court to take that fact into consideration when reviewing the reasonableness of the fees requested by the

other two plaintiffs. As conceded in the affidavit of plaintiff's counsel, the three cases were handled in tandem and involved essentially identical filings (e.g., 9/10/21 Stanton Aff. ¶ 72). When factoring back in the proportionate amount of time for the Stanton matter, the underlying premise of the plaintiffs claim is that \$180,595 worth of legal time was reasonably devoted to mostly simultaneous work on the three matters. As set forth below, the Court finds that the attorney fee request in the combined total amount of \$120,396.67 is unreasonable.

### **STANDARD ON REVIEW OF AN ATTORNEY FEE PETITION**

Determination of the appropriate award is governed by the fee-shifting provision of the S.C. Eminent Domain Procedure Act ("the Act"). Specifically, the Act includes the following provision for an award of attorney fees to a successful challenge action plaintiff:

If, in the action challenging the condemnor's right to take, the court determines that the condemnor has no right to take all or part of any landowner's property, the landowner's reasonable costs and litigation expenses incurred therein must be awarded to the landowner. . . .

S.C. Code Ann. § 28-2-510(A) (emphasis added). Under the Act, "[l]itigation expenses' means the reasonable fees, charges, disbursements, and expenses necessarily incurred from and after service of the Condemnation Notice, including, but not limited to, reasonable attorney's fees, appraisal fees, engineering fees, deposition costs, and other expert witness fees necessary for preparation or participation in condemnation actions . . . ." § 28-2-30(14) (emphasis added).

When determining the reasonableness of attorney fees, the fee arrangement between the party and its attorney does not control. As recognized in S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 13, 766 S.E.2d 700, 706 (2014), a Court applying fee shifting provisions under the Act has discretion to apply the factors identified in Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). Specifically, the Court may consider "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of

compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” Id. at 308, 486 S.E.2d at 760 (citing Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993)). “Consideration should be given to all six factors; none of the factors is controlling.” Taylor v. Medenica, 331 S.C. 575, 580, 503 S.E.2d 458, 461 (1998).

The S.C. Supreme Court has applied the Jackson factors to fee-shifting statutes in the context of a “lodestar” analysis. Layman v. State, 376 S.C. 434, 457, 658 S.E.2d 320, 332 (2008). “A lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case, and is calculated by multiplying a reasonable hourly rate by the reasonable time expended.” Id. The six Jackson factors are applied to determine “the reasonable time expended and a reasonable hourly rate for purposes of calculating attorneys' fees.” Id. at 458, 658 S.E.2d at 333.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **I. Analysis of Six Factors in Determining a Reasonable Attorney Fee**

Based upon review of the plaintiffs’ redacted fee statements, the case records, the submissions and arguments of the parties, and applicable law, the Court makes the following findings of fact and conclusions of law regarding the six factors identified under Jackson:

#### **(1) The nature, extent, and difficulty of the case**

The Court finds, after full consideration of the affidavits and other materials submitted by and on behalf of the plaintiffs, that the plaintiffs’ fee claim is disproportionate and unreasonable in relation to the nature, extent, and difficulty of the litigation. While the case was not simple, it was nonetheless limited in scope and complexity. The plaintiffs filed for summary judgment on approximately the first day they were permitted to do so under Rule 56(a), SCRCP. Likewise, factual review of what Town Council considered and discussed at one or even a handful of meetings at which relevant decisions may have been made did not present an unusually demanding task. The plaintiff did not identify any expert witnesses and, although plaintiffs’ counsel deposed

the appraiser for the Town, no testimony from the deposition was referenced in the summary judgment order. Particularly with regard to the procedural claims on which the plaintiff prevailed and obtained relief, the case did not involve complex or difficult issues. As set forth in the *Affidavit of David Pagliarini*, this was a case of “limited complexity and scope” (¶ 31).

**(2) The time necessarily devoted to the case**

Plaintiff’s counsel states that he has or will work 1000.5 hours, or more, in connection with the three consolidated cases. The fee claim is calculated specifically based on 950.5 hours of previously tallied claimed attorney time. For context, the plaintiffs’ first five fee statements, presenting attorney time up through five days before entry of the January 20, 2021 summary judgment order, reflect an average of 4.2 hours every weekday, including holidays, over a six-and-a-half month period (600.7<sup>1</sup> hours over 143 weekdays). The sixth fee statement, presenting additional attorney time up through the March 3, 2021 hearing on production of billing statements, reflects an average of 5.1 hours every weekday, including holidays, over a seven week period (173.6 hours over 34 weekdays). The plaintiffs also claimed an additional 176.2 hours since March 3, 2021. The fee statements reflect that in July 2020, the first month of the case, plaintiffs’ counsel worked 27 of the 31 days of the month for a total of 162.8 hours, an average of just over six hours per each of the 27 days worked.

The plaintiffs’ fee statements are in a “block billing” format, with all of the task descriptions for a given day generally included in a single paragraph with a single total daily time entry. The plaintiffs have not provided any fee statements or time descriptions for the 176.2 hours claimed since March 3, 2021 (9/10/21 Stanton Aff. ¶ 61-62). While block billing is permissible and certainly not inappropriate, in the context of a fee petition it makes it more difficult for a

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<sup>1</sup> 600.7 hours is the total the Plaintiff claims from these invoices after deduction of what Plaintiff’s counsel attributes as time related to the separate “Challenge Action II” cases.



reviewing court to determine the reasonableness of the time claimed to have been spent. In this case, the Court finds it relevant that the fee statements and fee affidavits did not include itemization to shed light on the massive amount of attorney time presented.

The plaintiff bears the burden to support its claim and is not entitled to a presumption that the claimed attorney time was reasonable. *See, e.g., Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp.*, 295 S.C. 208, 211, 367 S.E.2d 696, 698 (1988) (“The circuit court had before it only an affidavit from [petitioner]’s counsel stating, in conclusory fashion, that the fees were reasonable. Based upon this record, we conclude that the award is unsupported by the evidence.”). The Court may reduce a fee award where it finds that the claimed time represents “excessive and duplicitous work,” *Getzen v. L. Offs. of James M. Russ, P.A.*, 323 S.C. 377, 382, 475 S.E.2d 743, 746 (1996), or “an unreasonable duplication of efforts.” *City of N. Charleston v. Claxton*, 315 S.C. 56, 63, 431 S.E.2d 610, 614 (Ct. App. 1993).

The Court finds that the reasonableness and necessity of the claimed attorney time is unsupported by the evidence. The claimed hours are excessive in light of the actual needs of the case, even factoring in reasonable time spent on motions that the Town lost or withdrew. Further, the record does not support the plaintiffs’ assertion that the Town’s approach to the litigation created some need or justification for plaintiffs’ counsel to work the claimed number of hours. The Court’s determination of what was a reasonable amount of time necessarily devoted to the three cases is discussed further below.

### **(3) Professional standing of counsel**

The Court finds that plaintiffs’ counsel has commendable professional standing and a wide latitude of experience.

### **(4) Contingency of compensation**

This factor is not applicable under the circumstances of this case.

**(5) Beneficial results obtained**

The plaintiffs have obtained what is essentially temporary procedural relief based upon their stated position that “noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed[.]” (Amended Complaint p.11). In granting summary judgment to the plaintiffs, the Court quashed the Town’s condemnation notices and associated condemnation actions based upon findings that there were deficiencies in the procedure the Town used to initiate and pursue the actions. However, the plaintiffs did not obtain any permanent prohibitive relief or a declaration that the Town lacks authority to pursue the beach renourishment easements in the future. The Court stated that it “[did] not find it appropriate to address Plaintiff’s claims that the Town acted in fraud, bad faith, or related claims.” (Am. S.J. Order p.13, fn.5). The orders further specified that the ruling quashing the condemnation notices was “without prejudice to another attempt and attendant defenses if applicable.” ((Am. S.J. Order pp.14, 25). If the plaintiffs desire to challenge any future condemnation attempt by the Town based upon theories of fraud, bad faith, or lack of necessity, they will still bear the burden to prove those claims.<sup>2</sup>

The S.C. Supreme Court has recognized that it is appropriate for a court reviewing a fee request to consider that the claimant has only partially prevailed in the underlying litigation. Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995). Similarly, the U.S. Supreme Court established in Hensley v. Eckerhart, 461 U.S. 424 (1983), that “where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in

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<sup>2</sup> See, e.g., Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 396, 175 S.E.2d 805, 814 (1970) (“Whether there is a necessity, a permanent taking or a public use are primarily legislative questions, and there is a presumption that the use contemplated is a necessary, permanent and public one. The burden would be upon the landowner to show that the public use is a sham and a fraud . . . [that] there is no necessity for the use or the condemnation proceeding’s purpose is to cloak some sinister scheme[.]”).

relation to the results obtained.” *Id.* at 440. *See also* Hueble v. S.C. Dep't of Nat. Res., 416 S.C. 220, 234, 785 S.E.2d 461, 468 (2016) (generally citing to Hensley in review of a fee award under 42 U.S.C.A. § 1988); *Layman v. State*, 376 S.C. 434, 461, 658 S.E.2d 320, 334 (2008) (generally citing to Hensley in review of an award under the “state action” statute, § 15-77-300).

The record makes it clear that a significant amount of the time and effort of plaintiffs’ counsel was devoted to the theories of fraud, bad faith, and lack of necessity, along with the associated claim for permanent prohibitive relief. (See, e.g., the table of contents and “preliminary statement” to the *Amended Complaint*; *Amended Summary Judgment Order*, p. 13 [summarizing the plaintiffs’ claims]; Plaintiffs’ *Motion for Summary Judgment*, pp.2-3 [discussing the claims based on fraud, bad faith, and lack of necessity]). While procedural protections for landowners under the Eminent Domain Procedure Act are serious and important, the Court finds it is also true that, in this particular case, the relief obtained by the plaintiffs can be fairly characterized as limited and temporary in relation to the full scope of what they sought.

The Court also finds that the plaintiffs were unsuccessful in their dispute with the Town over production and redaction of attorney fee statements and takes that factor into account in consideration of the reasonable attorney time devoted to the matter. The Town was granted its request for in camera review of all redactions, and certain redactions were removed. The Court finds that the claimed attorney time associated with that dispute is excessive in relation to the reasonable amount of time necessary to address any concerns about confidentiality and redaction.

**(6) Customary legal fees for similar services**

Plaintiff counsel’s hourly rate of \$190 in this matter is reasonable based upon his professional standing and experience. The circumstances of the consolidated cases, in which the essentially identical claims of three plaintiffs were pursued jointly, made it reasonable and in line

with customary billing practices for the total fees to be divided and billed in thirds to each of the three plaintiffs. According to plaintiffs' counsel, this is how the actual billing was handled. The Court finds it is reasonable that the attorney fee award be handled in the same way, with both claiming plaintiffs being entitled to one-third of the total reasonable fee for the combined litigation.

## **II. Determination of Reasonable Attorney Hours**

After review of the plaintiffs' redacted fee statements, the case records, the submissions and oral arguments of the parties, the six factors identified under Jackson, and other applicable law, the Court finds that the reasonable amount of attorney time necessary for the plaintiffs in the three cases in this consolidated action, including pursuit of the fee award, was **125 hours**. The Court agrees with the *Affidavit of David Pagliarini* regarding what was a reasonable amount of time to be spent in tandem on the three cases. The Pagliarini affidavit accounts for reasonable efforts necessary to assert not only the procedural claims on which the plaintiffs prevailed, but also the other claims for fraud, bad faith, and lack of necessity that were not addressed in the summary judgment orders. The fact that the beneficial results achieved in the cases were more limited than that full requested scope of relief reinforces the Court's conclusion that 125 hours is an appropriate calculation of the time reasonably devoted to the cases on behalf of the plaintiffs.

## **III. Application of the Lodestar Analysis**

Application of the six factors analyzed above leads to the following lodestar calculation for a reasonable attorney fee for both claiming plaintiffs in this matter:

$$\$190 \times 125 \text{ hours} = \$24,000 \text{ (rounded)} \times 1/3 = \$8,000 \text{ attorney fee.}$$

## **IV. Plaintiffs' Out-of-Pocket Costs**

The Court finds that the claimed out of pocket costs of \$913.33 for Sunset, \$913.33 for Beattie, and \$881.59 for Stanton are reasonable.

**IT THEREFORE ORDERED THAT:**

1.) Litigation expenses are awarded to plaintiff Sunset Lodge, LLC pursuant to S.C. Code Ann. § 28-2-510(A) in the total amount of **\$8,913.33** (comprising \$8,000 attorney fees and \$913.13 out-of-pocket costs), and judgment shall be entered against the Town and in favor of said plaintiff in that amount;

2.) Litigation expenses are awarded to plaintiff Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust, pursuant to S.C. Code Ann. § 28-2-510(A) in the total amount of **\$8,913.33** (comprising \$8,000 attorney fees and \$913.13 out-of-pocket costs), and judgment shall be entered against the Town and in favor of said plaintiff in that amount;

3.) Plaintiff M. Baron Stanton has waived any claim to attorney fees but is awarded out-of-pocket costs pursuant to S.C. Code Ann. § 28-2-510(A) in the amount of **\$881.59**, and judgment shall be entered against the Town and in favor of said plaintiff in that amount;

4.) The plaintiffs' (A) unredacted fee agreements and fee statements submitted to the Court for in camera review and (B) redacted fee agreements and fee statements labelled "20001 – 20082") and submitted to the Court by counsel for the Town at the hearing, shall be filed under seal as part of the record of this matter; and

5.) These consolidated actions are hereby dismissed and shall be ended and stricken from the calendar. As set forth in the summary judgment orders, the dismissal is without prejudice to future condemnation attempts and attendant defenses, if applicable.

AND IT IS SO ORDERED.

\_\_\_\_\_, South Carolina

\_\_\_\_\_, 2021.

\_\_\_\_\_  
The Honorable Michael G. Nettles

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-22-00600

Sunset Lodge, LLC; Franklin D. Beattie, as trustee of  
The Franklin D. Beattie Preservation Trust; and  
M. Baron Stanton, PLAINTIFF(S)

Town of Pawleys Island

DEFENDANT(S)

Submitted by: William C. Dillard, Jr.

Attorney for : ☐ Plaintiff ☒ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: \_\_\_\_\_

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : This order applies to the cases consolidated in C/A 2020-CP-22-0600 from the cases numbered 2020-CP-22-0600, -0601, and -0602.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                              | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| Sunset Lodge, LLC                                                                                         | Town of Pawleys Island                   | \$ 8,913.33                                                 |
| Franklin D. Beattie, as trustee of The<br>Franklin D. Beattie Preservation<br>Trust                       | Town of Pawleys Island                   | \$ 8,913.33                                                 |
| M. Baron Stanton                                                                                          | Town of Pawleys Island                   | \$ 881.59                                                   |
| If applicable, describe the property, including tax map information and address, referenced in the order: |                                          |                                                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest  
SCRPC Form 4C (02/2017)

Page 1 of 2

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

\_\_\_\_\_  
Circuit Court Judge

\_\_\_\_\_  
Judge Code

\_\_\_\_\_  
Date

### For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
M. Baron Stanton, Esquire

\_\_\_\_\_  
P.O. Box 245

\_\_\_\_\_  
Columbia, SC 29202

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
William C. Dillard, Jr., Esquire

\_\_\_\_\_  
P.O. Box 96

\_\_\_\_\_  
Columbia, SC 29202

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:** Natalie Dahl, RPR

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

### ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc , plaintiff, et al VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-11-23 11:15:03 page 13 of 13



January 28, 2022 Judge Nettles order denying Landowner motion to reconsider.

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200600

Sunset Lodge Llc et al  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After review of the pleadings and materials associated with this case, Plaintiff's Motion to Reconsider filed on December 2, 2021, is denied.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/28/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter:

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc , plaintiff, et al VS Pawleys Island Town Of

**Case Number:** 2020CP2200600

**Type:** Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2022-01-28 09:34:18 page 3 of 3

June 9, 2020 Town condemnation notice to Sunset [included here once, but not again as Exhibit A to Landowner December 6, 2020 affidavit of papers first served, below].

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

Town of Pawleys Island,

Condemnor,

v.

Sunset Lodge, LLC,

Landowner.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2020-CP-22-

**CONDEMNATION NOTICE  
AND  
TENDER OF PAYMENT**

TO: THE LANDOWNER ABOVE-NAMED AND THEIR ATTORNEYS, IF ANY

Pursuant to the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-10 *et seq.*, you are hereby notified as follows:

1. The Town of Pawleys Island is the condemnor herein and seeks to acquire an easement on the real property described herein ("the Property") for public purpose.

2. Sunset Lodge, LLC is named as Landowner by virtue of their claim of title or interest in the Property as shown by that certain Deed dated September 18, 2015 and recorded on September 21, 2015 in Book 2655, at Page 15 in the Register of Deeds for Georgetown County.

3. The following is a description of the Property subject of this Condemnation Notice and a description and map of the property interest sought to be acquired in and to the Property by the Condemnor:

All that certain piece, parcel or lot of land situate, lying and being on the Southern End of Pawley's designated as Lot No. 306 on a plat made by George S. Ward, Engineer, dated January 1954, recorded in the Office of the Register of Deeds for Georgetown County in Plat Book J, Page 15, and on a Plat made by Samuel M. Harper, dated 15 January 1955, recorded in Plat Book J at Page 72; and shown on plat made by J. Luckey Sanders, RLS, dated July 21, 1998 and recorded in Plat Book 17 at Page 332 and having such metes and bounds as shown on said plat. This description

in lieu of metes and bounds as permitted under Section 30-5-200 of the 1976 Code of Laws of South Carolina.

The beach renourishment easement is in the shaded area on the map as described hereinbelow:

Lot 306 (Easement Exhibit) recorded Data, referenced and shown as 0.10 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-027.00.00.

4. The Town of Pawleys Island is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.*

5. The property interest sought to be acquired herein is intended for public purpose, more particularly for the Condemnor's beach renourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.

6. This Condemnation Notice is served on the Landowner pursuant to S.C. Code Ann. § 28-2-240 (Condemnation by Trial).

7. The Condemnor has complied with the requirements set forth in S.C. Code Ann. § 28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the service of this Condemnation Notice and commencement of condemnation action.

8. Project plans may be inspected at the Office of the Town Administrator located at 321 Myrtle Avenue, Pawleys Island, SC 29585.

9. THE CONDEMNOR HAS DETERMINED THAT JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL

DAMAGES, TO BE THE SUM OF ZERO DOLLARS (\$0.00), THE REASON BEING THAT THE PROPERTY STANDS TO GAIN A NET BENEFIT OF FORTY-THREE THOUSAND TWO HUNDRED SEVENTY-EIGHT DOLLARS (\$43,278.00) UPON COMPLETION OF THE PROJECT, AND HEREBY TENDERS PAYMENT OF ZERO DOLLARS (\$0.00) TO THE LANDOWNER.

10. Payment of Zero Dollars (\$0.00) will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The request and agreement must be sent by first class certified mail with return receipt requested or delivered in person to the Condemnor at the following address: Office of the Town Administrator, Town of Pawleys Island, 321 Myrtle Avenue, Pawleys Island, SC 29585.

11. If the tender is rejected or if the Landowner fails to respond within thirty (30) days from tender, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the Property is situated. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

12. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.



13. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, or the Landowner fails to respond to this Condemnation Notice within thirty (30) days from service hereof, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. The notice shall state whether the Condemnor demands a jury trial or by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

14. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

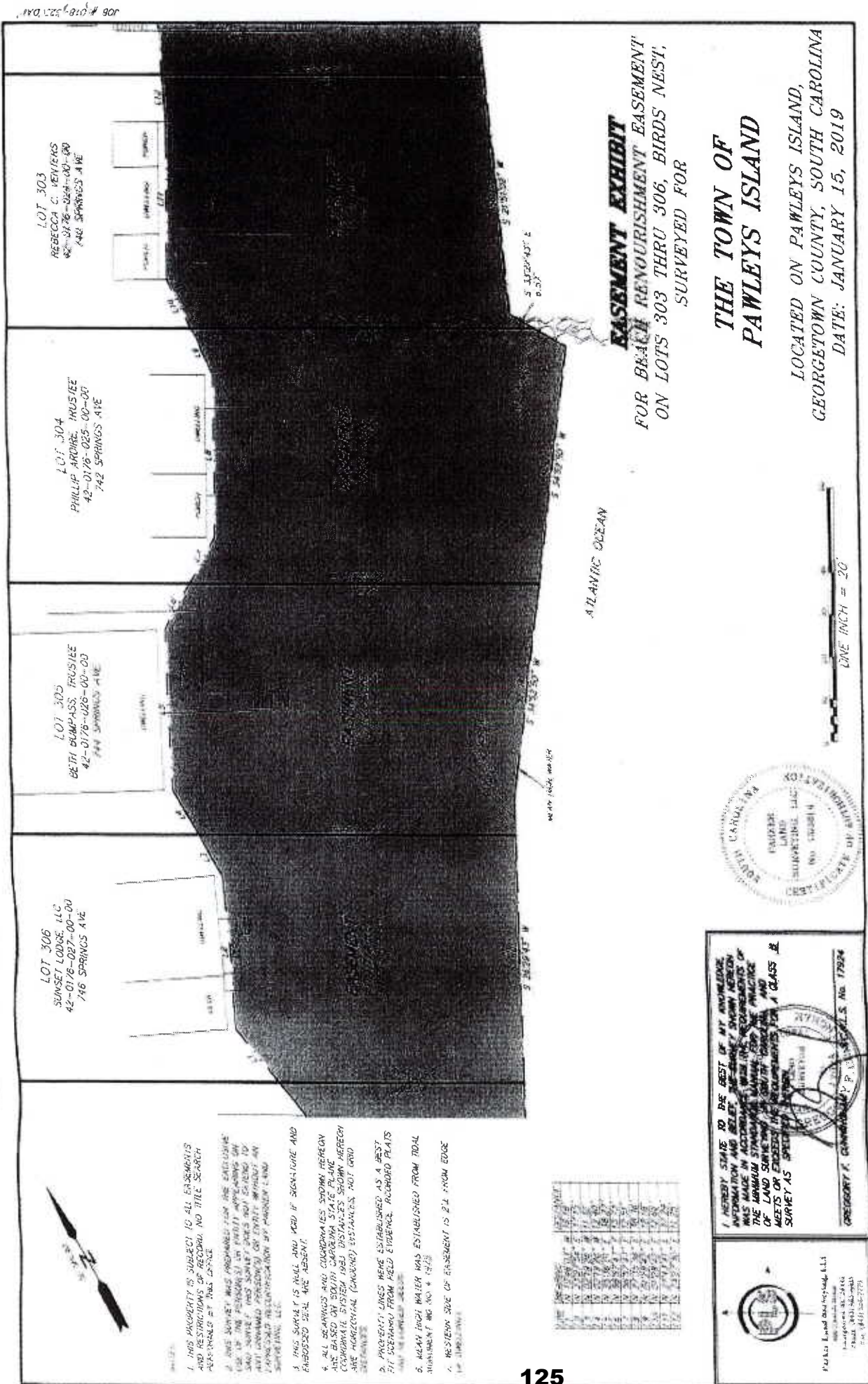
15. In the event the Landowner accepts the tender hereof, the attached Beach Renourishment Easement agreement should be signed and returned to the Condemnor within thirty (30) days of service of this Condemnation Notice.

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/N. David DuRant, Sr.  
N. David DuRant, Sr. (SCB #1803)  
P.O. Box 14722  
Surfside Beach, SC 29587  
Telephone: 843-650-7800  
Facsimile: 843-650-8090  
Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)  
**Attorney for the Condemnor**

June 9, 2020

**Exhibit “A”  
(Easement Areas)**



STATE OF SOUTH CAROLINA     )  
                                                            )  
 COUNTY OF GEORGETOWN        )

# BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

Sunset Lodge, LLC

**does hereby grant, bargain, sell and convey to the Grantee, the** Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern End of Pawley's designated as Lot No. 306 on a plat made by George S. Ward, Engineer, dated January 1954, recorded in the Office of the Register of Deeds for Georgetown County in Plat Book J, Page 15, and on a Plat made by Samuel M. Harper, dated 15 January 1955, recorded in Plat Book J at Page 72; and shown on plat made by J. Luckey Sanders, RLS, dated July 21, 1998 and recorded in Plat Book 17 at Page 332 and having such metes and bounds as shown on said plat. This description in lieu of metes and bounds as permitted under Section 30-5-200 of the 1976 Code of Laws of South Carolina.

Lot 306 (Easement Exhibit) recorded Data, referenced and shown as 0.10 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-027.00.00.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other



work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and Seals on this Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Sunset Lodge, LLC

\_\_\_\_\_  
\_\_\_\_\_

By:

\_\_\_\_\_  
Its Authorized Agent

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, personally appeared before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_  
of Pawleys Island

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, \_\_\_\_\_ of the Town of Pawleys Island, personally  
appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution  
of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GEORGETOWN**

**AFFIDAVIT**

**PERSONALLY** appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 746 Springs Avenue, **Pawleys Island, SC 29585**, bearing **Georgetown County** Tax Map Number **42-176-027.00.00**.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) X Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The Deed recording fee is composed as follows:
  - (a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_
  - (b) Place the amount listed in item 5 above here: \$ \_\_\_\_\_
  - (c) Subtract item 6(a) from item 6(b) and place result here: \$ \_\_\_\_\_
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this \_\_\_\_\_  
 day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
 (Notary Public)  
 My commission expires \_\_\_\_\_

\_\_\_\_\_  
 Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.  
 Print or Type Name Here



June 9, 2020 Town condemnation notice to Beattie [included here once, but not again as Exhibit B to Landowner December 6, 2020 affidavit of papers first served, below].

STATE OF SOUTH CAROLINA )

COUNTY OF GEORGETOWN )

Town of Pawleys Island, )

Condemnor, )

v. )

The Franklin D. Beattie Preservation Trust, )

Landowner. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2020-CP-22-

**CONDEMNATION NOTICE  
AND  
TENDER OF PAYMENT**

TO: THE LANDOWNER ABOVE-NAMED AND THEIR ATTORNEYS, IF ANY

Pursuant to the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-10 *et seq.*, you are hereby notified as follows:

1. The Town of Pawleys Island is the condemnor herein and seeks to acquire an easement on the real property described herein ("the Property") for public purpose.

2. The Franklin D. Beattie Preservation Trust is named as Landowner by virtue of their claim of title or interest in the Property as shown by that certain Deed dated October 9, 2007 and recorded on October 17, 2007 in Book 723, at Page 7 in the Register of Deeds for Georgetown County.

3. The following is a description of the Property subject of this Condemnation Notice and a description and map of the property interest sought to be acquired in and to the Property by the Condemnor:

All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as

shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats.

The beach renourishment easement is in the shaded area on the map as described hereinbelow:

Lot 307 (Easement Exhibit) recorded Data, referenced and shown as 0.07 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-028.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

4. The Town of Pawleys Island is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.*

5. The property interest sought to be acquired herein is intended for public purpose, more particularly for the Condemnor's beach renourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.

6. This Condemnation Notice is served on the Landowner pursuant to S.C. Code Ann. § 28-2-240 (Condemnation by Trial).

7. The Condemnor has complied with the requirements set forth in S.C. Code Ann. § 28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the service of this Condemnation Notice and commencement of condemnation action.

8. Project plans may be inspected at the Office of the Town Administrator located at 321 Myrtle Avenue, Pawleys Island, SC 29585.

9. THE CONDEMNOR HAS DETERMINED THAT JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES, TO BE THE SUM OF ZERO DOLLARS (\$0.00), THE REASON BEING THAT THE PROPERTY STANDS TO GAIN A NET BENEFIT OF FIFTY-FOUR THOUSAND FIFTY EIGHT DOLLARS (\$54,058) UPON COMPLETION OF THE PROJECT, AND HEREBY TENDERS PAYMENT OF ZERO DOLLARS (\$0.00) TO THE LANDOWNER.

10. Payment of Zero Dollars (\$0.00) will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The request and agreement must be sent by first class certified mail with return receipt requested or delivered in person to the Condemnor at the following address: Office of the Town Administrator, Town of Pawleys Island, 321 Myrtle Avenue, Pawleys Island, SC 29585.

11. If the tender is rejected or if the Landowner fails to respond within thirty (30) days from tender, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the Property is situated. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

12. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

13. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, or the Landowner fails to respond to this Condemnation Notice within thirty (30) days from service hereof, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. The notice shall state whether the Condemnor demands a jury trial of by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

14. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

15. In the event the Landowner accepts the tender hereof, the attached Agreement should be signed and returned to the Condemnor within thirty (30) days of service of this Condemnation Notice.

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/N. David DuRant, Sr.

N. David DuRant, Sr. (SCB #1803)

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: 843-650-7800

Facsimile: 843-650-8090

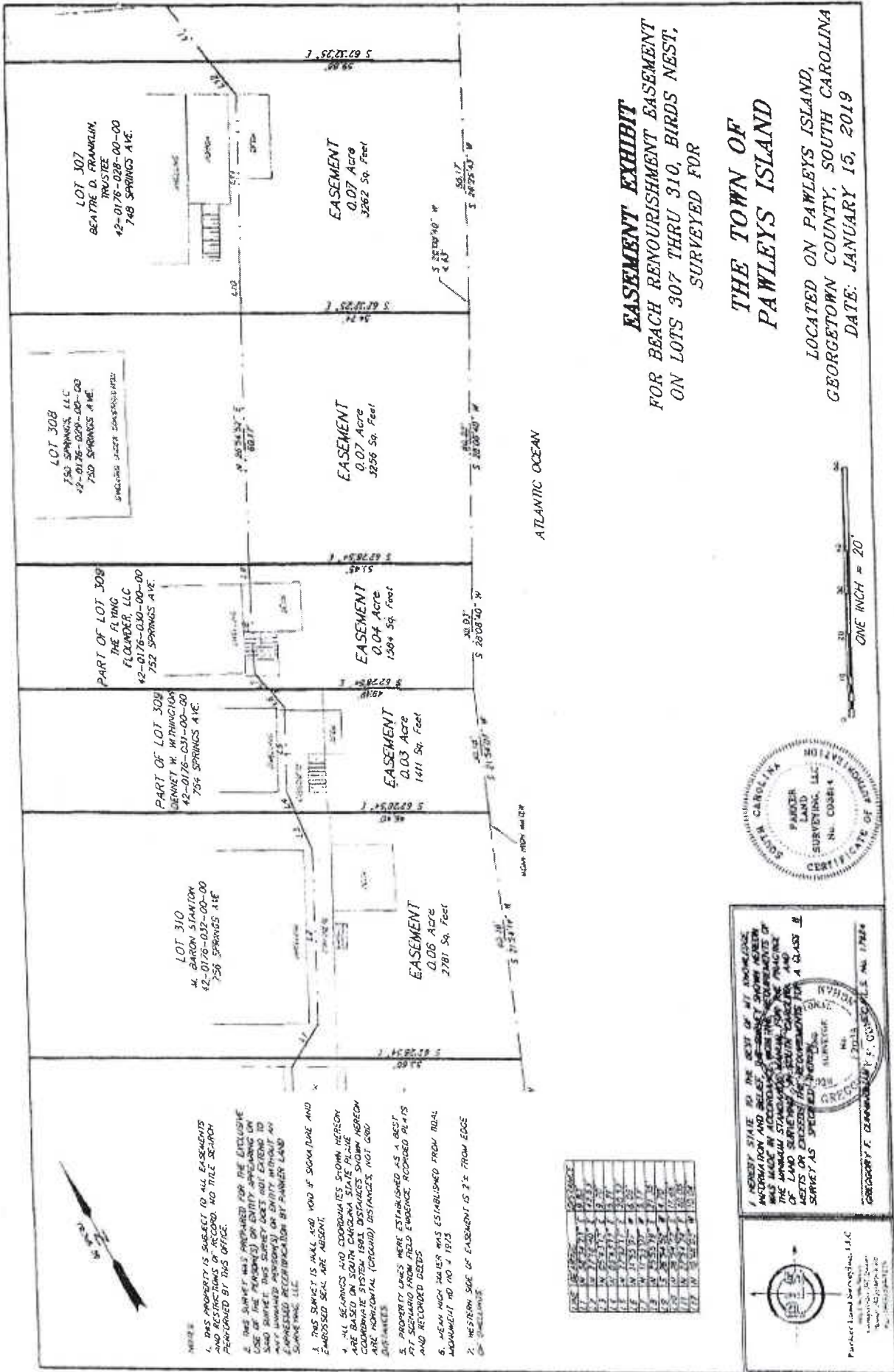
Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)

**Attorney for the Condemnor**

June 9, 2020

## **Exhibit “A” (Easement Areas)**





STATE OF SOUTH CAROLINA )

COUNTY OF GEORGETOWN )

## BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

The Franklin D. Beattie Preservation Trust

**does hereby grant, bargain, sell and convey to the Grantee, the** Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats.

Lot 307 (Easement Exhibit) recorded Data, referenced and shown as 0.07 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-028.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other



work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and Seals  
on this Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

The Franklin D. Beatties Preservation Trust

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Its Authorized Agent

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, personally appeared before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
of Pawleys Island

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed \_\_\_\_\_ of the Town of Pawleys Island, personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GEORGETOWN**

**AFFIDAVIT**

**PERSONALLY** appeared before the, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 748 Springs Avenue, **Pawleys Island, SC 29585**, bearing **Georgetown County** Tax Map Number **42-176-028.00.00**.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) ☒ X Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The Deed recording fee is composed as follows:
  - (a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_.
  - (b) Place the amount listed in item 5 above here: \$ \_\_\_\_\_.
  - (c) Subtract item 6(a) from item 6(b) and place result here: \$ \_\_\_\_\_.
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this \_\_\_\_\_  
 day of \_\_\_\_\_, 20\_\_\_\_.

(Notary Public)  
 My commission expires \_\_\_\_\_

\_\_\_\_\_  
 Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.  
 Print or Type Name Here

June 9, 2020 Town condemnation notice to Stanton [included here once, but not again as Exhibit C to Landowner December 6, 2020 affidavit of papers first served, below].

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Town of Pawleys Island,

Condemnor,

v.

M. Baron Stanton,

Landowner.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2020-CP-22-

**CONDEMNATION NOTICE  
AND  
TENDER OF PAYMENT**

TO: THE LANDOWNER ABOVE-NAMED AND THEIR ATTORNEYS, IF ANY

Pursuant to the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-10 *et seq.*, you are hereby notified as follows:

1. The Town of Pawleys Island is the condemnor herein and seeks to acquire an easement on the real property described herein (“the Property”) for public purpose.

2. M. Baron Stanton is named as Landowner by virtue of their claim of title or interest in the Property as shown by that certain Deed dated March 27, 1998 and recorded on April 14, 1998 in Book B862, at Page 17 in the Register of Deeds for Georgetown County.

3. The following is a description of the Property subject of this Condemnation Notice and a description and map of the property interest sought to be acquired in and to the Property by the Condemnor:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley’s Island, State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S. Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat; to the East by the high water mark of the Atlantic Ocean; to the South on Lot #311, as



shown on said plat; and to the West on the high water mark of said creek as shown on said plat. Saving and excepting on the West side a twenty-five (25') foot width for street and utility lines.

The beach renourishment easement is in the shaded area on the map as described hereinbelow:

Lot 310 (Easement Exhibit) recorded Data, referenced and shown as 0.06 Acre on a map by Parker Land Surveying, LLC, showing a perpetual and assignable easement and right-of-way in, on, over and across (the land described in Exhibit "A" for use by the (Sponsor), its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit said; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store, and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the Pawleys Island Coastal Storm Damage Reduction Project, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement, excepting personal owned improvement within the easement area (i.e. elevated decks, stairs, walkways) as shown on attached Exhibit A, reserving, however, to the Grantor(s), (his) (her) (its) (their) (heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the Project Sponsor) and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines. This easement does not cover the entire Lot 310 as described above, but only as to the portion of the easement shown in the shaded areas on Exhibit "A" attached hereto.

4. The Town of Pawleys Island is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.*

5. The property interest sought to be acquired herein is intended for public purpose, more particularly for the Condemnor's beach renourishment project in conjunction with the Army

Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.

6. This Condemnation Notice is served on the Landowner pursuant to S.C. Code Ann. § 28-2-240 (Condemnation by Trial).

7. The Condemnor has complied with the requirements set forth in S.C. Code Ann. § 28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the service of this Condemnation Notice and commencement of condemnation action.

8. Project plans may be inspected at the Office of the Town Administrator located at 321 Myrtle Avenue, Pawleys Island, SC 29585.

9. THE CONDEMNOR HAS DETERMINED THAT JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES, TO BE THE SUM OF ZERO DOLLARS (\$0.00), THE REASON BEING THAT THE PROPERTY STANDS TO GAIN A NET BENEFIT OF SIXTY THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$60,750.00) UPON COMPLETION OF THE PROJECT, AND HEREBY TENDERS PAYMENT OF ZERO DOLLARS (\$0.00) TO THE LANDOWNER.

10. If the tender is rejected or if the Landowner fails to respond within thirty (30) days from tender, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the Property is situated. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.



11. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

12. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, or the Landowner fails to respond to this Condemnation Notice within thirty (30) days from service hereof, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. The notice shall state whether the Condemnor demands a jury trial or by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

13. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

14. In the event the Landowner accepts the tender hereof, the attached Agreement should be signed and returned to the Condemnor within thirty (30) days of service of this Condemnation Notice.

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/N. David DuRant, Sr.

N. David DuRant, Sr. (SCB #1803)

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: 843-650-7800

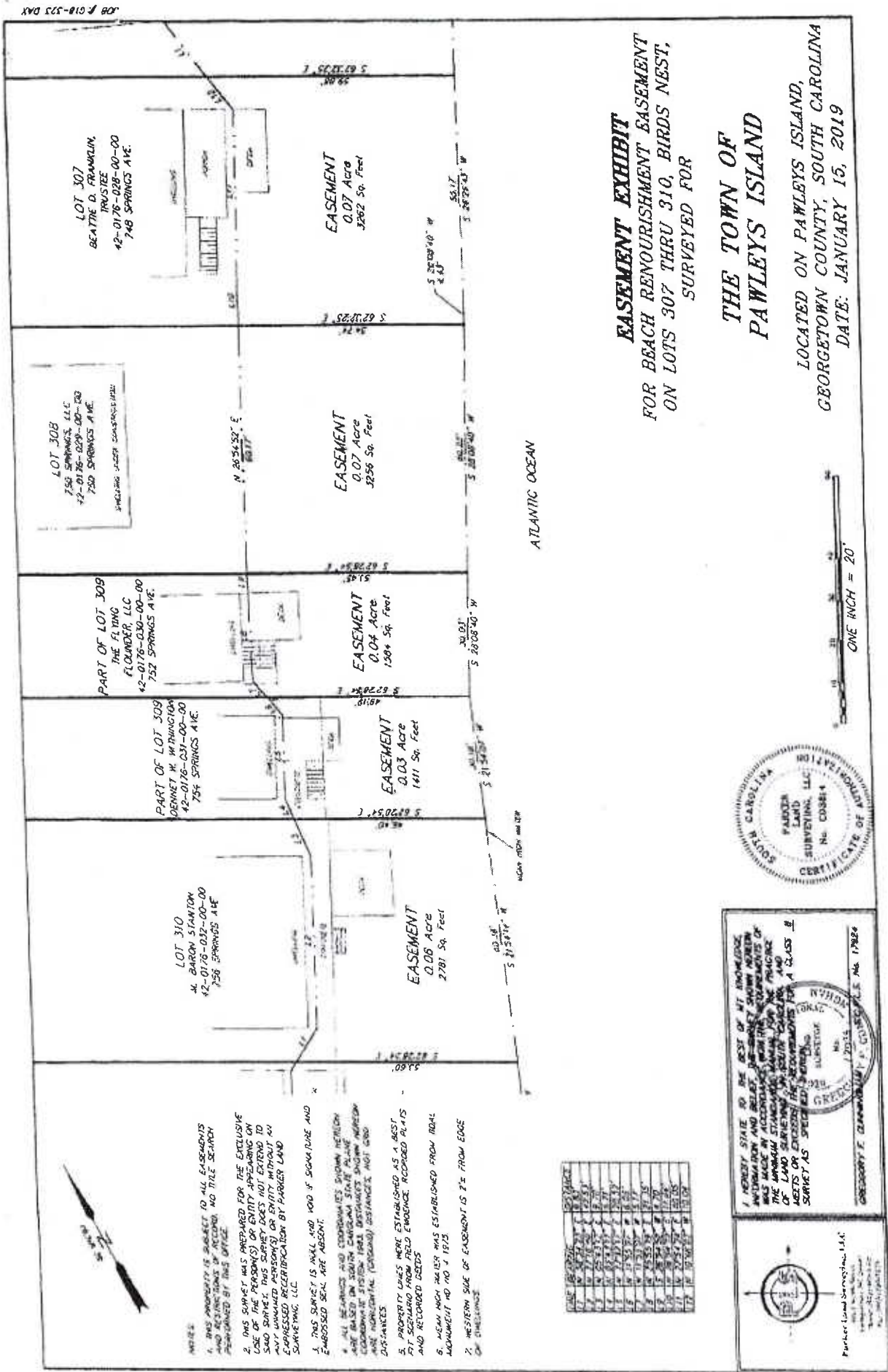
Facsimile: 843-650-8090

Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)

**Attorney for the Condemnor**

June 9, 2020

## **Exhibit “A” (Easement Areas)**



STATE OF SOUTH CAROLINA     )  
                                                            )  
 COUNTY OF GEORGETOWN        )

# BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

M. Baron Stanton

**does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:**

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley's Island, State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S. Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat; to the East by the high water mark of the Atlantic Ocean; to the South on Lot #311, as shown on said plat; and to the West on the high water mark of said creek as shown on said plat. Saving and excepting on the West side a twenty-five (25') foot width for street and utility lines.

Lot 310 (Easement Exhibit) recorded Data, referenced and shown as 0.06 Acre on a map by Parker Land Surveying, LLC, showing a perpetual and assignable easement and right-of-way in, on, over and across (the land described in Exhibit "A" for use by the (Sponsor), its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit said; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store, and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Coastal Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement, excepting personal owned improvement within the easement area (i.e. elevated decks, stairs, walkways) as shown on attached Exhibit A, reserving, however, to the Grantor(s), (his) (her) (its) (their) (heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations,



provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the Project Sponsor) and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines. This easement does not cover the entire Lot 310 as described above, but only as to the portion of the easement shown in the shaded areas on Exhibit "A" attached hereto.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be

used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and  
Seals on this Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
M. Baron Stanton

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed M. Baron Stanton, personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
of Pawleys Island

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, \_\_\_\_\_ of the Town of Pawleys Island, personally  
appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution  
of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )

**AFFIDAVIT**

**PERSONALLY** appeared before the, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 756 Springs Avenue, **Pawleys Island, SC 29585**, bearing **Georgetown County** Tax Map Number **42-176-032.00.00**.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The Deed recording fee is composed as follows:
 

|                                                              |          |
|--------------------------------------------------------------|----------|
| (a) Place the amount listed in item 4 above here:            | \$ _____ |
| (b) Place the amount listed in item 5 above here:            | \$ _____ |
| (c) Subtract item 6(a) from item 6(b) and place result here: | \$ _____ |
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_.

(Notary Public)

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.

Print or Type Name Here

July 21, 2020 Landowner Summons and Complaint to stop attempted condemnation.

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
|                         | ) |                                   |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-_____ |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | SUMMONS                           |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
| _____                   | ) |                                   |

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 746 Springs Avenue, including but not limited to the filing of the Condemnation Notice previously served, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.

**TO: THE ABOVE NAMED DEFENDANT: YOU ARE SUMMONED AND REQUIRED**

to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your Answer upon the undersigned at P. O. Box 245, Columbia, SC 29202 (1230 Richland Street, 29201), within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/M. Baron Stanton  
M. Baron Stanton (Bar#7970)  
Stanton Law Offices, P.A.  
PO Box 245  
Columbia, SC 29202  
Tel: (803) 929-1484  
[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)  
Attorney for Sunset Lodge, LLC

7/20/20

|                         |   |                                              |
|-------------------------|---|----------------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS                 |
|                         | ) |                                              |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-_____            |
|                         | ) |                                              |
| Sunset lodge, LLC,      | ) |                                              |
|                         | ) | COMPLAINT                                    |
| Plaintiff,              | ) | (Challenge of Authority to Condemn and In    |
|                         | ) | the Alternative, for Other Remedies)         |
| v.                      | ) |                                              |
|                         | ) | (Nonjury, except as to possible cause of     |
| Town of Pawleys Island, | ) | action arising in the alternative, for which |
|                         | ) | jury trial is demanded, so as not to be      |
| Defendant.              | ) | waived)                                      |
|                         | ) |                                              |
| _____                   | ) |                                              |

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 746 Springs Avenue, including but not limited to the filing of the Condemnation Notice previously served, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.

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in misrepresenting the purpose and scope of the easement, bars and disqualifies any claim by the Town that the easement is necessary.)

FOR A FOURTH CAUSE OF ACTION AND REQUEST FOR RELIEF.....56

(If, despite the Town’s prior determination that no easements were required, the Town could falsely re-label the project the Town completed as one which was completed instead by the Corps and as being a project for which an easement is required by the Corps, the easement sought to be acquired by the Town is still unnecessary, in that it includes far more than is necessary to accomplish its stated purpose, fails to balance any injury to Plaintiff, seeks things the Town already admitted in writing were not necessary, and, upon information and belief, seeks some things not sought from other owners.)

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AND REQUESTS FOR RELIEF

(Unanticipated arguments of the Town may give rise to other claims by Plaintiff in this or another action and Plaintiff does not waive jury trial on any that are so triable.)

PRELIMINARY STATEMENT

Plaintiff brings this action pursuant to S.C. Code Ann. § 28-2-470 and the common law to challenge the Town of Pawley’s Island’s attempt to condemn an easement on Plaintiff’s oceanfront land which is improved with a private residence.

There being no project requiring an easement, acquisition is completely unnecessary as a matter of law, and therefore constitutionally and equitably prohibited. The scope of the proposed acquisition is also broader than is necessary to accommodate any legitimate project and need for the easement, if there were any project and need. Procedural deficiencies, deliberate vagueness and confusion in the documents served by the Town, and the Town’s noncompliance with law also require a remedy of dismissal of its condemnation attempt, or at minimum, correction. All of the foregoing facts are more than a little imbued with, if not the Town’s fraudulent acts, its bad faith and abuse of discretion. These matters are set forth with more particularity herein.

There is no project for which the proposed acquisition is necessary, because the Town rejected the project for which the acquisition was originally proposed, and elected to complete,

and did complete, a larger, substitute, project, requiring no easements, before the Town ever attempted the threatened condemnation. Consequently, the condemnation attempt should be dismissed as a matter of law.

The “sand placement” easement the Town nevertheless seeks to acquire has always been overbroad and unnecessary for any renourishment project, whether past, present or hypothetical.

Among the serious problems with the easement that the Town now seeks to acquire is an unpublished issue the Town has tried for over a year to conceal, ignore, obscure or misrepresent. A term contained in a block of text the Town says was required by the Corps of Engineers when a previous project was proposed by the Corps of Engineers, which was similar to the project recently completed by the Town, dictates that the owner signing the document does not merely grant permission to deposit sand on the owner’s property, but grants public access to the owner’s property, and more. There is no demonstrated legal justification or authority for such a despotic third-party exaction.

The good faith of three property owners including Plaintiff is demonstrated by the fact that over a year ago, all three separately offered signed easements to the Town. These were offered for the now moot, unperformed, Corps of Engineers beach renourishment project. In response to the needs which the Town had actually officially stated for the now moot project, these owners offered, and in some cases, recorded, signed easements, which were more than sufficient for such stated needs.

These purposes stated by the Town were placement and maintenance of sand on the beach and on part of the owner’s property. The three owners fully complied.

The Corps of Engineers project was later rejected by the Town with no possibility of resurrection because the Town completed its own larger project instead of the Corps project. In



doing so, the Town officially, expressly, determined that the requested easements were “not necessary.”

The bad faith or abuse of discretion of the Town is demonstrated by Town Council and its agents never disclosing that these owners had signed and proffered easements.

In bad faith, Town Council and its agents shamed and defamed the owners, and instead presented the matter publicly – in statements to the newspaper, and in official, broadcasted, deliberations -- as if these owners would not sign “an easement,” which the Town consistently represented as being essentially for the limited purpose of sand placement on the beach, including the owner’s adjacent private property.

The bad faith or abuse of discretion of the Town is further demonstrated by the fact that not one single Town Council member has publicly acknowledged even reading the subject easements proposed by the Town. The scope of the proposed acquisition is a major issue.

Not one single Town Council member acknowledges knowing, or even asking, what it was in the proposed easements the owners objected to, much less, why they objected. These issues are not contained in a single deliberation by Town Council.

Instead, the Town Council was either misled that the owners had outright declined to sign an easement of any kind allowing sand placement on their property, or Town Council knew the contrary and itself misled the public that the owners had declined to give any easement at all. The Town Council was accordingly also either misled about the contents and scope of the proposed document, or Town Council knew the contents and scope and owner concerns, pretended lack of such knowledge, and made no consideration of such matters.

In either case, deliberation concerning the excessive, unnecessary and illegally “required” exactions in the document was completely omitted. The Town not only made no factual

conclusions at all on these factors it should by law have considered, but had no evidentiary support for any facts it did consider, and proceeded under errors of law on which Town Council was uninformed or misinformed. Town Council's decision making process was, accordingly, if not in bad faith, an abuse of discretion.

These considerations are eclipsed, of course, by the Town already deciding that the easements are categorically "not necessary." If the easements are not necessary, it is per se bad faith and abuse of discretion to condemn something totally unnecessary, and condemnation cannot be allowed at all.

Returning to the fact that there is no still pending project at all for which the easements are now necessary, the Town may now assert the condemnation is now necessary for some other, future, hypothetical renourishment "project" of the Corps. The condemnation is still unnecessary and in bad faith in that any such putative future project is admitted by the Town to be speculative, unlikely, and by the Town's own calculations, most probably unnecessary for as much as twenty-two years, and that even if a project arises then, the Corps cannot be relied upon, and Corps involvement is speculative.

To say that condemnation is necessary under a legally questionable after-the-fact scheme under which the Corps does some followup to the completed \$14.8 million dollar Town Project by planting some sea oats and maybe putting up sand fence, is fiction. In any event, proceeding on this premise is not even an attempt by the Town to determine whether the scope of the proposed acquisition and the injury to the owner exceeds what is necessary for the mischaracterized "project." At minimum, this is an abuse of discretion.

To state that using sea oats and sand fence to fictionally self-label the actually Town-completed project as "a completed Army Corps project" provides an "insurance policy" for

which condemnation is necessary, is insufficient and is facially incorrect. Condemnation is not provided for a supposed “insurance policy,” instead of for a public project, and the Town thus admits the lack of necessity to condemn for any actual public project. Even the thin purpose of “insurance” is plainly inaccurate, which becomes more apparent when the Town explains on May 18, 2020 that -- more in the nature of a lottery ticket than an insurance policy -- “down the road, if money ever does become available, or if the Corps can get it,” the unpredictable and unreliable Corps may be able to use it or work out what will at that time still be unclear financial sharing.

The Town’s bad faith and abuse of discretion in attempting to condemn property for this “purpose” is all the more apparent when the Town admits on May 18, 2020 that it never would have even asked for easements for such a purpose two years earlier because of its speculative nature, but that, now, after having completed all desired renourishment without the Corps, the Town still has about 100 easements it had obtained back when a prospect of a Corps project existed. These were easements collected through the misrepresentations described herein and in no way justify condemnation to get more, just to play some odds.

In the alternative that an actual, bona fide, proposed additional project were to materialize, the easement sought has still been sought through knowing, intentional misrepresentation, lack of honesty in fact, spite (e.g., requiring things previously acknowledged to be unnecessary, requiring things not required of others, etc.), caprice, arbitrariness, and illegality (e.g., including third party exactions based only on secretive bureaucratic whim), and has also been sought under influence by legal error as to not only the nature of the easement that is sought, but also as to the lack of basis, or legal or practical need, for the easement or its numerous overbroad attributes. The easement sought has also been sought under influence of

legal error as to the consequences of Plaintiff granting it or the Town taking it (e.g., that the owner will have the same rights after acquisition of the easement as before, that the easement is for no more than putting sand on the beach, etc.).

In no way could it be successfully contended that the “project” (which is nonexistent) incorporating the easement which is professed to be necessary is designed in a way to enable sufficient public benefit while resulting in the least private injury.

The bad faith continues in that the easement is also being sought through bad faith noncompliance with procedural rules, which also obfuscates what is being sought. The Town began attempts to condemn without providing an appraisal at the time required by law, falsely certified that an appraisal had been timely provided and had been the subject of prior negotiation, and provided conflicting information about the scope of the easement it seeks to acquire.

In the Condemnation Notice served upon Plaintiff, the Town does not describe the scope of the easement at all. The Town only states that it seeks to condemn “an easement for public purpose,” describes Plaintiff’s property (the entire lot, as well as an additional described part), and attaches a map showing the geographical area of the easement (which conflicts with the earlier statement that the entire lot is “subject to the condemnation notice”). Without the name given to the attached map, the easement description in the Condemnation Notice would not even indicate the general type of project the easement is for. The purpose of an easement, rather than acquisition of complete fee simple title, is to acquire only the limited right to occupy the subject land in a certain specified way or perform only certain specified activities on the subject land. The Condemnation Notice does not specify at all, what powers and activities are included in the easement sought, i.e., the notice does not say the easement allows construction, piling of spoil material, public access, limiting access including that of the owner, allowing Town “operation”

of a public beach, restriction of walkover structures, removal of Plaintiff's property in the area, or anything else. A later paragraph alleging the "public purpose" of the easement limits it to being for "the Condemnor's beach nourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach." A separate, unincorporated document was simply sent with the Notice, with no explanation, and was not part of it. This unexplained document is also incomplete, missing the "Exhibit A" it states is attached to it. Plaintiff is not required to guess or decide for itself what the Town must mean to include in the drastic measure of condemning property.

Upon information and belief, as of July 19, 2020, the Town also has failed to respond as legally required to a request under the Freedom of Information Act, pertaining to, among other things, the contents of easements accepted from others, and the bona fides of communications with the Corps. All these facts constitute "fraud, bad faith or abuse of discretion," and the Town's contemplated condemnation action, currently stayed by this action, should be disallowed with prejudice.

In the further alternative that the Town later shows in good faith, any actual necessity for any easement at all across Plaintiff's land and improvements, it is still necessary to first limit any condemnation to what is actually reasonably necessary to the "project" (which is nonexistent), causing the least private injury necessary. Whatever the result of that exercise, it is also necessary to clearly define the easement being sought, including its limitations and consequences, so that it and the damage it would cause can be properly valued.

To do so requires correction of the Town's persisting legal error as to not only the nature of the easement that is sought, but also the lack of basis, or legal or practical need, for the

easement attributes the Town either recklessly or deliberately attempts to include, and as to the consequences of Plaintiff granting the easement or the Town taking the easement.

Additionally, the Town's bad faith noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed, so that Plaintiff will not be deprived of a proper opportunity, forum and orderly procedure for assessing value, including knowing exactly what is or is not proposed to be valued and what is or is not proposed to be taken.

In the alternative that Plaintiff's rights herein or in any contemplated condemnation action are adversely affected by the already completed project, Plaintiff may need the already completed actions of the Town to be redressed by damages or other monetary remedy, for which cause of action Plaintiff would and does demand a trial by jury, despite the nonjury portions of this action challenging the Town's right to condemn.

#### PARTIES, PEOPLE, AND FACTUAL BACKGROUND

1. Plaintiff is a limited liability company organized under the laws of the state of South Carolina, which owns property at 746 Springs Avenue, on Pawleys Island, in Georgetown County, South Carolina.

2. The Town of Pawleys Island is an ostensible municipal corporation operating in Georgetown County, South Carolina, ostensibly incorporated in or around 1985 and having ostensible Town limits coextensive with the physical geological island of Pawleys Island itself, extending to the center of the salt creek separating the island from the mainland.

3. The Town purports to be governed by a council form of government, requiring a mayor and four council members.

4. This action concerns proposed easements formerly proposed for a prospective project which did not occur. That project was followed by a different project, which has now

been completed. The now proposed easements are not for an actual, concrete, prospective proposed project. These easements, sometimes hereinafter referred to as the “Public Access Easements,” are, in reality, for, among other things, completely speculative, putative future construction and installation activities on Plaintiff’s land and improvements, putative future deposit on Plaintiff’s land and improvements of large volumes of dredged ocean spoil material, ongoing, perpetual broad ability of the Town to restrict the owner’s access to and use of the owner’s own land and improvements, open-ended perpetual public access to the owner’s land and improvements, and broad, ambiguous powers of the Town itself, as opposed to the public, to engage in endeavors on the owner’s land including “operating a public beach.”

5. Brian Henry is an individual owning an interest in property on Pawleys, but upon information and belief, owns no property in the area of the island in which owners are requested to execute the Public Access Easements. Henry owns, lives at least part of the time at, and may have previously resided at, property outside the Town of Pawleys Island elsewhere in Georgetown County, but in running for mayor, swore to reside on the Island at a seasonal inn in which he has an interest, within the Town of Pawleys Island. Henry acts as mayor. Henry was acting as mayor on Town Council at the time of its unanimous vote to condemn Plaintiff’s property, and at the time of the Town serving the Notice of Condemnation.

6. Henry, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Henry, before voting to condemn Plaintiff’s property, was aware of the nature and extent of Plaintiff’s objections to the Public Access Easements which are the subject of this action, Plaintiff’s early and continued

efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

7. Ashley Carter is an individual owning an interest in property on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Upon information and belief, Carter owns and has owned alternative residential property outside the Town of Pawleys Island elsewhere in Georgetown County, but has sworn to reside on the Island in order to run for and hold office in the Town. Carter is a real estate salesman affiliated with Pawleys Island Realty. Carter was on Town Council at the time of his, Henry's and the other members' unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

8. Carter, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Carter, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.



9. Sarah Zimmerman is an individual owning an interest in property on Pawleys, but upon information and belief, none for which the owner is requested to execute the Public Access Easements. Zimmerman is a real estate saleswoman affiliated with RE/MAX Beach & Golf, which upon information and belief is actually Beach and Golf Properties of the Carolinas, LLC. Zimmerman was on Town Council at the time of her, Henry's, Carter's, and the other members' unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

10. Zimmerman, upon information and belief, has at least a primary school education, speaks English as her native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of her own statements or those of others in which she concurs by word or action. Upon information and belief, Zimmerman, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, falsely presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

11. Guerry Green is an individual owning an interest in property offered for rent on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Upon information and belief, since approximately 2013 or before, Green has owned residential property outside the Town of Pawleys Island elsewhere in Georgetown County, but swore to reside on the Island in order to run for office in the Town. Green is a principal of a companies located in Georgetown County known as Screen Tight and

GreenCore Materials. Green was on Town Council at the time of his, Henry's, Carter's, Zimmerman's, and the other member's unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

12. Green, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Green, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

13. Lawrence "Rocky" Holliday is an individual owning an interest in property on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Holliday was on Town Council at the time of his, Henry's, Carter's, Green's, and Zimmerman's unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

14. Holliday, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Holliday, before voting to condemn Plaintiff's property, was aware of the nature and

extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

15. Ryan Fabbri is an individual, upon information and belief, not owning an interest in property on Pawleys. Nor does Fabbri live on the Island. Fabbri is a hired administrator of the Town. Fabbri is Town Administrator of the Town and reports to Town Council. Fabbri has worked directly with an engineering company and a contractor for the completed Town renourishment project which the Town decided did not require easements, has advised Town Council concerning the now completed project and other matters, has, with Town consent, made public and private presentations of the Town's promises and intentions regarding the project and its effects on property owners, has liaised with the United States Army Corps of Engineers ("USACE" or the Corps) on the earlier, later abandoned, possibility of USACE doing the now completed project instead of the Town, has upon information and belief, provided information and directives to the Town Attorney on the details, nature and requirements for potential and actual renourishment projects, has dealt with property owners and given legal advice in requesting and obtaining easements for earlier purposes of the possibility of USACE performing the now Town-completed project, and has performed other administrative and, it appears, executive, functions for the Town. Fabbri was present at and participated in the Town Council meeting May 18, 2020 at the time of Henry's, Carter's, Zimmerman's, Green's and Holliday's unanimous vote to condemn Plaintiff's property and was the direct contact of the Town for the Town Attorney at the time of the Town serving the Notice of Condemnation.

16. Fabbri, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Fabbri, before Henry, Carter, Zimmerman, Green, and Holliday voted to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's and other parties' objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

17. David Durant is an individual, upon information and belief, not owning an interest in property on Pawleys nor living on the Island. Durant is a hired Town Attorney of the Town. Durant, upon information and belief, lives in the Town of Surfside Beach. Durant was present as Town Attorney at and participated in the Town Council meeting May 18, 2020 at the time of Henry's, Carter's, Zimmerman's, Green's and Holliday's unanimous vote to condemn Plaintiff's property and was Town Attorney at the time of the Town serving the Notice of Condemnation.

18. Durant has a postgraduate degree, and therefore at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Durant, before Henry, Carter, Zimmerman, Green, and Holliday voted to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's and other parties' early

and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

19. Gladys Oranga is an individual, upon information and belief, not owning an interest in property on Pawleys nor living on the Island. Oranga is a paralegal employed in Surfside Beach by and acting for the Town Attorney of the Town of Pawleys. Upon information and belief, Oranga has at least a primary school education, speaks English, and is able to read, write and understand English in spoken and written form.

20. After the Town sent a packet of loose leaf papers including a Condemnation Notice (but no appraisal), Oranga,, upon information and belief, confirmed in writing to another owner that the easement the Town wished to make an offer for and negotiate for would have different terms and a map attached to it (without amendment of the condemnation notice to that owner) which was materially different (being more disadvantageous to the owner) from the terms and map attached to the condemnation notice served on that owner. Upon information and belief, the new terms and map to be attached to the offer had previously been agreed by the Town to require and include more than was necessary for the contemplated "project," and had thus previously been agreed by the Town to be revised in a less onerous manner.

21. Plaintiff's property is on the southernmost mile of Pawleys Island (sometimes hereinafter "the south end") and is bounded on the east by the mean high water mark of the Atlantic Ocean.

22. The mean high water mark is not an actual mark on the beach itself.

23. The mean high water mark is an average measurement defining a potentially moving boundary line of the property owned by Plaintiff, extending the area of Plaintiff's fee simple title so that it always remains oceanfront.

24. Under the deeds from which Plaintiff's title derives, if the beach builds up or erodes or the ocean recedes or rises, in such a manner that the mean high water mark does not move, Plaintiff's eastern property boundary does not move.

25. Under the deeds from which Plaintiff's title derives, if the beach builds up or the ocean recedes in such a manner that the mean high water mark moves eastward, Plaintiff's eastern property boundary also moves eastward, so that it always remains oceanfront.

26. Since the 1950s or before, Plaintiff's land has been taxed on the basis of an area extending forty-nine (49') feet more or less oceanward of the current oceanwardmost (easternmost) part of Plaintiff's home on the premises constructed in the 1950s, this easternmost part being stairs providing access to the home. This area extends fifty-six (56') feet more or less oceanward of the location of the current most eastern main pilings of the structure of Plaintiff's home, which was constructed on the land in the 1950s.

27. The mean high water mark in the proposed Public Access Easements which are the subject of this action is shown in the foregoing approximate locations relative to the above-mentioned features of the structure.

28. The original and current construction of the house of Plaintiff is two stories.

29. Sometime before 2008, the Town began consideration of attempting to artificially build up the natural beach on the Island through excavation, dredging or other available or permitted means, and depositing large volumes of the dirt, sand, mud, shells, rocks or other spoil materials on the beach, which materials would be certified as ecologically and structurally

compatible “sand.” (This general process is hereinafter referred to as “nourishing” the beach or, to use a slight misnomer, “renourishing” the beach.)

30. Beach “nourishment” has its pitfalls and detractors. Complaints include mudballs, rock, shells and dark, dirty sand virtually replacing beautiful white-sand beaches and the feeling of something like sharp aggregate underfoot when attempting to wade or swim. A walk on the beach then produces not sandy, but dirty, feet, and brings not just sand, but rock and dirt onto decks and porches and into the house. The effect is worse when children, or adults, dig, turning up dark sediment, and coming in with dirt under their fingernails. Despite these detractions, Plaintiff attempted to cooperate in the desire and decision of the Town to renourish.

31. Complaints also include an altered foreshore, resulting in a steeper, if not cliff-like, descent of the beach and surf bottom into the water at the immediate shore, resulting in waves breaking immediately at shore and slamming into the steeply rising bottom just a few feet from the end of water, strong undertows and rip currents. These features have generated observations and complaints in North Carolina and other places ranging from making surf walking and “beach sitting” less convenient, less scenic and less pleasant (“We were like cows on a hillside [(like mythic Sidehill Dodgers)]”), to causing increased cervical injuries to surfers, creating drowning hazards for toddlers and others, causing poorer surfing and swimming conditions, creating an impediment to sea turtle reproduction, and posing a danger to already living sea turtles. Despite these detractions, Plaintiff attempted to cooperate in the desire and decision of the Town to renourish.

32. Complaints also include “sand” deposits exterminating entire existing populations of coquina clams and molecrabs (“sand fleas,” but not the type that fly) in the shallow surf, which provide food to some shorebirds and marine organisms.

33. Larger complaints include obstruction of view, in the case of construction of artificial dunes. Also included are physical limitation of beach access and a longer distance to the water from beachfront homes, and large scale geological and ecological consequences (e.g., silting and clogging of inlets and creeks) from removing large volumes of “sand” from one place, and putting it in another where it has not previously existed, only to find out later the magnitude of the unintended consequences of its removal, deposit, or later migration or overwash elsewhere.

34. As of July 9, 2020, scores of owners on the south end of Litchfield, the immediately neighboring beach to the north of Pawleys, filed objections to a proposed renourishment on the south end of Litchfield using offshore “sand,” because, among other reasons, their property was governed by a homeowner’s association which could assess them hundreds of thousands of dollars to primarily benefit others. One concern raised by owners opposing use of offshore sand was the quality of sand placed on Pawleys Island in the course of the completed renourishment eventually described below. It contained mud and shell. The proposed Litchfield project has been revised to use trucked-in sand from an inland source.

#### Early Corps Plans

35. In or around 2004 (some report 2006), the United States Army Corps of Engineers designed a project to renourish the beach on the south end of Pawleys Island, where Plaintiff’s property is located.



### Nonaction by Corps

36. The Corps's project was approved by the decision structure of the Corps and by any other required governing entities, but was not funded by the United States Congress.

37. For approximately fourteen years, Congress declined to include appropriations in the annual federal budget to fund the approved project. As the then acting mayor of Pawleys Island reported on October 25, 2011, the status of renourishment in October 2011 was "No change. No funding. No Progress!"

### Town Plans

38. In or around 2015, the Town designed its own nourishment project and began preparations to do and pay for a nourishment project on its own, for the greater part of the Island, including the parts where then members of Town Council, and present members of Town Council (Henry, Green, Holliday, and Carter), owned property.

### Re-emergence of Corps Plans

39. In or around 2018, the Corps announced it had funding to proceed with a project to renourish the south end, as approved in or around 2004 but not funded for around fourteen years.

40. The Town had to decide whether to delay commencement of its own project, which was for both mid-island and the south end, while waiting on the Corps to decide in what manner and with what timing it would do the south end project, or whether the Town should proceed without the Corps entirely and not miss another hurricane season.

41. The Town decided to wait on the Corps.

42. The Town did so under the expectation that the Corps would do its south end project and the Town would do the mid-island project it had planned, using the Corps as the Town's agent for supervision and contracting.

#### Request for "Sand" Easements

43. In early 2019, the Town announced to property owners that because the Corps would be doing the south end renourishment project, easements for "renourishment" would be needed, but only from south end owners, for 113 properties.

44. In March 2019, the Town, through Fabbri, stated that proposed easement grant documents had already been prepared and that the Town had begun to mail them out. The Town, through Fabbri, represented to all south end owners: "The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project."

45. No mention was made by the Town of owners providing an easement, not only to the Town, but to the general public. No mention was made in the latter case, of "public access" over the owner's entire lot, or, at minimum, two (2') feet from the remaining portions of the owner's house not destroyed in the course of the renourishment. Public access, while generally considered beneficial to the public who want it, is generally not considered beneficial to those whose rights are taken in order to provide it, nor is public access generally considered beneficial to the value of property either subjected to it or even adjacent to it. Public access, when provided, may include general traffic and occupation, frolic, day camping, inadvertent littering, immaculate pet exercise, cheerful and celebratory yelling, admiration of the occupants inside the adjacent house or their belongings, playing favorite tasteful music, showing sweet physical love

of each other, putting up large beautiful tents, breathing only through face masks at a distance downwind, or gathering to respectfully and peacefully picket and protest regarding important issues of a socioeconomic nature, or pertaining to political party or elections, or relating to gender, sexual, or public-access matters, or others. No mention was made by the Town of the owners granting access to the public, permitting the above-described activities by the general public (i.e., strangers) within two (2') feet of the owner's private residence, if not on the owner's whole lot and improvements). No mention is made of this item of scope, which has nothing to do the public doing any work to deposit sand, to construct beach profiles, to erect sand fence or to plant sea oats.

46. No mention was made by the Town of encroachment of the easement (including public access) onto property improvements of owners, like previously private decks, steps, walkways, etc.

47. No mention was made of allowing the foregoing access of the general public, deposit of sand, creation of artificial dirt and rock dunes, and destruction of the owner's improvements – all, up to two feet from the main pilings of the owner's house.

48. No mention was made by the Town of subjecting not just the "work" area, but the entire lot of the owner, to general public access.

49. At this same time in March 2019, the Town, through Fabbri, represented to all south end owners, "The easement provides the town and its contractors with the ability to work in the area of the beach."

50. In early 2019, the Town, through Fabbri, sent proposed easement grant documents to south end property owners, not offering to pay anything for the grant of partial interest in the subject real estate, stating, again, as to the scope of the proposed easement: "The easement will

be used to construct and maintain the improvements authorized under the Pawleys Island Coastal Storm Risk Management Project. Only the work specifically authorized under this easement and under the Pawleys Island Project as authorized by Congress, will be performed.”

51. However, the proposed documents sent by Fabbri in or around March 2019 differed from all the Town’s foregoing representations regarding the simplicity and limited nature of the requested easement. The document reflected something far in excess of what was “required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project,” as represented by the Town.

52. The requested Public Access Easement grant was excessive, injurious, contrary to the representations of the Town, and unnecessary to the described project in the following particulars, among others:

- a. The grant, which was forever, was not just to “the Town.” It was to the Town “or its assigns,” e.g., USACE or potentially others.
- b. Shockingly, it was also to the “public,” for “public access.”
- c. The grant was not limited to being active and valid only when renourishment work, maintenance, sand fence erection or sea oats planting was being done. It was “perpetual” and had no limitation language to indicate it was anything but continuous as to much more than allowing a deposit of “sand” to remain. It in fact provided not only for “maintenance,” which is an unlimited ongoing activity, but also “public access” and such things as “patrolling” and “operating a public beach.”
- d. The grant included a map/plat showing the boundaries of the allowed project work, which encompassed the land and improvements two (2’) feet from the main

pilings of Plaintiff's house, and included components of Plaintiff's house such as portions of the stairs -- and this proposed grant explicitly, in plain English, provided for the ability of the Town or its assigns to destroy things within the easement area.

e. Despite the attached map/plat showing a smaller area, the plain English language of the written proposed grant was devoid of appropriate relational language (e.g., "the premises subject to this easement is ....") and described the entire lot of Plaintiff as being subject to the easement, and the easement scope language of the document went on in other passages to describe the rights of the grantees -- the Town, and its assigns, and the public -- to do various things in the "described" property, which literally was the whole lot.

f. The grant included the right of the Town or its assigns to exclude the owner from the owner's land under a broadly worded right to "limit access" to "dune areas" in order to "facilitate preservation" of vegetation or dunes.

g. The grant included the right of the Town to engage in broad activities on Plaintiff's land, including "patrolling," "operating" and "maintaining" a "public beach a[nd] dune system."

h. The grant, after clarifying the right of the Town and its assigns to destroy Plaintiff's owned improvements constructed on Plaintiff's land in the mapped area (and the rest of the lot), and the right of the Town and its assigns to limit Plaintiff's access to Plaintiff's property, also restricts Plaintiff to building only such walkovers as may be "approved" by "a designated representative" of the Town, without any statement of standards anchored to state or local law or anchored to any language in the grant itself. That is, rather than leave Plaintiff subject only to such lawful restrictions as may be

imposed under state or local law, the grant adds an additional private-law layer of restriction in the conveyancing document, which restriction can be exercised by whim of some unknown Town's or "project sponsor's" "designated representative," without regard to other law or regulation.

53. Assuming the gravely serious and perpetual document to be the result of haste, ignorance of its permanence and gravity, or inattention, or to drafting by an unlicensed person, Plaintiff eventually set about preparing an easement grant which was responsive to the Town's previously publicly explained needs. Plaintiff tried to prepare a document which was as close as possible to the document requested by the Town, but one which corrected, among others, the above defects. Plaintiff prepared its own proper plat and an easement which was more than that "required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project," this being the purpose stated by the Town.

54. Into the spring, the Town continued to represent that the easement was for limited purposes, activities and powers, but, unbeknownst to Plaintiff, several other owners, too, had read and understood the gravity of the proposed document.

55. On April 20, 2019, in a Town meeting for property owners, Fabbri, speaking for the Town, acknowledged that "the project" had "taken many turns" and had "changed a lot in two years." Fabbri reported that of the 113 easements sought, he had 70, with about 40 to 45 to go.

56. In the April 20, 2019 meeting, Fabbri, speaking for the Town (at about time stamp 16:19 of the video record of the meeting), emphasized that there would be "no work on or under decks, patios, or porches." Fabbri continued, "People are concerned about the easements. Are

we going to tear up their walkway? Are we going to tear up their stairs? The idea is to do our best to work under and around.” The proposed perpetual easement grant Fabbri sent to Plaintiff in March made no exception for such items and affirmatively showed them in the mapped area.

57. Speaking for the Town, Fabbri continued April 20, 2019 (at time stamp 17:59): “I know it is private property and I don’t want anyone to sign anything they are not comfortable with. \*\*\* At the end of the day, this is an easement to the Town, not the federal government.”

58. Fabbri continued, “This easement will always be controlled by five council members who live here, who live here full time – who, I cannot imagine for the next fifty years or however long this easement is in place, that they are going to do something to violate your rights, or to screw you over. I cannot see that happening.”

59. The proposed easement grant sent by Fabbri to Plaintiff in March 2019 was perpetual and was not limited to the Town – it was to the Town or its assigns, which could include the federal government; the composition of Town Council changed within the next year; Town Council included then, and still includes, members who do not live full time on the Island and the next mayoral election involved a legal dispute over the actual residency of the challenger to Braswell; Upon information and belief, Town Council has made as close to zero effort as is possible to advocate for Plaintiff’s property rights and reasonable concerns to USACE; and the present Town Council has now, upon information and belief, knowingly voted to condemn a clearly excessive and unnecessary “easement” on Plaintiff’s property, while making false public pretenses about the nature and scope of the requested easement, about their lack of knowledge of the nature and scope of Plaintiff’s objections to it, and about the extent of Plaintiff’s efforts to cooperate in providing, free of charge, an easement within what have been publicly touted by the Town as the limits of the necessary scope.

60. Contrary to Fabbri's assurances, Town Council has done little or nothing to protect Plaintiff's property rights and may actually be the sponsor of their violation. On and before July 4, 2020, there were already numerous tire tracks of a full size nonemergency Town vehicle on the dry sand beach on Plaintiff's property, while, with the exception of emergency vehicles, driving on the public beach in the Town is prohibited by Town ordinance, and driving on Plaintiff's land is a trespass. As described hereinbelow, the Town now has an appraisal report on Plaintiff's property but has never contacted Plaintiff to obtain any permission to enter onto Plaintiff's property as required by statute.

61. Speaking for the Town on April 20, 2019, in response to questions about public access language in the proposed documents, Fabbri represented that the project would be complete and at an end when the sand fill was in place, and at that point, all the public access rights in the proposed easement would also be at an end: "It will only be used for this project," he stated (at time stamp 29:42). "It will never be used for anything else." As demonstrated further herein, the Town's later and current insistence on public access -- if necessary, even through condemnation -- even after the Corps project was rejected and the Town's project has been completed, renders Fabbri's assurance totally and utterly false.

62. Fabbri explained (at time stamp 29:48), "I can promise you that and can say it with one hundred (100%) percent confidence, because it is to the Town." (Emphasis Fabbri's.)

63. Fabbri continued, "And I cannot imagine," Fabbri stated (at 29:48), "under any scenario, where five council members decide they're going to go do something that is going to violate your property rights. Zero." The easement the Town sought in March 2019 is not limited to the Town. The Condemnation Notice, as mentioned above, is incomplete. The proposed project by the Corps for which the easements were solicited in 2019 did not occur. Instead, the



Town did its own project and the Town project is now complete. Even the Town project, done with no easement from several owners, is at an end, and yet the Town Council, with no actual proposed project pending, has authorized and directed that a Public Access Easement, completely unnecessary by the Town's own previous statements, be obtained on Plaintiff's property by the drastic measure of condemnation.

64. At the same April 20, 2019 meeting, then mayor Jimmy Braswell, who was later succeeded in a contested, and disputed, Town election, stated (at 1:11:17), "I would have bet anything we would not be hit by four hurricanes in four years. \*\*\* Who is to say we won't go another twenty years and not be hit hard."

65. At the same April 20, 2019 meeting, Bill Otis, the mayor preceding Braswell, clarified (at 1:29:51) that the projects at hand were going to last only the few months necessary for the act of putting a specified volume of fill sand on the beach: "Today's decision is renourish or not – not what we're going to do ten, twenty, thirty years from now ... if we get to nine years and stop, we're better off." Otis emphasized (at 1:30:44), "Just separate [the two questions]: Do we do the beach project or not." Braswell concurred (at 1:32:26), "Once we do this first project, it's done." (Emphasis Braswell's.)

66. Unbeknownst to Plaintiff until later, on or about April 28, 2020, Fabbri received from another owner, the Beattie trust, a revised easement document intended to correct many of the same abovedescribed defects in the proposed Public Access Easement, and for which Beattie had included and recorded his own plat, prepared for him. However, upon information and belief, Fabbri requested a correction to a matter of form occurring on the signature page, and Beattie executed another page, authorizing it to be attached only to the easement grant Beattie had submitted. Upon information and belief, unbeknownst to Beattie at the time, Fabbri

thereafter attached the signature page to a Public Access Easement and filed it in the title records for Georgetown County. Upon information and belief when Beattie weeks later discovered these actions, he was in touch with both Fabbri and Durant, and eventually had the inauthentic document cancelled.

67. On April 30, 2019, speaking for the Town, Fabbri wrote by e-mail to another owner:

The intent of this letter is to clarify the purpose of the perpetual easement the Town is seeking for beach renourishment and how it will impact your property. The easement will be used only by authorized personnel solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project. Additionally, this activity is confined to the easement area only and not the remainder of your lot. The easement is and always will be for the purpose of constructing and maintaining the project. It does not change the boundaries of your property, convey property to the Town, or change your ability to access or use the property as you currently do, except in limited instances during the construction phase of the project. You will still maintain private access to the beach.

Fabbri is not a licensed attorney. Fabbri is not the mayor (who would also not have authority to make such statements binding on the Town). Fabbri did not cite any Town resolution or ordinance making such statements. Fabbri did not make such statements in an enforceable filed conveyancing document altering the wording or enforceability of the proposed permanent easement grant document. He cited no legal opinion from licensed counsel willing to make such a statement, nor did he offer a title insurance company which would insure such conditions.

68. Many parts of the statement in Fabbri's April 30, 2019 e-mail letter are patently false, and the Town will not agree to put any of them in writing in the requested easement grant itself.

69. The proposed Public Access Easement grant, by its statements in plain English, will and can be used by the public at any time. In plain English, the document proposed in

March 2019 provides for patrolling, “operating,” and maintaining a “public beach a[nd] dune system,” which is different and greater in scope than merely piling sand, maintaining it, planting on it and putting sand fence on it. On and before July 4, 2020, there were already numerous tire tracks of a full size nonemergency Town vehicle on the dry sand beach on Plaintiff’s property.

70. The proposed March 2019 document states that the easement does lie “over, upon, through and under” what is stated in plain English as “the following described premises,” and this phrase is followed by a description of Plaintiff’s whole lot.

71. The document does convey property to the Town. It is a proposed “grant” of a perpetual easement. An easement is a property interest, and in this case, if it is the perpetual right to both exclude the owner from the land, and a perpetual evisceration of the owner’s right to exclude others (the public) from the land, it is a very big property interest, close to taking the entire “bundle” of rights constituting property ownership.

72. The document does change, or allows the Town, or its assigns, to change, the manner in which Plaintiff accesses and uses the property, in that it allows, among other things, destruction of Plaintiff’s access structures, then permits a “walkover” only as approved by the Town with no standards set forth for such approval, and includes a broadly stated express ability of the Town, or its assigns, to “limit access,” which includes access of the owner. “Limit access” means to limit access.

73. Fabbri, who is not a lawyer, and who, upon information and belief, claims that in dealing with the Corps, he “never worked with a lawyer,” still must know his lay representations are false, unless he has received legal advice elsewhere that the document does not mean what a grade-school reader of English would know it to mean. He also must know that one cannot

describe an easement in purposefully broad or sloppy language, or even specific language, and then just “say,” on the side, what it means, or that it does not mean what it says.

74. The easement grant or the easement condemnation must explicitly say within the operative document – not in a “side letter” -- what the document means and does not mean. Otherwise, a purchaser, title insurance company, appraiser, or present owner, must assume the worst, and must at least assume what the document plainly says. This is the only basis for assessing whether to make the grant, and in a condemnation action, is the only basis on which to assess the value of what is taken and the damage done by the taking.

75. The Town’s hereinbelowdescribed repeated and continuous insistence on including sloppiness and deliberate ambiguity, if not express overreaching, permanently in Plaintiff’s chain of title, is in bad faith and is an abuse of discretion.

76. Under the proposed Public Access Easement, Plaintiff will not, as stated by lay fiat of Fabbri alone, “still maintain private access to the beach,” when in fact the document expressly grants to others, rights to engage in sweeping activities on Plaintiff’s land and improvements, “together with the right of public use and access.”

77. Upon information and belief, some time after another owner sent a proposed easement grant document to the Town on April 8, 2019, signed and in recordable form, and responsive to the actual stated needs of the proposed project, the Town rejected it. Here again, the Town was on acute notice of the fact that the easement the Town was actually trying to obtain was different from the easement the Town publicly and privately stated the Town needed.

78. Having consistently publicly misrepresented the scope of the easements sought by the Town to be minimal short-term authorizations to simply bring in equipment and deposit sand for a few months, Fabbri thereafter publicly (in the newspaper and Town published

communications) represented in references to certain other owners, that these owners had not sent Fabbri an easement or had not signed an easement, implying outright refusal rather than diligent cooperation. Fabbri did so rather than risk publicizing the inaccuracies of his own prior public statements and the problems with the excessive, overreaching, and in many ways, reckless or sloppy, proposed document.

79. Upon information and belief, the Town represented directly to another owner that the Town had never worked with an attorney at USACE and that USACE would not allow the Town to alter the defective draft document the Town had prepared and proposed, which included incomplete sentences, punctuation errors affecting intelligibility and meaning, misspellings, and typographical errors in addition to the other defects recounted herein. The Town represented that the wording and format of the document was “standard” and not susceptible to any exception.

80. Cursory research and a facial inspection of the document, however, reveals that the Corps has on other projects, employed similar language in only one block of text of the overall easement grant document, which the Corps refers to as “Standard Estate 26,” which is a further identification and description of the scope and nature of easement interest being conveyed. The remaining components of the document, such as the premises (identification of parties, the consideration, the granting clause), the description of the property subjected to the easement conveyed, the habendum clause, any reddendum clause, the execution and the probate or modernized acknowledgement or proof of execution, are clearly and necessarily left to the document assembler. Standard Estate 26 accounts for many, but not all, serious problems presented by the proposed Public Access Easements, including the sneaked-in grant of public access.

81. Further, Standard Estate 26 is anything but standard, or legitimate.

82. Standard Estate 26 has not been established by statute.

83. Upon information and belief, Standard Estate 26, as opposed to some other USACE Standard Estates, has never been adopted as, or in, a regulation in accordance with the federal Administrative Procedures Act.

84. Upon information and belief, Standard Estate 26 does not have the status of actually adopted written policy by USACE. There is no readily accessible record of who came up with its contents, or why, or who approved them. Further, other versions of this nonstandard “estate” contain blanks for insertions of exceptions, making it, per se, not standard.

85. Upon information and belief, continuing to try to resolve the matter, another owner, against constant dissuasion attempts by the Town, insisted on contacting the parties at USACE in Savannah perceived to be involved in the proposed project, D. Steinbeiser and J. Hinely. Upon information and belief, that owner provided them information about nonstandard, nonrequired Standard Estate 26, including a different version used elsewhere, and set up a phone call with one of them and a USACE lawyer.

86. Upon information and belief, in the May 1, 2019 call, the excessive and injurious nature of the proposed document was discussed, as were the public shaming and misinformation tactics employed by the Town to try to stampede remaining owners (under a falsely stated deadline) into signing the damaging document. Upon information and belief, USACE resolved to look into changing some of the more injurious aspects of the document, likely by employing an exceptions clause in the different version found by the other owner.

87. Upon information and belief, meanwhile and subsequently, the Town publicly falsely represented that the other owner was among a few of an inaccurately stated number, who “had not signed an easement,” or from whom the Town “had not received an easement” (e.g.,

“Lawyers with the Army Corps of Engineers were scheduled to talk Wednesday with one of two property owners who declined to sign easements to allow the federally-funded beach renourishment project on the south end”), attempting to defame and shame the other owner and others and intimidate them into signing the sloppily drafted, defective, excessive, overreaching, permanent easement grant described hereinabove. By early May, the Town, through Fabbri, was also already publicly threatening condemnation in statements to the newspaper.

88. Upon information and belief after the May 1, 2019 telephone conference, the Corps ignored the other owner’s request to work with him on the revision before sending anything to the Town. Upon information and belief, instead, after the Corps had some communication with the Town, in which the owner was not included, the Corps had the Town draft something to send the owner. Upon information and belief, it took the Town and USACE until around June 18, 2019 to respond, although Fabbri had previously represented April 30 as a drop dead date for owners to provide easements. Upon information and belief, then USACE responded, not to the owner, but to the Town, who would in turn send a re-drafted document with no record of whose drafting was involved or whose decisions went into what was presented.

89. Upon information and belief, meanwhile, the owner worked with the Town to alter other portions of the document, presumably not requiring Corps input, or otherwise being approved by USACE in communications not including the owner. Upon information and belief, one of these changes, agreed and proposed by the Town in writing around June 18, 2019, was to move the project line on the proposed attached map a few feet so that it did not envelope Plaintiff’s concrete foundation in the project area.

90. Upon information and belief, the putative Corps changes the Town drafted to other parts of the proposed document were inadequate to address all the other owner’s concerns.

Upon information and belief, for example, they excepted the owner's deck from destruction, but not from all aspects of the easement, such as public access, and also made no other effort to preserve the owner's rights to maintain, repair, replace or relocate the deck or other improvements. Upon information and belief, the owner promptly sent the Town a suggested further revision in June 2018.

91. Upon information and belief, despite the urgency for which the request for an easement was first presented to the other owner and others, for weeks and months, the owner never got a response.

92. Upon information and belief, it would be eight months before the other owner would hear anything further about a request for an easement, and about nine and a half months before the owner would hear anything further about the agreed substance of any proposed easement.

93. On July 26, 2019, Plaintiff recorded a proper easement and plat responsive to the Town's publicly stated needs, correcting many of the same abovedescribed defects,

#### Nonaction by Corps, Decision of Town That Corps is Unreliable

94. By early July 2019, for reasons of deciding to do a cost-benefit study of the potential Corps project, USACE put the proposed project on hold, with no promise of when it would be pursued or on what basis with regard to levels of sand or money.

95. By early July 2019, the Town, through Fabbri, was publicly claiming in statements to the paper that the Town had acquired all 113 easements sought. He also stated that the entire initial decision to let the Corps do the south end project was based on a waiver, in



writing, stating that a new cost-benefit analysis would not be needed and that the Town was exempt from it.

96. Then-mayor Braswell said, “[T]hey’re not holding up their end of the bargain ... They are leading us down the primrose path.” Holliday said, “We can’t rely on them.” Holliday later stated, “the question for council is, will they do it at all? That’s the biggest concern I have.” Carter stated, “There’s so much uncertainty in trying to deal with the Corps.” And again, Holliday stated that although he thought the benefits of Corps involvement were huge, “You have to weigh that against the potential that they won’t do anything at all.”

Town Plans, Action, Formal Decision That Easements Are Unnecessary, Rejection of Corps Project, and Completion of Town Project with No Easement

97. In or around July 2019, the Town rejected the Corps project. The Town decided to do its originally designed project, on its own, for both the south end and mid-island.

98. On July 29, 2019, the Town stated, “The easements that were collected were necessary for the Army Corp of Engineers to do our project.” However, the Town Council officially acknowledged, “...but if we decide to go with Marinex the easements are not necessary.”

99. Town Council decided to go with Marinex. As Fabbri, stated it August 1, 2020, “In light of the uncertainty clouding the future of the USACE option, council decided to forgo the federal project and move forward with Marinex and the construction of our original project.”

100. The Town's “Town of Pawleys Island South Carolina Local Comprehensive Beach Management Plan August 2011” is adopted by Town ordinance but is absent from the codified ordinance itself and is there said to be available at Town Hall. It is also available at <https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/beach->

management/local-comprehensive-beach. There, the Town claimed at page 47, that while the beach in the vicinities of some of the properties of the 2020 Town Council members had relatively stable beach and a low or negative long term erosion rate (measured in feet of shoreline change per year), the beach in the vicinity of Plaintiff's property (at Monument 4200C) had a long term erosion rate which was actually a positive accretion rate (presented as a positive number) of one and forty-one one hundredths (1.41) feet of positive beach accretion per year. These rates are shown in the Plan at Table 3 and in Figure 17, which is mislabeled as "Figure 4."

101. In August 2020, the Town continued to consider the various amounts of sand it could include in the Town project, which would be done without involvement of the Corps. On August 27, 2019 Rocky Holliday stated in the Town Council meeting that the Town now understood and acknowledged that they were not thinking about the timing of future projects correctly. Originally, he explained, the Town was looking at doing a project every ten 10 years. Now, in working with the Town's engineers and discussing it among Council members and Town "staff," there was another scenario reviewed with a much longer time span between projects. Holliday presented a graph showing that if the project added one million, one hundred thousand (1,100,000 c.y.) cubic yards of sand to the beach, it would be twenty-two (22) years before the additional sand eroded down to four hundred thousand (400,000 c.y.) cubic yards of sand more than was presently on the beach. According to Holliday and the engineers and Council and Town "staff," four hundred thousand (400,000 c.y.) cubic yards more than was then on the beach would be a "trigger point" for another renourishment project. I.e., it might be twenty-two (22) years before another renourishment project, assuming one were done even then.

102. In early September 2019, the Town decided to contract for the option providing the maximum amount of sand for the project, one million, one hundred thousand (1,100,000 c.y.)

cubic yards of sand, at a forecasted price of fourteen million, eight hundred thousand (\$14,800,000.00) dollars.

103. With no easement from Plaintiff different from the proper one Plaintiff had recorded July 26, 2019, between late October 2019 and late April 2020, the Town did all the renourishment in its own project, on its own, from stem to stern, with a contractor paid by the Town. By March 16, 2020, the full contracted volume of one million, one hundred thousand cubic yards of “sand” fill was in place and complete, from the south end north to just north of the pier, about three miles from Plaintiff’s house.

104. The renourishment on the south end was largely completed before mid-February 2020, and placed a large artificial dune-like berm of spoil material directly on the ocean side of Plaintiff’s house.

105. In February 2020, in an e-mail to all owners, echoing Holliday’s August 27, 2019 estimates of twenty-two (22) years of sand, Henry stated sand in place would last fifteen (15) years, with a substantial volume still remaining at that time.

106. The executed, engineer-designed-and-supervised project avoided Plaintiff’s stairs and bent the berm around a nearby owner’s deck to avoid the deck and other features. The berm, full of rocky material, shells, mud balls, rocks, and blackish-grey dirty sand, was high enough to completely block the view of the ocean from the under the house, and required the building of a walkway out from the deck to get up over it to get to the ocean.

107. The spoil material of the completed renourishment also built the beach up to where the high tide in early April 2020 generally did not rise or encroach closer than about seventy-seven yards from the eastern edge of Plaintiff’s stairs.

108. About a block south of Plaintiff's property, the engineer-designed-and-supervised project also moved the berm about thirty (30') feet seaward from its originally designed location. Upon information and belief, this was done simply to have the berm further from the public parking area already existing at that location.

#### Re-emergence of Corps Interest in Possible Future Projects

109. In late February 2020, after all renourishment under the Town's project was complete on Plaintiff's end of the beach and for miles to the north, Fabbri began contacting some owners to discuss obtaining either an easement or a revised easement because the Town wanted the Corps possibly to be available to do future renourishment projects and money swapping under a contrivance characterizing the Corps as a participant in the already completed project costing over fourteen million (\$14,000,000) dollars, on which the Corps had done nothing.

110. The contrivance was to let the Corps do as much as \$40,000 to \$80,000 worth of work erecting sand fence and planting "beach grass" (known locally as sea oats) on the already completed spoil berm and be "deemed" to have done the project. Upon information and belief, Fabbri admitted that if the Town obtained "the easements" and had the Corps enter the contrived relationship, given the Corps's and Congress's track records, there was absolutely no guarantee the Corps would ever do anything. However, he pointed out that if the Town did not get the Corps into such a relationship, there was a 100% chance the Corps would never do anything. This is the same principle which prevents one from winning a dollar in poker if one never sits at the table to take a chance, and dictates that one might not catch any fish at all in a boat, but one certainly won't if one is sitting on the couch.

111. Upon information and belief, after such a discussion, another owner, on February 24, 2020, yet again sent the Town a proposed easement grant, updating the owner's prior unresponded-to, June 18, 2019 revisions to correct previously unnoticed broad language allowing the Town or its assigns to exclude the owner from his own property, and clarifying, in light of adverse experiences in other jurisdictions suffered years after similar easements were signed, that the scope and nature of the Town's activities in the subject part of the owner's land were not to broaden or change, and that owner's access to and use of the beach would not be hindered or changed.

Requests for Easement for Speculative Possibility of Future Projects When No Actual Project is Any Longer Proposed or Pending

112. Upon information and belief around March 31, 2020, Fabbri contacted the other owner with what was represented to be the Corps's response to the revisions requested by the owner about nine and a half months earlier, on June 18, 2019, before the Corps project was rejected. Upon information and belief, according to Fabbri, with one exception, the Corps refused any changes beyond those the Town had sent the owner in June 2019 back before the Town elected not to involve the Corps and completed the renourishment project on its own. Upon information and belief, according to Fabbri, the Corps did now agree to adding one word, "public," requested by the owner in the easement the owner offered February 24, 2020. Upon information and belief, Fabbri, however, represented that Fabbri himself cleaned up the document in some particulars and also had the map/plat changed to move the project line (the so-called "Perpetual Easement Line") itself seaward. Upon information and belief, in his e-mail, Fabbri stated that he had "incorporated an alternate perpetual easement line that removes all structures."

113. Upon information and belief, Fabbri attached an updated proposed easement grant, but inadvertently failed to add the agreed added word, “public,” in what he sent. Who Fabbri copied on this written communication is unknown, but, upon information and belief, the map/plat in document he e-mailed also did not move the PEL to remove all structures. It did move the PEL off the concrete foundation system, further from the main pilings of the house, but it left the deck and stairs fully enveloped.

114. Upon information and belief, on April 8, 2020, now, like the rest of the populace, fully submerged in the COVID-19 pandemic crisis and widespread quarantining-lockdown issues, the owner wrote to Fabbri again.

115. Upon information and belief, in the April 8, 2020 e-mail, the owner explained specifically and at length, again, what was unreasonable, excessive, and injurious about the documents the Town had sent and kept sending.

116. Upon information and belief, in the April 8, 2020 e-mail, the owner explained in eight items, that the document the owner sent February 24, 2020 was properly expressed and would have granted more than was actually or reasonably needed, but that the March 31, 2020 proposed grant prepared by Fabbri unreasonably sought far more. The easement grant Plaintiff had recorded July 26, 2019 bore a similar relationship to the documents the Town had proposed, correcting many of the same concerns.

117. Upon information and belief, the other owner subsequently again reminded Fabbri, that it was not correct to state that he had “failed to get an easement” from the owner, but had, rather, he had failed to get an unreasonable easement from the owner. Upon information and belief, the owner reminded Fabbri, the Town Administrator of Pawleys Island, who reported to Town Council, in writing:

Those unreasonable features include encumbering our improvements in a manner which might prevent their repair and might remove our ability to exclude others from them, lack of clarity that our rights to access the ocean from our property are not affected, granting the public an easement across our property which is not legally necessary for renourishment, not explicitly limiting the scope and nature of the Town's future use of the easement area to renourishment-related activities, and requiring permission to build access structures to be obtained by whomever the Town designates without requiring the person to be appointed by law and to apply standards applicable to all owners.

118. Upon information and belief, later in April 2020, the other owner contacted Henry directly, explained the situation, and offered Henry and the rest of Town Council an opportunity to understand, directly, what had been going on and do the right thing. Upon information and belief, at Henry's suggestion, on April 21 and 24, 2020 the owner sent Henry a history of the matter and a specification of the repeated unreasonableness and excessiveness of the Town's requests along with corrective revisions.

119. Upon information and belief, Henry forwarded it to the Corps, not advocating for the owner in the least. Upon information and belief, despite all the information provided to Fabbri, and now directly to Henry, Henry stated to the Corps that he "[did]'nt claim to fully understand the legalese associated with some of the language in question," and asked if the Corps could have a conversation with the owner.

120. Upon information and belief, the Corps had no conversation with the owner.

Town's and Corps's Capricious or Spiteful Insistence That Property Owner Relinquish to Town and Others in Easement, Property Rights Previously Agreed in Writing Not to Be Necessary to Any Proposed Project, Whether Past, Future, Moot, or Completely Speculative

121. Upon information and belief, on May 7, 2020, Henry reported to the owner third hand that Fabbri, not Henry, had spoken to the Corps "again" and that Fabbri advised that the Corps had advised that the Corps was not in agreement with any changes, including any previously agreed.

122. Upon information and belief, the changes to which the Corps allegedly retracted its agreement, to add ambiguity, were allegedly called “minor” by the Corps, according to Henry, according to Fabbri. Upon information and belief, the changes were, however, verified later to be all those that were previously agreed in writing to be unnecessary to the earlier, moot, Corps project, and to be unnecessary to any speculative possible future project. Upon information and belief, the retracted changes included some which were made for other owners, thus confirming they were per se unnecessary to exact from the other owner or Plaintiff, and spiteful or for purposes of some misguided negotiating pressure, which is bad faith.

123. Upon information and belief, these previously agreed, but now retracted, changes for the other owner and some others included:

- a. those agreed to by the Town preceding owner’s June 18, 2019 requested revisions, which included an insufficient, but very material, not “minor,” statement that the owner’s improvements in the shaded area on the proposed map would not be subject to destruction or removal by the easement holder;
- b. the “cleanup” in the March 31, 2020 proposed grant Fabbri sent to the owner, which included the very material, not “minor,” clarification that the easement – with all its attributes, including public access – did not run over the owner’s entire lot;
- c. the very material, not “minor,” moving of the PEL in the map attached to that same document, four to five feet further away from the main pilings of the house; and
- d. the very material, but not “minor,” addition of the word “public” as a qualifier of the type of access the Town or later owners of the easement would be able to limit from accessing the property. That is, a change removing the ability of the holder of the easement to keep the owner off his own property.



124. Including in any proposed easement, the following attributes in favor of the grantee, if not absolutely required for the purpose of the proposed project, is unnecessary as a matter of law; doing so is also, if not fraudulent, then spiteful and in bad faith, or capricious, or arbitrary, or done out of such indifference, ignorance or lack of training as to be an “abuse of discretion” on multiple levels of the definition of that term:

- a. the right to destroy owner improvements in the shaded area;
- b. an implication or statement that the attributes of the easement apply to the entire lot;
- c. showing a shaded area for work, sand piling, and public access two (2') feet from the main body of the house, if not also enveloping foundation elements; and
- d. an ability to exclude the owner from the owner's own land in dune “areas” under an overbroad power to “facilitate preservation” of “dunes” or “vegetation,” which could be just about anything.

Town Council's Punitive and Bad Faith Vote to Condemn Wholly Unnecessary Easements With Features Agreed to Be Unnecessary to Anything, Under False Pretenses, Continuing to Conceal or Misrepresent the Features Sought, or Under Abject Failure to Understand or Attempt to Inform Itself of the Meaning of Plain English in the Easement

125. Upon information and belief, neither Henry, nor Fabbri, nor anyone on Town Council, despite having a Town Attorney available and involved, despite Fabbri's reports to Council, despite having at least one other owner's explanation of the matter numerous times in writing, and despite being fully aware of Plaintiff's and other owners' concerns with the very real, legal and real-life consequences of the unreasonable, overreaching, overbroad and intentionally sloppy and ambiguous granting document the Town kept proposing, did anything to advocate for their constituent and its property.

126. What the Town Council and Fabbri did was take rapid public steps to approve an attempted condemnation of an interest in Plaintiff's property, and publicly misrepresent the approved measure as condemning an easement "only to put sand on the beach," and publicly represent the measure to be necessary because, for reasons Town Council pretended not to know, Plaintiff simply had not signed "an easement."

127. On May 18, 2020, after, upon information and belief, plans already made and pursuant to an agenda already set, the Town Council of the Town of Pawleys Island met (live-streamed and now recorded, found at <https://www.facebook.com/TownofPawleysIsland/>).

128. There, the Council, consisting NOW of Henry, Green, Holliday, Carter, and Zimmerman, joined by Fabbri as Town Administrator, first have an off-the-record "executive session" with the lawyer, Durant to get "legal advice."

129. They then go through an exercise of ostensibly thorough and thoughtful and hesitant discussion about the nature of the problem and whether to condemn the properties of four of their fellow citizens.

130. The theme is they can't understand why everybody wouldn't "sign" "an easement," and the implication is that certain people simply would not grant one. In reality, and truth, however, these are two different things.

131. Fabbri assures the Council on the record that he has worked diligently on the matter for "a year and a half." Fabbri knew full well that, of three of the owners: one had actually sent a proper executed easement to him over a year earlier and had followed numerous times, in writing, with exactly the reasons certain aspects of the easement sought by the Town were unnecessary and unreasonable; another had prepared and hand delivered an easement in April 2019, which Fabbri subsequently altered without authorization, resulting in the Town filing

a cancellation in July 2019 and that owner filing a clearer cancellation in October 2019; and Plaintiff had prepared and filed an easement and plat in late July, 2019. Yet, Fabbri states to Town Council and the viewing public (at 59:10) that “for whatever reasons,” the owners in question had not “signed.” Despite having received a very full explanation, Fabbri does not disclose this fact and adds, “they do not owe us an explanation,” clearly implying, falsely, that no explanation was given and no reason was known. The then-mayor, Henry, states that he has gone to bat for concerned owners, but doesn't state what he did. Not one mention is made by any Council member of having read the proposed easement or of knowing its contents. Not one mention is made of at least three of the subject owners having offered easements of different scope. The written resolution Council eventually votes on, despite its liberal recitations and “whereas”s, makes no mention of the actual nature of the easement or any concern expressed about its unnecessary scope.

132. Durant, the lawyer advising the Town, simply states and advises Council on the record that the owners "would still have all the same rights they had before granting the easement."

133. Administrator Fabbri says he had a “dialogue” with all 4 owners to get an easement to deposit spoil/sand in front of their respective houses and “doesn’t know why they won’t sign.”

134. Town Lawyer, Durant, of Surfside, adds: “property owners will still have title to the property.”

135. Zimmerman, at time stamp [1:02:35](#), asks Town Lawyer Durant, on the record in the publicly broadcast session, "and the easement basically is simply to put sand on the beach,

right, David?" Durant officially replies, advising Council, "Yes, that is correct." The three  
aforedescribed owners had all offered easements to put sand on the beach.

136. No mention is made of the cooperative efforts or the nature of the objections, if  
any, of the citizens whose property is the subject. No mention is made of the tenuous nature of  
Corps involvement.

137. No mention is made that one subject owner actually gave Fabbri/The Town an  
easement to deposit spoil/sand in front of his house, in person, on or about [April 25, 2019](#), at  
Fabbri's office, and that what happened after that was that Fabbri requested and was provided a  
corrective signature page, and then attached the signature page to a different, unauthorized  
document, and recorded it in the title records of Georgetown County.

138. No mention is made of the owner's later discovery of the more-than-a-little-  
inauthentic document, letter to Fabbri, and efforts to get his title corrected.

139. No mention is made of another owner's extensive, if not exhaustive, efforts to  
accommodate the Town, give it every chance to do the right thing, and do the job it should have  
done or at least should have backed.

140. No mention is made that Plaintiff had, at its own expense, actually signed and  
directly recorded an easement responsive to the publicly professed needs of the Town for an  
"easement basically simply to put sand on the beach."

141. Upon information and belief, contrary to the implication of Town Council at the  
May 18, 2020 meeting, and contrary to statements and implication of those reporting to Council,  
three of the owners referenced had been willing, since the previous year, to grant the Town the  
right to renourish in front of their homes, and indeed, do more than "simply to put sand on the  
beach."

142. No mention is made that for months, the Town abandoned any effort to obtain, or iron out any questions about, the remainder of the previously sought 113 easements, because the Town determined to not get easements. The Town determined to do the project on its own, which it did and completed. After plunging itself into a huge, long term debt, the Town then sought an angle to possibly get some money. After the actual renourishment was already done, the Town then began a last-minute resumed courtship with the Corps and now, under the bad faith pretense that there was a project yet to be done, the Town Council presented the matter as if it were one of great urgency. The Town also presented this matter of needlessly condemning the property of its own citizens as if the citizens had plenty of time to get this done, when in truth the matter was presented by the Town, both the first time and a second time, as an emergency under falsely stated deadlines.

143. Also not emphasized in the Town Council's comments on the subject, as the present council purports to agonize over condemnation of its citizens' properties, is that easements are only sought from roughly the last mile of property owners on the south end. Neither the mayor, the other council members, the town attorney, nor the town administrator have signed such an easement. The Council do not even publicly claim to have read or understood the Public Access Easement, although they are charged with understanding Town affairs, are educated people, are reported to by Fabbri, are advised by a Town attorney, and condemning their own neighbors' property is certainly a grave and drastic matter, costing those neighbors time, stress, and legal and other expense, if nothing else.

144. The renourishment which is also already done for the roughly two miles to the north will be paid for by the Town with whatever different help the Town can get, but with no help from the Corps. What the Town may or may not get back from the Corps someday perhaps

twenty-two (22) years hence with respect to the south end, and whether, if so, the Town would re-allocate the benefit to all, are speculative matters. If the Town had not begun courting the unreliable Corps again, the south end would simply be in the same situation the two miles to the north is in -- with beach renourishment, already completed, and paid for by the Town of Pawleys Island with long term debt and whatever non-Corps help it can come up with.

145. While Durant states: "Property owners will still have 'title' to the property," no mention is made of the fact that Durant, with Fabbri's approval, drafted an easement unequivocally granting "public access" up to within a few feet of all the owners' houses, as indicated by the PEL. This public access includes decks, stairs, and other improvements shown as being on the owners' land, some being original appurtenances to houses built over 50 yrs. ago. In its pretended thoroughness, the Council does not acknowledge that the Town's proposed easements also include the ability of the Town, or others coming to control and use the easement, to "limit access" to the easement area - without any qualification as to whose access may be limited. In plain English, this means the Town would have power to exclude people, including the owner, from the property.

146. Nor does the Council acknowledge in its pretended careful deliberation, that the proposed easements do not provide or reserve any right to the owner to repair, rebuild, or maintain any improvements of the owner's, located now or in the future, within the area the Town wants.

147. Nor does the Council let slip to the public that the proposed easements include the affirmative right of the Town to remove "obstructions" -- in plain English this means tear down the owner's improvements, in the area the Town wants. Instead, in an abuse of discretion, the

Council votes on something it professes not to have read and not to understand. Shockingly, Carter states in the May 18, 2020 meeting, simply, "I can't understand it."

148. Upon information and belief, on May 21, 2020, one of the other owners asked Henry, directly, whether Henry himself had ever gotten a written a response from the Corps to Henry's own e-mail in which Henry forwarded the Corps the details provided by the owner, of the serious issues presented and solutions for them. Upon information and belief, when Henry did not respond, the owner asked again by e-mail on June 4, 2020, and Henry did not respond in any way.

149. Upon information and belief, on May 27, 2020, the other owner asked Fabbri, directly, since the only information the owner had received as to the Corps's response was third hand from Henry, whether Henry got it right in describing the Corps's communication with Fabbri on the subject, whether there was any more detail or reasoning given by the Corps, and whether there was anything in writing as to what the Corps meant. Upon information and belief, Fabbri did not respond, the owner followed up on June 4, and Fabbri did not respond.

Condemnation Notice Purposefully Obscuring Nature and Extent of the Easement Sought and What Is Being Valued, Including False Certifications, Sent Without Ever Having Made Appraisal Available or Having Negotiated in Light of Appraisal; Later-Obtained Appraisal Similarly Murky About What the Attributes of the Subject Easement Include; Missing Elements From Loose Leaf Papers

150. In Late June 2020, the Town sent Plaintiff a condemnation notice in which:

a. The Town falsely stated, in contravention of express statutory procedure and Rule 11, that it had first made an appraisal report available to Plaintiff and falsely stated that the Town had negotiated in good faith with respect to that appraisal report for the purchase of an easement;

b. The Town offered to pay zero dollars because of the reasoning and opinion of the appraiser in the appraisal report, which had never been provided;

c. The Town gave Plaintiff thirty (30) days to respond to the offer in the Condemnation Notice;

d. The Town did not, even then, include a copy of an appraisal; and

e. The Town did not describe the attributes of the easement it sought to condemn.

151. Not in the Condemnation Notice itself, another partial proposed Public Access Easement document was simply included in the envelope with the mailed Condemnation Notice. The additional document was not part of the Condemnation Notice, nor referred to in it, nor referenced in any transmittal letter. The unexplained partial Public Access Easement document had approximately the same language used in the proposed Public Access Easement proposed by the Town around March 2019.

152. Plaintiff had to contact the Town after having been served with the Condemnation Notice in order to obtain the appraisal report upon which the time-sensitive Notice and the offer therein was supposedly based, and which was required by law to have been sent to Plaintiff before serving a condemnation notice.

Clarification of Town Punitive and Bad Faith “Intent” to Be Unclear and Maybe Pursue Wholly Unnecessary Easements With, Not Just Some, But All Features Previously Agreed to Be Unnecessary While Having Publicly Concealed or Misrepresented Features Sought

153. Upon information and belief, subsequently to another owner’s receipt of a condemnation notice, upon information and belief, Oranga sent to the other owner, another Public Access Easement document, this time complete with attached map, the document being



the one proposed by Fabbri to that owner March 6, 2019 (the one with maximum defects, before any of the changes of the past year had been made).

154. Upon information and belief, the owner asked Oranga why this separate document was sent and what its purpose was, and Oranga responded that this was the original version of the proposed easement grant document and to please consider all other versions withdrawn “at this time.”

155. Upon information and belief, the document conflicted materially with the easement described by the condemnation notice sent to that owner.

156. Upon information and belief, no amendment of the condemnation notice or its exhibit was sent to the other owner, however, nor was any extension or reset of time mentioned. Plaintiff objects to the Town constantly creating vagueness and unintelligibility in serious legal documents which are supposed to require professional valuation opinions, and does not agree to the Town changing its position on time-sensitive legal matters unilaterally without leave of court, by simply sending more or different things.

**FOR A FIRST CAUSE OF ACTION AND REQUEST FOR RELIEF**

(Any necessity for the easement requested for the Corps project and any other, ceased, when the proposed Corps project for which an easement was requested was rejected, the Town officially determined that an easement was not necessary, the work was not done by the Corps, and the work was completed by the Town.)

157. The foregoing facts and allegations are incorporated herein.

158. The contemplated condemnation is completely unnecessary as a matter of law, and therefore constitutionally and equitably prohibited, and the Town of Pawley’s Island’s attempt to condemn an overbroad easement after the fact for an already completed and no longer proposed or prospective project should be disallowed and permanently restrained.

FOR A SECOND CAUSE OF ACTION AND REQUEST FOR RELIEF

(Because no new Corps project is proposed in good faith, an easement is also not necessary for a merely speculative project that may or may not occur many years in the future.)

159. The foregoing facts and allegations are incorporated herein.

160. In the alternative that the Town asserts the condemnation is for some other, future, hypothetical project, the condemnation is still unnecessary and in bad faith in that any such putative future project is admitted by the Town to be speculative, unlikely, and by the Town's own calculations, most probably unnecessary for as much as twenty-two years.

FOR A THIRD CAUSE OF ACTION AND REQUEST FOR RELIEF

(If a new Corps project were proposed, the Town's insistence that the easement is only for placement of sand when all the sand, has already been placed, and the Town's own bad faith, if not fraud and abuse of discretion, in misrepresenting the purpose and scope of the easement, bars and disqualifies any claim by the Town that the easement is necessary.)

161. The foregoing facts and allegations are incorporated herein.

162. In the alternative that an actual, bonafide, proposed additional project were to materialize, the easement sought has been sought through knowing, intentional misrepresentation, lack of honesty in fact, spite, caprice, arbitrariness, and illegality, and has also been sought under influence by legal error as to not only the nature of the easement that is sought, but also as to the lack of basis, or legal or practical need, for the easement or its numerous overbroad attributes. The easement sought has also been sought under influence of legal error as to the consequences of Plaintiff granting it or the Town taking it. The easement is also being sought through bad faith noncompliance with procedural rules. In that these facts constitute "fraud, bad faith or abuse of discretion," the Town's contemplated condemnation action, currently stayed by this action, should be disallowed with prejudice.

FOR A FOURTH CAUSE OF ACTION AND REQUEST FOR RELIEF

(If, despite the Town's prior determination that no easements were required, the Town could falsely re-label the project the Town completed as one which was completed instead by the Corps and as being a project for which an easement is required by the Corps, the easement sought to be acquired by the Town is still unnecessary, in that it includes far more than is necessary to accomplish its stated purpose, fails to balance any injury to Plaintiff, seeks things the Town already admitted in writing were not necessary, and, upon information and belief, seeks some things not sought from other owners.)

163. The foregoing facts and allegations are incorporated herein.

164. In the further alternative that the Town could later show in good faith, any actual necessity for any easement at all across Plaintiff's land and improvements, it is necessary to first limit any condemnation to what is actually reasonably necessary, and to clearly define the easement being sought, including its limitations and consequences. To do so requires prior correction of persisting legal error or misrepresentation as to not only the nature of the easement that is sought, but also the basis, or legal or practical need, for the attributes the Town sloppily or deliberately attempts to include, and as to the consequences of Plaintiff granting it or the Town taking it.

165. Among other things, there is no need for an easement over the owner's entire lot. There is no need for public access of any kind, no need to limit owner access, no need for broad Town activities unassociated with doing and maintaining the work, no need to include owner improvements, no need to be so close to owner homes, and no reason not to clarify there is no change in owner access to ocean and beach.

166. Additionally, the Town's bad faith noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed, so that Plaintiff will not be deprived of a proper opportunity, forum and procedure for assessing value, including knowing exactly what is or is not proposed to be taken.

167. The extent of the easement sought was purposefully obscured in bad faith in Town pre-condemnation communications, but cannot be allowed to remain so in the Condemnation Notice and proceedings relating to it.

FOR A FIFTH AND POSSIBLE FURTHER CAUSES OF ACTION AND REQUESTS FOR RELIEF

(Unanticipated arguments of the Town may give rise to other claims by Plaintiff in this or another action and Plaintiff does not waive jury trial on any that are so triable.)

168. The foregoing facts and allegations are incorporated herein.

169. In the alternative that Plaintiff's rights herein or in any contemplated condemnation action are adversely affected by the already completed project, Plaintiff may need the already completed actions of the Town to be redressed by damages for trespass or other monetary remedy, for which cause of action Plaintiff would and does demand a trial by jury, despite the nonjury portions of this action challenging the Town's right to condemn.

WHEREFORE, Plaintiff prays that the Condemnation Notice be quashed and that the Town be forever barred and enjoined from filing it or proceeding with it, for such other and further relief as is just and proper, and for all litigation costs.

s/M. Baron Stanton  
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*Attorney for Sunset Lodge, LLC*

7/20/20

July 31, 2020 Landowner Amended Complaint.

|                         |   |                                              |
|-------------------------|---|----------------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS                 |
|                         | ) |                                              |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600            |
|                         | ) |                                              |
| Sunset lodge, LLC,      | ) | AMENDED                                      |
|                         | ) | COMPLAINT                                    |
| Plaintiff,              | ) | (Challenge of Authority to Condemn and In    |
|                         | ) | the Alternative, for Other Remedies)         |
| v.                      | ) |                                              |
|                         | ) | (Nonjury, except as to possible cause of     |
| Town of Pawleys Island, | ) | action arising in the alternative, for which |
|                         | ) | jury trial is demanded, so as not to be      |
| Defendant.              | ) | waived)                                      |
|                         | ) |                                              |
|                         | ) |                                              |

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 746 Springs Avenue, including but not limited to the filing of the Condemnation Notice previously served, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.

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in misrepresenting the purpose and scope of the easement, bars and disqualifies any claim by the Town that the easement is necessary.)

FOR A FOURTH CAUSE OF ACTION AND REQUEST FOR RELIEF .....57

(The South Carolina Eminent Domain Procedure Act is the “exclusive procedure” for condemnation, the sections of the Act which require the condemnor to provide the appraisal before serving the notice and which specify the contents of the notice are stated in imperative terms of “shall” and “must,” and the Town’s failure to comply with these mandatory procedures is a fatal defect, rendering any attempted condemnation void and ultra vires; these defects, coupled with the fact that under the statute, the notice is the operative pleading for purposes of an action, and that the notice contains a false certification, further justify dismissal pursuant to Rules 11 and 12, SCRCF and other applicable authorities.)

FOR A FIFTH CAUSE OF ACTION AND REQUEST FOR RELIEF .....59

(If, despite the Town’s prior determination that no easements were required, the Town could falsely re-label the project the Town completed as one which was completed instead by the Corps and as being a project for which an easement is required by the Corps, the easement sought to be acquired by the Town is still unnecessary, in that it includes far more than is necessary to accomplish its stated purpose, fails to balance any injury to Plaintiff, seeks things the Town already admitted in writing were not necessary, and, upon information and belief, seeks some things not sought from other owners.)

FOR A SIXTH AND POSSIBLE FURTHER CAUSES OF ACTION AND REQUESTS FOR RELIEF .....61

(Unanticipated arguments of the Town may give rise to other claims by Plaintiff in this or another action and Plaintiff does not waive jury trial on any that are so triable.)

PRELIMINARY STATEMENT

Plaintiff brings this action pursuant to S.C. Code Ann. § 28-2-470 and the common law to challenge the Town of Pawley’s Island’s attempt to condemn an easement on Plaintiff’s oceanfront land which is improved with a private residence.

There being no project requiring an easement, acquisition is completely unnecessary as a matter of law, and therefore constitutionally and equitably prohibited. The scope of the proposed acquisition is also broader than is necessary to accommodate any legitimate project and need for the easement, if there were any project and need. Procedural deficiencies, deliberate vagueness



and confusion in the documents served by the Town, and the Town's noncompliance with law also require a remedy of dismissal of its condemnation attempt, or at minimum, correction. All of the foregoing facts are more than a little imbued with, if not the Town's fraudulent acts, its bad faith and abuse of discretion. These matters are set forth with more particularity herein.

There is no project for which the proposed acquisition is necessary, because the Town rejected the project for which the acquisition was originally proposed, and elected to complete, and did complete, a larger, substitute, project, requiring no easements, before the Town ever attempted the threatened condemnation. Consequently, the condemnation attempt should be dismissed as a matter of law.

The "sand placement" easement the Town nevertheless seeks to acquire has always been overbroad and unnecessary for any renourishment project, whether past, present or hypothetical.

Among the serious problems with the easement that the Town now seeks to acquire is an unpublished issue the Town has tried for over a year to conceal, ignore, obscure or misrepresent. A term contained in a block of text the Town says was required by the Corps of Engineers when a previous project was proposed by the Corps of Engineers, which was similar to the project recently completed by the Town, dictates that the owner signing the document does not merely grant permission to deposit sand on the owner's property, but grants public access to the owner's property, and more. There is no demonstrated legal justification or authority for such a despotic third-party exaction.

The good faith of three property owners including Plaintiff is demonstrated by the fact that over a year ago, all three separately offered signed easements to the Town. These were offered for the now moot, unperformed, Corps of Engineers beach renourishment project. In response to the needs which the Town had actually officially stated for the now moot project,

these owners offered, and in some cases, recorded, signed easements, which were more than sufficient for such stated needs.

These purposes stated by the Town were placement and maintenance of sand on the beach and on part of the owner's property. The three owners fully complied.

The Corps of Engineers project was later rejected by the Town with no possibility of resurrection because the Town completed its own larger project instead of the Corps project. In doing so, the Town officially, expressly, determined that the requested easements were "not necessary."

The bad faith or abuse of discretion of the Town is demonstrated by Town Council and its agents never disclosing that these owners had signed and proffered easements.

In bad faith, Town Council and its agents shamed and defamed the owners, and instead presented the matter publicly – in statements to the newspaper, and in official, broadcasted, deliberations -- as if these owners would not sign "an easement," which the Town consistently represented as being essentially for the limited purpose of sand placement on the beach, including the owner's adjacent private property.

The bad faith or abuse of discretion of the Town is further demonstrated by the fact that not one single Town Council member has publicly acknowledged even reading the subject easements proposed by the Town. The scope of the proposed acquisition is a major issue.

Not one single Town Council member acknowledges knowing, or even asking, what it was in the proposed easements the owners objected to, much less, why they objected. These issues are not contained in a single deliberation by Town Council.

Instead, the Town Council was either misled that the owners had outright declined to sign an easement of any kind allowing sand placement on their property, or Town Council knew the

contrary and itself misled the public that the owners had declined to give any easement at all. The Town Council was accordingly also either misled about the contents and scope of the proposed document, or Town Council knew the contents and scope and owner concerns, pretended lack of such knowledge, and made no consideration of such matters.

In either case, deliberation concerning the excessive, unnecessary and illegally “required” exactions in the document was completely omitted. The Town not only made no factual conclusions at all on these factors it should by law have considered, but also had no evidentiary support for any facts it did consider, and proceeded under errors of law on which Town Council was uninformed or misinformed. Town Council’s decision making process was, accordingly, if not in bad faith, an abuse of discretion.

These considerations are eclipsed, of course, by the Town already deciding that the easements are categorically “not necessary.” If the easements are not necessary, it is per se bad faith and abuse of discretion to condemn something totally unnecessary, and condemnation cannot be allowed at all.

Returning to the fact that there is no still pending project at all for which the easements are now necessary, the Town may now assert the condemnation is now necessary for some other, future, hypothetical renourishment “project” of the Corps. The condemnation is still unnecessary and in bad faith in that any such putative future project is admitted by the Town to be speculative, unlikely, and by the Town’s own calculations, most probably unnecessary for as much as twenty-two years, and that even if a project arises then, the Corps cannot be relied upon, and Corps involvement is speculative.

To say that condemnation is necessary under a legally questionable after-the-fact scheme under which the Corps does some followup to the completed \$14.8 million dollar Town Project

by planting some “beach grass” and maybe putting up sand fence, is fiction. In any event, proceeding on this premise is not even an attempt by the Town to determine whether the scope of the proposed acquisition and the injury to the owner exceeds what is necessary for the mischaracterized “project.” At minimum, this is an abuse of discretion.

To state that using “beach grass” and sand fence to fictionally self-label the actually Town-completed project as “a completed Army Corps project” provides an “insurance policy” for which condemnation is necessary, is insufficient and is facially incorrect. Condemnation is not provided for a supposed “insurance policy,” instead of for a public project, and the Town thus admits the lack of necessity to condemn for any actual public project. Even the thin purpose of “insurance” is plainly inaccurate, which becomes more apparent when the Town explains on May 18, 2020 that -- more in the nature of a lottery ticket than an insurance policy -- “down the road, if money ever does become available, or if the Corps can get it,” the unpredictable and unreliable Corps may be able to use it or work out what will at that time still be unclear financial sharing.

The Town’s bad faith and abuse of discretion in attempting to condemn property for this “purpose” is all the more apparent when the Town admits on May 18, 2020 that it never would have even asked for easements for such a purpose two years earlier because of its speculative nature, but that, now, after having completed all desired renourishment without the Corps, the Town still has about 100 easements it had obtained back when a prospect of a Corps project existed. These were easements collected through the misrepresentations described herein and in no way justify condemnation to get more, just to play some odds.

In the alternative that an actual, bona fide, proposed additional project were to materialize, the easement sought has still been sought through knowing, intentional

misrepresentation, lack of honesty in fact, spite (e.g., requiring things previously acknowledged to be unnecessary, requiring things not required of others, etc.), caprice, arbitrariness, and illegality (e.g., including third party exactions based only on secretive bureaucratic whim), and has also been sought under influence by legal error as to not only the nature of the easement that is sought, but also as to the lack of basis, or legal or practical need, for the easement or its numerous overbroad attributes. The easement sought has also been sought under influence of legal error as to the consequences of Plaintiff granting it or the Town taking it (e.g., that the owner will have the same rights after acquisition of the easement as before, that the easement is for no more than putting sand on the beach, etc.).

In no way could it be successfully contended that the “project” (which is nonexistent) incorporating the easement which is professed to be necessary is designed in a way to enable sufficient public benefit while resulting in the least private injury.

The bad faith continues in that the easement is also being sought through bad faith noncompliance with statutes and procedural rules, which also obfuscates what is being sought. By serving condemnation notices, the Town began attempts to condemn without providing an appraisal at the time required by the exclusive, statutory procedure. The Town, falsely certified in the formal notice (which serves as the operative court pleading) that an appraisal had been timely provided. Contrary to statutory procedure, the Town provided conflicting information about the scope of the easement the Town seeks to acquire. This conflicting information took the form of either (in two notices) completely omitting from the notice, “an appropriate legal description of the interest to be taken,” or (in one of the three notices) sending subsequent documents contradicting the description given, so as to indicate that the easement sought was now even broader than as described in the actual condemnation notice.

Yet, despite its prior errant actions and misleading statements having been repeatedly called politely to its attention over the course of the recent year, the Town continued to act in bad faith, in keeping with its year-long practice of (i) misinforming the public (including other owners, neighbors and others in the small community), (ii) needlessly publicizing personal and private information, (iii) defaming the owners (and now disparaging their property), and (iv) depriving the owners of timely and accurate information. In this vein, after unlawfully delaying and withholding the hereinafterdescribed flawed appraisals from the owners until after serving the flawed and incomplete condemnation notices, the Town, upon information and belief, provided the flawed appraisals of the owners' specific properties (or the conclusions therein) to the newspaper for July 16, 2020 publication. When, after polite demand, the owners did receive the appraisals, the appraisals revealed, among other things, the not-reported fact that the proposed easement documents themselves had never been provided to the appraiser, whose task was to determine the loss in value and other damage caused by the imposition of such easements.

In the Condemnation Notice served upon Plaintiff, the Town does not describe the scope of the easement at all. The Town only states that it seeks to condemn "an easement for public purpose," describes Plaintiff's property (the entire lot, as well as an additional described part), and attaches a map showing the geographical area of the easement (which conflicts with the earlier statement that the entire lot is "subject to the condemnation notice"). Without the name given to the attached map, the easement description in the Condemnation Notice would not even indicate the general type of project the easement is for. The purpose of an easement, rather than acquisition of complete fee simple title, is to acquire only the limited right to occupy the subject land in a certain specified way or perform only certain specified activities on the subject land. The Condemnation Notice does not specify at all, what powers and activities are included in the

easement sought, i.e., the notice does not say the easement allows construction, piling of spoil material, public access, limiting access including that of the owner, allowing Town “operation” of a public beach, restriction of walkover structures, removal of Plaintiff’s property in the area, or anything else. A later paragraph alleging the “public purpose” of the easement limits it to being for “the Condemnor’s beach nourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.” A separate, unincorporated document was simply sent with the Notice, with no explanation, and was not part of it. This unexplained document is also incomplete, missing the “Exhibit A” it states is attached to it. Plaintiff is not required to guess or decide for itself what the Town must mean to include in the drastic measure of condemning property.

Despite its voluntary participation in providing “information” to the paper for July 16, 2020 publication, upon information and belief, as of July 19, 2020, the Town also has failed to respond as legally required – or respond at all -- to a request under the Freedom of Information Act, pertaining to, among other things, the contents of easements accepted from others, and the bona fides of communications with the Corps. (Such failure continues as of July 31, 2020.) All these facts constitute “fraud, bad faith or abuse of discretion,” and the Town’s contemplated condemnation action, currently stayed by this action, should be disallowed with prejudice.

In the further alternative that the Town later shows in good faith, any actual necessity for any easement at all across Plaintiff’s land and improvements, it is still necessary to first limit any condemnation to what is actually reasonably necessary to the “project” (which is nonexistent), causing the least private injury necessary. Whatever the result of that exercise, it is also

necessary to clearly define the easement being sought, including its limitations and consequences, so that it and the damage it would cause can be actually properly valued.

To do so requires correction of the Town's persisting legal error as to not only the nature of the easement that is sought, but also the lack of basis, or legal or practical need, for the easement attributes the Town either recklessly or deliberately attempts to include, and as to the consequences of Plaintiff granting the easement or the Town taking the easement.

Additionally, the Town's bad faith noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed, so that Plaintiff will not be deprived of a proper opportunity, forum and orderly procedure for assessing value, including knowing exactly what is or is not proposed to be valued and what is or is not proposed to be taken.

In the alternative that Plaintiff's rights herein or in any contemplated condemnation action are adversely affected by the already completed project, Plaintiff may need the already completed actions of the Town to be redressed by damages or other monetary remedy, for which cause of action Plaintiff would and does demand a trial by jury, despite the nonjury portions of this action challenging the Town's right to condemn.

#### PARTIES, PEOPLE, AND FACTUAL BACKGROUND

1. Plaintiff is a limited liability company organized under the laws of the state of South Carolina, which owns property at 746 Springs Avenue, on Pawleys Island, in Georgetown County, South Carolina.

2. The Town of Pawleys Island is an ostensible municipal corporation operating in Georgetown County, South Carolina, ostensibly incorporated in or around 1985 and having ostensible Town limits coextensive with the physical geological island of Pawleys Island itself, extending to the center of the salt creek separating the island from the mainland.



3. The Town purports to be governed by a council form of government, requiring a mayor and four council members.

4. This action concerns proposed easements formerly proposed for a prospective project which did not occur. That project was followed by a different project, which has now been completed. The now proposed easements are not for an actual, concrete, prospective proposed project. These easements, sometimes hereinafter referred to as the “Public Access Easements,” are, in reality, for, among other things, completely speculative, putative future construction and installation activities on Plaintiff’s land and improvements, putative future deposit on Plaintiff’s land and improvements of large volumes of dredged ocean spoil material, ongoing, perpetual broad ability of the Town to restrict the owner’s access to and use of the owner’s own land and improvements, open-ended perpetual public access to the owner’s land and improvements, and broad, ambiguous powers of the Town itself, as opposed to the public, to engage in endeavors on the owner’s land including “operating a public beach.”

5. Brian Henry is an individual owning an interest in property on Pawleys, but upon information and belief, owns no property in the area of the island in which owners are requested to execute the Public Access Easements. Henry owns, lives at least part of the time at, and may have previously resided at, property outside the Town of Pawleys Island elsewhere in Georgetown County, but in running for mayor, swore to reside on the Island at a seasonal inn in which he has an interest, within the Town of Pawleys Island. Henry acts as mayor. Henry was acting as mayor on Town Council at the time of its unanimous vote to condemn Plaintiff’s property, and at the time of the Town serving the Notice of Condemnation.

6. Henry, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English

clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Henry, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

7. Ashley Carter is an individual owning an interest in property on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Upon information and belief, Carter owns and has owned alternative residential property outside the Town of Pawleys Island elsewhere in Georgetown County, but has sworn to reside on the Island in order to run for and hold office in the Town. Carter is a real estate salesman affiliated with Pawleys Island Realty. Carter was on Town Council at the time of his, Henry's and the other members' unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

8. Carter, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Carter, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately,

presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

9. Sarah Zimmerman is an individual owning an interest in property on Pawleys, but upon information and belief, none for which the owner is requested to execute the Public Access Easements. Zimmerman is a real estate saleswoman affiliated with RE/MAX Beach & Golf, which upon information and belief is actually Beach and Golf Properties of the Carolinas, LLC. Zimmerman was on Town Council at the time of her, Henry's, Carter's, and the other members' unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

10. Zimmerman, upon information and belief, has at least a primary school education, speaks English as her native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of her own statements or those of others in which she concurs by word or action. Upon information and belief, Zimmerman, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, falsely presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

11. Guerry Green is an individual owning an interest in property offered for rent on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Upon information and belief, since approximately 2013

or before, Green has owned residential property outside the Town of Pawleys Island elsewhere in Georgetown County, but swore to reside on the Island in order to run for office in the Town. Green is a principal of a companies located in Georgetown County known as Screen Tight and GreenCore Materials. Green was on Town Council at the time of his, Henry's, Carter's, Zimmerman's, and the other member's unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

12. Green, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Green, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

13. Lawrence "Rocky" Holliday is an individual owning an interest in property on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Holliday was on Town Council at the time of his, Henry's, Carter's, Green's, and Zimmerman's unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

14. Holliday, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English

clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Holliday, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

15. Ryan Fabbri is an individual, upon information and belief, not owning an interest in property on Pawleys. Nor does Fabbri live on the Island. Fabbri is a hired administrator of the Town. Fabbri is Town Administrator of the Town and reports to Town Council. Fabbri has worked directly with an engineering company and a contractor for the completed Town renourishment project which the Town decided did not require easements, has advised Town Council concerning the now completed project and other matters, has, with Town consent, made public and private presentations of the Town's promises and intentions regarding the project and its effects on property owners, has liaised with the United States Army Corps of Engineers ("USACE" or the Corps) on the earlier, later abandoned, possibility of USACE doing the now completed project instead of the Town, has upon information and belief, provided information and directives to the Town Attorney on the details, nature and requirements for potential and actual renourishment projects, has dealt with property owners and given legal advice in requesting and obtaining easements for earlier purposes of the possibility of USACE performing the now Town-completed project, and has performed other administrative and, it appears, executive, functions for the Town. Fabbri was present at and participated in the Town Council

meeting May 18, 2020 at the time of Henry's, Carter's, Zimmerman's, Green's and Holliday's unanimous vote to condemn Plaintiff's property and was the direct contact of the Town for the Town Attorney at the time of the Town serving the Notice of Condemnation.

16. Fabbri, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Fabbri, before Henry, Carter, Zimmerman, Green, and Holliday voted to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's and other parties' objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

17. David Durant is an individual, upon information and belief, not owning an interest in property on Pawleys nor living on the Island. Durant is a hired Town Attorney of the Town. Durant, upon information and belief, lives in the Town of Surfside Beach. Durant was present as Town Attorney at and participated in the Town Council meeting May 18, 2020 at the time of Henry's, Carter's, Zimmerman's, Green's and Holliday's unanimous vote to condemn Plaintiff's property and was Town Attorney at the time of the Town serving the Notice of Condemnation.

18. Durant has a postgraduate degree, and therefore at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon

information and belief, Durant, before Henry, Carter, Zimmerman, Green, and Holliday voted to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's and other parties' early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

19. Gladys Oranga is an individual, upon information and belief, not owning an interest in property on Pawleys nor living on the Island. Oranga is a paralegal employed in Surfside Beach by and acting for the Town Attorney of the Town of Pawleys. Upon information and belief, Oranga has at least a primary school education, speaks English, and is able to read, write and understand English in spoken and written form.

20. After the Town sent a packet of loose leaf papers including a Condemnation Notice (but no appraisal), Oranga,, upon information and belief, confirmed in writing to another owner that the easement the Town wished to make an offer for and negotiate for would have different terms and a map attached to it (without amendment of the condemnation notice to that owner) which was materially different (being more disadvantageous to the owner) from the terms and map attached to the condemnation notice served on that owner. Upon information and belief, the new terms and map to be attached to the offer had previously been agreed by the Town to require and include more than was necessary for the contemplated "project," and had thus previously been agreed by the Town to be revised in a less onerous manner.

21. Plaintiff's property is on the southernmost mile of Pawleys Island (sometimes hereinafter "the south end") and is bounded on the east by the mean high water mark of the Atlantic Ocean.

22. The mean high water mark is not an actual mark on the beach itself.

23. The mean high water mark is an average measurement defining a potentially moving boundary line of the property owned by Plaintiff, extending the area of Plaintiff's fee simple title so that it always remains oceanfront.

24. Under the deeds from which Plaintiff's title derives, if the beach builds up or erodes or the ocean recedes or rises, in such a manner that the mean high water mark does not move, Plaintiff's eastern property boundary does not move.

25. Under the deeds from which Plaintiff's title derives, if the beach builds up or the ocean recedes in such a manner that the mean high water mark moves eastward, Plaintiff's eastern property boundary also moves eastward, so that it always remains oceanfront.

26. Since the 1950s or before, Plaintiff's land has been taxed on the basis of an area extending forty-nine (49') feet more or less oceanward of the current oceanwardmost (easternmost) part of Plaintiff's home on the premises constructed in the 1950s, this easternmost part being stairs providing access to the home. This area extends fifty-six (56') feet more or less oceanward of the location of the current most eastern main pilings of the structure of Plaintiff's home, which was constructed on the land in the 1950s.

27. The mean high water mark in the proposed Public Access Easements which are the subject of this action is shown in the foregoing approximate locations relative to the above-mentioned features of the structure.

28. The original and current construction of the house of Plaintiff is two stories.



29. Sometime before 2008, the Town began consideration of attempting to artificially build up the natural beach on the Island through excavation, dredging or other available or permitted means, and depositing large volumes of the dirt, sand, mud, shells, rocks or other spoil materials on the beach, which materials would be certified as ecologically and structurally compatible “sand.” (This general process is hereinafter referred to as “nourishing” the beach or, to use a slight misnomer, “renourishing” the beach.)

30. Beach “nourishment” has its pitfalls and detractors. Complaints include mudballs, rock, shells and dark, dirty sand virtually replacing beautiful white-sand beaches and the feeling of something like sharp aggregate underfoot when attempting to wade or swim. A walk on the beach then produces not sandy, but dirty, feet, and brings not just sand, but rock and dirt onto decks and porches and into the house. The effect is worse when children, or adults, dig, turning up dark sediment, and coming in with dirt under their fingernails. Despite these detractions, Plaintiff attempted to cooperate in the desire and decision of the Town to renourish.

31. Complaints also include an altered foreshore, resulting in a steeper, if not cliff-like, descent of the beach and surf bottom into the water at the immediate shore, resulting in waves breaking immediately at shore and slamming into the steeply rising bottom just a few feet from the end of water, strong undertows and rip currents. These features have generated observations and complaints in North Carolina and other places ranging from making surf walking and “beach sitting” less convenient, less scenic and less pleasant (“We were like cows on a hillside [(like mythic Sidehill Dodgers)]”), to causing increased cervical injuries to surfers, creating drowning hazards for toddlers and others, causing poorer surfing and swimming conditions, creating an impediment to sea turtle reproduction, and posing a danger to already

living sea turtles. Despite these detractions, Plaintiff attempted to cooperate in the desire and decision of the Town to renourish.

32. Complaints also include “sand” deposits exterminating entire existing populations of coquina clams and molecrabs (“sand fleas,” but not the type that fly) in the shallow surf, which provide food to some shorebirds and marine organisms.

33. Larger complaints include obstruction of view, in the case of construction of artificial dunes. Also included are physical limitation of beach access and a longer distance to the water from beachfront homes, and large scale geological and ecological consequences (e.g., silting and clogging of inlets and creeks) from removing large volumes of “sand” from one place, and putting it in another where it has not previously existed, only to find out later the magnitude of the unintended consequences of its removal, deposit, or later migration or overwash elsewhere. Other projects which can be performed without renourishment, but which are sometimes performed after a renourishment project, may include planting of vegetation and installation of structures such as sand fence, and these projects, too, are not without drawbacks or cause for weighing, if not apprehension. Complaints or problems may include installed sand fence being of low utility or completely ineffectual based on contraindicated site conditions, while endangering nesting animals such as sea turtles, becoming debris on the beach or in the water when dislodged, presenting injurious sharp features (e.g., cut wire and nails) for humans and animals, altering bird and other animal habitat or blocking use or access. Complaints or problems with unthinking – or thinking --introduction of invasive non-native species of plants include those pertaining to *Vitex rotundiflora* (“beach vitex”) which was heavily promoted by coastal authorities in South Carolina in the 1980s, but which has become the subject of a complete eradication campaign by the same authorities after the plant choked out other dune-

building plants, failed to contribute to significant dune building or preservation, and contributed to the entanglement and deaths of hatchling sea turtles. The high-dune-building propensities of non-native *Ammophila arenaria* (European beach grass) have been known to result in high, steep, brushy-topped and brush-filled, and brush-choked, dunes, unnatural for the area, at the expense of view and indigenous plant scenery, sand volume and natural protective low dunes on the adjacent beach, and sand volume to areas behind the primary dune, as well as habitat for native plants and animals such as arthropods (e.g., ghost crabs). Non-native *Ammophila breviligulata*, (American beach grass) with intermediate-height dune-building propensities, is nevertheless invasive in some applications, and has created unforeseen monoculture and morphological changes with attendant loss of native plants and alteration of physical animal habitat, such as where introduced on northwestern beaches where it is being eradicated with bulldozers, herbicides and other means in an attempt to restore the plover habitat it destroyed.

34. As of July 9, 2020, scores of owners on the south end of Litchfield, the immediately neighboring beach to the north of Pawleys, filed objections to a proposed renourishment on the south end of Litchfield using offshore “sand,” because, among other reasons, their property was governed by a homeowner’s association which could assess them hundreds of thousands of dollars to primarily benefit others. One concern raised by owners opposing use of offshore sand was the quality of sand placed on Pawleys Island in the course of the completed renourishment eventually described below. It contained mud and shell. The proposed Litchfield project has been revised to use trucked-in sand from an inland source.

### Early Corps Plans

35. In or around 2004 (some report 2006), the United States Army Corps of Engineers designed a project to renourish the beach on the south end of Pawleys Island, where Plaintiff's property is located.

### Nonaction by Corps

36. The Corps's project was approved by the decision structure of the Corps and by any other required governing entities, but was not funded by the United States Congress.

37. For approximately fourteen years, Congress declined to include appropriations in the annual federal budget to fund the approved project. As the then acting mayor of Pawleys Island reported on October 25, 2011, the status of renourishment in October 2011 was "No change. No funding. No Progress!"

### Town Plans

38. In or around 2015, the Town designed its own nourishment project and began preparations to do and pay for a nourishment project on its own, for the greater part of the Island, including the parts where then members of Town Council, and present members of Town Council (Henry, Green, Holliday, and Carter), owned property.

### Re-emergence of Corps Plans

39. In or around 2018, the Corps announced it had funding to proceed with a project to renourish the south end, as approved in or around 2004 but not funded for around fourteen years.

40. The Town had to decide whether to delay commencement of its own project, which was for both mid-island and the south end, while waiting on the Corps to decide in what manner and with what timing it would do the south end project, or whether the Town should proceed without the Corps entirely and not miss another hurricane season.

41. The Town decided to wait on the Corps.

42. The Town did so under the expectation that the Corps would do its south end project and the Town would do the mid-island project it had planned, using the Corps as the Town's agent for supervision and contracting.

#### Request for "Sand" Easements

43. In early 2019, the Town announced to property owners that because the Corps would be doing the south end renourishment project, easements for "renourishment" would be needed, but only from south end owners, for 113 properties.

44. In March 2019, the Town, through Fabbri, stated that proposed easement grant documents had already been prepared and that the Town had begun to mail them out. The Town, through Fabbri, represented to all south end owners: "The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project."

45. No mention was made by the Town of owners providing an easement, not only to the Town, but to the general public. No mention was made in the latter case, of "public access" over the owner's entire lot, or, at minimum, two (2') feet from the remaining portions of the owner's house not destroyed in the course of the renourishment. Public access, while generally

considered beneficial to the public who want it, is generally not considered beneficial to those whose rights are taken in order to provide it, nor is public access generally considered beneficial to the value of property either subjected to it or adjacent to it. Public access, when provided, may include general traffic and occupation, frolic, day camping, inadvertent littering, immaculate pet exercise, cheerful and celebratory yelling, admiration of the occupants inside the adjacent house or their belongings, playing favorite tasteful music, showing sweet physical love of each other, putting up large beautiful tents, breathing only through face masks at a distance downwind, or gathering to respectfully and peacefully picket and protest regarding important issues of a socioeconomic nature, or pertaining to political party or elections, or relating to gender, sexual, or public-access matters, or others. No mention was made by the Town of the owners granting access to the public, permitting the above-described activities by the general public (i.e., strangers) within two (2') feet of the owner's private residence, if not on the owner's whole lot and improvements. No mention is made of this item of scope, which has nothing to do the public doing any work to deposit sand, to construct beach profiles, to erect sand fence or to plant sea oats.

46. No mention was made by the Town of encroachment of the easement (including public access) onto property improvements of owners, like previously private decks, steps, walkways, etc.

47. No mention was made of allowing the foregoing access of the general public, deposit of sand, creation of artificial dirt and rock dunes, and destruction of the owner's improvements – all, up to two feet from the main pilings of the owner's house.

48. No mention was made by the Town of subjecting not just the "work" area, but the entire lot of the owner, to general public access.

49. At this same time in March 2019, the Town, through Fabbri, represented to all south end owners, “The easement provides the town and its contractors with the ability to work in the area of the beach.”

50. In early 2019, the Town, through Fabbri, sent proposed easement grant documents to south end property owners, not offering to pay anything for the grant of partial interest in the subject real estate, stating, again, as to the scope of the proposed easement: “The easement will be used to construct and maintain the improvements authorized under the Pawleys Island Coastal Storm Risk Management Project. Only the work specifically authorized under this easement and under the Pawleys Island Project as authorized by Congress, will be performed.”

51. However, the proposed documents sent by Fabbri in or around March 2019 differed from all the Town’s foregoing representations regarding the simplicity and limited nature of the requested easement. The document reflected something far in excess of what was “required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project,” as represented by the Town.

52. The requested Public Access Easement grant was excessive, injurious, contrary to the representations of the Town, and unnecessary to the described project in the following particulars, among others:

- a. The grant, which was forever, was not just to “the Town.” It was to the Town “or its assigns,” e.g., USACE or potentially others.
- b. Shockingly, it was also to the “public,” for “public access.”
- c. The grant was not limited to being active and valid only when renourishment work, maintenance, sand fence erection or sea oats planting was being

done. It was “perpetual” and had no limitation language to indicate it was anything but continuous as to much more than allowing a deposit of “sand” to remain. It in fact provided not only for “maintenance,” which is an unlimited ongoing activity, but also “public access” and such things as “patrolling” and “operating a public beach.”

d. The grant included a map/plat showing the boundaries of the allowed project work, which encompassed the land and improvements two (2’) feet from the main pilings of Plaintiff’s house, and included components of Plaintiff’s house such as portions of the stairs -- and this proposed grant explicitly, in plain English, provided for the ability of the Town or its assigns to destroy things within the easement area.

e. Despite the attached map/plat showing a smaller area, the plain English language of the written proposed grant was devoid of appropriate relational language (e.g., “the premises subject to this easement is ....”) and described the entire lot of Plaintiff as being subject to the easement, and the easement scope language of the document went on in other passages to describe the rights of the grantees – the Town, and its assigns, and the public -- to do various things in the “described” property, which literally was the whole lot.

f. The grant included the right of the Town or its assigns to exclude the owner from the owner’s land under a broadly worded right to “limit access” to “dune areas” in order to “facilitate preservation” of vegetation or dunes.

g. The grant included the right of the Town to engage in broad activities on Plaintiff’s land, including “patrolling,” “operating” and “maintaining” a “public beach a[nd] dune system.”



h. The grant, after clarifying the right of the Town and its assigns to destroy Plaintiff's owned improvements constructed on Plaintiff's land in the mapped area (and the rest of the lot), and the right of the Town and its assigns to limit Plaintiff's access to Plaintiff's property, also restricts Plaintiff to building only such walkovers as may be "approved" by "a designated representative" of the Town, without any statement of standards anchored to state or local law or anchored to any language in the grant itself. That is, rather than leave Plaintiff subject only to such lawful restrictions as may be imposed under state or local law, the grant adds an additional private-law layer of restriction in the conveyancing document, which restriction can be exercised by whim of some unknown Town's or "project sponsor's" "designated representative," without regard to other law or regulation.

53. Assuming the gravely serious and perpetual document to be the result of haste, ignorance of its permanence and gravity, or inattention, or to drafting by an unlicensed person, Plaintiff eventually set about preparing an easement grant which was responsive to the Town's previously publicly explained needs. Plaintiff tried to prepare a document which was as close as possible to the document requested by the Town, but one which corrected, among others, the above defects. Plaintiff prepared its own proper plat and an easement which was more than that "required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project," this being the purpose stated by the Town.

54. Into the spring, the Town continued to represent that the easement was for limited purposes, activities and powers, but, unbeknownst to Plaintiff, several other owners, too, had read and understood the gravity of the proposed document.

55. On April 20, 2019, in a Town meeting for property owners, Fabbri, speaking for the Town, acknowledged that “the project” had “taken many turns” and had “changed a lot in two years.” Fabbri reported that of the 113 easements sought, he had 70, with about 40 to 45 to go.

56. In the April 20, 2019 meeting, Fabbri, speaking for the Town (at about time stamp 16:19 of the video record of the meeting), emphasized that there would be “no work on or under decks, patios, or porches.” Fabbri continued, “People are concerned about the easements. Are we going to tear up their walkway? Are we going to tear up their stairs? The idea is to do our best to work under and around.” The proposed perpetual easement grant Fabbri sent to Plaintiff in March made no exception for such items and affirmatively showed them in the mapped area.

57. Speaking for the Town, Fabbri continued April 20, 2019 (at time stamp 17:59): “I know it is private property and I don’t want anyone to sign anything they are not comfortable with. \*\*\* At the end of the day, this is an easement to the Town, not the federal government.”

58. Fabbri continued, “This easement will always be controlled by five council members who live here, who live here full time – who, I cannot imagine for the next fifty years or however long this easement is in place, that they are going to do something to violate your rights, or to screw you over. I cannot see that happening.”

59. The proposed easement grant sent by Fabbri to Plaintiff in March 2019 was perpetual and was not limited to the Town – it was to the Town or its assigns, which could include the federal government; the composition of Town Council changed within the next year; Town Council included then, and still includes, members who do not live full time on the Island and the next mayoral election involved a legal dispute over the actual residency of the challenger to Braswell; Upon information and belief, Town Council has made as close to zero effort as is

possible to advocate for Plaintiff's property rights and reasonable concerns to USACE; and the present Town Council has now, upon information and belief, knowingly voted to condemn a clearly excessive and unnecessary "easement" on Plaintiff's property, while making false public pretenses about the nature and scope of the requested easement, about their lack of knowledge of the nature and scope of Plaintiff's objections to it, and about the extent of Plaintiff's efforts to cooperate in providing, free of charge, an easement within what have been publicly touted by the Town as the limits of the necessary scope.

60. Contrary to Fabbri's assurances, Town Council has done little or nothing to protect Plaintiff's property rights and may actually be the sponsor of their violation. On and before July 4, 2020, there were already numerous tire tracks of a full size nonemergency Town vehicle on the dry sand beach on Plaintiff's property, while, with the exception of emergency vehicles, driving on the public beach in the Town is prohibited by Town ordinance, and driving on Plaintiff's land is a trespass. As described hereinbelow, the Town now has an appraisal report on Plaintiff's property but has never contacted Plaintiff to obtain any permission to enter onto Plaintiff's property as required by statute.

61. Speaking for the Town on April 20, 2019, in response to questions about public access language in the proposed documents, Fabbri represented that the project would be complete and at an end when the sand fill was in place, and at that point, all the public access rights in the proposed easement would also be at an end: "It will only be used for this project," he stated (at time stamp 29:42). "It will never be used for anything else." As demonstrated further herein, the Town's later and current insistence on public access -- if necessary, even through condemnation -- even after the Corps project was rejected and the Town's project has been completed, renders Fabbri's assurance totally and utterly false.

62. Fabbri explained (at time stamp 29:48), “I can promise you that and can say it with one hundred (100%) percent confidence, because it is to the Town.” (Emphasis Fabbri’s.)

63. Fabbri continued, “And I cannot imagine,” Fabbri stated (at 29:48), “under any scenario, where five council members decide they’re going to go do something that is going to violate your property rights. Zero.” The easement the Town sought in March 2019 is not limited to the Town. The Condemnation Notice, as mentioned above, is incomplete. The proposed project by the Corps for which the easements were solicited in 2019 did not occur. Instead, the Town did its own project and the Town project is now complete. Even the Town project, done with no easement from several owners, is at an end, and yet the Town Council, with no actual proposed project pending, has authorized and directed that a Public Access Easement, completely unnecessary by the Town’s own previous statements, be obtained on Plaintiff’s property by the drastic measure of condemnation.

64. At the same April 20, 2019 meeting, then mayor Jimmy Braswell, who was later succeeded in a contested, and disputed, Town election, stated (at 1:11:17), “I would have bet anything we would not be hit by four hurricanes in four years. \*\*\* Who is to say we won’t go another twenty years and not be hit hard.”

65. At the same April 20, 2019 meeting, Bill Otis, the mayor preceding Braswell, clarified (at 1:29:51) that the projects at hand were going to last only the few months necessary for the act of putting a specified volume of fill sand on the beach: “Today’s decision is renourish or not – not what we’re going to do ten, twenty, thirty years from now ... if we get to nine years and stop, we’re better off.” Otis emphasized (at 1:30:44), “Just separate [the two questions]: Do we do the beach project or not.” Braswell concurred (at 1:32:26), “Once we do this first project, it’s done.” (Emphasis Braswell’s.)

66. Unbeknownst to Plaintiff until later, on or about April 28, 2020, Fabbri received from another owner, the Beattie trust, a revised easement document intended to correct many of the same abovedescribed defects in the proposed Public Access Easement, and for which Beattie had included and recorded his own plat, prepared for him. However, upon information and belief, Fabbri requested a correction to a matter of form occurring on the signature page, and Beattie executed another page, authorizing it to be attached only to the easement grant Beattie had submitted. Upon information and belief, unbeknownst to Beattie at the time, Fabbri thereafter attached the signature page to a Public Access Easement and filed it in the title records for Georgetown County. Upon information and belief when Beattie weeks later discovered these actions, he was in touch with both Fabbri and Durant, and eventually had the inauthentic document cancelled.

67. On April 30, 2019, speaking for the Town, Fabbri wrote by e-mail to another owner:

The intent of this letter is to clarify the purpose of the perpetual easement the Town is seeking for beach renourishment and how it will impact your property. The easement will be used only by authorized personnel solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project. Additionally, this activity is confined to the easement area only and not the remainder of your lot. The easement is and always will be for the purpose of constructing and maintaining the project. It does not change the boundaries of your property, convey property to the Town, or change your ability to access or use the property as you currently do, except in limited instances during the construction phase of the project. You will still maintain private access to the beach.

Fabbri is not a licensed attorney. Fabbri is not the mayor (who would also not have authority to make such statements binding on the Town). Fabbri did not cite any Town resolution or ordinance making such statements. Fabbri did not make such statements in an enforceable filed conveyancing document altering the wording or enforceability of the proposed permanent

easement grant document. He cited no legal opinion from licensed counsel willing to make such a statement, nor did he offer a title insurance company which would insure such conditions.

68. Many parts of the statement in Fabbri's April 30, 2019 e-mail letter are patently false, and the Town will not agree to put any of them in writing in the requested easement grant itself.

69. The proposed Public Access Easement grant, by its statements in plain English, will and can be used by the public at any time. In plain English, the document proposed in March 2019 provides for patrolling, "operating," and maintaining a "public beach a[nd] dune system," which is different and greater in scope than merely piling sand, maintaining it, planting on it and putting sand fence on it. On and before July 4, 2020, there were already numerous tire tracks of a full size nonemergency Town vehicle on the dry sand beach on Plaintiff's property.

70. The proposed March 2019 document states that the easement does lie "over, upon, through and under" what is stated in plain English as "the following described premises," and this phrase is followed by a description of Plaintiff's whole lot.

71. The document does convey property to the Town. It is a proposed "grant" of a perpetual easement. An easement is a property interest, and in this case, if it is the perpetual right to both exclude the owner from the land, and a perpetual evisceration of the owner's right to exclude others (the public) from the land, it is a very big property interest, close to taking the entire "bundle" of rights constituting property ownership.

72. The document does change, or allows the Town, or its assigns, to change, the manner in which Plaintiff accesses and uses the property, in that it allows, among other things, destruction of Plaintiff's access structures, then permits a "walkover" only as approved by the Town with no standards set forth for such approval, and includes a broadly stated express ability

of the Town, or its assigns, to “limit access,” which includes access of the owner. “Limit access” means to limit access.

73. Fabbri, who is not a lawyer, and who, upon information and belief, claims that in dealing with the Corps, he “never worked with a lawyer,” still must know his lay representations are false, unless he has received legal advice elsewhere that the document does not mean what a grade-school reader of English would know it to mean. He also must know that one cannot describe an easement in purposefully broad or sloppy language, or even specific language, and then just “say,” on the side, what it means, or that it does not mean what it says.

74. The easement grant or the easement condemnation must explicitly say within the operative document – not in a “side letter” -- what the document means and does not mean. Otherwise, a purchaser, title insurance company, appraiser, or present owner, must assume the worst, and must at least assume what the document plainly says. This is the only basis for assessing whether to make the grant, and in a condemnation action, is the only basis on which to assess the value of what is taken and the damage done by the taking.

75. The Town’s hereinbelowdescribed repeated and continuous insistence on including sloppiness and deliberate ambiguity, if not express overreaching, permanently in Plaintiff’s chain of title, is in bad faith and is an abuse of discretion.

76. Under the proposed Public Access Easement, Plaintiff will not, as stated by lay fiat of Fabbri alone, “still maintain private access to the beach,” when in fact the document expressly grants to others, rights to engage in sweeping activities on Plaintiff’s land and improvements, “together with the right of public use and access.”

77. Upon information and belief, some time after another owner sent a proposed easement grant document to the Town on April 8, 2019, signed and in recordable form, and

responsive to the actual stated needs of the proposed project, the Town rejected it. Here again, the Town was on acute notice of the fact that the easement the Town was actually trying to obtain was different from the easement the Town publicly and privately stated the Town needed.

78. Having consistently publicly misrepresented the scope of the easements sought by the Town to be minimal short-term authorizations to simply bring in equipment and deposit sand for a few months, Fabbri thereafter publicly (in the newspaper and Town published communications) represented in references to certain other owners, that these owners had not sent Fabbri an easement or had not signed an easement, implying outright refusal rather than diligent cooperation. Fabbri did so rather than risk publicizing the inaccuracies of his own prior public statements and the problems with the excessive, overreaching, and in many ways, reckless or sloppy, proposed document.

79. Upon information and belief, the Town represented directly to another owner that the Town had never worked with an attorney at USACE and that USACE would not allow the Town to alter the defective draft document the Town had prepared and proposed, which included incomplete sentences, punctuation errors affecting intelligibility and meaning, misspellings, and typographical errors in addition to the other defects recounted herein. The Town represented that the wording and format of the document was “standard” and not susceptible to any exception.

80. cursory research and a facial inspection of the document, however, reveals that the Corps has on other projects, employed similar language in only one block of text of the overall easement grant document, which the Corps refers to as “Standard Estate 26,” which is a further identification and description of the scope and nature of easement interest being conveyed. The remaining components of the document, such as the premises (identification of parties, the consideration, the granting clause), the description of the property subjected to the



easement conveyed, the habendum clause, any reddendum clause, the execution and the probate or modernized acknowledgement or proof of execution, are clearly and necessarily left to the document assembler. Standard Estate 26 accounts for many, but not all, serious problems presented by the proposed Public Access Easements, including the sneaked-in grant of public access.

81. Further, Standard Estate 26 is anything but standard, or legitimate.

82. Standard Estate 26 has not been established by statute.

83. Upon information and belief, Standard Estate 26, as opposed to some other USACE Standard Estates, has never been adopted as, or in, a regulation in accordance with the federal Administrative Procedures Act.

84. Upon information and belief, Standard Estate 26 does not have the status of actually adopted written policy by USACE. There is no readily accessible record of who came up with its contents, or why, or who approved them. Further, other versions of this nonstandard “estate” contain blanks for insertions of exceptions, making it, per se, not standard.

85. Upon information and belief, continuing to try to resolve the matter, another owner, against constant dissuasion attempts by the Town, insisted on contacting the parties at USACE in Savannah perceived to be involved in the proposed project, D. Steinbeiser and J. Hinely. Upon information and belief, that owner provided them information about nonstandard, nonrequired Standard Estate 26, including a different version used elsewhere, and set up a phone call with one of them and a USACE lawyer.

86. Upon information and belief, in the May 1, 2019 call, the excessive and injurious nature of the proposed document was discussed, as were the public shaming and misinformation tactics employed by the Town to try to stampede remaining owners (under a falsely stated

deadline) into signing the damaging document. Upon information and belief, USACE resolved to look into changing some of the more injurious aspects of the document, likely by employing an exceptions clause in the different version found by the other owner.

87. Upon information and belief, meanwhile and subsequently, the Town publicly falsely represented that the other owner was among a few of an inaccurately stated number, who “had not signed an easement,” or from whom the Town “had not received an easement” (e.g., “Lawyers with the Army Corps of Engineers were scheduled to talk Wednesday with one of two property owners who declined to sign easements to allow the federally-funded beach renourishment project on the south end”), attempting to defame and shame the other owner and others and intimidate them into signing the sloppily drafted, defective, excessive, overreaching, permanent easement grant described hereinabove. By early May, the Town, through Fabbri, was also already publicly threatening condemnation in statements to the newspaper.

88. Upon information and belief after the May 1, 2019 telephone conference, the Corps ignored the other owner’s request to work with him on the revision before sending anything to the Town. Upon information and belief, instead, after the Corps had some communication with the Town, in which the owner was not included, the Corps had the Town draft something to send the owner. Upon information and belief, it took the Town and USACE until around June 18, 2019 to respond, although Fabbri had previously represented April 30 as a drop dead date for owners to provide easements. Upon information and belief, then USACE responded, not to the owner, but to the Town, who would in turn send a re-drafted document with no record of whose drafting was involved or whose decisions went into what was presented.

89. Upon information and belief, meanwhile, the owner worked with the Town to alter other portions of the document, presumably not requiring Corps input, or otherwise being

approved by USACE in communications not including the owner. Upon information and belief, one of these changes, agreed and proposed by the Town in writing around June 18, 2019, was to move the project line on the proposed attached map a few feet so that it did not envelope the owner's concrete foundation in the project area.

90. Upon information and belief, the putative Corps changes the Town drafted to other parts of the proposed document were inadequate to address all the other owner's concerns. Upon information and belief, for example, they excepted the owner's deck from destruction, but not from all aspects of the easement, such as public access, and also made no other effort to preserve the owner's rights to maintain, repair, replace or relocate the deck or other improvements. Upon information and belief, the owner promptly sent the Town a suggested further revision in June 2019.

91. Upon information and belief, despite the urgency for which the request for an easement was first presented to the other owner and others, for weeks and months, the owner never got a response.

92. Upon information and belief, it would be eight months before the other owner would hear anything further about a request for an easement, and about nine and a half months before the owner would hear anything further about the agreed substance of any proposed easement.

93. On July 26, 2019, Plaintiff recorded a proper easement and plat responsive to the Town's publicly stated needs, correcting many of the same abovedescribed defects,

Nonaction by Corps, Decision of Town That Corps is Unreliable

94. By early July 2019, for reasons of deciding to do a cost-benefit study of the potential Corps project, USACE put the proposed project on hold, with no promise of when it would be pursued or on what basis with regard to levels of sand or money.

95. By early July 2019, the Town, through Fabbri, was publicly claiming in statements to the paper that the Town had acquired all 113 easements sought. He also stated that the entire initial decision to let the Corps do the south end project was based on a waiver, in writing, stating that a new cost-benefit analysis would not be needed and that the Town was exempt from it.

96. Then-mayor Braswell said, “[T]hey’re not holding up their end of the bargain ... They are leading us down the primrose path.” Holliday said, “We can’t rely on them.” Holliday later stated, “the question for council is, will they do it at all? That’s the biggest concern I have.” Carter stated, “There’s so much uncertainty in trying to deal with the Corps.” And again, Holliday stated that although he thought the benefits of Corps involvement were huge, “You have to weigh that against the potential that they won’t do anything at all.”

Town Plans, Action, Formal Decision That Easements Are Unnecessary, Rejection of Corps Project, and Completion of Town Project with No Easement

97. In or around July 2019, the Town rejected the Corps project. The Town decided to do its originally designed project, on its own, for both the south end and mid-island.

98. On July 29, 2019, the Town stated, “The easements that were collected were necessary for the Army Corp of Engineers to do our project.” However, the Town Council officially acknowledged, “...but if we decide to go with Marinex the easements are not necessary.”

99. Town Council decided to go with Marinex. As Fabbri, stated it August 1, 2020, “In light of the uncertainty clouding the future of the USACE option, council decided to forgo the federal project and move forward with Marinex and the construction of our original project.”

100. The Town's “Town of Pawleys Island South Carolina Local Comprehensive Beach Management Plan August 2011” is adopted by Town ordinance but is absent from the codified ordinance itself and is there said to be available at Town Hall. It is also available at <https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/beach-management/local-comprehensive-beach>. There, the Town claimed at page 47, that while the beach in the vicinities of some of the properties of the 2020 Town Council members had relatively stable beach and a low or negative long term erosion rate (measured in feet of shoreline change per year), the beach in the vicinity of Plaintiff's property (at Monument 4200C) had a long term erosion rate which was actually a positive accretion rate (presented as a positive number) of one and forty-one one hundredths (1.41) feet of positive beach accretion per year. These rates are shown in the Plan at Table 3 and in Figure 17, which is mislabeled as “Figure 4.”

101. In August 2020, the Town continued to consider the various amounts of sand it could include in the Town project, which would be done without involvement of the Corps. On August 27, 2019 Rocky Holliday stated in the Town Council meeting that the Town now understood and acknowledged that they were not thinking about the timing of future projects correctly. Originally, he explained, the Town was looking at doing a project every ten 10 years. Now, in working with the Town's engineers and discussing it among Council members and Town “staff,” there was another scenario reviewed with a much longer time span between projects. Holliday presented a graph showing that if the project added one million, one hundred thousand (1,100,000 c.y.) cubic yards of sand to the beach, it would be twenty-two (22) years

before the additional sand eroded down to four hundred thousand (400,000 c.y.) cubic yards of sand more than was presently on the beach. According to Holliday and the engineers and Council and Town “staff,” four hundred thousand (400,000 c.y.) cubic yards more than was then on the beach would be a “trigger point” for another renourishment project. I.e., it might be twenty-two (22) years before another renourishment project, assuming one were done even then.

102. In early September 2019, the Town decided to contract for the option providing the maximum amount of sand for the project, one million, one hundred thousand (1,100,000 c.y.) cubic yards of sand, at a forecasted price of fourteen million, eight hundred thousand (\$14,800,000.00) dollars.

103. With no easement from Plaintiff different from the proper one Plaintiff had recorded July 26, 2019, between late October 2019 and late April 2020, the Town did all the renourishment in its own project, on its own, from stem to stern, with a contractor paid by the Town. By March 16, 2020, the full contracted volume of one million, one hundred thousand cubic yards of “sand” fill was in place and complete, from the south end north to just north of the pier, about three miles from Plaintiff’s house.

104. The renourishment on the south end was largely completed before mid-February 2020, and placed a large artificial dune-like berm of spoil material directly on the ocean side of Plaintiff’s house.

105. In February 2020, in an e-mail to all owners, echoing Holliday’s August 27, 2019 estimates of twenty-two (22) years of sand, Henry stated sand in place would last fifteen (15) years, with a substantial volume still remaining at that time.

106. The executed, engineer-designed-and-supervised project avoided Plaintiff’s stairs and bent the berm around a nearby owner’s deck to avoid the deck and other features. The berm,

full of rocky material, shells, mud balls, rocks, and blackish-grey dirty sand, was high enough to completely block the view of the ocean from the under the house, and required the building of a walkway out from the deck to get up over it to get to the ocean.

107. The spoil material of the completed renourishment also built the beach up to where the high tide in early April 2020 generally did not rise or encroach closer than about seventy-seven yards from the eastern edge of Plaintiff's stairs.

108. About a block south of Plaintiff's property, the engineer-designed-and-supervised project also moved the berm about thirty (30') feet seaward from its originally designed location. Upon information and belief, this was done simply to have the berm further from the public parking area already existing at that location.

#### Re-emergence of Corps Interest in Possible Future Projects

109. In late February 2020, after all renourishment under the Town's project was complete on Plaintiff's end of the beach and for miles to the north, Fabbri began contacting some owners to discuss obtaining either an easement or a revised easement because the Town wanted the Corps possibly to be available to do future renourishment projects and money swapping under a contrivance characterizing the Corps as a participant in the already completed project costing over fourteen million (\$14,000,000) dollars, on which the Corps had done nothing.

110. The contrivance was to let the Corps do as much as \$40,000 to \$80,000 worth of work erecting sand fence and planting "beach grass" on the already completed spoil berm and be "deemed" to have done the project. ("Beach grass" is now assumed to NOT refer to the iconic, southern, native, dune-building grass, *Uniola paniculata* (sea oats), a food producer for the red-winged blackbird, but rather, to either *Ammophila breviligulata* ("American beach grass," with a

range from Maine to North Carolina) or *Ammophila arenaria* (“European beach grass,” with a wide northern range), both of which are non-native and can be invasive.) Upon information and belief, Fabbri admitted that if the Town obtained “the easements” and had the Corps enter the contrived relationship, given the Corps’s and Congress’s track records, there was absolutely no guarantee the Corps would ever do anything. However, he pointed out that if the Town did not get the Corps into such a relationship, there was a 100% chance the Corps would never do anything. This is the same principle which prevents one from winning a dollar in poker if one never sits at the table to take a chance, and dictates that one might not catch any fish at all in a boat, but one certainly won’t if one is sitting on the couch.

111. Upon information and belief, after such a discussion, another owner, on February 24, 2020, yet again sent the Town a proposed easement grant, updating the owner’s prior unresponded-to, June 18, 2019 revisions to correct previously unnoticed broad language allowing the Town or its assigns to exclude the owner from his own property, and clarifying, in light of adverse experiences in other jurisdictions suffered years after similar easements were signed, that the scope and nature of the Town’s activities in the subject part of the owner’s land were not to broaden or change, and that owner’s access to and use of the beach would not be hindered or changed.

Requests for Easement for Speculative Possibility of Future Projects When No Actual Project is Any Longer Proposed or Pending

112. Upon information and belief around March 31, 2020, Fabbri contacted the other owner with what was represented to be the Corps’s response to the revisions requested by the owner about nine and a half months earlier, on June 18, 2019, before the Corps project was rejected. Upon information and belief, according to Fabbri, with one exception, the Corps



refused any changes beyond those the Town had sent the owner in June 2019 back before the Town elected not to involve the Corps and completed the renourishment project on its own. Upon information and belief, according to Fabbri, the Corps did now agree to adding one word, “public,” requested by the owner in the easement the owner offered February 24, 2020. Upon information and belief, Fabbri, however, represented that Fabbri himself cleaned up the document in some particulars and also had the map/plat changed to move the project line (the so-called “Perpetual Easement Line”) itself seaward. Upon information and belief, in his e-mail, Fabbri stated that he had “incorporated an alternate perpetual easement line that removes all structures.”

113. Upon information and belief, Fabbri attached an updated proposed easement grant, but inadvertently failed to add the agreed added word, “public,” in what he sent. Who Fabbri copied on this written communication is unknown, but, upon information and belief, the map/plat in document he e-mailed also did not move the PEL to remove all structures. It did move the PEL off the concrete foundation system, further from the main pilings of the house, but it left the deck and stairs fully enveloped.

114. Upon information and belief, on April 8, 2020, now, like the rest of the populace, fully submerged in the COVID-19 pandemic crisis and widespread quarantining-lockdown issues, the owner wrote to Fabbri again.

115. Upon information and belief, in the April 8, 2020 e-mail, the owner explained specifically and at length, again, what was unreasonable, excessive, and injurious about the documents the Town had sent and kept sending.

116. Upon information and belief, in the April 8, 2020 e-mail, the owner explained in eight items, that the document the owner sent February 24, 2020 was properly expressed and

would have granted more than was actually or reasonably needed, but that the March 31, 2020 proposed grant prepared by Fabbri unreasonably sought far more. The easement grant Plaintiff had recorded July 26, 2019 bore a similar relationship to the documents the Town had proposed, correcting many of the same concerns.

117. Upon information and belief, the other owner subsequently again reminded Fabbri, that it was not correct to state that he had “failed to get an easement” from the owner, but had, rather, he had failed to get an unreasonable easement from the owner. Upon information and belief, the owner reminded Fabbri, the Town Administrator of Pawleys Island, who reported to Town Council, in writing:

Those unreasonable features include encumbering our improvements in a manner which might prevent their repair and might remove our ability to exclude others from them, lack of clarity that our rights to access the ocean from our property are not affected, granting the public an easement across our property which is not legally necessary for renourishment, not explicitly limiting the scope and nature of the Town's future use of the easement area to renourishment-related activities, and requiring permission to build access structures to be obtained by whomever the Town designates without requiring the person to be appointed by law and to apply standards applicable to all owners.

118. Upon information and belief, later in April 2020, the other owner contacted Henry directly, explained the situation, and offered Henry and the rest of Town Council an opportunity to understand, directly, what had been going on and do the right thing. Upon information and belief, at Henry’s suggestion, on April 21 and 24, 2020 the owner sent Henry a history of the matter and a specification of the repeated unreasonableness and excessiveness of the Town’s requests along with corrective revisions.

119. Upon information and belief, Henry forwarded it to the Corps, not advocating for the owner in the least. Upon information and belief, despite all the information provided to Fabbri, and now directly to Henry, Henry stated to the Corps that he “[did]’nt claim to fully

understand the legalese associated with some of the language in question,” and asked if the Corps could have a conversation with the owner.

120. Upon information and belief, the Corps had no conversation with the owner.

Town’s and Corps’s Capricious or Spiteful Insistence That Property Owner Relinquish to Town and Others in Easement, Property Rights Previously Agreed in Writing Not to Be Necessary to Any Proposed Project, Whether Past, Future, Moot, or Completely Speculative

121. Upon information and belief, on May 7, 2020, Henry reported to the owner third hand that Fabbri, not Henry, had spoken to the Corps “again” and that Fabbri advised that the Corps had advised that the Corps was not in agreement with any changes, including any previously agreed.

122. Upon information and belief, the changes to which the Corps allegedly retracted its agreement, to add ambiguity, were allegedly called “minor” by the Corps, according to Henry, according to Fabbri. Upon information and belief, the changes were, however, verified later to be all those that were previously agreed in writing to be unnecessary to the earlier, moot, Corps project, and to be unnecessary to any speculative possible future project. Upon information and belief, the retracted changes included some which were made for other owners, thus confirming they were per se unnecessary to exact from the other owner or Plaintiff, and spiteful or for purposes of some misguided negotiating pressure, which is bad faith.

123. Upon information and belief, these previously agreed, but now retracted, changes for the other owner and some others included:

a. those agreed to by the Town preceding owner’s June 18, 2019 requested revisions, which included an insufficient, but very material, not “minor,” statement that the

owner's improvements in the shaded area on the proposed map would not be subject to destruction or removal by the easement holder;

b. the "cleanup" in the March 31, 2020 proposed grant Fabbri sent to the owner, which included the very material, not "minor," clarification that the easement – with all its attributes, including public access – did not run over the owner's entire lot;

c. the very material, not "minor," moving of the PEL in the map attached to that same document, four to five feet further away from the main pilings of the house; and

d. the very material, but not "minor," addition of the word "public" as a qualifier of the type of access the Town or later owners of the easement would be able to limit from accessing the property. That is, a change removing the ability of the holder of the easement to keep the owner off his own property.

124. Including in any proposed easement, the following attributes in favor of the grantee, if not absolutely required for the purpose of the proposed project, is unnecessary as a matter of law; doing so is also, if not fraudulent, then spiteful and in bad faith, or capricious, or arbitrary, or done out of such indifference, ignorance or lack of training as to be an "abuse of discretion" on multiple levels of the definition of that term:

- a. the right to destroy owner improvements in the shaded area;
- b. an implication or statement that the attributes of the easement apply to the entire lot;
- c. showing a shaded area for work, sand piling, and public access two (2') feet from the main body of the house, if not also enveloping foundation elements; and

d. an ability to exclude the owner from the owner's own land in dune "areas" under an overbroad power to "facilitate preservation" of "dunes" or "vegetation," which could be just about anything.

Town Council's Punitive and Bad Faith Vote to Condemn Wholly Unnecessary Easements With Features Agreed to Be Unnecessary to Anything, Under False Pretenses, Continuing to Conceal or Misrepresent the Features Sought, or Under Abject Failure to Understand or Attempt to Inform Itself of the Meaning of Plain English in the Easement

125. Upon information and belief, neither Henry, nor Fabbri, nor anyone on Town Council, despite having a Town Attorney available and involved, despite Fabbri's reports to Council, despite having at least one other owner's explanation of the matter numerous times in writing, and despite being fully aware of Plaintiff's and other owners' concerns with the very real, legal and real-life consequences of the unreasonable, overreaching, overbroad and intentionally sloppy and ambiguous granting document the Town kept proposing, did anything to advocate for their constituent and its property.

126. What the Town Council and Fabbri did was take rapid public steps to approve an attempted condemnation of an interest in Plaintiff's property, and publicly misrepresent the approved measure as condemning an easement "only to put sand on the beach," and publicly represent the measure to be necessary because, for reasons Town Council pretended not to know, Plaintiff simply had not signed "an easement."

127. On May 18, 2020, after, upon information and belief, plans already made and pursuant to an agenda already set, the Town Council of the Town of Pawleys Island met (live-streamed and now recorded, found at <https://www.facebook.com/TownofPawleysIsland/>).

128. There, the Council, consisting NOW of Henry, Green, Holliday, Carter, and Zimmerman, joined by Fabbri as Town Administrator, first have an off-the-record "executive session" with the lawyer, Durant to get "legal advice."

129. They then go through an exercise of ostensibly thorough and thoughtful and hesitant discussion about the nature of the problem and whether to condemn the properties of four of their fellow citizens.

130. The theme is they can't understand why everybody wouldn't "sign" "an easement," and the implication is that certain people simply would not grant one. In reality, and truth, however, these are two different things.

131. Fabbri assures the Council on the record that he has worked diligently on the matter for "a year and a half." Fabbri knew full well that, of three of the owners: one had actually sent a proper executed easement to him over a year earlier and had followed numerous times, in writing, with exactly the reasons certain aspects of the easement sought by the Town were unnecessary and unreasonable; another had prepared and hand delivered an easement in April 2019, which Fabbri subsequently altered without authorization, resulting in the Town filing a cancellation in July 2019 and that owner filing a clearer cancellation in October 2019; and Plaintiff had prepared and filed an easement and plat in late July, 2019. Yet, Fabbri states to Town Council and the viewing public (at 59:10) that "for whatever reasons," the owners in question had not "signed." Despite having received a very full explanation, Fabbri does not disclose this fact and adds, "they do not owe us an explanation," clearly implying, falsely, that no explanation was given and no reason was known. The then-mayor, Henry, states that he has gone to bat for concerned owners, but doesn't state what he did. Not one mention is made by any Council member of having read the proposed easement or of knowing its contents. Not one

mention is made of at least three of the subject owners having offered easements of different scope. The written resolution Council eventually votes on, despite its liberal recitations and “whereas”s, makes no mention of the actual nature of the easement or any concern expressed about its unnecessary scope.

132. Durant, the lawyer advising the Town, simply states and advises Council on the record that the owners "would still have all the same rights they had before granting the easement."

133. Administrator Fabbri says he had a “dialogue” with all 4 owners to get an easement to deposit spoil/sand in front of their respective houses and “doesn’t know why they won’t sign.”

134. Town Lawyer, Durant, of Surfside, adds: “property owners will still have title to the property.”

135. Zimmerman, at time stamp [1:02:35](#), asks Town Lawyer Durant, on the record in the publicly broadcast session, "and the easement basically is simply to put sand on the beach, right, David?" Durant officially replies, advising Council, "Yes, that is correct." The three aforedescribed owners had all offered easements to put sand on the beach.

136. No mention is made of the cooperative efforts or the nature of the objections, if any, of the citizens whose property is the subject. No mention is made of the tenuous nature of Corps involvement.

137. No mention is made that one subject owner actually gave Fabbri/The Town an easement to deposit spoil/sand in front of his house, in person, on or about [April 25, 2019](#), at Fabbri's office, and that what happened after that was that Fabbri requested and was provided a

corrective signature page, and then attached the signature page to a different, unauthorized document, and recorded it in the title records of Georgetown County.

138. No mention is made of the owner's later discovery of the more-than-a-little-inauthentic document, letter to Fabbri, and efforts to get his title corrected.

139. No mention is made of another owner's extensive, if not exhaustive, efforts to accommodate the Town, give it every chance to do the right thing, and do the job it should have done or at least should have backed.

140. No mention is made that Plaintiff had, at its own expense, actually signed and directly recorded an easement responsive to the publicly professed needs of the Town for an "easement basically simply to put sand on the beach."

141. Upon information and belief, contrary to the implication of Town Council at the May 18, 2020 meeting, and contrary to statements and implication of those reporting to Council, three of the owners referenced had been willing, since the previous year, to grant the Town the right to renourish in front of their homes, and indeed, do more than "simply to put sand on the beach."

142. No mention is made that for months, the Town abandoned any effort to obtain, or iron out any questions about, the remainder of the previously sought 113 easements, because the Town determined to not get easements. The Town determined to do the project on its own, which it did and completed. After plunging itself into a huge, long term debt, the Town then sought an angle to possibly get some money. After the actual renourishment was already done, the Town then began a last-minute resumed courtship with the Corps and now, under the bad faith pretense that there was a project yet to be done, the Town Council presented the matter as if it were one of great urgency. The Town also presented this matter of needlessly condemning the



property of its own citizens as if the citizens had plenty of time to get this done, when in truth the matter was presented by the Town, both the first time and a second time, as an emergency under falsely stated deadlines.

143. Also not emphasized in the Town Council's comments on the subject, as the present council purports to agonize over condemnation of its citizens' properties, is that easements are only sought from roughly the last mile of property owners on the south end. Neither the mayor, the other council members, the town attorney, nor the town administrator have signed such an easement. The Council do not even publicly claim to have read or understood the Public Access Easement, although they are charged with understanding Town affairs, are educated people, are reported to by Fabbri, are advised by a Town attorney, and condemning their own neighbors' property is certainly a grave and drastic matter, costing those neighbors time, stress, and legal and other expense, if nothing else.

144. The renourishment which is also already done for the roughly two miles to the north will be paid for by the Town with whatever different help the Town can get, but with no help from the Corps. What the Town may or may not get back from the Corps someday perhaps twenty-two (22) years hence with respect to the south end, and whether, if so, the Town would re-allocate the benefit to all, are speculative matters. If the Town had not begun courting the unreliable Corps again, the south end would simply be in the same situation the two miles to the north is in -- with beach renourishment, already completed, and paid for by the Town of Pawleys Island with long term debt and whatever non-Corps help it can come up with.

145. While Durant states: "Property owners will still have 'title' to the property," no mention is made of the fact that Durant, with Fabbri's approval, drafted an easement unequivocally granting "public access" up to within a few feet of all the owners' houses, as

indicated by the PEL. This public access includes decks, stairs, and other improvements shown as being on the owners' land, some being original appurtenances to houses built over 50 yrs. ago. In its pretended thoroughness, the Council does not acknowledge that the Town's proposed easements also include the ability of the Town, or others coming to control and use the easement, to "limit access" to the easement area - without any qualification as to whose access may be limited. In plain English, this means the Town would have power to exclude people, including the owner, from the property.

146. Nor does the Council acknowledge in its pretended careful deliberation, that the proposed easements do not provide or reserve any right to the owner to repair, rebuild, or maintain any improvements of the owner's, located now or in the future, within the area the Town wants.

147. Nor does the Council let slip to the public that the proposed easements include the affirmative right of the Town to remove "obstructions" -- in plain English this means tear down the owner's improvements, in the area the Town wants. Instead, in an abuse of discretion, the Council votes on something it professes not to have read and not to understand. Shockingly, Carter states in the May 18, 2020 meeting, simply, "I can't understand it."

148. Upon information and belief, on May 21, 2020, one of the other owners asked Henry, directly, whether Henry himself had ever gotten a written a response from the Corps to Henry's own e-mail in which Henry forwarded the Corps the details provided by the owner, of the serious issues presented and solutions for them. Upon information and belief, when Henry did not respond, the owner asked again by e-mail on June 4, 2020, and Henry did not respond in any way.

149. Upon information and belief, on May 27, 2020, the other owner asked Fabbri, directly, since the only information the owner had received as to the Corps's response was third hand from Henry, whether Henry got it right in describing the Corps's communication with Fabbri on the subject, whether there was any more detail or reasoning given by the Corps, and whether there was anything in writing as to what the Corps meant. Upon information and belief, Fabbri did not respond, the owner followed up on June 4, and Fabbri did not respond.

Condemnation Notice Purposefully Obscuring Nature and Extent of the Easement Sought and What Is Being Valued, Including False Certifications, Sent Without Ever Having Made Appraisal Available or Having Negotiated in Light of Appraisal; Later-Obtained Appraisal Similarly Murky About What the Attributes of the Subject Easement Include; Missing Elements From Loose Leaf Papers

150. In Late June 2020, the Town sent Plaintiff a condemnation notice in which:

- a. The Town falsely stated, in contravention of express statutory procedure and Rule 11, SCRCF that the Town had first made an appraisal report available to Plaintiff and falsely certified that the Town had negotiated in good faith with respect to that appraisal report for the purchase of an easement prior to serving the condemnation notice;
- b. The Town offered to pay zero dollars because of the reasoning and opinion of the appraiser in the appraisal report, which had never been provided;
- c. The Town gave Plaintiff two (2) thirty-day deadlines: (1) thirty days from service to respond to the offer in the Condemnation Notice, and (2) thirty days from service to file a separate action challenging the ability of the Town to condemn the subject property, in whole or in part;
- d. The Town did not, even then, include a copy of an appraisal; and
- e. The Town did not describe the attributes of the easement it sought to condemn.

151. Not in the Condemnation Notice itself, another partial proposed Public Access Easement document was simply included in the envelope with the mailed Condemnation Notice. The additional document was not part of the Condemnation Notice, nor referred to in it, nor referenced in any transmittal letter. The unexplained partial Public Access Easement document had approximately the same language used in the proposed Public Access Easement proposed by the Town around March 2019.

152. Plaintiff had to contact the Town after having been served with the Condemnation Notice in order to obtain the appraisal report upon which the time-sensitive Notice and the offer therein was supposedly based, and which was required by law to have been sent to Plaintiff before serving a condemnation notice. The appraisal report indicates that the appraiser was never provided a copy of the proposed easement which was the sole subject of his appraisal.

Clarification of Town Punitive and Bad Faith “Intent” to Be Unclear and Maybe Pursue Wholly Unnecessary Easements With, Not Just Some, But All Features Previously Agreed to Be Unnecessary While Having Publicly Concealed or Misrepresented Features Sought

153. Upon information and belief, subsequently to another owner’s receipt of a condemnation notice, upon information and belief, Oranga sent to the other owner, another separate Public Access Easement document, this time complete with attached map, the document being the one proposed by Fabbri to that owner March 6, 2019 (the one with maximum defects, before any of the changes of the past year had been made).

154. Upon information and belief, the owner asked Oranga why this separate document was sent and what its purpose was, and Oranga responded in writing on behalf of the Town that this was the original version of the proposed easement grant document and to please consider all other versions withdrawn “at this time.”

155. Upon information and belief, the document conflicted materially with the easement described by the condemnation notice sent to that owner.

156. Upon information and belief, no amendment of the condemnation notice or its exhibit was sent to the other owner, however, nor was any extension or reset of time mentioned. Plaintiff objects to the Town constantly creating vagueness and unintelligibility in serious legal documents which are supposed to require professional valuation opinions, and does not agree to the Town changing its position on time-sensitive legal matters unilaterally without leave of court, by simply sending more or different things.

FOR A FIRST CAUSE OF ACTION AND REQUEST FOR RELIEF

(Any necessity for the easement requested for the Corps project and any other, ceased, when the proposed Corps project for which an easement was requested was rejected, the Town officially determined that an easement was not necessary, the work was not done by the Corps, and the work was completed by the Town.)

157. The foregoing facts and allegations are incorporated herein.

158. The contemplated condemnation is completely unnecessary as a matter of law, and therefore constitutionally and equitably prohibited, and the Town of Pawley's Island's attempt to condemn an overbroad easement after the fact for an already completed and no longer proposed or prospective project should be disallowed and permanently restrained.

FOR A SECOND CAUSE OF ACTION AND REQUEST FOR RELIEF

(Because no new Corps project is proposed in good faith, an easement is also not necessary for a merely speculative project that may or may not occur many years in the future.)

159. The foregoing facts and allegations are incorporated herein.

160. In the alternative that the Town asserts the condemnation is for some other, future, hypothetical project, the condemnation is still unnecessary and in bad faith in that any

such putative future project is admitted by the Town to be speculative, unlikely, and by the Town's own calculations, most probably unnecessary for as much as twenty-two years.

FOR A THIRD CAUSE OF ACTION AND REQUEST FOR RELIEF

(If a new Corps project were proposed, the Town's insistence that the easement is only for placement of sand when all the sand has already been placed, and the Town's own bad faith, if not fraud and abuse of discretion, in misrepresenting the purpose and scope of the easement, bars and disqualifies any claim by the Town that the easement is necessary.)

161. The foregoing facts and allegations are incorporated herein.

162. In the alternative that an actual, bona fide, proposed additional project were to materialize, the easement sought has been sought through knowing, intentional misrepresentation, lack of honesty in fact, spite, caprice, arbitrariness, and illegality, and has also been sought under influence by legal error as to not only the nature of the easement that is sought, but also as to the lack of basis, or legal or practical need, for the easement or its numerous overbroad attributes. The easement sought has also been sought under influence of legal error as to the consequences of Plaintiff granting it or the Town taking it. The easement is also being sought through bad faith noncompliance with procedural rules. In that these facts constitute "fraud, bad faith or abuse of discretion," the Town's contemplated condemnation action, currently stayed by this action, should be disallowed with prejudice.

FOR A FOURTH CAUSE OF ACTION AND REQUEST FOR RELIEF

(The South Carolina Eminent Domain Procedure Act is the "exclusive procedure" for condemnation, the sections of the Act which require the condemnor to provide the appraisal before serving the notice and which specify the contents of the notice are stated in imperative terms of "shall" and "must," and the Town's failure to comply with these mandatory procedures is a fatal defect, rendering any attempted condemnation void and ultra vires; these defects, coupled with the fact that under the statute, the notice is the operative pleading for purposes of an action, and that the notice contains a false certification, further justify dismissal pursuant to Rules 11 and 12, SCRPC and other applicable authorities.)

163. The foregoing facts and allegations are incorporated herein.

164. The Town failed to give reasonable notice of request of the appraiser to enter onto the property, as required by S.C. Code Ann. subsection 28-2-70(C) and the common law of trespass

165. The Town made no such request at all and gave no notice at all of any request.

166. After obtaining an appraisal, the Town failed to make the appraisal available to Plaintiff before service of the condemnation notice as mandated by S.C. Code Ann. subsection 28-2-70(A).

167. After obtaining an appraisal with no request to enter the property or notice of intent to enter, and delaying in providing the report to Plaintiff, the Town made the appraisal or its conclusions available to the newspaper.

168. By failing completely to describe in the Condemnation Notice, the attributes of the easement sought, the Town failed to give, in the condemnation notice, “an appropriate legal description of the interest to be taken,” as required by S.C. Code Ann. subsection 28-2-280(C)(3).

169. Rule 11, SCRCF applies under S.C. Code Ann. section 28-2-120 because Rule 11 is not in conflict with the Eminent Domain Procedures Act, and because under S.C. Code Ann. subsection 28-2-30(5), a condemnation action includes all acts after the service of the condemnation notice, and the condemnation notice therefore constitutes a “pleading, motion or other paper” in an action, as described by Rule 11.

170. The Town failed to comply with Rule 11, SCRCF in that the statements in the Town’s operative pleading, the condemnation notice itself, i.e. the Town’s statement that the Town made the appraisal available before serving the condemnation notice and the Town’s

certification that a negotiated resolution in light of the appraisal provided was attempted prior to service of the condemnation notice, were false, and without factual basis.

171. After serving the condemnation notice, and only after Plaintiff's demand, the Town sent Plaintiff the appraisal report, which also did not set forth the attributes of the easement sought, because the Town did not provide a copy of the proposed easement document to the appraiser.

172. For the reasons that (1) noncompliance with exclusive mandatory procedure renders the Town's condemnation notice ultra vires and void, and (2) knowing or recklessly negligent false statements in a pleading render the pleader subject to sanctions including dismissal, the beginnings of the condemnation action represented by the Town's Condemnation Notice should be dismissed with prejudice.

FOR A FIFTH CAUSE OF ACTION AND REQUEST FOR RELIEF

(If, despite the Town's prior determination that no easements were required, the Town could falsely re-label the project the Town completed as one which was completed instead by the Corps and as being a project for which an easement is required by the Corps, the easement sought to be acquired by the Town is still unnecessary, in that it includes far more than is necessary to accomplish its stated purpose, fails to balance any injury to Plaintiff, seeks things the Town already admitted in writing were not necessary, and, upon information and belief, seeks some things not sought from other owners.)

173. The foregoing facts and allegations are incorporated herein.

174. In the further alternative that the Town could later show in good faith, any actual necessity for any easement at all across Plaintiff's land and improvements, it is necessary to first limit any condemnation to what is actually reasonably necessary, and to clearly define the easement being sought, including its limitations and consequences. To do so requires prior correction of persisting legal error or misrepresentation as to not only the nature of the easement that is sought, but also the basis, or legal or practical need, for the attributes the Town sloppily or



deliberately attempts to include, and as to the consequences of Plaintiff granting it or the Town taking it.

175. Among other things, there is no need for an easement over the owner's entire lot. There is no need for public access of any kind, no need to limit owner access, no need for broad Town activities unassociated with doing and maintaining the work, no need to include owner improvements, no need to be so close to owner homes, and no reason not to clarify there is no change in owner access to ocean and beach.

176. Additionally, the Town's bad faith noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed, so that Plaintiff will not be deprived of a proper opportunity, forum and procedure for assessing value, including knowing exactly what is or is not proposed to be taken.

177. The extent of the easement sought was purposefully obscured in bad faith in Town pre-condemnation communications, but cannot be allowed to remain so in the Condemnation Notice and proceedings relating to it.

FOR A SIXTH AND POSSIBLE FURTHER CAUSES OF ACTION AND REQUESTS FOR  
RELIEF

(Unanticipated arguments of the Town may give rise to other claims by Plaintiff in this or another action and Plaintiff does not waive jury trial on any that are so triable.)

178. The foregoing facts and allegations are incorporated herein.

179. In the alternative that Plaintiff's rights herein or in any contemplated condemnation action are adversely affected by the already completed project, Plaintiff may need the already completed actions of the Town to be redressed by damages for trespass or other monetary remedy, for which cause of action Plaintiff would and does demand a trial by jury, despite the nonjury portions of this action challenging the Town's right to condemn.

WHEREFORE, Plaintiff prays that the Condemnation Notice be quashed and that the Town be forever barred and enjoined from filing it or proceeding with it, for such other and further relief as is just and proper, and for all litigation costs.

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)

Stanton Law Offices, P.A.

PO Box 245

Columbia, SC 29202

Tel: (803) 929-1484

[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)

*Attorney for Sunset Lodge, LLC*

7/31/20

September 18, 2020 Town answer to Amended Complaint.

|                         |   |                                    |
|-------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS       |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT         |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO.: 2020-CP-22-00600 |
|                         | ) |                                    |
| Sunset Lodge, LLC,      | ) |                                    |
|                         | ) |                                    |
| Plaintiff,              | ) | <b>ANSWER</b>                      |
|                         | ) | <b>TO AMENDED COMPLAINT</b>        |
| v.                      | ) |                                    |
|                         | ) |                                    |
| Town of Pawleys Island, | ) |                                    |
|                         | ) |                                    |
| Defendant.              | ) |                                    |
| _____                   | ) |                                    |

**DEFENDANT, TOWN OF PAWLEYS ISLAND, BY AND THROUGH ITS UNDERSIGNED COUNSEL, ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT, ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:**

**FOR A FIRST DEFENSE**

1. Each and every allegation of Plaintiff's Amended Complaint which is not hereinafter specifically admitted, modified or qualified, is denied, and strict proof thereof is demanded.

**FOR A SECOND DEFENSE**

2. The Defendant denies the truth of the allegations contained in Plaintiff's "First Cause of Action and Request for Relief, Second Cause of Action and Request for Relief, Third Cause of Action and Request for Relief, Fourth Cause of Action and Request for Relief, Fifth Cause of Action and Request for Relief, and Sixth Cause of Action and Request for Relief."

3. The Defendant denies the truth of the allegations contained Plaintiff's "Preliminary Statement", except for the first paragraph thereof.

**FOR A THIRD DEFENSE**

4. The Defendant lacks knowledge and is without sufficient information to either admit or deny the allegations contained in Paragraphs 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 of the Amended Complaint.

5. The Defendant denies the truth of the allegations contained in Paragraph 2 of the Amended Complaint, except admits that the Defendant is a municipal corporation.

6. The Defendant admits the allegations contained in Paragraph 3 of the Amended Complaint.

7. The Defendant denies the truth of the allegations contained in Paragraphs 4, 20, 30, 31, 32, 33, 34 of the Amended Complaint.

8. Answering the allegations contained in Paragraph 17 of the Amended Complaint, the Defendant admits only that David DuRant is an individual not owning an interest in property on Pawleys Island; that he was present as Town Attorney at the Town Council meeting on May 18, 2020; and, that he was Town Attorney at the time of service by the Town of the Condemnation Notice. All other allegations are denied.

9. Answering the allegations contained in Paragraph 18 of the Amended Complaint, the Defendant admits only the first sentence thereof. All other allegations are denied.

10. The Defendant lacks knowledge and is without sufficient information to either admit or deny the allegations contained in Paragraphs 35, 36, 38, 39, 40, 41, 42, 43, 44, 49, 50, 55, 56, 57, 58, 64, 65, 67, 70, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 105, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 127, 128, 132, 133, 134, 135, 136, 137, 138, 139, 140, 148, 149, 153, and 154 of the Amended Complaint.

11. The Defendant denies the truth of the allegations contained in Paragraphs 37, 45, 46, 47, 48, 51, 52, 53, 54, 59, 60, 61, 62, 63, 66, 68, 69, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 103, 104, 106, 107, 108, 109, 110, 119, 122, 123, 124, 125, 126, 129, 130, 131, 141, 142, 143, 144, 145, 146, 147, 150, 151, 152, 155, and 156 of the Amended Complaint.

#### **FOR A FOURTH DEFENSE**

12. The allegations set forth in Paragraph 157 of the Amended Complaint do not require a response. In the event a response is deemed necessary, the Defendant denies same.

13. The Defendant denies the truth of the allegations contained in Paragraph 158 of the Amended Complaint.

#### **FOR A FIFTH DEFENSE**

14. The allegations set forth in Paragraph 159 of the Amended Complaint do not require a response. In the event a response is deemed necessary, the Defendant denies same.

15. The Defendant denies the truth of the allegations contained in Paragraph 160 of the Amended Complaint.

**FOR A SIXTH DEFENSE**

16. The allegations set forth in Paragraph 161 of the Amended Complaint do not require a response. In the event a response is deemed necessary, the Defendant denies same.

17. The Defendant denies the truth of the allegations contained in Paragraph 162 of the Amended Complaint.

**FOR A SEVENTH DEFENSE**

18. The allegations set forth in Paragraph 163 of the Amended Complaint do not require a response. In the event a response is deemed necessary, the Defendant denies same.

19. The Defendant denies the truth of the allegations contained in Paragraphs 164 through 172 of the Amended Complaint.

**FOR AN EIGHTH DEFENSE**

20. The allegations set forth in Paragraph 173 of the Amended Complaint do not require a response. In the event a response is deemed necessary, the Defendant denies same.

21. The Defendant denies the truth of the allegations contained in Paragraphs 174 through 177 of the Amended Complaint.

**FOR A NINTH DEFENSE**

22. The allegations set forth in Paragraph 178 of the Amended Complaint do not require a response. In the event a response is deemed necessary, the Defendant denies same.

23. The Defendant denies the truth of the allegations contained in Paragraph 179 of the Amended Complaint.

**FOR A TENTH DEFENSE**

24. The Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted.

**FOR AN ELEVENTH DEFENSE**

25. The Defendant is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.* Furthermore, the determination that an acquisition is necessary to accomplish a project for a public purpose lies within the sound judgment and discretion of the entity, in this case, the Defendant, exercising the power of eminent domain.

**FOR A TWELFTH DEFENSE**

26. The easement sought to be acquired by the Defendant is intended for the public purpose of beach renourishment that would benefit both residents and visitors of the Town of Pawleys Island.

**FOR A THIRTEENTH DEFENSE**

27. The easement sought to be acquired by the Defendant is a requirement by the United States Army Corps of Engineers (the “Corps”) in connection with a 45-year beach renourishment project for the Town of Pawleys Island.

**FOR A FOURTEENTH DEFENSE**

28. If the Defendant complies with the easement requirements by the Corps, the Town’s beach renourishment project will be federally protected. Thus:

a. The Corps will be responsible for an estimated cost of \$300,000.00 for erecting sand fence and planting beach grass, at no cost to the Town;

b. The Corps will periodically renourish the Town’s beach every nine (9) years in the next forty-five (45) years, and be responsible for 50% of the forecasted total renourishment costs of \$129,522,533.00; and,

c. The Corps will repair all beach damage resulting from a significant storm for the next forty-five (45) years, irrespective of federal declaration, at no cost to the Town.

**FOR A FIFTEENTH DEFENSE**

29. Pursuant to S.C. Code Ann. § 27-3-10 *et seq.*, the Plaintiff will not be liable toward any persons by granting the easement sought by the Defendant.

**WHEREFORE**, having answered the Plaintiff's Amended Complaint, the Defendant hereby respectfully asks the Court for the following relief:

- a. Dismissal of the Amended Complaint with prejudice;
- b. An award of attorney's fees and costs to the Defendant; and
- e. Such other and further reliefs as this Court deems just and proper.

**LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.**

s/N. David DuRant, Sr.  
N. David DuRant, Sr., Esquire (SCB# 1803)  
P.O. Box 14722  
Surfside Beach, SC 29587  
Telephone: 843-650-7800  
Facsimile: 843-650-8090  
Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)  
**Attorney for Defendant**

September 18, 2020



October 6, 2021 hearing transcript.

STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF GEORGETOWN ) CASE NO.:2020-DR-22-0600

**ORIGINAL**

-----  
October 6, 2021

**BEFORE:** The Honorable Michael Nettles

-----  
SUNSET LODGE, et al.,

Plaintiff,

vs.

TOWN OF PAWLEYS, et al.,

Defendants.  
-----

APPEARANCES:

Baron Stanton, Esq.  
Appearing for the Plaintiffs.

William C. Dillard, Jr., Esq.  
Appearing for the Defendants.

Official Court Reporter

Natalie Dahl, RPR

**CERTIFIED TRANSCRIPT FOR STANTON LAW OFFICES ONLY!**

1 **NOTE: Pursuant to Rule 607 (h)(1)(B), SCACR "A COURT**  
2 **REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR**  
3 **FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT."**  
4 **All requests for a copy of the enclosed transcript**  
5 **shall be sent to: Natalie Dahl, RPR**  
6 **P.O. Box 762**  
7 **Conway, SC 29526**

8 P-R-O-C-E-E-DI-N-G-S

9 THE COURT: I'll recognize Mr. Stanton. Yes,  
10 sir.

11 MR. STANTON: Thank you, Your Honor. May it  
12 please the Court. On the masks, should we continue  
13 wearing those?

14 THE COURT: Most people who appear take them off  
15 when -- if you feel comfortable doing so, you can. It  
16 is easier for the court reporter to hear you, if you  
17 would do that. If you feel comfortable, take it off,  
18 if you want to.

19 MR. STANTON: Not to put anyone on the spot, but  
20 I'm vaccinated.

21 THE COURT: That's not a problem at all.

22 MR. STANTON: Thank you, Your Honor. We're here  
23 for the plaintiffs' motions -- actually, three  
24 plaintiffs' motions in three cases for cost of  
25 attorney's fees, and that is my motion representing  
two of the plaintiffs -- I represent all three  
plaintiffs; one being me, pro se. I thought before we  
went further, I saw something that Mr. Dillard filed

**CERTIFIED TRANSCRIPT FOR STANTON LAW OFFICES ONLY!**

1 with the Court asking if we could consolidate these  
2 cases formally under the Rule for Consolidation, even  
3 though we are towards the end of the proceedings. We  
4 did that in the other three cases towards the end of  
5 those as well, on the basis that if there were further  
6 proceedings or either party would appeal, it would cut  
7 filing fees to a third, and probably the number of  
8 papers filed. We did that. There were three related  
9 challenge cases that the last time we were in court,  
10 Judge Culbertson was here in Georgetown, and he agreed  
11 to consolidate those three under the banner of the  
12 Sunset case, which had a different case number over  
13 there. Mr. Dillard moved for that, and I was  
14 agreeable to it. If we need to do that at the onset  
15 for the purposes of the court reporter doing a  
16 consolidated transcript.

17 THE COURT: All right. Well, Mr. Dillard, what  
18 do you have to say about that?

19 MR. DILLARD: Yes, sir. I think Mr. Stanton  
20 summarized it well, just to simplify things.

21 THE COURT: We will, indeed, do that. And I'll  
22 ask that whoever I have to prepare the order addresses  
23 that first.

24 MR. STANTON: I think what we agreed to, which  
25 makes sense to us, is do it under the case number for

***CERTIFIED TRANSCRIPT FOR STANTON LAW OFFICES ONLY!***

1 the Sunset Lodge case, which is the one ending in 600.

2 Does that make sense to you?

3 MR. DILLARD: Yes.

4 THE COURT: Okay.

5 MR. STANTON: For the record, the three cases are  
6 Subset Lodge, LLC, against Town of Pawleys Island.  
7 Franklin D. Beattie as trustee for the Franklin D.  
8 Beattie Preservation Trust against the Town of Pawleys  
9 Island; that ends in 601 case number. And, then,  
10 lastly, is M. Baron Stanton against the Town of  
11 Pawleys Island; that case number ends in 602. In that  
12 last one, I'm one in the same with that plaintiff,  
13 representing myself pro se. Then, in the other two  
14 cases, I'm representing Sunset Lodge and Frank  
15 Beattie.

16 So to move on with it --

17 THE COURT: Before we get started, in one of your  
18 later affidavits or filings, you indicated that one of  
19 the plaintiffs is foregoing the request for attorney's  
20 fees; is that correct?

21 MR. STANTON: Yes, Your Honor.

22 THE COURT: That is an unconditional withdrawal  
23 of the request?

24 MR. STANTON: Yes and no. The no part of that is  
25 that in our argument we want the Court to take that

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1 into consideration in that it ineffectually, in the  
2 other two cases, gives a one-third production or -- or  
3 another way --

4 THE COURT: Well, that's kind of a funny request  
5 to say that if I get a favorable ruling, I don't want  
6 attorney's fees; but if it is an unfavorable ruling, I  
7 do.

8 MR. STANTON: No. No. I'm not saying that, Your  
9 Honor. We are not requesting attorney's fees in the  
10 third case, but we don't want the Court to lose sight  
11 of the fact that that is a third of the fees that the  
12 Town will not be paid. The whole purpose of this is  
13 to be reasonable.

14 THE COURT: Right. I see. I see.

15 MR. STANTON: In other words, if you took -- I'll  
16 use round figures. The attorney's fee request of the  
17 three parties, by our calculation, you know, would be  
18 a little over \$60,000 apiece. I'm going to use  
19 \$60,000 as a round figure; don't stick me to that.  
20 The precise figures are in my papers. If you took the  
21 three at \$60,000, that is \$180,000 in total attorney's  
22 fees the Town would pay for three cases, but because  
23 one of those plaintiffs is not requesting that third,  
24 it would be \$120,000, you know; two at 60, instead of  
25 three at 60. I'll lay it out in my argument, but the

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1 three -- what the three plaintiffs did is they divided  
2 the bill by three.

3 THE COURT: I understand all of that. Let me  
4 hear what Mr. Dillard has to say about the fact they  
5 have withdrawn the request for one of them.

6 MR. STANTON: Well, we never even made it. We  
7 stated at the onset that we were not asking for --  
8 that Stanton -- I'm going to refer to myself in the  
9 third person -- was not asking for the attorney's  
10 fees.

11 THE COURT: Oh, okay.

12 MR. STANTON: From the onset. The initial  
13 petition was just for the two, and noting that Stanton  
14 -- Stanton only has a request for out-of-pocket costs,  
15 which are just under \$900.

16 THE COURT: All right. Okay.

17 MR. DILLARD: Yes, Your Honor. We're happy they  
18 are only claiming two of the three. I believe that  
19 the Town's position is that the way these fees were  
20 structured, according to their materials, is that each  
21 party paid a third -- or billed a third. We think  
22 that is the only reasonable way for it to have been  
23 handled, as far as billing, and that is how it should  
24 be handled here.

25 THE COURT: All right. We'll think about that as

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1 the argument goes forward. You all have done a very  
2 good job briefing this. I'll hear arguments from both  
3 sides as long as the spirit moves you in that  
4 direction, but I think I have a pretty good idea what  
5 is going on, but I'll give everyone plenty of  
6 opportunity to be heard.

7 Mr. Stanton.

8 MR. STANTON: Thank you, Your Honor. In speaking  
9 of that, I always attempt to be brief and, you know,  
10 sometimes one fails. But in starting with that  
11 attempt, we did -- both of us filed a lot of papers.  
12 If I could adopt those papers -- incorporate them as  
13 part of my argument, I would like to do so. Whatever  
14 I don't mention, I'll leave it to those papers; if  
15 that's fair.

16 THE COURT: All right. Very good.

17 MR. STANTON: And speaking of those papers, I  
18 want to make sure that the record is clear and that  
19 Your Honor didn't miss anything. There is a lot of  
20 paper. Indeed, when you look at the docket sheet, it  
21 is hard to figure out which to print, if you want to  
22 print it. What we filed was back in January. We  
23 filed the initial fee petition, which was a motion for  
24 the fees, which largely was based on the accompanying  
25 affidavit that set out the basis for the request.

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1           Now we are about eight months later, and  
2           periodically, during this process, we've been updating  
3           the affidavit part of that. So when I refer to the  
4           "fee petition," I'm referring to the motion that we  
5           made, which was a very brief motion based on the  
6           affidavit. But the last affidavit that we filed  
7           updated everything, and it has a comprehensive  
8           description of everything so you don't have to look at  
9           the earlier affidavits. The last affidavit is dated  
10          September 10<sup>th</sup>, 2021. I'm referring to that in the  
11          motion as the "fee petition."

12          So we filed that, and then there were eight  
13          months of other things going on, and lots of things  
14          that both parties filed. When we got back to the  
15          runway for this hearing today, Mr. Dillard filed a  
16          memorandum in opposition and four affidavits; some of  
17          those affidavits had exhibits to the affidavits. And  
18          then he also filed a thing he designated as  
19          "prehearing motions." One of those things was the  
20          request to consolidate that we've already covered.

21          And then in response or in reply to all of that,  
22          we filed our memorandum in opposition, which was dated  
23          October 4<sup>th</sup>. There were a couple typos in it, so we  
24          amended and filed it again on October 5<sup>th</sup>. With  
25          that, we filed a reply affidavit from Stanton to each

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1 of the four affidavits that he filed, which were --  
2 those were by DuRant, Henry, Pagliarini, and Dillard.  
3 So we filed replies to those by Stanton and two more  
4 affidavits; one by Frank Beattie, and one by Charlie  
5 Howard. I think that is all of it.

6 Then there was one exhibit to our brief and there  
7 was -- there was an exhibit to the affidavit of  
8 Mr. Pagliarini. That, at least, helped me get  
9 oriented. I hope it maybe served another purpose.

10 So, our fee petition arose from this Court  
11 granting summary judgment on January 21<sup>st</sup> of 2021.  
12 We filed the fee petition about four days later on  
13 January the 25, 2021. We had an intervening period of  
14 seven, eight months that brings us today, which is  
15 October 6<sup>th</sup>, 2021; some of which dealt with the  
16 motion to reconsider the summary judgment order, which  
17 was entered April 5, 2021, and a little bit dealing  
18 with other discovery, and a large part of it dealing  
19 with their objections to the fee requests. I'm sure  
20 Your Honor remembers exquisitely the back-and-forth we  
21 had of redacting fees, in-camera review of bills, and  
22 whatnot.

23 So that brings us to today where we're actually  
24 having the hearing on the January 25<sup>th</sup>, 2021 motion  
25 for fees. The governing law is Layman versus State,

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1 both parties have cited it numerous times; a South  
2 Carolina Supreme Court case. There are related cases  
3 that kind of echo parts of it and talk about it.  
4 There is one called Revels, R-E-V-E-L-S. There is a  
5 South Carolina District Court called Sauders,  
6 S-A-U-D-E-R-S, by Judge Duffy, which was later cited  
7 with approval in one of our state appellant courts.

8 But that Layman case pretty much sets the core of  
9 the methodology, and that is that the Court is  
10 supposed to take the reasonable hours devoted to the  
11 case, ascertain that figure, multiply -- ascertain a  
12 reasonable rate for a lawyer to charge in the case,  
13 multiply the two, come up with a figure, rate times  
14 hours, and then apply the Neilco factors or the  
15 Jackson versus Speed factors, which is the same in  
16 both cases, to determine whether a multiplier should  
17 be applied to enhance that fee.

18 What we have submitted is that the preliminary  
19 math is that we spent a minimum -- a minimum of a  
20 thousand hours -- excuse me, a thousand point five  
21 hours. 950.5 of those are recorded hours that we have  
22 records for. The remaining 50 or so hours is  
23 estimated additional time we spent at a minimum. We  
24 noted that we spent very likely way more than that in  
25 additional unrecorded time, but we're certain that, at

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1 a minimum, it was about 50.

2 Not included in the whole thousand is additional  
3 time spent before the parties were sued and before I  
4 was retained by the other two people where we did  
5 additional research and looking into things, which  
6 brought value to the case in that you have a lawyer  
7 walking in already knowing fact and law specific  
8 stuff, but that is not included. So the part that is  
9 included is a thousand point five hours that we  
10 absolutely know that we spent on this case. For the  
11 rate -- let me back up to Layman versus State. It  
12 literally says "hours times rate." All of the cases,  
13 all of the state cases, talk about the lawyer  
14 presenting a -- to the Court the hours and rates.  
15 None of those cases require producing to the court  
16 billing statements. As all the papers filed in this  
17 case are attestation to, there is probably a reason  
18 for that. I know we have all in our practice seen  
19 people throw in their bills and say, Well, here is  
20 some more information, but sometimes that is at the  
21 end of the case where the bills don't matter or it is  
22 a plain vanilla matter. My main point is to be  
23 oriented to case law, Layman versus State and the  
24 related cases simply require that the Court ascertain  
25 the hours reasonably spent, not to go picking through

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1 all of the bills; but I'll get to that in a minute.

2 So we have a thousand point five hours. Then, on  
3 the reasonable rate, the initial calculation, we  
4 suggest it would fully support a rate of \$250 an hour;  
5 and that is on the basis -- in my case, you have a  
6 lawyer of over 30 years of experience in a lot of  
7 things, including litigation of the kind of things  
8 we're litigating over here.

9 THE COURT: In your qualifications, you mentioned  
10 that you have represented a middle eastern member of  
11 royalty; who might that have been?

12 MR. STANTON: That was Prince -- I don't like to  
13 mention who my clients were, but that was so long ago.  
14 Gosh, Prince -- I got to where I can't remember my  
15 cousins' names now. That was some years ago. The  
16 prince had ordered one or more containers,  
17 containerized shipping, orders of PVC fittings and  
18 parts from a fellow over here in the United States,  
19 whose name was Byon Eldotta (phonetic). I remember  
20 his name. It was an international transaction where  
21 the payment was done by a confirmed back-to-back  
22 letters of credit that were paid against the  
23 documentary presentation that was pretty loose. It  
24 required just an affidavit that --

25 THE COURT: I was asking out of curiosity.

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1 MR. STANTON: It was a fascinating case because  
2 what Mr. Eldotta did was filed a false affidavit, and  
3 the bank honored the letter of credit and drew down  
4 the whole letter. So we represented the prince, and  
5 we sued Mr. Eldotta for fraud and violation of the  
6 Unfair Trade Practices Act and violation of the  
7 Racketeer Influenced and Corrupt Organizations Act.  
8 It got so bad that we ended up getting a default  
9 judgment against him for punitive and triple damages  
10 on all three of those counts. It went on from there  
11 into collections, and then Mr. Eldotta sued his  
12 lawyer, and I got deposed. It was pretty interesting.

13 THE COURT: Sounds like it.

14 MR. STANTON: I don't know if the prince ever got  
15 his money. I think the main asset that the prince had  
16 to collect was Mr. Eldotta's malpractice claim against  
17 his lawyer. So it was pretty bizarre.

18 Anyway, we suggested \$250 an hour. Your Honor is  
19 familiar with rates in the vicinity, but among those,  
20 that is the exact same rate that Mr. Dillard charged  
21 the Town, exact same rate that Dr. DuRant charged the  
22 Town. The Town obviously thought that was a  
23 reasonable rate for their services, and we won that  
24 round of the case.

25 THE COURT: I don't think there will be any

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1 objection.

2 MR. STANTON: And I don't mean for it to sound  
3 like a Ginsu knife commercial, but it gets even more  
4 reasonable. What we wanted to point out is if you  
5 took that \$250 times a thousand dollars, you get about  
6 \$250,000 as a fee. Well, that is not what we  
7 requested. We tried to be reasonable from the get-go.  
8 What we requested was -- you use only the 950.5 hours  
9 that were actually recorded, put aside our estimate,  
10 multiply that not by \$250 an hour, but \$190 an hour,  
11 and then when you do that, you end up with a figure  
12 that is -- I'm using round figures -- a total figure a  
13 little north of \$180,000 from the total hours spent.

14 In essence, those total hours were spent on each  
15 case, but we thought it was reasonable to emulate what  
16 we actually did in reality, which was we split the  
17 bill into thirds. Mr. Beattie got a bill, Sunset  
18 Lodge got a bill, and I personally got a bill. I  
19 mean, there is literally a bill to me. We split it in  
20 thirds, so they only paid a third.

21 So you take the 180 -- again, I'm using round  
22 figures because it is easier to talk about -- take the  
23 180, and that is about 60 apiece. So Sunset Lodge and  
24 Beattie are each asking for a little bit north of  
25 \$60,000 in fees each. Stanton is not asking for

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1 attorney's fees and only asking for a little under  
2 \$900 in out-of-pocket expenses.

3 Now, Beattie and Sunset Lodge also have  
4 out-of-pocket expenses in the amount of \$913.33. So  
5 they want that added, too. So the figure -- total  
6 figure of fees plus expenses for Beattie and Sunset  
7 Lodge is 61,000 --

8 THE COURT: Tell me the amount of expenses that  
9 you want to be compensated for.

10 MR. STANTON: My expenses were the only anomaly  
11 in the case. Mine was \$31.74 less than theirs,  
12 because I filed one less motion, and we did allocate  
13 the motion fees.

14 THE COURT: Tell me the amount you are requesting  
15 for costs.

16 MR. STANTON: I need to do the math. \$913.33  
17 minus that figure in Beattie, and Sunset is \$913.33,  
18 and mine, it's that minus \$31.74.

19 THE COURT: \$911.55?

20 MR. STANTON: I don't think so, Your Honor.

21 (A brief pause in the proceedings.)

22 THE COURT: No, that is not right.

23 MR. STANTON: \$881.59. \$31.74 is how much it  
24 costs you with electronic fees and everything to file  
25 one motion.

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1 THE COURT: Very good.

2 MR. STANTON: 881 -- how did I get 59? \$881 is  
3 fine.

4 THE COURT: Very good.

5 MR. STANTON: I guess we could get that out of  
6 the way, because I think the way they put it is they  
7 don't have any objection to that provided you award  
8 anything at all.

9 So that leaves Beattie and Sunset. The requested  
10 fee, for attorney's fees only, is \$60,198.33; the  
11 out-of-pocket is \$913.33, for a total request of  
12 \$61,112.02 each, for the total award. So as I was  
13 saying, if you look at it over the whole three cases,  
14 the Town -- if I had not waived attorney's fees, they  
15 would be looking at \$180,000 in fees; instead, I'm  
16 waiving that, so it is only \$120,000 in fees. If I  
17 had gone out and hired Rick Bobby, or someone like  
18 that, and each of them had gone out and hired  
19 somebody, Mr. Pagliarini or someone else, we all had  
20 three separate lawyers, they wouldn't be charging \$190  
21 an hour; it is north of \$250. My wife has been  
22 practicing eight years less than I have and her rate  
23 is double mine -- well, more than double. So they  
24 would be paying a higher rate.

25 If the thing was done in the same number of

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1 hours, you know, the Town would have been looking --  
2 could have been looking at \$750,000 in attorney's fees  
3 in three cases; instead, we're asking about 120 over  
4 the three cases, but just for those two, if that makes  
5 sense.

6 So I think it is eminently reasonable that the  
7 rate is more than reasonable. The hours were actually  
8 worked. You know, there is no overreach at all. Like  
9 I said, we divided it by three. One party didn't ask  
10 for fees. I'll tell you, there is good law out there,  
11 and probably some of you can argue against it, but  
12 where a pro se attorney should be able to get fees,  
13 particularly if he's responding to being sued and his  
14 firm defends him or helps him, and he's spending his  
15 time that he could be spending on something else. But  
16 we just thought let's take out all of the flak and  
17 complications, and that is reasonable.

18 What I want Your Honor to recognize is that, in  
19 essence, they are getting equivalent of a third  
20 reduction in each of those other cases, and that more  
21 accounts for any quibbling over one phone call too  
22 many, or two hours more being careful to make sure to  
23 proofread a brief, or whatever. You know, there is a  
24 lot of quibbling in there, and there are some big  
25 quibbles that are fundamentally incorrect. I'm taking

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1 just one little side road; for instance, they prepared  
2 this elaborate chart and said that the deposition took  
3 17.3 hours, and the people who prepared the chart and  
4 opined about the chart, neither one has even read the  
5 deposition or was there. I've gone to great length to  
6 explain that in the deposition I took eight hours for  
7 three cases, with three reports, on three different  
8 properties, and everything about it was reasonable.  
9 But, you know, any of those quibbles I think are  
10 addressed. It's more than a reasonable rate. There  
11 is very good recordkeeping on the hours, and then  
12 further reductions.

13 I would point out, speaking about recordkeeping  
14 on the hours, kind of an irony or anomaly in the case  
15 law, if you look at the South Carolina Supreme Court  
16 cases and some of the Court of Appeals cases, over the  
17 last few decades leading up to the present day, our  
18 courts don't get involved like some fellow courts in  
19 far-away lands do. Some federal courts get pulled  
20 into a lot of the minutiae, but our courts -- there  
21 was a case cited, the Medenica case, Dr. Medenica was  
22 from somewhere down in the Hilton Head/Beaufort area.  
23 There was probably more than reported Medenica case,  
24 but this had to do with attorney's fees. In that, the  
25 supreme court said the attorneys didn't have either --

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1 either didn't have any time records, or they had some  
2 records, but weren't kept very well, and that it was  
3 within the Court's discretion to accept the reasonable  
4 estimate.

5       So you got people who accept cases on a  
6 contingency basis who keep no time at all, and yet in  
7 Layman versus State it requires the Layman calculation  
8 rather than the contingency fee calculation. So the  
9 Court takes a contingency fee case where the attorney  
10 keeps no records, makes a reasonable estimate of the  
11 hours, multiplies it by a reasonable rate, which has  
12 nothing to do with the actual rate of the client, and  
13 then adds a multiplier; sometimes if it is a good  
14 result or there is some other adverse conditions.

15       Here, you have basically precision, conservatism,  
16 and a paired-down reasonable presentation where you  
17 don't have to do any of that. If I had taken this  
18 case on a contingency fee basis, there might not be  
19 any time records; but because there are, you end up  
20 digging into all of this minutiae going through bills  
21 and all of this stuff. It is almost like if you had a  
22 client who let you work for him for a year-and-a-half  
23 without ever getting a bill, and then you send a bill  
24 after the year, then they want to sit down and talk  
25 about stuff a year ago; absolute nightmare. If you

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1 send a bill every month and your client has a problem,  
2 you sit down and talk about it so you can run through  
3 what you did a month earlier. Usually, that doesn't  
4 remain a client very long on one side or the other.

5 Here, it is almost absurd if you think about the  
6 suggestion that you should live your entire life  
7 preparing a bill for the adversary. What we submit  
8 is -- if you look at the South Carolina case law, the  
9 Court can accept reasonable estimates of time and can  
10 make its own assessment based on the record in the  
11 case. Sometimes it is a trial judge who has seen a  
12 whole trial; sometimes it is circuit court judge who  
13 didn't see the trial, but observed some of the  
14 proceedings. The part where we are all at a  
15 disadvantage is, kind of, our rotating-judge system in  
16 this state where sometimes -- like I think in this  
17 case three different judges ruled on motions. Judge  
18 Price ruled on a motion to compel; Judge Culbertson  
19 denied the motion to dismiss and some other motions;  
20 and Your Honor heard the summary judgment motion and  
21 presided over a lot of the back-and-forth over the  
22 fees. So we got a good case record here. We have  
23 actual time records. I think it's a very conservative  
24 and reasonable presentation.

25 Now, what Mr. Dillard will tell you -- and he

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1 filed four affidavits with some of them to this  
2 effect -- the themes spread over the four affidavits  
3 and all of the arguments seem to be: One, we doubt  
4 that the time was actually spent. I assure you, it  
5 was. I've done two affidavits now that we assured you  
6 that it was spent. And render bills paid by the  
7 clients, who agreed it was reasonable. You have an  
8 affidavit from Charlie Howard, who is an attorney who  
9 has been practicing more than 50 years, who is a  
10 substantial partner in Sunset, who filed an affidavit  
11 saying I've reviewed the bills; and not only that, I  
12 saw the work and reviewed the work while it was going  
13 on. Everything about it was reasonable. You have the  
14 same thing from Frank Beattie, a lawyer who practiced  
15 for 53 years who received the bills, watched  
16 everything in the case, and he said everything in it  
17 is reasonable. But the suggestion that the time  
18 wasn't spent -- I'll avoid expletives and say it  
19 couldn't be further from the truth.

20 I remember sometimes getting up in the morning  
21 and having a cup of coffee still in my slippers going  
22 to work on this case and signing off at about 4:00 in  
23 the morning. Now, whether that time got put on the  
24 next day or same day -- I think there was one in there  
25 that was like a 19-hour day. We didn't just work on

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1 weekdays; we worked nights and weekends. All the time  
2 was spent.

3 Their next suggestion, which is contradictory to  
4 the first, is that the time spent on it was excessive.  
5 Well, which is it? Was it not spent, or excessive?  
6 By "excessive," they said it was spent on unnecessary  
7 things. You know, I'm going to judge my client's  
8 needs, and I do what I think is reasonable. All I can  
9 tell you from the rooftop is that I think everything  
10 we did was reasonable, and the result speaks for  
11 itself. We got their condemnation thrown out.

12 The third thing is, well, we didn't really win.  
13 The Town sued all three plaintiffs for condemnation,  
14 and in these cases, we sued the Town back, as we were  
15 required to do that by statute if we had that defense.  
16 We had to raise it within 30 days or lose it forever,  
17 so we sued the Town to stop the condemnation. This  
18 Court granted summary judgment, throwing out the  
19 condemnations, granting summary judgment. In my book,  
20 that is a win.

21 Then they say, well, if they did win, the results  
22 weren't beneficial. I think having the condemnations  
23 thrown out is beneficial. Not only did it firmly  
24 establish something that -- the root of this whole  
25 thing is that the Town has been denying for two years

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1 that the easement they wanted everybody to sign  
2 contains a wide open full-time grant of public access  
3 forever to the plaintiffs' properties. The Town has  
4 denied that and tried every which way to say that all  
5 it is a construction easement to put sand on the  
6 beach, and when the project is over, everything is  
7 done. This Court, in its summary judgment, confirmed  
8 that's not the case. The summary judgment order also  
9 confirmed you can't try to condemn by getting an  
10 appraisal of something that is different from what you  
11 are condemning; can't do that again.

12 The Court also confirmed you have to have a fair  
13 and open deliberation of relevant factors before you  
14 decide to condemn; they can't do that again. They  
15 can't have a put-up pretense of a meeting, like the  
16 Town council did where they said all we're doing is  
17 putting sand on the beach, and these people wouldn't  
18 give us an easement, which couldn't be further from  
19 the truth; so they can't do that again. There is a  
20 lot of things they can't do again.

21 We established on summary judgment all the facts  
22 that were undisputed. They are stuck with those  
23 facts, too. Plus, their condemnation got thrown out.  
24 All three plaintiffs still own that third of the  
25 property free of public access, free of the ability of

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1 the Town to tear down their decks and steps, free of  
2 the Town's ability to restrict their own access to  
3 their own property, free of the ability of the Town to  
4 go four-wheeling on their property, which the Town  
5 does with their vehicle, free of the ability of the  
6 Town to put giant trash cans and signs on their  
7 property; any of those things, that is a beneficial  
8 result.

9 I think the fee request is conservative, or as  
10 Mr. Charlie Howard said, even generous given the  
11 situation to the Town. I've gone on longer than I  
12 wanted to. I would love to go through Mr. DuRant's  
13 affidavit, Mr. Pagliarini's affidavit, Mr. Dillard's  
14 affidavit, and Mr. Henry's affidavit; but if Your  
15 Honor has read those, I won't. I'll answer any  
16 questions you might have about them.

17 THE COURT: Thank you very much.

18 Mr. Dillard.

19 MR. DILLARD: Thank you very much. Over the past  
20 several months working through these issues -- at the  
21 outset, I wanted to ask if you might entertain a  
22 couple other items on the prehearing motion that we  
23 filed. I think they are housekeeping matters and  
24 should not take more than a minute or two. I have a  
25 copy, if that is helpful.

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1 THE COURT: Yes.

2 MR. DILLARD: This is from the Sunset case, but  
3 an identical motion was filed.

4 So the first item, consolidation, that has been  
5 handled. Second item, filing of the submitted fee  
6 records under seal; I think that was sort of handled  
7 in the protective order before. I want to be sure in  
8 the event that there is an appeal by either side, that  
9 all of the fee statements redacted and un-redacted are  
10 in the record under seal. And so I believe the Court  
11 could confirm that as part of the order that you  
12 issued after the hearing, and we can handle it any  
13 other way that the Court prefers.

14 THE COURT: You don't have an objection, do  
15 you -- or do you?

16 MR. STANTON: This is truly to be helpful; there  
17 might be in the order, and even in the parties'  
18 understandings, of some difference about where those  
19 things stand. The way I read the order, and the way I  
20 intended it was let's see if we could get through this  
21 without putting these things -- going through the  
22 rigmarole of putting them under seal and taking room  
23 in the courthouse, and then if there is an appeal,  
24 having that moved to the appellant court, and then the  
25 appellant court has to have it under seal. I know you

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1 can do that, but my approach was let's see if we could  
2 get through this without that happening.

3 So my vision of this was -- we sent Your Honor  
4 the un-redacted fee statements and the redacted fee  
5 statements without so much filing them or Your Honor  
6 filing them. You could probably answer this, but if  
7 you have already filed them under seal, it is a done  
8 deal. My response to what Mr. Dillard said is if he  
9 wants that done, the protective order that you  
10 entered, it allows him to request it, and then you can  
11 do it. The only objection I have to that is, as Your  
12 Honor might remember, I didn't agree with all of that  
13 protective order. So I don't want to go on record  
14 saying I agree with the protective order and now you  
15 can file it. If Your Honor is not going to reconsider  
16 the protective order, clearly, under the terms of that  
17 order, he has a right to simply say, Your Honor, would  
18 you file those under seal.

19 THE COURT: All right. Well, if you involve  
20 that, I'll indeed do that. I know I've read in great  
21 detail the bills. I have the -- what did we do with  
22 the un-redacted ones? That was a different law clerk.  
23 Did I send those backs to you, the un-redacted ones?

24 MR. STANTON: You didn't, Your Honor, but I could  
25 -- I might have some here. I could reprint at home

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1 and give you the ones I have here.

2 THE COURT: Let's make that -- put that in the  
3 order, that he'll provide to you, for your approval,  
4 the un-redacted --

5 MR. STANTON: Well, no, he never gets to see  
6 them.

7 MR. DILLARD: Provide the Court.

8 THE COURT: Provide the Court, yes. I will see  
9 that it -- I'll give it to the clerk and put it under  
10 seal.

11 MR. STANTON: That is the ones that are -- the  
12 same ones that Mr. Dillard saw in redacted form and  
13 that were also provided to Your Honor in redacted  
14 form, right? In other words, it was like --

15 MR. DILLARD: That was my next point, Your Honor.  
16 I don't -- I never saw what Your Honor actually  
17 redacted. I have the copies that, I believe, you sent  
18 back to Mr. Stanton, that he sent to me. They were  
19 Bates labeled, and I have here "confidential." These  
20 are what I looked at for my opinion, and  
21 Mr. Pagliarini's. I have a copy if --

22 THE COURT: That is the....

23 MR. DILLARD: Redacted.

24 THE COURT: Redacted portion that I approved?

25 MR. DILLARD: Right. That is how it was

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1 presented to me by Mr. Stanton.

2 THE COURT: That's correct. If we could make  
3 that part of the record to be sealed.

4 MR. STANTON: I'm trying to follow.

5 You can help me here, Will.

6 What I did -- I can't remember. I sent what I  
7 proposed to be redacted to Your Honor, and clean  
8 copies that weren't redacted.

9 THE COURT: Right.

10 MR. STANTON: At that time, did I send that to  
11 you, too?

12 MR. DILLARD: You sent me the original  
13 redactions, and Judge Nettles changed the redactions.

14 THE COURT: And you got more information based on  
15 my change of the redactions.

16 MR. DILLARD: Yes, sir, and he sent that to me  
17 after he received it from you.

18 THE COURT: Right.

19 MR. DILLARD: That is what I would like to put in  
20 the record, if that's okay.

21 MR. STANTON: You mean instead? There are two  
22 things, or three things going in?

23 MR. DILLARD: All I know is this is what was  
24 presented to me.

25 THE COURT: I think the Court needs to have what

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1 you reviewed, and you need to have the virgin  
2 un-redacted ones for appellant review.

3 MR. DILLARD: Yes, sir. If I may approach?

4 THE COURT: Yes. So what you need to provide to  
5 me to be put under seal would be the virgin  
6 un-redacted.

7 MR. STANTON: But I believe, Your Honor, that we  
8 agreed that even the redacted ones would be under seal  
9 as well.

10 THE COURT: That's correct. Yes. Yes.

11 MR. STANTON: So what we are not putting into --  
12 just to be clear -- is the initial set that I sent  
13 to --

14 THE COURT: That's not even relevant now, because  
15 what he based his argument on is what I decided.

16 MR. STANTON: The end result, right?

17 THE COURT: Yes.

18 MR. STANTON: That is fine. I just wanted to  
19 understand what we are doing.

20 THE COURT: So we have that, and that needs to be  
21 put under seal. You need to send your virgin  
22 completely un-redacted ones for appellant review.

23 MR. STANTON: I think I know what happened to  
24 your clean copy. I think that is what you used to  
25 redact.

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1 THE COURT: I probably did. So send me --

2 MR. STANTON: Send another clean set.

3 THE COURT: Yes. I'll give it to my law clerk to  
4 put under seal.

5 MR. DILLARD: These were Bates stamped by  
6 Mr. Stanton as 20001 through 20082, and I added  
7 "confidential" on each page.

8 MR. STANTON: Oh, thank you. I might have those  
9 with me; and if I don't, I may courier them to you.

10 MR. DILLARD: Thank you, Your Honor. The second  
11 and final housekeeping item is one thing that we  
12 requested to be un-redacted, that was not un-redacted,  
13 was the dollar totals at the end of the invoices to  
14 show what was billed and paid and outstanding. I  
15 don't think that is technically in the record, so I  
16 wanted to be sure that we got our request for that on  
17 the record. I understand you looked at it, and I'm  
18 not asking you to spend a bunch more time now, but for  
19 the record.

20 THE COURT: Okay. You're protected on the record  
21 in that regard.

22 MR. STANTON: If I may seek protection in light  
23 of that. My response to Mr. Dillard was if you look  
24 at the protective order, it says whatever we send to  
25 the judge, except anything that had to be put under

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1 seal, would be under seal, but anything that we  
2 presented to Your Honor is considered part of the  
3 record. So I would say it is not necessary that he  
4 file those things. If we find ourselves in an appeal,  
5 he needs to say, Here is part of the appellant record.  
6 The protective order says already that those things  
7 are fair game as part of the record.

8 All I'm saying is I want to make sure it is not  
9 just that. Where I wrote back in response to his  
10 things, I said, Your Honor, here is why you don't need  
11 to do this; all of that would be fair game.

12 THE COURT: If it is in the record. You can't  
13 pull stuff out of the file and put it in the record.

14 MR. STANTON: Anything that was presented to the  
15 Court?

16 THE COURT: Yes. Yes.

17 MR. STANTON: Right.

18 THE COURT: Do you have an objection to that?

19 MR. DILLARD: So you are -- you mean something  
20 that is in his file that he says he presented to the  
21 Court? Like, you sent an e-mail to Judge Nettles --

22 MR. STANTON: Right. The thing you just referred  
23 to is where you wrote to Judge Nettles and says, Here  
24 is more stuff I would like for you to do; and I wrote  
25 to Judge Nettles and said, In response, here is my

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1 response. Both of those things were presented to the  
2 Court in this matter.

3 MR. DILLARD: That's fine. But mine is in the  
4 record.

5 THE COURT: Why don't we get through the order,  
6 and if we need to settle the record, file a motion at  
7 the conclusion. Don't you think that would be a  
8 better way? I'm a little confused exactly what all is  
9 in the record.

10 MR. DILLARD: I agree; yes, sir.

11 THE COURT: Exactly what -- there's been a bunch  
12 in the record, and I don't know whether some of the  
13 e-mails -- it would be unfair for you to be able to  
14 put in the record things that were sent to me -- well,  
15 I imagine everything you sent to me, he's sent a copy  
16 of it. We'll have a hearing to settle the record if  
17 there is a question that cannot be resolved.

18 MR. DILLARD: Thank you. So I'm clear on the  
19 un-redacted dollar totals, is the Court denying my  
20 request now to be reflected in the order at the end of  
21 this?

22 THE COURT: You can put in there that you  
23 objected to that; you can, indeed, do that.

24 MR. DILLARD: Thank you. I appreciate it, Your  
25 Honor.

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1           THE COURT: If there is something you want in  
2 response to that that we have not discussed, and we  
3 don't know exactly what that is, if you deem it  
4 necessary when you file -- when and if you file an  
5 appeal, we'll have a hearing about it and I'll decide  
6 whether it is in the record or not.

7           MR. DILLARD: Thank you, Your Honor. Now into  
8 the substance of this. Let me say at the outset that  
9 we are not taking the position affirmatively that we  
10 don't think that Mr. Stanton worked the hours he  
11 claimed. I think we are careful in couching language  
12 to present that as the hours claimed and the hours  
13 he -- we don't have any evidence that he padded the  
14 bills, and we are not saying that. I wanted to clear  
15 that up from the outset.

16           I think -- the way I see it, the plaintiffs in  
17 these cases, they had just about everything going for  
18 them to be able to show up today and make a reasonable  
19 fee request. One, there were three of them that split  
20 the fees. On top of that, they had a very reasonable  
21 hourly rate from Mr. Stanton, which we certainly have  
22 no objection to of \$190 an hour. We also know from  
23 the affidavits that he filed that, not just Mr.  
24 Stanton, but the other two plaintiffs as well, are all  
25 experienced attorneys; that means that they had an

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1 opportunity to combine their experience, brain power  
2 and come up with the most effective and most efficient  
3 way to approach these cases. It also means that all  
4 three plaintiffs had an opportunity to monitor and  
5 understand what was going on. They said they reviewed  
6 the invoices, reviewed the filing they knew what was  
7 going on as the case progressed based on their filing.  
8 So all of those things should ensure that no more than  
9 a reasonable amount of time was spent.

10 The one thing that they did not have in this  
11 case, that I think could have prevented this huge fee  
12 request, they did not have somebody to say stop. This  
13 approach, from the 60-page complaint and everything  
14 that followed, is not necessary, it is not reasonable.  
15 We need to stop this, slow things down, and handle it  
16 in a more reasonable manner. I think in some  
17 situations the best advice an attorney can give their  
18 client is simply to stop. Here, for whatever reason,  
19 nobody said that. This effort to not only pursue  
20 these, what I'll call procedural claims about the  
21 process the Town used, not only pursue those, but also  
22 to go after this vast fraud conspiracy set of theories  
23 that they have that was fully unleashed, and that is  
24 what happened here. The result is this 1000.5 hours.

25 The underlying premise of their claim is that

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1 more than \$190,000 of attorney time was reasonably  
2 spent on this. They also argue that because Mr.  
3 Stanton's rates are so reasonable, it really should be  
4 more. In looking at what he argued about, you know,  
5 fee rates, you know, he might say \$300 an hour is a  
6 reasonable rate for someone of this experience; that  
7 would get to \$300,000 for one case, \$900,000 for all  
8 three cases, plus he said there was more time he  
9 spent. So we're easily talking about a million  
10 dollars, which we feel is a very limited procedural  
11 ruling, but still allows the Town to come back and  
12 pursue the condemnation. To them, it is just as  
13 reasonable as the \$120,000 claim that they presented.

14 So, for context, a thousand dollars, what does  
15 that look like? The first five fee statements, which  
16 run from the start of the case in July of '20 through  
17 shortly before the summary judgment order in  
18 mid-January of 2021, there were 600.7 hours; that is  
19 over about six-and-a-half months. If you average that  
20 over every weekday during that period, including  
21 holidays and Thanksgiving, Monday through Friday, that  
22 comes to 4.2 hours every single weekday for  
23 six-and-a-half months.

24 The next fee statement, and the last one we got,  
25 was basically from summary judgment through

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1 March 3<sup>rd</sup> of 2021, about seven weeks; there were  
2 173.6 hours. If you average that over weekdays, it is  
3 5.1 hours per weekday. And since March 3, we don't  
4 have the fee statements, but if you would look at the  
5 hourly totals, over seven months, 226.2 hours, which  
6 is roughly 32.3 hours per month in a period of the  
7 case where not much was really happening. We had one  
8 hearing on our motion for reconsideration, and then  
9 all of the stuff with the fee statements. But, you  
10 know, more than 30 hours a month, that isn't a lot for  
11 a case where much is happening.

12 All of that matters, Your Honor, because I think  
13 it shows how the thousands of hours they are claiming  
14 plays out, not just on paper, but in real life. When  
15 an attorney goes to work every day, this is how the  
16 time is broken up, and the amount of time they are  
17 talking about being reasonably devoted to what is  
18 effectively a single case. It is really just beyond  
19 the pale, in our view.

20 For all of the affidavits that they filed, all of  
21 the briefs, all of the arguments that Mr. Stanton has  
22 just made, they still have not answered, really, I  
23 think the only important question, which is: Why?  
24 What about this case led to any need for a thousand  
25 hours of attorney time? They say a few things to

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1 blame it on the Town. They argue the facts are  
2 complicated because we're dealing with issues and  
3 things that were said at a few different town  
4 meetings, and for some reason it took hundreds of  
5 hours to get a good grip on that.

6 They said the Town wasn't adequately responsive  
7 in our discovery, that we filed motions for bonds and  
8 to disqualify Mr. Stanton; and those two things are  
9 true. Across the board, throughout everything they  
10 filed, they say that the Town and its representatives  
11 and attorneys are fundamentally dishonest, can't help  
12 but lie about everything, and that caused Mr. Stanton  
13 to do a lot of work. I'm not exaggerating; that is  
14 what they filed and argued. As of two days ago, they  
15 filed more things to that effect.

16 A lot of that stuff is not true. But even giving  
17 the plaintiffs the benefit of the doubt, on all of  
18 those issues, all of those claims, it is our fault.  
19 None of that, individually or collectively, gets you  
20 to a thousand hours in this case. It really doesn't  
21 get you to 500 or 400 or even 300 hours of attorney  
22 time. So, you know, discovery squabbles, motions,  
23 multiple sets of facts; these are not uncommon in  
24 litigation, but it doesn't get you that amount of  
25 time.

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1           Another example, if you look at just the first  
2 month, July of 2020, this was before the Town even  
3 appeared in the case before we did everything, so it  
4 could not have been our fault. Mr. Pagliarini  
5 discusses in his affidavit, Paragraph 19, that  
6 Mr. Stanton logged time on 27 of the 31 days in July,  
7 for a total of 162.8 hours. The average of those 27  
8 days out of the 31 in July, that is more than six  
9 hours a day. Again, why? They have not answered the  
10 question. Why so much time? What is the need for it?  
11 If Mr. Stanton wanted to spend that much time, that is  
12 fine. If his clients wanted to go along with it --  
13 you know, after they received the first invoice and  
14 saw what was going on, then the next one and the next  
15 one, and continued this, that is fine, but it doesn't  
16 make it reasonable.

17           I think they are certainly not entitled to a  
18 presumption that the attorney time is reasonable just  
19 because it was billed and paid for. Really, they  
20 haven't put a reasonable or even plausible number  
21 before the Court. The only reasonable number Your  
22 Honor has before you is the one from the Town. We've  
23 filed several supporting materials. Our memo was  
24 filed September 20, and with that we had four  
25 affidavits. I'm going to kind of recap each of those

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1 for the Court. The affidavit of David DuRant, he's  
2 the Town attorney and original counsel of record in  
3 the case, he refused the claim that the Town used a  
4 fee scorched earth approach. He filed a motion for  
5 bond early on. He filed a motion to disqualify Mr.  
6 Stanton later on. Both of those things were resolved  
7 very quickly. The motion for bond was denied after  
8 three, four weeks. The motion to disqualify was  
9 withdrawn. Mr. Stanton is claiming time for both of  
10 those, and we do not dispute that time; that is not  
11 something we're challenging. But, again, those were  
12 promptly resolved. Nothing that Mr. DuRant did caused  
13 this thousand hours to be necessary. We also filed  
14 the affidavit of Brian Henry in response to an e-mail  
15 that Mr. Stanton filed from August of 2020; wherein,  
16 Mr. Henry asked the Army Corps of Engineers, after the  
17 actions were filed, if there is a nuclear option to  
18 try to lock in the Corps money and help the  
19 renourishment funding be put in place. Potentially,  
20 it is tens of millions of dollars, so it is a big deal  
21 for the Town to get that program going and  
22 established.

23 Mayor Henry makes it clear in his affidavit what  
24 he meant is, is there some kind of an arrangement  
25 where we can lock in the money, but move the project

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1 boundaries a little bit, meaning there is some  
2 collateral damage, because portions of the beach in  
3 close proximity, not just to the plaintiffs, but other  
4 property owners who did sign the easement, would not  
5 necessarily be eligible for that renourishment money.  
6 That is not the Town's first priority. That is what  
7 he meant; what can we do to lock this in even if it is  
8 not a perfect solution.

9 Mr. Stanton filed another e-mail a month ago  
10 where the town administrator responded to a FOIA  
11 request. It is really 20 pages that Mr. Stanton is  
12 asking all of these questions to the town  
13 administrator, kind of about the case without my  
14 permission. But, in any event, the town administrator  
15 says, yeah, I told the mayor, he didn't recall what  
16 the nuclear option means. It was clear from the  
17 context that that was just a quick conversation. The  
18 mayor probably didn't even look back at the e-mail at  
19 that point. I think they were just tired of all the  
20 questions and didn't give it much thought. I have  
21 zero doubt that what we filed is one hundred percent  
22 accurate and truthful. Again, there is no evidence of  
23 fee scorched earth having taken place; that didn't  
24 take place in the case, and it hasn't been shown in  
25 the records.

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1           Then, our key affidavit is from David Pagliarini.  
2       He's one of the most experienced and knowledgeable  
3       imminent domain attorneys in the state. He's done a  
4       lot of work on both sides. His CV lists some of the  
5       projets he's been on; just a few examples are I-26  
6       Port Access Road, Georgetown County Airport, Cooper  
7       River Bridge. He's also the town attorney for  
8       Mt. Pleasant, which is, I think, the fourth largest in  
9       the state; it has more people than the City of  
10      Greenville. So he's the real deal. He knows what he  
11      is talking about.

12           I do a good bit of imminent domain work, and I  
13      have cases probably pending in eight counties maybe  
14      right now, across the state, on both sides. I'm a  
15      city attorney for a smaller municipality in the  
16      Midlands. The point is to say that I know firsthand  
17      that when attorneys have questions about these  
18      difficult issues, Mr. Pagliarini is one of the people  
19      they go to for help. So we're very comfortable and  
20      proud to present his opinion in the case. He is well  
21      qualified even if he is not -- doesn't have first-hand  
22      knowledge of the case. He is not a law professor,  
23      which Mr. Stanton seemed to argue in his filings. We  
24      think he is well qualified. He looked at the case top  
25      to bottom; the filings, the orders, the index, the fee

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1 affidavits, fee statements, which was their  
2 opportunity to answer that question of: Why? Why so  
3 much time?

4 Mr. Pagliarini also looked at the case of Vince  
5 Table that I prepared, and there is -- that was simply  
6 a summary that I prepared of things that appeared in  
7 the record. There is nothing in that table that does  
8 not appear in the record. The thought was that there  
9 is no reason for him or the Court or anyone else to  
10 reinvent that wheel if I can just provide summary;  
11 that was the purpose of that.

12 I'm not aware of any errors in the table I  
13 prepared; Mr. Stanton said there. I'm not sure  
14 specifically what he means. There is no major  
15 omissions. In any event, Mr. Pagliarini viewed the  
16 case index as well; so he saw everything that happened  
17 in the case. One more note: The plaintiffs make a  
18 big thing about the fact that the case table that I  
19 prepared was not attached to my affidavit, even though  
20 I referenced it; it was attached to Mr. Pagliarini's  
21 affidavit, and that, therefore, they claim it is  
22 unsworn.

23 Yesterday, in response to that, I filed a  
24 one-page affidavit saying here it is, it's mine; I  
25 swear it is mine. That is filed with the Court. I

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1 have a copy I could hand up if Your Honor would like  
2 to see it, but it is in the record.

3       Importantly, Mr. Pagliarini's review did not rely  
4 -- he didn't even see the other document that I  
5 prepared, which was the proposed reductions based on  
6 the fee statements. He never even saw that. I think  
7 I sent a copy after everything was filed, but that is  
8 not part of his analysis; that was my own independent  
9 analysis.

10       He determined, Mr. Pagliarini, a reasonable  
11 amount of time for working on all three cases was 125  
12 hours, times the hourly rate of \$190, which is  
13 approximately \$24,000 total, with both of the claiming  
14 plaintiffs to get one third; so \$8,000 each for Sunset  
15 and Beattie. His number accounts to the Town's  
16 unsuccessful motions -- that is Paragraph 30 -- for  
17 the fact that there were three cases and you had to  
18 refile three different times. He also accounts for a  
19 reasonable amount of time to handle the fee  
20 application. Both of those are in Paragraph 32.

21       He opines that resisting to produce the fee  
22 statements by Mr. Stanton was unreasonable; but,  
23 still, like I said, he includes a reasonable amount of  
24 time for pursuing the fee petition, if it was done in  
25 a reasonable way.

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1           Finally, my affidavit, the Dillard's affidavit,  
2   it provides that proposed reduction table that goes  
3   through the fee statements and breaks down, sort of,  
4   sets of days with related tasks and proposed  
5   reductions and identifies the reasons for the proposed  
6   reductions. In preparing that table, I did look at  
7   Mr. Pagliarini's affidavit; I want to be clear about  
8   that. We didn't magically come to similar numbers.  
9   He didn't look at mine; I looked at his and agreed  
10   with his general framework. Generally, I applied that  
11   for case tasks to the fee statements that Mr. Stanton  
12   presented. Ultimately, it is my opinion of what is  
13   reasonable as appearing in my affidavit, and that also  
14   includes reasonable time for the fee petition.

15           I think -- I hope the Court will agree that both  
16   of these approaches, Mr. Pagliarini's approach and  
17   then my approach, where it gets into the guts of the  
18   fee statements and breaks things out, both show a  
19   reasonable amount of work and provide sound basis for  
20   the Court to award reasonable attorney's fees, if you  
21   decide to award anything.

22           One issue that we discussed in the brief is the  
23   fact that the plaintiffs didn't prevail on all claims,  
24   and we think a tremendous amount of time was spent on  
25   the fraud claims that they didn't prevail on. In

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1 terms of the numbers we present, Mr. Pagliarini's  
2 hourly total, that is for all claims, he doesn't pull  
3 anything out -- my table includes all claims, and then  
4 says you can also pull out another 21 percent or so  
5 based on those non-prevailing claims. So the analysis  
6 can be performed either way. I think the law would  
7 support it.

8 The other thing my affidavit does is provide a  
9 long recap of what happened in our dispute over the  
10 fee agreements. I know it is not enjoyable to read; I  
11 know it wasn't enjoying to write. I thought it was  
12 important to pin down what happen. The key thing is  
13 February 9<sup>th</sup>, Mr. Stanton -- like a week after I got  
14 the case -- proposed a protective order. At first, I  
15 said, no, I don't know -- you are trying to get this  
16 thing in a month, I don't think that is necessary,  
17 give me the statements.

18 February 17<sup>th</sup>, seven days later, eight days  
19 later, we had a status conference with Your Honor, and  
20 you said here is what I think needs to happen,  
21 protective order and I'll review in camera, and all of  
22 that, try to put together a proposed order for me.  
23 From that point forward, we did exactly what you said.  
24 We went with it, and that was fine with us.

25 Mr. Stanton did not. He called us to have

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1 multiple hearings and all the things we went through.  
2 So our position is that he is not entitled to recover  
3 time, or his clients are not, for those unsuccessful  
4 and unreasonable efforts, because you did issue an  
5 order that was basically what we asked for. Other  
6 than leaving the hourly totals with the fee statements  
7 redacted, I believe that you agreed to everything we  
8 asked. We just want it reviewed so Your Honor could  
9 make sure that only appropriate things were redacted.

10 One last point, again, they declined to provide  
11 any fee statements for time since March 3, 2021. I  
12 think that underscores how they failed to prove the  
13 reasonableness of what they are claiming. The brief  
14 covers the legal points and details. To touch on a  
15 few key issues, the plaintiffs did not get the  
16 permanent relief they were really after. They didn't  
17 prevail with the fraud theory that they were so  
18 focused on. I think it is undeniable if you look at  
19 the pleadings, the proposed summary judgment order,  
20 which was like 50 pages, and I think more than half of  
21 it was on those non-prevailing claims; that is where  
22 the bulk of the attorney time went in this case. If  
23 it was just the procedural issues, that could have  
24 been worked out in a month. That's not what this was  
25 about, but that is what the order addressed.

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1           Second, it was not a particularly complicated  
2 case on the law or the facts. I understand the  
3 theories, but it simply did not require a 60-page  
4 complaint. It is not a normal road condemnation case,  
5 but not complicated in the way they contend.

6           Third and finally, under consideration of the  
7 factor of customary legal fees for similar legal  
8 services, these were divided by three. There were  
9 three plaintiffs jointly represented by the same  
10 counsel, so I think it makes sense for any fee award  
11 to reflect that as well.

12           To rebut a few points that Mr. Stanton made in  
13 his arguments and recent filings, he filed affidavits  
14 from Franklin Beattie and Mr. Charles Howard, two of  
15 the plaintiffs, or plaintiff owners. With all due  
16 respect, I don't think that those affidavits really  
17 add much, if anything, for the Court's consideration.  
18 Mr. Beattie, basically, says that the Town was  
19 dishonest, Mr. Stanton did a good job, and the time he  
20 worked reflects on the Town's character, to  
21 paraphrase. Mr. Howard, who is a co-owner of Sunset  
22 Lodge, LLC, he says that he reviewed -- and both of  
23 these gentlemen are experienced attorneys. Mr. Howard  
24 said he filed the case, he thinks it is reasonable,  
25 but at a conclusion, he didn't give an analysis for

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1 why or talk about any experience with imminent domain  
2 litigation. So I think both of those should not have  
3 any weight with the Court.

4 They make the argument that David DuRant,  
5 attorney, that in his affidavit that he claimed that  
6 the summary judgment order determined that some of  
7 their positions lacked merit. That's not what he  
8 said. If you read his affidavit, he just says that he  
9 believes some of their positions lacked merit. I  
10 wanted to clear up any confusion on that because that  
11 was referenced several times in their filings.

12 An important point under the Lodestar analysis,  
13 under Layman v. State, the six factors, including the  
14 beneficial results obtained, those are not reserved  
15 for the enhancement analysis. Layman is clear that  
16 those are a part of the determination on what is a  
17 reasonable amount of time. I can read language for  
18 the Court, if you would like. I just want to make  
19 that point.

20 The one specific point that Mr. Stanton took  
21 issue with in our analysis is that he thinks we are  
22 saying that the deposition of the appraiser took 17.3  
23 hours, and that is not what we are saying. The table,  
24 Page 3 of my proposed redaction table, it compiles the  
25 time from October 16 to October 28, 2020, for a total

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1 of 17.3 hours, that included that deposition, but also  
2 other communication. So I think that was a  
3 misunderstanding on Mr. Stanton's part.

4 The last thing is that any arguments that they  
5 are making about what the Town is -- first, that is  
6 completely hearsay. He hasn't produced any records to  
7 show what the attorneys were paid, but also any  
8 records about what the Town paid its attorneys that  
9 would reflect not just this matter, but other  
10 litigation as well, and other things related to the  
11 overall situation. So I don't think that is really  
12 squarely before the Court in any way, for all of those  
13 reasons.

14 So, Your Honor, the Town feels that under the  
15 circumstances of this case the most appropriate award  
16 would be no award at all, because there was really no  
17 finding as required under the Attorney Fee Statute  
18 that the Town had no right to take the property.  
19 There was a procedural ruling, as we characterized it,  
20 that said the Town can still come back and start  
21 things over. However, if the Court does feel that  
22 some is appropriate, for the reasons I outlined, we  
23 think that \$8,000 for an attorney's fee is the  
24 appropriate award for each of the two plaintiffs, and  
25 the referenced out-of-pocket costs, roughly \$900, and

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1 the details are in the record, we have no objection to  
2 that, if an award is made at all.

3 Finally, we request that all three cases be  
4 dismissed in the order so there is no confusion  
5 whether anyone can come back and request an order.  
6 Thank you.

7 THE COURT: Mr. Stanton, I have a pretty good  
8 feel for this. I know that you don't agree with  
9 everything that he said, and that was made clear in  
10 your initial presentation, but if you feel compelled  
11 to address some of those in a brief fashion, I'll hear  
12 from you.

13 MR. STANTON: I will say, Your Honor, if you read  
14 our brief --

15 THE COURT: Yes, I have.

16 MR. STANTON: -- and you read the six affidavits,  
17 mainly the four in which I replied to their four, and  
18 the other two, one from Mr. Beattie and one from  
19 Mr. Howard, you wouldn't have to guess what my  
20 response to everything he just said is because we've  
21 already responded in all of those affidavits in great  
22 detail, except instead of just testifying in open air  
23 or making a generalization, we gave specific examples.

24 I will, again, incorporate those things in being  
25 faithful that you have read them, and if you have any

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1 doubt, you'll read them again. So I won't go through  
2 every point Mr. Dillard just went through, but I do  
3 want to touch on a few of them.

4 He said we had everything going for us in how  
5 reasonable this presentation was, reasonable rate,  
6 accurate assessment of the number of hours, an  
7 experienced attorney, and he says the only thing we  
8 didn't state is why we spent the number of hours we  
9 did. To do that, Your Honor, it would take a  
10 year-and-a-half, the same time it took to spend those  
11 hours. An attorney has to make judgments when the  
12 attorney is going along and has to do it in foresight,  
13 not in hindsight. It is the attorney's decision what  
14 to do that he thinks is reasonable for his client. I  
15 understand the standard is reasonable, and the Court  
16 might look back on something and have a question.  
17 We're willing to answer questions from the Court, but  
18 we can't write a 4,000-page explanation for the Town  
19 in a fee petition.

20 Some of those decisions have to do with the fact  
21 that -- bear in mind what we did here: We got summary  
22 judgment as quick as you can get it. It saved the  
23 Town and the plaintiffs and Court an extremely lengthy  
24 and tedious merits trial. It threw the case out  
25 early. In fact, Mr. Dillard not only acknowledges,

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1 but seemingly complains in his papers that he filed a  
2 motion for summary judgment on the first day that the  
3 rules would allow a motion for summary judgment to be  
4 filed. I believe that was sometime in August of 2020.  
5 The Town wouldn't let us have our summary judgment  
6 motion heard at the same time they had their expedited  
7 motion to dismiss heard; they would not agree to have  
8 that scheduled. So, instead, our summary judgment  
9 motion got put off, and it was going to come up in  
10 October. We were pursuing discovery to get ready for  
11 all of that. The Town resisted discovery. When I  
12 called Mr. DuRant to check on his tardy or soon-to-be  
13 tardy discovery responses, instead accepting my call  
14 or responding to my e-mail, where I was calling to  
15 consult to make sure I didn't need to have to file a  
16 motion to compel, he filed a motion to block all  
17 discovery against the Town without consulting with me.  
18 Then, he proceeded to not respond to any discovery,  
19 and then when we had -- I think it was -- one motion  
20 or another, it was either the denial of his motion to  
21 dismiss or whatever, but when that motion became  
22 either moot or denied, then we still had to wait for  
23 the responses.

24 So, then, the summary judgment that was scheduled  
25 for October, the Town moved to continue that into

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1 December because Mr. DuRant needed to go to the  
2 Clemson game, Clemson against Boston College game. We  
3 agreed that people's personal commitments are fine.  
4 Never mind the fact that I worked all night and missed  
5 an anniversary trip and medical appointments, and all  
6 other stuff. But, you know, I would like to be able  
7 to go to the beach or a game. They had that  
8 continued, and I actually spent extra time -- it  
9 probably took me a few hours to contact the judge who  
10 was set for that and see if we could set alternative  
11 times that would accommodate him for going to the  
12 game. But the goal was to let's move this thing out  
13 to the next term, so it was set for December 4<sup>th</sup>.

14 So now we're months down the road, but it didn't  
15 stop the Town. Right about the same time that the  
16 summary judgment motion was supposed to be heard, when  
17 I show up for the deposition of the appraiser --  
18 everything I'm saying here, Your Honor, is in our  
19 papers. I'm not adding testimony here standing in the  
20 courtroom. When I showed up for the deposition, with  
21 no notice, they served us with three more suits, okay,  
22 against the same three people on the same subject  
23 matter, not fixing a single thing that they already  
24 knew was wrong with their first suit. So we had to  
25 get a continuance of summary judgment motion so he

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1 could go to a game, but that didn't stop them from  
2 having a town council meeting and preparing another  
3 set of suits, which they served by surprise when we  
4 show up for the appraiser's deposition. When we show  
5 up for the deposition, instead, we spent about a half  
6 hour in Mr. DuRant's office while the court reporter  
7 waits talking about will you accept service of these  
8 things. I said I'm not sure what it is; it is a lot  
9 to read, but I'll probably accept whatever I can  
10 accept to cut the cost on this case, but let me look  
11 and I'll tell you what I'll do.

12 This is the same deposition that Mr. Dillard here  
13 states in his chart took 17.3 hours, and there was no  
14 misunderstanding as he just told you today. There was  
15 no misunderstanding about what is in his chart. If  
16 you look at his chart, he's talking about how long the  
17 deposition took, and he said you should take and  
18 reduce that to four hours for not only the deposition,  
19 but all local travel and everything else. He's  
20 talking about the deposition.

21 I don't know if it is by coincidence, but some  
22 weeks earlier the Town's council published, on live  
23 stream Internet to everyone who was watching, that  
24 Mr. Stanton took 17 hours to take this deposition, and  
25 it took eight hours, Your Honor. The court reporter

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1 recorded the time it took on the transcript, and I  
2 would invite Your Honor to ask Mr. Dillard if he's  
3 even read the deposition before putting down that it  
4 took 17.3 hours, and that it should have taken four.  
5 He hasn't read the deposition, Mr. Pagliarini hasn't,  
6 and Mr. DuRant hasn't read the deposition. Mr. DuRant  
7 was the only one that was there, and he has nothing to  
8 say about the deposition. That is just an example of  
9 how far off this cherry-picking chart is.

10 Speaking of being sued again, in October -- that  
11 happened to be about two months after the mayor wrote  
12 his e-mail looking for a nuclear option. So we got  
13 the mayor asking is there a nuclear option, something  
14 we can do that is so destructive and devastating and  
15 overwhelming to bomb these people back to the Stone  
16 Age that we can get over with this thing? Within two  
17 months, we're sued again in a duplicate set of suits.  
18 We have given example after example of exactly what we  
19 have said.

20 Now, when I say consistently that dishonest  
21 positions have been taken, that is what the complaint  
22 says. It says it in numerous paragraphs. I think the  
23 amended complaint was -- I forgot how many it was now.  
24 Say it was -- it was over a hundred paragraphs, and  
25 the Town denied every single paragraph except three.

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1 Then, Mr. Pagliarini -- let's talk about  
2 Mr. Pagliarini. There is not a single thing in his  
3 resume that he ever represented a landowner in a  
4 challenge case. Whether he knows what he is talking  
5 about in regards to imminent domain or not, it is all  
6 roadwork that he does mostly, it looks like. The  
7 stuff he says in there, in his affidavit, about his  
8 understanding of the Rules of Civil Procedure and even  
9 the English language makes you wonder if he's ever  
10 even looked himself at any of this stuff. Mr. Dillard  
11 just admitted in court here today that the times that  
12 he's assigned to these various events that he's picked  
13 out is all Mr. Dillard's opinion, and not Mr.  
14 Pagliarini's. Mr. Dillard said in his affidavit that  
15 he relied on Mr. Pagliarini's opinion.

16 Mr. Pagliarini states that the amended complaint  
17 is unintelligible, and I've attached to our response a  
18 sample of over 60 paragraphs that are perfectly  
19 intelligible that an eighth grade school kid could  
20 understand. Then, he goes further and shows -- I  
21 can't imagine he knows that little about civil  
22 procedure, probably no more than he has looked at the  
23 case. He says there was no need for a summary  
24 judgment affidavit that tracked the allegations of the  
25 pleadings. He probably didn't realize that they

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1 denied every single one of those allegations. To get  
2 summary judgment, you have to put something out there.  
3 Once that was put out there, and the only way the Town  
4 could resist and deny those allegations was to do  
5 something under oath, but they didn't deny any of  
6 them; not one.

7 So we got, basically, Mr. Pagliarini being hired  
8 to bless someone else's wishful thinking about the  
9 case, and he comes up with these astounding figures.  
10 Mr. Dillard accounted it to Your Honor. His  
11 calculation is that each plaintiff should get \$8,000  
12 in attorney's fees. Mr. Dillard says that everything  
13 about what the Town has paid is hearsay; it's not. It  
14 is in affidavits under oath. I've done the FOIA  
15 requests. Mr. DuRant's bills are online. They are in  
16 the FOIA responses. Mr. Dillard's bills, some of them  
17 are online, and they are in the FOIA responses. It is  
18 reasonable for me, as a reasonable lawyer to rely on  
19 that, that when it says \$250 an hour for everything  
20 they did, it is \$250 an hour.

21 Furthermore, as of a few weeks ago, I'm sure it's  
22 not reflected in all of this wealth of 104 pages of  
23 stuff that Mr. Dillard has put in here, the bills that  
24 the Town had paid to Mr. Dillard and Mr. DuRant were  
25 over \$75,000 and headed north. So here is another --

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1 but Mr. Pagliarini thinks then for winning, the  
2 plaintiffs should only get \$8,000 apiece reimbursed  
3 for the \$60,000 that they've spent or going to spend.  
4 That is totally unreasonable.

5 You know, another thing you could do is let's  
6 ballpark it. The Town is going to spend over \$80,000,  
7 including all of the resistance to the attorney's  
8 fees and everything else; they lost, we won. Why  
9 don't you say reasonable attorney's fees are 160,  
10 double what they paid to lose?

11 I've addressed the notion of averaging of hours;  
12 I still don't understand it. We didn't work averages  
13 of hours. If we worked 19 hours day and night, we  
14 worked 19 hours day and night. Oh, I did lose my  
15 initial point which was it's the attorney's judgment  
16 of what is necessary to represent his client. You  
17 know, he doesn't put everything on his bill and  
18 explain here is why I did all of this. That is a  
19 contemporaneous bill rendered to the client. The bill  
20 is not for Mr. Dillard; it is for the client. It  
21 doesn't reflect every single thing that we researched,  
22 why it was researched, why the analysis took a while.  
23 When you are preparing a pleading, it doesn't mention  
24 you proofread it twice. All of those things -- I  
25 think I put it in a footnote that if you put

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1 everything in this, you would have the equivalent of  
2 that comedian Steven Wright with his life-sized map of  
3 the USA; it will take forever to fold. You know, it's  
4 absurd.

5 The foresight is no reasonable attorney goes into  
6 a case saying, you know what, I'm going to win this  
7 case on summary judgment in a state where, up until 20  
8 years ago, summary judgments were never granted. It's  
9 never a reasonable assumption in South Carolina to  
10 think you are going to win in state court on summary  
11 judgment. We all know summary judgment is a -- denial  
12 of a summary judgment can't be appealed. So if a  
13 judge is in doubt, he denies summary judgment. It's  
14 never reversed. You don't go into a case saying I'm  
15 going to win on summary judgment. If you are going  
16 into a case thinking you might win on summary  
17 judgment, you don't say, you know, I have five good  
18 grounds, why don't we just pick one, maybe that will  
19 work. You present all of them, all the ones that are  
20 good, and all of ours were.

21 You know what else you don't do? You don't  
22 assume you are going to win on one of those five. You  
23 are in a case where the Town has moved to expedite the  
24 case. That was one of their first motions: Let's  
25 expedite the case, but not let the Town respond to any

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1 discovery. So we are already staring down the barrel  
2 of we're going to get stampeded here. It is a  
3 hurry-up-and-lose. We're going to deny discovery,  
4 speed up the case, and we will have a trial before you  
5 can get enough stuff to prove everything you said. So  
6 a reasonable attorney is going to want to prepare for  
7 that full merits trial; that is what we did. We did  
8 the research. We did the factual analysis. Mr.  
9 Dillard is saying it's either fraud or procedural, and  
10 we have addressed that at length. It is not either  
11 fraud or procedural. The things that they did that  
12 were procedurally wrong, every single one of them had  
13 to do with falsity and dishonesty. A good part of  
14 what we complained about being false and dishonest  
15 included those acts that Mr. Dillard says were  
16 procedural.

17 But there were numerous scenarios that needed to  
18 be presented and analyzed as well to prepare for a  
19 merits trial, such as the fact that the Town first  
20 asked for these easements, and then there was some  
21 back and forth on whether they were going to get them  
22 all, and that is more than just these three people.  
23 There were several people that had not done it yet.  
24 Then the Town decided the Corps of Engineers was  
25 unreliable, declared publicly these easements are not

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1 necessary because we are going to do this project on  
2 our own without the court. Then they did the project,  
3 and then the Corps comes creeping back and says, well,  
4 maybe there is something we can work out, and then the  
5 Town comes back and asks for the easements again.

6 So, you know, you have to analyze all of that and  
7 those -- that fact right there was one of the facts  
8 that before condemning the properties of three of the  
9 neighbors, the town council didn't even talk about it.  
10 But my main point is to say looking backwards, well,  
11 you won on summary judgment. So you should just  
12 prepare on one, and I prepare for everything else?

13 No.

14 There is no South Carolina case law on what Mr.  
15 Dillard calls "non-prevailing claims" when someone  
16 wins on a summary judgment, on a summary disposition.  
17 There is no merits ruling against them on anything.  
18 The judge just doesn't reach all of the things that  
19 somehow everything that the attorney has done to that  
20 point is unreasonable. It is just ridiculous.

21 I can see that if I go on everybody is going to  
22 be glazed over. It's the same stuff in our responses.  
23 It is just really hard to sit down, but I would invite  
24 you to ask Mr. Dillard if he or Mr. Pagliarini read  
25 the deposition; they didn't, and Mr. Pagliarini gave

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1 an opinion that it was unreasonable. Thank you.

2 THE COURT: Very good. Mr. Dillard, if you can  
3 prepare an order consistent with my ruling here today.  
4 The plaintiffs seek a combined total expense award of  
5 \$120,396.67 based on a proportion amount of a total of  
6 950.5 hours of attorney's time that has been alleged  
7 to have been spent on three related matters:  
8 2020-CP-0600, 601, and 602, which has since been  
9 consolidated. In light of the nature of the action,  
10 the reasonableness of the fee calculation and the  
11 results obtained, the Court finds that an award of  
12 \$120,396.67 is unreasonable. Court is guided by the  
13 South Carolina Imminent Domain Procedures Act as the  
14 controlling statute with regard to disbursement of  
15 attorney's fees. This is a fee shifting statute. As  
16 part of the Act, authorized landowners who prevail in  
17 an imminent domain action to recover reasonable  
18 litigation expenses, where the Court finds the award  
19 of fees to be warranted, the Court views the fee  
20 statement put forth by the plaintiff's counsel. The  
21 Court then has discretion to evaluate the six factors  
22 set forth by the South Carolina Supreme Court in  
23 Jackson versus Speed in determining the reasonableness  
24 of attorney's fees, and South Carolina Department of  
25 Transportation v. Revels.

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1           These factors are as follows: One, the nature  
2           and extent and difficulty of the case; the time  
3           necessary devoted to the case; professional standing  
4           of counsel; contingency of compensation; beneficial  
5           results obtained; customary legal fees for similar  
6           services. These factors are examined with  
7           consideration to each and with no single factor  
8           controlling. Factors are further examined in the  
9           context of Lodestar analysis designed to reflect the  
10          reasonable time and effort involved in litigating a  
11          case and is calculated by multiplying a reasonable  
12          hourly rate by the reasonable time expended.

13          First factor: The nature, extent, and difficulty  
14          of the case. The defendant has submitted four  
15          affidavits: David Pagliarini, experienced domain  
16          practitioner; David DuRant, Senior, Town attorney and  
17          original counsel of record for the Town; Brian Henry,  
18          mayor of the Town of Pawleys Island; William C.  
19          Dillard, Junior, counsel of record for the Town.

20          Based on the review of plaintiffs' counsel's  
21          affidavit, as well as the affidavit submitted by the  
22          defendant and the nature and circumstances of the  
23          claim, the Court finds that the plaintiffs' proposed  
24          amount of attorney's fee is disproportionate and  
25          unreasonable. The Court finds that this was, by no

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1 means, a simple case, but was one with limited  
2 complexity and scope.

3 The second factor: The time necessary devoted to  
4 the case. Plaintiffs' counsel states that he has or  
5 will work 950.5 hours in connection with this and the  
6 two connected cases. Plaintiffs' counsel in his  
7 affidavit submitted block billing statements beginning  
8 on August 5 of 2020, but fails to itemize the billing  
9 statements to shed light on the massive quantity of  
10 time proffered as being devoted to this matter.

11 Plaintiff is not entitled to any presumption that  
12 the claimed attorney's fees -- the claimed attorney  
13 time was reasonable in this case, and the Court finds  
14 that based on this record, the award to the extent  
15 that plaintiffs' counsel seek is unsupported by the  
16 evidence.

17 Number three: Professional standing of the  
18 Counsel. The Court finds plaintiffs' counsel to be in  
19 a commendable professional standing in a wide latitude  
20 of practice areas, including those in this case.

21 Number four: Contingency of compensation; it is  
22 not applicable to this case.

23 Beneficial results obtained. It is important to  
24 note that the relief that plaintiffs' counsel has  
25 obtained through summary judgment is procedural and

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1 without prejudice. The Court is directed to the  
2 beneficial results obtained in this case and  
3 distinguishes the claims of fraud, bad faith, and lack  
4 of necessity. In accordance with the affidavit of  
5 David Pagliarini, the Court finds an award based on  
6 125 hours allotted for the full scope of the claim,  
7 divided among three plaintiffs, and one has waived  
8 that to be reasonable.

9 Six: Customary legal fees for similar services.  
10 The rate of \$190 that the plaintiffs' counsel seeks is  
11 within the range of what is reasonable and customary  
12 based on his professional standing and relevant  
13 experience in the subject matter of this case. The  
14 parties essentially agreed to this. The circumstance  
15 of this and the two related cases, which put forth  
16 essentially identical claims of three plaintiffs were  
17 pursued jointly, and according to plaintiffs' counsel,  
18 billed in thirds. These circumstances lead to the  
19 finding that any fee award to the plaintiff is limited  
20 to one-third -- to the individual plaintiffs, limited  
21 to one-third, the total reasonable amount for all  
22 three cases.

23 The Lodestar analysis: Application of the six  
24 factors above leads to the following Lodestar  
25 calculation for reasonable attorney's fees in this

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1 case: \$190 times 125 hours, which would amount to  
2 \$8,000 per client. One has waived, so there is an  
3 award of \$16,000 in attorney's fees, and Mr. Stanton,  
4 as the plaintiff, will be awarded \$881.59 in costs.  
5 Each of the remaining plaintiffs will be awarded  
6 \$913.33 for each.

7 I'll ask that you prepare an order along with the  
8 ancillary matters that we resolved with regard to  
9 consolidation, the filing of the documents under seal.  
10 Is there anything further from the plaintiffs?

11 MR. STANTON: No, Your Honor.

12 THE COURT: Anything from the defense?

13 MR. DILLARD: No, Your Honor. Thank you.

14 THE COURT: Mr. Stanton, I'll mention that you  
15 might want to take a look to see if you had the  
16 un-redacted bills. If you will -- if you can do that,  
17 I'll ask my law clerk to remain here in the courtroom.  
18 Thank you all so much.

19 (Whereupon, the hearing concluded.)  
20  
21  
22  
23  
24  
25

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## 1 CERTIFICATE OF REPORTER

2 State of South Carolina)

3 County of Georgetown )

4  
5 I, Natalie Dahl, Official Court Reporter for the  
6 State of South Carolina, do hereby certify that the  
7 foregoing is a true, accurate and complete Transcript  
8 of Record of the proceedings had and evidence  
9 introduced in the hearing of the captioned case,  
10 relative to appeal, in the Court of Common Pleas for  
11 Georgetown County, South Carolina, on the 6th day of  
12 October, 2021.

13 I do further certify that I am neither of kin,  
14 counsel, nor interest to any party hereto.

15  
16 March 30, 2022

17  
18 -----  
19 Natalie Dahl, RPR

20 Court Reporter  
21  
22  
23  
24  
25

***CERTIFIED TRANSCRIPT FOR STANTON LAW OFFICES ONLY!***

Electronic docket sheet with notations of roster notices, other electronic notices, and filings.



## 2020CP2200600 : Sunset Lodge Llc , plaintiff, et al VS Pawleys Island Town Of

Common Pleas

**Case Number** 2020CP2200600  
**Case Subtype** Fraud/Bad Faith 150  
**Filed Date** 07-21-2020  
**Status** Appeal

**Plaintiff** Sunset Lodge Llc et al  
**Defendant** Pawleys Island Town Of  
**Assigned Judge** Clerk Of Court C P, G S, And Family Court  
**File Type** Mediator-Non-Jury

[Show/Hide Participants](#)

| Name                                  | Description                                                  | Type     | File Date              |
|---------------------------------------|--------------------------------------------------------------|----------|------------------------|
| Sunset Lodge Llc                      | NEF(02-28-2022 04:57:55 PM) Notice/Other                     | Filing   | 03-01-2022 08:29:10 AM |
| Sunset Lodge Llc                      | Notice of Appeal/Certificate of Service                      | Filing   | 02-28-2022 04:57:55 PM |
| M Baron Stanton                       | NEF(01-29-2022 09:33:13 AM) Judgment/Satisfaction of Jud...  | Filing   | 01-31-2022 09:02:57 AM |
| Franklin D Beattie                    | NEF(01-29-2022 09:31:40 AM) Judgment/Satisfaction of Jud...  | Filing   | 01-31-2022 08:59:45 AM |
| M Baron Stanton                       | Judgment/Satisfaction of Judgment                            | Filing   | 01-29-2022 09:33:13 AM |
| Franklin D Beattie                    | Judgment/Satisfaction of Judgment                            | Filing   | 01-29-2022 09:31:40 AM |
| Sunset Lodge Llc                      | NEF(01-28-2022 03:27:29 PM) Judgment/Satisfaction of Jud...  | Filing   | 01-28-2022 04:51:02 PM |
| Franklin D Beattie                    | NEF(01-28-2022 03:28:49 PM) Judgment/Satisfaction of Jud...  | Filing   | 01-28-2022 04:47:11 PM |
| M Baron Stanton                       | NEF(01-28-2022 03:30:02 PM) Judgment/Satisfaction of Jud...  | Filing   | 01-28-2022 04:45:39 PM |
| M Baron Stanton                       | Judgment/Satisfaction of Judgment                            | Filing   | 01-28-2022 03:30:02 PM |
| Franklin D Beattie                    | Judgment/Satisfaction of Judgment                            | Filing   | 01-28-2022 03:28:49 PM |
| Sunset Lodge Llc                      | Judgment/Satisfaction of Judgment                            | Filing   | 01-28-2022 03:27:29 PM |
| Sunset Lodge Llc                      | NEF(01-28-2022 09:45:17 AM) Order/Electronic Form 4          | Filing   | 01-28-2022 09:45:31 AM |
| Sunset Lodge Llc                      | Order/Electronic Form 4/Motion To Reconsider Denied          | Order    | 01-28-2022 09:45:17 AM |
| Franklin D Beattie                    | NEF(12-02-2021 10:50:35 PM) Motion/Reconsider                | Filing   | 12-03-2021 09:35:07 AM |
| Sunset Lodge Llc                      | Motion/Reconsider/Stanton                                    | Motion   | 12-02-2021 10:50:35 PM |
| Pawleys Island Town Of                | Judgment/Judgment                                            | Judgment | 11-23-2021 04:52:22 PM |
| Franklin D Beattie                    | Judgment/Judgment                                            | Judgment | 11-23-2021 04:52:22 PM |
| Pawleys Island Town Of                | Judgment/Judgment                                            | Judgment | 11-23-2021 12:36:30 PM |
| M. Baron Stanton                      | Judgment/Judgment                                            | Judgment | 11-23-2021 12:36:30 PM |
| Pawleys Island Town Of                | Judgment/Judgment                                            | Judgment | 11-23-2021 12:35:37 PM |
| Franklin D Beattie Trustee            | Judgment/Judgment                                            | Judgment | 11-23-2021 12:35:37 PM |
| Pawleys Island Town Of                | Judgment/Judgment                                            | Judgment | 11-23-2021 12:34:56 PM |
| Franklin D Beattie Preservation Trust | Judgment/Judgment                                            | Judgment | 11-23-2021 12:34:56 PM |
| Sunset Lodge Llc                      | Judgment/Judgment                                            | Judgment | 11-23-2021 12:33:48 PM |
| Pawleys Island Town Of                | Judgment/Judgment                                            | Judgment | 11-23-2021 12:33:48 PM |
| Pawleys Island Town Of                | NEF(11-23-2021 11:24:04 AM) Order/Form 4                     | Filing   | 11-23-2021 11:35:19 AM |
| Pawleys Island Town Of                | Order/Form 4                                                 | Order    | 11-23-2021 11:24:04 AM |
| Pawleys Island Town Of                | NEF(11-22-2021 10:36:41 AM) Order/Order Cover Sheet \$25.... | Filing   | 11-22-2021 11:47:13 AM |
| Pawleys Island Town Of                | Order/Order Cover Sheet \$25.00                              | Filing   | 11-22-2021 10:36:41 AM |
| Pawleys Island Town Of                | NEF(11-11-2021 04:56:34 PM) Letter/Letter                    | Filing   | 11-12-2021 08:16:48 AM |
| Pawleys Island Town Of                | Ltr/Pre Hrg Mot Regarding Fee Heard by Judge Nettles 10-6-21 | Filing   | 11-11-2021 04:56:34 PM |
| M. Baron Stanton                      | 11/12/2021_MOTION_Roster/Notice of Case Roster Publication S | Action   | 11-05-2021 10:17:40 AM |
| Norwood David DuRant, Sr.             | 11/12/2021_MOTION_Roster/Notice of Case Roster Publication S | Action   | 11-05-2021 10:17:40 AM |
| William Clayton Dillard, Jr.          | 11/12/2021_MOTION_Roster/Notice of Case Roster Publication S | Action   | 11-05-2021 10:17:40 AM |
| Sunset Lodge Llc                      | ADR/Sanctions Letter                                         | Action   | 10-23-2021 09:08:25 AM |
| Sunset Lodge Llc                      | Letter/Bills of Cost/Sealed                                  | Filing   | 10-22-2021 04:02:17 PM |
| Pawleys Island Town Of                | NEF(10-15-2021 04:27:43 PM) Order/Form 4                     | Filing   | 10-15-2021 04:28:13 PM |
| Pawleys Island Town Of                | Order/Form 4/Mot to Consolidate is Granted                   | Order    | 10-15-2021 04:27:43 PM |
| Pawleys Island Town Of                | NEF(10-15-2021 10:19:51 AM) Proposed Order/Form 4            | Filing   | 10-15-2021 10:44:16 AM |
| Pawleys Island Town Of                | Order/Order Cover Sheet \$25.00                              | Filing   | 10-15-2021 10:19:51 AM |
| Sunset Lodge Llc                      | NEF(10-13-2021 09:08:25 AM) ADR/Sanctions Letter             | Filing   | 10-13-2021 09:10:14 AM |
| M. Baron Stanton                      | 11/12/2021_MOTION_Roster/Notice of Case Roster Publication S | Action   | 10-07-2021 01:54:55 PM |
| Norwood David DuRant, Sr.             | 11/12/2021_MOTION_Roster/Notice of Case Roster Publication S | Action   | 10-07-2021 01:54:55 PM |
| William Clayton Dillard, Jr.          | 11/12/2021_MOTION_Roster/Notice of Case Roster Publication S | Action   | 10-07-2021 01:54:55 PM |
| Pawleys Island Town Of                | NEF(10-05-2021 04:26:18 PM) Affidavit/Attorney               | Filing   | 10-05-2021 04:44:59 PM |
| Pawleys Island Town Of                | Affidavit of William C Dillard Jr                            | Filing   | 10-05-2021 04:26:18 PM |
| Pawleys Island Town Of                | Affidavit of William C Dillard Jr-EX_1                       | Filing   | 10-05-2021 04:26:18 PM |
| Sunset Lodge Llc                      | NEF(10-05-2021 10:07:03 AM) Amended/Other                    | Filing   | 10-05-2021 11:29:23 AM |
| Sunset Lodge Llc                      | NEF(10-05-2021 09:52:38 AM) Amended/Other                    | Filing   | 10-05-2021 10:39:49 AM |
| Sunset Lodge Llc                      | Amended/Reply Brief                                          | Filing   | 10-05-2021 10:07:03 AM |
| Sunset Lodge Llc                      | Amended/Reply Brief-EX_1                                     | Filing   | 10-05-2021 10:07:03 AM |
| Sunset Lodge Llc                      | Amended/Reply Brief                                          | Filing   | 10-05-2021 09:52:38 AM |

|                              |                                                              |        |                        |
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| Sunset Lodge Llc             | NEF(10-04-2021 06:01:03 PM) Affidavit/Affidavit of           | Filing | 10-05-2021 08:48:11 AM |
| Sunset Lodge Llc             | NEF(10-04-2021 06:06:36 PM) Affidavit/Affidavit of           | Filing | 10-05-2021 08:46:21 AM |
| Sunset Lodge Llc             | NEF(10-04-2021 06:10:54 PM) Affidavit/Affidavit of           | Filing | 10-05-2021 08:45:42 AM |
| Sunset Lodge Llc             | NEF(10-04-2021 06:15:27 PM) Affidavit/Affidavit of           | Filing | 10-05-2021 08:45:06 AM |
| Sunset Lodge Llc             | Reply Affidavit of B Stanton                                 | Filing | 10-04-2021 06:15:27 PM |
| Sunset Lodge Llc             | Reply Affidavit of B Stanton                                 | Filing | 10-04-2021 06:10:54 PM |
| Sunset Lodge Llc             | Reply Affidavit of B Stanton                                 | Filing | 10-04-2021 06:06:36 PM |
| Sunset Lodge Llc             | Reply Affidavit of B Stanton                                 | Filing | 10-04-2021 06:01:03 PM |
| Sunset Lodge Llc             | Reply Affidavit of B Stanton-EX_1                            | Filing | 10-04-2021 06:01:03 PM |
| Sunset Lodge Llc             | NEF(10-04-2021 04:07:11 PM) Affidavit/Affidavit of           | Filing | 10-04-2021 04:44:52 PM |
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| Sunset Lodge Llc             | Reply Brief to Memo in Opposition                            | Filing | 10-04-2021 09:35:31 AM |
| Sunset Lodge Llc             | Reply Brief to Memo in Opposition-EX_1                       | Filing | 10-04-2021 09:35:31 AM |
| Pawleys Island Town Of       | NEF(09-24-2021 03:32:50 PM) Motion/Other                     | Filing | 09-24-2021 03:53:08 PM |
| Pawleys Island Town Of       | Pre Hearing Motion Regarding Fee Petition Matters/Dillard    | Motion | 09-24-2021 03:32:50 PM |
| Pawleys Island Town Of       | Pre Hearing Motion Regarding Fee Petition Matters/Dillard-EX | Motion | 09-24-2021 03:32:50 PM |
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| Pawleys Island Town Of       | Memo/Memo in Opposition to Petition for Attorneys Fees-EX_1  | Filing | 09-20-2021 11:36:24 PM |
| Pawleys Island Town Of       | Memo/Memo in Opposition to Petition for Attorneys Fees-EX_2  | Filing | 09-20-2021 11:36:24 PM |
| Pawleys Island Town Of       | Memo/Memo in Opposition to Petition for Attorneys Fees-EX_3  | Filing | 09-20-2021 11:36:24 PM |
| Pawleys Island Town Of       | Memo/Memo in Opposition to Petition for Attorneys Fees-EX_4  | Filing | 09-20-2021 11:36:24 PM |
| Sunset Lodge Llc             | NEF(09-13-2021 05:36:13 PM) Notice/Other                     | Filing | 09-14-2021 08:22:27 AM |
| Sunset Lodge Llc             | Notice/Erratum                                               | Filing | 09-13-2021 05:36:13 PM |
| Sunset Lodge Llc             | NEF(09-10-2021 09:45:09 PM) Affidavit/Attorney Fees          | Filing | 09-13-2021 08:52:12 AM |
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| Sunset Lodge Llc             | Affidavit/Attorney Fees-EX_1                                 | Filing | 09-10-2021 09:45:09 PM |
| Sunset Lodge Llc             | NEF(06-30-2021 10:58:37 AM) Order/Other                      | Filing | 06-30-2021 11:03:41 AM |
| Sunset Lodge Llc             | NEF(06-30-2021 11:02:15 AM) Order/Electronic Form 4          | Filing | 06-30-2021 11:02:26 AM |
| Sunset Lodge Llc             | Order/Electronic Form 4/See Formal Order                     | Order  | 06-30-2021 11:02:15 AM |
| Sunset Lodge Llc             | Order                                                        | Order  | 06-30-2021 10:58:37 AM |
| Sunset Lodge Llc             | ADR/Notice of ADR                                            | Action | 06-18-2021 10:56:14 AM |
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| Sunset Lodge Llc             | Notice/Erratum                                               | Filing | 05-19-2021 04:30:00 PM |
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| Sunset Lodge Llc             | NEF(04-22-2021 03:02:22 PM) Amended/Other                    | Filing | 04-22-2021 03:23:12 PM |
| Sunset Lodge Llc             | Amended/Affidavit                                            | Filing | 04-22-2021 03:02:22 PM |
| Pawleys Island Town Of       | NEF(04-05-2021 03:07:37 PM) Order/Protective Order           | Filing | 04-05-2021 03:12:18 PM |
| Pawleys Island Town Of       | Order Protective for Prod of Doc Relating Mot for Atty Fees  | Order  | 04-05-2021 03:07:37 PM |
| Sunset Lodge Llc             | NEF(04-05-2021 02:03:59 PM) Order/Judgment Amended and F...  | Filing | 04-05-2021 02:04:13 PM |
| Sunset Lodge Llc             | Order Form 4                                                 | Order  | 04-05-2021 02:03:59 PM |
| Sunset Lodge Llc             | NEF(04-05-2021 02:03:17 PM) Order/Judgment Amended and F...  | Filing | 04-05-2021 02:03:34 PM |
| Sunset Lodge Llc             | Order Summary Judgment                                       | Order  | 04-05-2021 02:03:17 PM |
| Sunset Lodge Llc             | Order Summary Judgment                                       | Order  | 04-05-2021 02:03:17 PM |
| Pawleys Island Town Of       | NEF(04-05-2021 09:31:48 AM) Order/Order Cover Sheet \$25.... | Filing | 04-05-2021 11:36:25 AM |
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| Sunset Lodge Llc             | Order/Order Cover Sheet \$25.00                              | Filing | 04-01-2021 06:01:19 PM |
| Sunset Lodge Llc             | NEF(04-01-2021 04:15:29 PM) Order/Electronic Form 4          | Filing | 04-01-2021 04:23:00 PM |
| Sunset Lodge Llc             | Elect Form 4/Def Mot For Protect From Disc Partial Granted   | Order  | 04-01-2021 04:15:29 PM |
| M. Baron Stanton             | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 03-25-2021 09:14:17 AM |
| M. Baron Stanton             | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 03-25-2021 09:14:17 AM |
| Norwood David DuRant, Sr.    | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 03-25-2021 09:14:17 AM |
| Norwood David DuRant, Sr.    | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 03-25-2021 09:14:17 AM |
| William Clayton Dillard, Jr. | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 03-25-2021 09:14:17 AM |
| William Clayton Dillard, Jr. | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 03-25-2021 09:14:17 AM |
| Sunset Lodge Llc             | NEF(03-18-2021 07:03:31 PM) Memo/Memo in Opposition          | Filing | 03-19-2021 09:14:25 AM |
| Sunset Lodge Llc             | Memo/Memo in Opposition                                      | Filing | 03-18-2021 07:03:31 PM |
| Pawleys Island Town Of       | NEF(03-17-2021 01:58:48 PM) Memo/Memo in Support             | Filing | 03-17-2021 04:10:39 PM |
| Pawleys Island Town Of       | Memo/Memo in Support of Motion to Amend Judgment             | Filing | 03-17-2021 01:58:48 PM |
| Sunset Lodge Llc             | NEF(03-17-2021 12:15:15 PM) Memo/Memo in Opposition          | Filing | 03-17-2021 01:46:26 PM |
| Sunset Lodge Llc             | Memo/Memo in Opposition                                      | Filing | 03-17-2021 12:15:15 PM |
| Sunset Lodge Llc             | Memo/Memo in Opposition-EX_1                                 | Filing | 03-17-2021 12:15:15 PM |

|                              |                                                              |        |            |             |
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| Pawleys Island Town Of       | NEF(03-09-2021 08:27:56 AM) Order/Protection from Court ...  | Filing | 03-09-2021 | 08:28:10 AM |
| Pawleys Island Town Of       | Order/Protection from Court Appearance                       | Order  | 03-09-2021 | 08:27:56 AM |
| Pawleys Island Town Of       | NEF(03-05-2021 12:13:47 PM) Proposed Order/Protection fr...  | Filing | 03-05-2021 | 01:22:44 PM |
| Pawleys Island Town Of       | Order/Order Cover Sheet \$25.00                              | Filing | 03-05-2021 | 12:13:47 PM |
| Pawleys Island Town Of       | NEF(03-03-2021 02:24:03 PM) Motion/Protection from Disco...  | Filing | 03-03-2021 | 02:59:08 PM |
| Pawleys Island Town Of       | Motion/Protection from Discovery/Dillard                     | Motion | 03-03-2021 | 02:24:03 PM |
| Pawleys Island Town Of       | Motion/Protection from Discovery/Dillard-EX_1                | Motion | 03-03-2021 | 02:24:03 PM |
| Sunset Lodge Llc             | NEF(03-02-2021 10:52:03 AM) Notice/Other                     | Filing | 03-02-2021 | 11:20:10 AM |
| Sunset Lodge Llc             | Plaintiff Objection to Hearing on March 3 2021               | Filing | 03-02-2021 | 10:52:03 AM |
| Sunset Lodge Llc             | NEF(03-01-2021 01:48:29 PM) Memo/Memo in Support             | Filing | 03-01-2021 | 03:49:00 PM |
| Pawleys Island Town Of       | NEF(03-01-2021 03:14:04 PM) Motion/Discovery and Disclos...  | Filing | 03-01-2021 | 03:47:23 PM |
| Pawleys Island Town Of       | Mot Protect Ord Prod Doc Relating Mot for Att Fees/Dillard   | Motion | 03-01-2021 | 03:14:04 PM |
| Pawleys Island Town Of       | Mot Protect Ord Prod Doc Relating Mot for Att Fees/Dillard-E | Motion | 03-01-2021 | 03:14:04 PM |
| Sunset Lodge Llc             | Memo/Memo in Support                                         | Filing | 03-01-2021 | 01:48:29 PM |
| Sunset Lodge Llc             | ADR/Alternative Dispute Resolution (Workflow)                | Action | 02-16-2021 | 07:47:00 AM |
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| Sunset Lodge Llc             | Reply                                                        | Filing | 02-09-2021 | 10:02:17 AM |
| Sunset Lodge Llc             | NEF(02-08-2021 11:37:16 AM) Order/Electronic Form 4          | Filing | 02-08-2021 | 11:37:23 AM |
| Sunset Lodge Llc             | Order/Electronic Form 4/Mot to Strike Withdrawn              | Order  | 02-08-2021 | 11:37:16 AM |
| Pawleys Island Town Of       | NEF(02-05-2021 02:39:33 PM) Memo/Memo in Opposition          | Filing | 02-05-2021 | 02:47:13 PM |
| Pawleys Island Town Of       | Memo/Memo in Opposition to Motion for Expenses               | Filing | 02-05-2021 | 02:39:33 PM |
| M. Baron Stanton             | 2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 02-05-2021 | 12:51:29 PM |
| M. Baron Stanton             | 2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 02-05-2021 | 12:51:29 PM |
| Norwood David DuRant, Sr.    | 2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 02-05-2021 | 12:51:29 PM |
| Norwood David DuRant, Sr.    | 2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 02-05-2021 | 12:51:29 PM |
| William Clayton Dillard, Jr. | 2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 02-05-2021 | 12:51:29 PM |
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| Sunset Lodge Llc             | NEF(02-04-2021 04:55:05 PM) Reply/Other                      | Filing | 02-05-2021 | 09:02:35 AM |
| Sunset Lodge Llc             | Reply to Opposition to Motion for Fees                       | Filing | 02-04-2021 | 04:55:05 PM |
| Sunset Lodge Llc             | 1st Supplement to 2nd Amended Affidavit of Fees              | Filing | 02-04-2021 | 04:55:05 PM |
| Sunset Lodge Llc             | NEF(02-03-2021 02:33:28 PM) Memo/Memo in Opposition          | Filing | 02-03-2021 | 02:54:29 PM |
| Sunset Lodge Llc             | Memo/Memo in Opposition                                      | Filing | 02-03-2021 | 02:33:28 PM |
| Pawleys Island Town Of       | NEF(02-03-2021 10:26:21 AM) Notice/Notice of Appearance      | Filing | 02-03-2021 | 10:26:41 AM |
| Pawleys Island Town Of       | Notice/Notice of Appearance                                  | Filing | 02-03-2021 | 10:26:21 AM |
| Sunset Lodge Llc             | NEF(02-02-2021 02:04:27 PM) Order/Compel                     | Filing | 02-02-2021 | 02:04:36 PM |
| Sunset Lodge Llc             | Amended Order Granting Motion to Compel                      | Order  | 02-02-2021 | 02:04:27 PM |
| Sunset Lodge Llc             | NEF(02-01-2021 06:44:22 PM) Notice/Other                     | Filing | 02-02-2021 | 08:48:05 AM |
| Sunset Lodge Llc             | Notice of Proposed Order                                     | Filing | 02-01-2021 | 06:44:22 PM |
| M. Baron Stanton             | 2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 01-29-2021 | 02:42:51 PM |
| Norwood David DuRant, Sr.    | 2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 01-29-2021 | 02:42:51 PM |
| Pawleys Island Town Of       | NEF(01-29-2021 12:22:27 PM) Notice/Other                     | Filing | 01-29-2021 | 02:39:22 PM |
| Pawleys Island Town Of       | NEF(01-29-2021 11:55:21 AM) Motion/Alter and/or Amend        | Filing | 01-29-2021 | 02:31:47 PM |
| Pawleys Island Town Of       | Notice/Motion/Disqualification of Counsel for the Plt        | Filing | 01-29-2021 | 12:22:27 PM |
| Pawleys Island Town Of       | Motion/Alter and/or Amend/Durant                             | Motion | 01-29-2021 | 11:55:21 AM |
| Pawleys Island Town Of       | Motion/Alter and/or Amend/Durant-EX_1                        | Motion | 01-29-2021 | 11:55:21 AM |
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| Sunset Lodge Llc             | Order/Electronic Form 4/See Form 4                           | Order  | 01-27-2021 | 12:34:47 PM |
| Sunset Lodge Llc             | NEF(01-26-2021 09:59:32 PM) Memo/Memo in Opposition          | Filing | 01-27-2021 | 10:47:26 AM |
| Sunset Lodge Llc             | Memo/Memo in Opposition                                      | Filing | 01-26-2021 | 09:59:32 PM |
| Sunset Lodge Llc             | NEF(01-26-2021 03:18:44 PM) Amended/Other                    | Filing | 01-26-2021 | 03:52:49 PM |
| Sunset Lodge Llc             | Amendment to Affidavit RE Reasonable Fees and Expenses       | Filing | 01-26-2021 | 03:18:44 PM |
| Sunset Lodge Llc             | NEF(01-25-2021 02:26:36 PM) Motion/Attorney Fees             | Filing | 01-25-2021 | 04:38:50 PM |
| Sunset Lodge Llc             | Motion/Attorney Fees                                         | Motion | 01-25-2021 | 02:26:36 PM |
| Sunset Lodge Llc             | Affidavit/Attorney Fees                                      | Filing | 01-25-2021 | 02:26:36 PM |
| M. Baron Stanton             | 2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 01-21-2021 | 04:09:21 PM |
| M. Baron Stanton             | 2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 01-21-2021 | 04:09:21 PM |
| Norwood David DuRant, Sr.    | 2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 01-21-2021 | 04:09:21 PM |
| Norwood David DuRant, Sr.    | 2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 01-21-2021 | 04:09:21 PM |
| M. Baron Stanton             | 2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 01-21-2021 | 04:04:56 PM |
| M. Baron Stanton             | 2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 01-21-2021 | 04:04:56 PM |
| Norwood David DuRant, Sr.    | 2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 01-21-2021 | 04:04:56 PM |
| Norwood David DuRant, Sr.    | 2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 01-21-2021 | 04:04:56 PM |
| Sunset Lodge Llc             | NEF(01-20-2021 01:17:27 PM) Order/Summary Judgment           | Filing | 01-20-2021 | 01:17:34 PM |
| Sunset Lodge Llc             | Order/Summary Judgment                                       | Order  | 01-20-2021 | 01:17:27 PM |
| Pawleys Island Town Of       | NEF(01-15-2021 12:06:37 PM) Certification/Attorney Certi...  | Filing | 01-15-2021 | 01:08:10 PM |
| Pawleys Island Town Of       | Certification/Attorney Certification                         | Filing | 01-15-2021 | 12:06:37 PM |



|                           |                                                              |        |            |             |
|---------------------------|--------------------------------------------------------------|--------|------------|-------------|
| Sunset Lodge Llc          | NEF(01-14-2021 11:05:14 PM) Motion/Strike                    | Filing | 01-15-2021 | 08:31:17 AM |
| Sunset Lodge Llc          | Motion/Strike/Stanton                                        | Motion | 01-14-2021 | 11:05:14 PM |
| Pawleys Island Town Of    | NEF(01-14-2021 12:23:04 PM) Motion/Disqualify                | Filing | 01-14-2021 | 01:17:51 PM |
| Pawleys Island Town Of    | Motion/Disqualification of Counsel for the Plt/DuRant        | Motion | 01-14-2021 | 12:23:04 PM |
| Pawleys Island Town Of    | Motion/Disqualification of Counsel for the Plt/DuRant-EX_1   | Motion | 01-14-2021 | 12:23:04 PM |
| Sunset Lodge Llc          | NEF(01-08-2021 01:22:47 PM) Order/Electronic Form 4          | Filing | 01-08-2021 | 01:22:56 PM |
| Sunset Lodge Llc          | Order/Electronic Form 4/See Form 4                           | Order  | 01-08-2021 | 01:22:47 PM |
| M. Baron Stanton          | 1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 01-07-2021 | 10:18:48 AM |
| M. Baron Stanton          | 1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 01-07-2021 | 10:18:48 AM |
| Norwood David DuRant, Sr. | 1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 01-07-2021 | 10:18:48 AM |
| Norwood David DuRant, Sr. | 1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 01-07-2021 | 10:18:48 AM |
| M. Baron Stanton          | 1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 12-20-2020 | 04:41:52 PM |
| M. Baron Stanton          | 1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 12-20-2020 | 04:41:52 PM |
| Norwood David DuRant, Sr. | 1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 12-20-2020 | 04:41:52 PM |
| Norwood David DuRant, Sr. | 1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 12-20-2020 | 04:41:52 PM |
| Sunset Lodge Llc          | NEF(12-06-2020 12:07:46 PM) Affidavit/Affidavit of           | Filing | 12-07-2020 | 09:01:10 AM |
| Sunset Lodge Llc          | Affidavit of Condem Notice & Associated Papers First Served  | Filing | 12-06-2020 | 12:07:46 PM |
| Sunset Lodge Llc          | Affidavit of Condem Notice & Associated Papers First Served- | Filing | 12-06-2020 | 12:07:46 PM |
| Sunset Lodge Llc          | Affidavit of Condem Notice & Associated Papers First Served- | Filing | 12-06-2020 | 12:07:46 PM |
| Sunset Lodge Llc          | Affidavit of Condem Notice & Associated Papers First Served- | Filing | 12-06-2020 | 12:07:46 PM |
| Sunset Lodge Llc          | NEF(12-03-2020 10:35:50 PM) Memo/Memo in Support             | Filing | 12-04-2020 | 08:13:07 AM |
| Sunset Lodge Llc          | Memo/Memo in Support                                         | Filing | 12-03-2020 | 10:35:50 PM |
| M. Baron Stanton          | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 12-01-2020 | 10:38:09 AM |
| M. Baron Stanton          | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 12-01-2020 | 10:38:09 AM |
| M. Baron Stanton          | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 12-01-2020 | 10:38:09 AM |
| Norwood David DuRant, Sr. | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 12-01-2020 | 10:38:09 AM |
| Norwood David DuRant, Sr. | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 12-01-2020 | 10:38:09 AM |
| Norwood David DuRant, Sr. | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 12-01-2020 | 10:38:09 AM |
| Pawleys Island Town Of    | NEF(11-24-2020 11:10:40 AM) Memo/Memo in Opposition          | Filing | 11-24-2020 | 12:39:18 PM |
| Pawleys Island Town Of    | Memo/Memo in Opposition to Motion of Summary Judgment        | Filing | 11-24-2020 | 11:10:40 AM |
| Pawleys Island Town Of    | Memo/Memo in Opposition to Motion of Summary Judgment-EX_1   | Filing | 11-24-2020 | 11:10:40 AM |
| Pawleys Island Town Of    | Memo/Memo in Opposition to Motion of Summary Judgment-EX_2   | Filing | 11-24-2020 | 11:10:40 AM |
| Pawleys Island Town Of    | Memo/Memo in Opposition to Motion of Summary Judgment-EX_3   | Filing | 11-24-2020 | 11:10:40 AM |
| Pawleys Island Town Of    | Memo/Memo in Opposition to Motion of Summary Judgment-EX_4   | Filing | 11-24-2020 | 11:10:40 AM |
| Sunset Lodge Llc          | NEF(11-20-2020 03:31:58 PM) Motion/Enlarge Time              | Filing | 11-23-2020 | 09:17:10 AM |
| Sunset Lodge Llc          | Motion/Enlarge Time/Stanton                                  | Motion | 11-20-2020 | 03:31:58 PM |
| Pawleys Island Town Of    | NEF(11-20-2020 12:30:05 PM) Affidavit/Affidavit of           | Filing | 11-20-2020 | 12:53:41 PM |
| Pawleys Island Town Of    | Affidavit/Affidavit                                          | Filing | 11-20-2020 | 12:30:05 PM |
| Sunset Lodge Llc          | NEF(11-05-2020 04:34:43 PM) Motion/Compel                    | Filing | 11-06-2020 | 08:53:43 AM |
| Sunset Lodge Llc          | Motion/Compel and Expenses/Stanton                           | Motion | 11-05-2020 | 04:34:43 PM |
| Sunset Lodge Llc          | Motion/Compel and Expenses/Stanton-EX_1                      | Motion | 11-05-2020 | 04:34:43 PM |
| Sunset Lodge Llc          | Motion/Compel and Expenses/Stanton-EX_2                      | Motion | 11-05-2020 | 04:34:43 PM |
| M. Baron Stanton          | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 11-05-2020 | 03:30:31 PM |
| M. Baron Stanton          | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 11-05-2020 | 03:30:31 PM |
| M. Baron Stanton          | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 11-05-2020 | 03:30:31 PM |
| Norwood David DuRant, Sr. | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 11-05-2020 | 03:30:31 PM |
| Norwood David DuRant, Sr. | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 11-05-2020 | 03:30:31 PM |
| Norwood David DuRant, Sr. | 12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 11-05-2020 | 03:30:31 PM |
| Pawleys Island Town Of    | NEF(10-21-2020 09:40:36 AM) Order/Continuance                | Filing | 10-21-2020 | 09:40:48 AM |
| Pawleys Island Town Of    | Order/Continuance Until the Next Available Term of Court     | Order  | 10-21-2020 | 09:40:36 AM |
| Sunset Lodge Llc          | NEF(10-14-2020 10:24:06 PM) Memo/Memo in Opposition          | Filing | 10-15-2020 | 08:53:49 AM |
| Sunset Lodge Llc          | Memo/Memo in Opposition                                      | Filing | 10-14-2020 | 10:24:06 PM |
| Sunset Lodge Llc          | Affidavit/Affidavit in Response                              | Filing | 10-14-2020 | 10:24:06 PM |
| Pawleys Island Town Of    | NEF(10-14-2020 03:54:19 PM) Motion/Continuance               | Filing | 10-14-2020 | 04:48:02 PM |
| Pawleys Island Town Of    | Motion/Continuance/DuRant                                    | Motion | 10-14-2020 | 03:54:19 PM |
| M. Baron Stanton          | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 10-12-2020 | 10:05:07 AM |
| M. Baron Stanton          | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 10-12-2020 | 10:05:07 AM |
| M. Baron Stanton          | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 10-12-2020 | 10:05:07 AM |
| Norwood David DuRant, Sr. | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 10-12-2020 | 10:05:07 AM |
| Norwood David DuRant, Sr. | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 10-12-2020 | 10:05:07 AM |
| Norwood David DuRant, Sr. | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 10-12-2020 | 10:05:07 AM |
| M. Baron Stanton          | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 09-28-2020 | 10:26:05 AM |
| Norwood David DuRant, Sr. | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 09-28-2020 | 10:26:05 AM |
| M. Baron Stanton          | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 09-28-2020 | 10:25:56 AM |
| Norwood David DuRant, Sr. | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 09-28-2020 | 10:25:56 AM |
| M. Baron Stanton          | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 09-28-2020 | 10:25:45 AM |

|                           |                                                              |        |            |             |
|---------------------------|--------------------------------------------------------------|--------|------------|-------------|
| Norwood David DuRant, Sr. | 10/30/2020_MOTION_Roster/Notice of Case Roster Publication S | Action | 09-28-2020 | 10:25:45 AM |
| Sunset Lodge Llc          | NEF(09-18-2020 12:11:44 PM) Answer/Answer To Amended Com...  | Filing | 09-18-2020 | 01:28:10 PM |
| Sunset Lodge Llc          | Answer/Answer To Amended Complaint                           | Filing | 09-18-2020 | 12:11:44 PM |
| Sunset Lodge Llc          | NEF(09-11-2020 02:26:07 PM) Order/Electronic Form 4          | Filing | 09-11-2020 | 02:26:18 PM |
| Sunset Lodge Llc          | Elect Form 4/Mot to Dismiss&Mot for Priority Denied          | Order  | 09-11-2020 | 02:26:07 PM |
| M. Baron Stanton          | 9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 09-08-2020 | 08:51:42 AM |
| M. Baron Stanton          | 9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 09-08-2020 | 08:51:42 AM |
| Norwood David DuRant, Sr. | 9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 09-08-2020 | 08:51:42 AM |
| Norwood David DuRant, Sr. | 9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 09-08-2020 | 08:51:42 AM |
| Sunset Lodge Llc          | NEF(09-07-2020 11:03:43 PM) Memo/Memo in Opposition          | Filing | 09-08-2020 | 08:21:41 AM |
| Sunset Lodge Llc          | Memo/Memo in Opposition                                      | Filing | 09-07-2020 | 11:03:43 PM |
| Pawleys Island Town Of    | NEF(09-01-2020 03:11:31 PM) Filing/Other                     | Filing | 09-01-2020 | 03:53:40 PM |
| Pawleys Island Town Of    | Exhibit C to Memo in Support of Motion to Dismiss            | Filing | 09-01-2020 | 03:11:31 PM |
| Pawleys Island Town Of    | NEF(08-28-2020 12:44:04 PM) Memo/Memo in Support             | Filing | 08-28-2020 | 01:35:23 PM |
| Pawleys Island Town Of    | Memo/Memo in Support of Motion to Dismiss                    | Filing | 08-28-2020 | 12:44:04 PM |
| Pawleys Island Town Of    | Memo/Memo in Support of Motion to Dismiss-EX_1               | Filing | 08-28-2020 | 12:44:04 PM |
| Pawleys Island Town Of    | Memo/Memo in Support of Motion to Dismiss-EX_2               | Filing | 08-28-2020 | 12:44:04 PM |
| Sunset Lodge Llc          | NEF(08-27-2020 05:13:42 PM) Motion/Compel                    | Filing | 08-28-2020 | 09:38:04 AM |
| Sunset Lodge Llc          | Motion/Compel/Stanton                                        | Motion | 08-27-2020 | 05:13:42 PM |
| Sunset Lodge Llc          | Motion/Compel/Stanton-EX_1                                   | Motion | 08-27-2020 | 05:13:42 PM |
| Sunset Lodge Llc          | NEF(08-27-2020 04:40:18 PM) Memo/Memo in Opposition          | Filing | 08-27-2020 | 04:57:32 PM |
| Sunset Lodge Llc          | Return To Towns Motion For Protection From All Discovery     | Filing | 08-27-2020 | 04:40:18 PM |
| Sunset Lodge Llc          | Affidavit In Support Of Return To Towns Motion For Protectio | Filing | 08-27-2020 | 04:40:18 PM |
| Pawleys Island Town Of    | NEF(08-25-2020 11:44:01 AM) Motion/Protection from Disco...  | Filing | 08-25-2020 | 12:05:47 PM |
| Pawleys Island Town Of    | Motion/Protection from Discovery/Durant                      | Motion | 08-25-2020 | 11:44:01 AM |
| Sunset Lodge Llc          | NEF(08-21-2020 03:24:18 PM) Motion/Summary Judgment          | Filing | 08-21-2020 | 04:00:35 PM |
| Sunset Lodge Llc          | Motion/Summary Judgment/Stanton                              | Motion | 08-21-2020 | 03:24:18 PM |
| Sunset Lodge Llc          | Affidavit of Stanton                                         | Filing | 08-21-2020 | 03:24:18 PM |
| M. Baron Stanton          | 9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 08-17-2020 | 02:00:40 PM |
| M. Baron Stanton          | 9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 08-17-2020 | 02:00:40 PM |
| Norwood David DuRant, Sr. | 9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 08-17-2020 | 02:00:40 PM |
| Norwood David DuRant, Sr. | 9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se | Action | 08-17-2020 | 02:00:40 PM |
| Sunset Lodge Llc          | NEF(08-11-2020 08:05:20 PM) Memo/Memo in Opposition          | Filing | 08-12-2020 | 08:49:44 AM |
| Sunset Lodge Llc          | Return To Motion For Priority And For Bond                   | Filing | 08-11-2020 | 08:05:20 PM |
| Pawleys Island Town Of    | NEF(08-10-2020 04:58:18 PM) Motion/Other                     | Filing | 08-11-2020 | 08:53:52 AM |
| Pawleys Island Town Of    | Motion For Priority And For An Order Requiring The Plaintiff | Motion | 08-10-2020 | 04:58:18 PM |
| Pawleys Island Town Of    | NEF(08-03-2020 03:14:43 PM) Motion/Dismiss                   | Filing | 08-04-2020 | 09:07:47 AM |
| Pawleys Island Town Of    | Motion/Dismiss/DuRant                                        | Motion | 08-03-2020 | 03:14:43 PM |
| Sunset Lodge Llc          | NEF(07-31-2020 05:00:58 PM) Amended/Amended Complaint        | Filing | 08-03-2020 | 09:06:54 AM |
| Sunset Lodge Llc          | Amended/Amended Complaint                                    | Filing | 07-31-2020 | 05:00:58 PM |
| Pawleys Island Town Of    | NEF(07-27-2020 02:43:44 PM) Notice/Notice of Appearance      | Filing | 07-27-2020 | 02:44:09 PM |
| Pawleys Island Town Of    | Notice/Notice of Appearance                                  | Filing | 07-27-2020 | 02:43:44 PM |
| Sunset Lodge Llc          | Summons & Complaint                                          | Filing | 07-21-2020 | 07:47:00 AM |

March 2, 2021 to July 13, 2021 series of e-mails of the parties with the Court, including dates 3/23/21, 3/23, 4/1, 4/1, 4/22, 4/23, 4/23, 3/2, 3/2, 3/2, 3/2, 3/2, 3/5, 3/8, 3/11, 3/17, 3/17, 3/19, 3/19, 3/19, 3/19, 3/19, 3/21, 3/22, 3/22, 3/22, 3/23, 4/1, 4/1, 4/22, 4/23, 4/23, 4/23, 4/26, 4/26, 5/21, 5/27, 5/27, 6/3, 6/4, 6/4, 6/21, 6/21, 6/21, 6/25, and 7/13. (This string in this order has been e-mailed to Respondent's counsel.)

## Barry Stanton

---

**From:** Barry Stanton  
**Sent:** Tuesday, July 13, 2021 4:55 PM  
**To:** Will Dillard  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd); Nettles, Michael G. Law Clerk (Charles Smith)  
**Subject:** RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Will, pursuant to the June 30, 2021 order of Judge Nettles in each of the cases, I will be dropping off today or tomorrow, with a copy of this e-mail, confidential copies of the billing materials as marked by Judge Nettles.

I am simply copying Mr. Smith and Ms. Byrd for their and Judge Nettles's information.

I am sending you exactly what Judge Nettles sent me, except I added control numbers 20001 to 20082 to the feet of the pages. The Sunset pages start with 20001, the Beattie, with 20051, and the Stanton, with 20071.

Since what Judge Nettles marked still had the sticker, "Unredacted" on it to indicate his source document, that is reproduced, even though the copies obviously bear redactions. On the 20001 page, the sticker, "Judge Nettles Redacted Copy" is reproduced.

Since this is identical to what Judge Nettles sent me, I am not mailing him a copy, but can always make one with the control numbers if that is desired.

I was out last week and believe you are out this week.

Best,

Barry

M. Baron ("Barry") Stanton

STANTON LAW OFFICES, P.A.

Cell 803-530-2642

Offc. 803-929-1484 (pending building changes)

POB 245

Cola., SC 29202

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <MNettlesLC@sccourts.org>  
**Sent:** Friday, June 25, 2021 1:43 PM  
**To:** Barry Stanton <bstanton@stantonlaw.com>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <MNettlesSC@sccourts.org>; Will Dillard <will@belserpa.com>  
**Subject:** RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good afternoon,

Please see the attached Orders for the above referenced matters. The Orders will be e-filed shortly. Please let me know if you have any questions.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettlslc@sccourts.org](mailto:mnettlslc@sccourts.org)

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**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Monday, June 21, 2021 11:01 AM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlslc@sccourts.org](mailto:MNettlslc@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlslc@sccourts.org](mailto:MNettlslc@sccourts.org)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

\*\*\* **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Roger.

Thanks.

Best,

Barry

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlslc@sccourts.org](mailto:MNettlslc@sccourts.org)>  
**Sent:** Monday, June 21, 2021 10:55 AM  
**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlslc@sccourts.org](mailto:MNettlslc@sccourts.org)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good morning,

That is correct. Judge Nettles will issue an order directing that the materials with the redactions Judge Nettles made be sent to Mr. Dillard. Judge Nettles has a trial this week, but the order will be issued as soon as possible. Please let me know if you have any questions.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501

(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

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**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Monday, June 21, 2021 10:13 AM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Mr. Smith, I thought I'd check back with you and make sure we were all in sync. Was Judge Nettles going to issue an order directing that we go ahead and send the materials to Mr. Dillard with the redactions as made by Judge Nettles?

Best,

Barry

M. Baron ("Barry") Stanton  
STANTON LAW OFFICES, P.A.  
Cell 803-530-2642  
Offc. 803-929-1484 (pending building changes)  
POB 245  
Cola., SC 29202

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**From:** Barry Stanton  
**Sent:** Friday, June 4, 2021 12:42 PM  
**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Dear Mr. Smith:

I am responding to your question in the thread below, regarding what we may request in terms of keeping a record of what has been ordered to be produced and what has been requested, denied, or objected to. I think we are close to having a sufficient record the way the parties and the Court have handled it thus far. I appreciate the great care that has been taken with the matter by the Court and the opponent.

I believe we have a complete copy and sufficient record of what I initially sent to Judge Nettles and to Mr. Dillard with proposed redactions, under reservation of prior objection to producing anything at all.

I also have the copy of what Judge Nettles, after review, sent me, indicating what he proposed be redacted, i.e., a complete set of the same underlying materials, proposing fewer redactions than I requested.

Rather than simply ask again that everything I had previously proposed be redacted, I sent Judge Nettles a specific and precise list of what we believe he may have overlooked, and may have intended to not unredact. For example, since the bills were represented to be the same to each party, a redaction on one not made on another protects no confidentiality or privilege. We requested that these redactions be made on the same bases set forth previously. Again, this was under reservation of prior objections.

Rather than marked copies, we sent a specific item-by-item description, e.g., "all words and characters between "Research" and "; Continue working on". This was also provided to Mr. Dillard so that he could follow along generally, without Judge Nettles's product and have a record.

Since Judge Nettles is inclined to keep his proposed redactions as is, if he orders that we produce that version to the defendant and we do so, the defendant and everybody will have a copy of that version.

I would think that we would need only an order at this point unless Judge Nettles would like to change anything or would like to hear further from us.

Best,

Barry

Barry  
803 530 2642

----- Original message -----

From: Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

Date: 6/4/21 7:40 AM (GMT-05:00)

To: "Nettles, Michael G. Law Clerk (Charles Smith)" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>, Barry Stanton  
<[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

Cc: "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

Subject: RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Mr. Smith:

Thank you for your email. Just so I am clear, will the hearing you reference be a hearing to formalize Judge Nettles's decision on the redactions or, on the other hand, a hearing on the underlying attorney fee petition?

For the eventual hearing on the attorney fee petition, we (the defendant Town of Pawleys Island) ask that it be scheduled no earlier than 30 days after production of the final, less redacted version of the itemized fee statements.

Thank you,

Will

William C. Dillard, Jr., Esquire

BELSER & BELSER, P.A.

1325 Park Street, Suite 300 (29201)

P.O. Box 96, Columbia, SC 29202

Phone: (803) 929-0096

Fax: (803) 929-0196

Direct: (803) 999-1255

[will@belserpa.com](mailto:will@belserpa.com)

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Sent:** Thursday, June 3, 2021 3:36 PM

**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good morning,

Judge Nettles has reviewed the requested additional redactions; however, Judge Nettles is inclined to keep the redactions as is. Mr. Stanton, how would you like to preserve your objections for appellate review? Please let me know, and we will work to schedule a date that works for everyone.

Thank you,

Chase Smith

Law Clerk to the Honorable Michael G. Nettles

181 N. Irby St., Suite 3610

Florence, SC 29501

(843) 292-7433 (Office)

(843) 251-6057 (Cell)

(843) 292-7436 (Fax)

[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)



---

**From:** Nettles, Michael G. Law Clerk (Charles Smith)  
**Sent:** Thursday, May 27, 2021 12:13 PM  
**To:** 'Barry Stanton' <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Thank you, Mr. Stanton! I will inform Judge Nettles and get back to you as soon as possible.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Thursday, May 27, 2021 11:34 AM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Dear Mr. Smith:

Attached is a list of our requested additional redactions. Let me know if Judge Nettles would like it in any different format.

On the matter of scheduling, I wanted to ask for protection in this particular case, since we are handling scheduling directly. My one official week of vacation is next week, May 31-June 4. (I was slow on the draw and have one hearing mid-week.) Additionally, I would ask protection July 6-9.

Best,

Barry

M. Baron ("Barry") Stanton

STANTON LAW OFFICES, P.A.

Cell 803-530-2642

Offc. 803-929-1484 (currently undergoing work)

POB 245

Cola., SC 29202

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Sent:** Friday, May 21, 2021 1:20 PM  
**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good afternoon, Mr. Dillard and Mr. Stanton:

Judge Nettles has reviewed the redacted and unredacted fee records for the above-captioned case. Our office is sending Mr. Stanton a copy of Judge Nettles' revisions for Mr. Stanton to make any initial objections. We will be in contact to schedule a hearing in the near future. Please let me know if you have any questions.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bastian@stantonlaw.com](mailto:bastian@stantonlaw.com)>  
**Sent:** Monday, April 26, 2021 4:15 PM  
**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

I will send a response to this as soon as is feasible.

Best,

Barry Stanton

Barry

803 530 2642

----- Original message -----

From: Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

Date: 4/26/21 3:44 PM (GMT-05:00)

To: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>, [MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)

Cc: "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

Subject: RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Mr. Smith:

Good afternoon. On behalf of the Defendant/Town of Pawleys Island, I am writing to transmit to Judge Nettles the attached letter outlining certain issues that we request he consider during his in camera review of the plaintiffs' fee records based on my initial review of redacted copies of the same. As stated in the letter, the purpose of this correspondence is merely to bring these specific items of concern to the attention of Judge Nettles as early in the review process as possible.

It is understood that Mr. Stanton will also have additional opportunity to respond to any finding that additional materials should in fact be redacted.

Mr. Stanton is cc'd, and the original hard copy is on the way to Judge Nettles by mail.

Thank you, and best regards,

Will

William C. Dillard, Jr., Esquire

BELSER & BELSER, P.A.

1325 Park Street, Suite 300 (29201)

P.O. Box 96, Columbia, SC 29202

Phone: (803) 929-0096

Fax: (803) 929-0196

Direct: (803) 999-1255

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Sent:** Friday, April 23, 2021 10:20 AM

**To:** [MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)

**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Sorry -- something went wrong with my previous e-mail --

Thanks. FYI, I found a typo in the updated affidavit that is clarified in the rest of the affidavit. On page 7, should be 57,303.01 as stated on pages 11 and 22.

Barry

803 530 2642

----- Original message -----

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Date:** 4/23/21 10:14 AM (GMT-05:00)

**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Cc:** "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>, 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Thanks. FYI, I found a typo in the updated affidavit that is clarified in the rest of the affidavit. On page

Barry

803 530 2642

----- Original message -----

From: "Nettles, Michael G. Law Clerk (Charles Smith)" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

Date: 4/23/21 9:16 AM (GMT-05:00)

To: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

Cc: "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>, 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>

Subject: RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Thank you, Mr. Stanton! We also received the billing materials.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Sent:** Thursday, April 22, 2021 3:40 PM

**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. **\*\*\***

Dear Mr. Smith:

I am simply writing to provide Judge Nettles, you and Mr. Dillard status.

Earlier this week, we FedExed out to Judge Nettles and Mr. Dillard, their respective sets of copies of billing materials referenced in the recent order providing for in camera review. I trust they were received.

Today, we electronically filed an update to the fee petition, consisting of an update to the affidavit which provides the statement of time and charges. As a sample, I am attaching a copy of the Sunset filing, which is identical to the Beattie filing. The Stanton filing continues to request only expenses not including attorney's fees at this point, but the expense figure is revised.

Best,

Barry Stanton

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Sent:** Thursday, April 1, 2021 4:24 PM

**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>; 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>

**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Mr. Smith, I do not think the revised orders granting summary judgment have the change that was supposed to go roughly at page 9, in the form of an added footnote immediately following the sentence, "The renourishment is done."

That is, although I have not reviewed the whole document, I think it may be the same as the original order, with no changes.

I would like to call and walk through that with you in accordance with the input both lawyers have already provided.

Best,

Barry

Barry Stanton

Cell [803-530-2642](tel:803-530-2642)

Office [803-929-1484](tel:803-929-1484) (undergoing work)

Stanton Law Offices, P.A.

P.O. Box 245

Columbia, SC 29202

----- Original message -----

From: "Nettles, Michael G. Law Clerk (Charles Smith)" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

Date: 4/1/21 4:04 PM (GMT-04:00)

To: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>, 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>

Cc: "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

Subject: RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good afternoon,



Judge Nettles has reviewed the Proposed Orders above. Will you please E-file the documents for his E-signature. Please let me know if there are any issues.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Tuesday, March 23, 2021 3:23 PM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. **\*\*\***

Mr. Smith, in accordance with the foregoing e-mails and Judge Nettles's ruling March 19, I am attaching revisions of the three orders, adding a footnote at what was formerly page 9. This footnote is now note 2 at page 10. We earlier noted that we also saw a typo in the misspelling of "condemnees" on the same page and fixed that.

These are the only changes to the order documents you sent me. They were very helpful. Thank you.

I have also attached Form 4s for each matter in case that is helpful.

Best,

Barry Stanton

M. Baron ("Barry") Stanton

STANTON LAW OFFICES, P.A.

Cell 803-530-2642

Offc. 803-929-1484 (currently undergoing work)

POB 245

Cola., SC 29202

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Sent:** Tuesday, March 23, 2021 8:54 AM  
**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good morning,

I have attached the Orders in Word format. Please let me know if there are any issues or if you need any additional information!

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)

(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Monday, March 22, 2021 5:43 PM  
**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Great. Thanks.

Mr. Smith, can you by chance send me the order in Word?

Best

B

Barry Stanton

Cell [803-530-2642](tel:803-530-2642)

Office [803-929-1484](tel:803-929-1484) (undergoing work)

Stanton Law Offices, P.A.

P.O. Box 245

Columbia, SC 29202

----- Original message -----

From: Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

Date: 3/22/21 5:28 PM (GMT-05:00)

To: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>, "'Nettles, Michael G. Law Clerk (Charles Smith)'" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

Cc: "'Nettles, Michael G. Secretary (Sherrie E. Byrd)'" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

Subject: RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Thank you, Barry. Leaving in the highlighted portion looks fine to me.

Thanks,

Will

William C. Dillard, Jr., Esquire

BELSER & BELSER, P.A.

1325 Park Street, Suite 300 (29201)

P.O. Box 96, Columbia, SC 29202

Phone: (803) 929-0096

Fax: (803) 929-0196

Direct: (803) 999-1255

[will@belserpa.com](mailto:will@belserpa.com)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Sent:** Monday, March 22, 2021 9:10 AM

**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; 'Nettles, Michael G. Law Clerk (Charles Smith)' <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** 'Nettles, Michael G. Secretary (Sherrie E. Byrd)' <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

With one exception, that would be fine. I have highlighted in yellow, what I propose to leave in. The Town has never contended -- and I think we all agree that it is not the fact -- that program sought with the Corps would ever involve eligibility of anything other than the south end for future Corps work/assistance as part of that program.

That is, the mile and a half of the beach to the north which was renourished by the Town received no assistance or work from the Corps and is never proposed to in the future.

It has been paid for by Town present and future funds (along with anything the Town could get from the State, if those funds weren't also restricted). The Town proposes to pay for any future work on the northern part only with Town funds and not require any permanent public easements from those folks.

I believe that if there is any government assistance for the northern part, it would be solely by virtue of it qualifying as an "engineered beach," such that it might get FEMA, not Corps, funds under certain circumstances. If there were no Corps involvement at all, the entire stretch of beach, north and south, would be in this same boat, again, with no one being pressed for a perpetual public easement across their yard. This was the basis on which the Town decided to go forward in the fall of 2019 and then proceeded to complete the renourishment. I am not aware of whether the northern stretch is disqualified from the FEMA help as well by virtue of not having any public access points to get from the road to the beach.

So the part I propose to leave in is simply the part that makes it clear no party contends that the Corps work, past, present or future would be for the whole island. No one truly contends it is for anything other than the south end.

An alternative to the footnote altogether would be to change the footnoted sentence to read, "The placement of the 1.1 million cubic yards of additional sand on the entire 2.7 miles of beach is done."

Will, we can also communicate on a back channel if you want to discuss or let me know your preferences.

Best,

Barry

Barry Stanton

Cell [803-530-2642](tel:803-530-2642)

Office [803-929-1484](tel:803-929-1484) (undergoing work)

Stanton Law Offices, P.A.

P.O. Box 245

Columbia, SC 29202

----- Original message -----

From: Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

Date: 3/21/21 5:53 PM (GMT-05:00)

To: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>, "'Nettles, Michael G. Law Clerk (Charles Smith)'" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

Cc: "'Nettles, Michael G. Secretary (Sherrie E. Byrd)'" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

Subject: RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good evening:

Please find attached my "blue-line" changes to Mr. Stanton's proposed footnote. In summary, there were portions of the language that I was concerned could potentially be construed as argumentative or subject to misinterpretation later on. Since the purpose of the amendment, as I understand it, is to simply recount (in the light most favorable to the Town) some basic facts about the status of the beach renourishment efforts as appearing in the record, I have attempted in my revisions to provide a slightly more generalized statement.

I would be grateful if Mr. Stanton would please reply to confirm whether he is agreeable to my changes.

Thank you,

Will

William C. Dillard, Jr., Esquire

BELSER & BELSER, P.A.

1325 Park Street, Suite 300 (29201)

P.O. Box 96, Columbia, SC 29202

Phone: (803) 929-0096

Fax: (803) 929-0196

Direct: (803) 999-1255

[will@belserpa.com](mailto:will@belserpa.com)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Sent:** Friday, March 19, 2021 7:36 PM

**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; 'Nettles, Michael G. Law Clerk (Charles Smith)' <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Cc:** 'Nettles, Michael G. Secretary (Sherrie E. Byrd)' <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Mr. Smith, Judge Nettles denied the Town's motion to reconsider with the exception of agreeing to clarify one statement on page 9 of the January 20 order.

I have been instructed to prepare one revision on page 9 of the 24-page order of January 20, 2021. On present page 9, there is a statement, "The renourishment is done."

The concern was that this be distinguished from a finding that the "project," as the Town may define it, has been completed.

In similar approach to what we just did with Will's changes to the Town's protective order, I am attaching a redline/changes tracked version of only that one page, which now has different page numbering because the preceding

pages were deleted. I have also attached the whole order showing the same changes on page 9, but it has some formatting issues.

I have a problem. I did not have a copy of the order in Word format. I have a pdf downloaded from the web, with a blue vertical January 20 electronic file-stamp banner down the right side. I converted the pdf to Word, but that inevitably creates a few tab shifts and other spacing glitches that then need to be cleaned up in order to finalize it. Could you send me the order in Word with no filestamp? If not, I can clean up what I have, but if I can get Mr. Dillard's comments, if any, first, that would be good.

I thought the best approach was to not change the wording of the text of the order in any way, and to insert an explanatory and clarifying footnote. The only other thing I changed was a misspelling I incidentally noticed on the same page.

Best,

Barry Stanton

M. Baron ("Barry") Stanton

STANTON LAW OFFICES, P.A.

Cell 803-530-2642

Offc. 803-929-1484 (currently undergoing work)

POB 245

Cola., SC 29202



---

**From:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Sent:** Friday, March 19, 2021 5:15 PM  
**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; 'Nettles, Michael G. Law Clerk (Charles Smith)' <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** 'Nettles, Michael G. Secretary (Sherrie E. Byrd)' <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Mr. Smith, I have no objection to Mr. Stanton's additional revisions and have attached clean copies incorporating those changes for both cases.

Barry, thank you for the quick turn around on this.

Best regards,

Will

William C. Dillard, Jr., Esquire

BELSER & BELSER, P.A.

1325 Park Street, Suite 300 (29201)

P.O. Box 96, Columbia, SC 29202

Phone: (803) 929-0096

Fax: (803) 929-0196

Direct: (803) 999-1255

[will@belserpa.com](mailto:will@belserpa.com)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Friday, March 19, 2021 4:54 PM  
**To:** 'Nettles, Michael G. Law Clerk (Charles Smith)' <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Cc:** 'Nettles, Michael G. Secretary (Sherrie E. Byrd)' <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Attached are my changes to Will's changes. They are shown in redline a/k/a MS Word's "Track Changes" as additions to his already shown changes. I hope my changes show in contrasting type from his. On my display, mine show in blue and his, in red. I also included embedded comments explaining the changes, which in most cases are to catch things that needed to also be conformed to the hearing today.

I would have run these by Mr. Dillard first to see if we could now just accept all changes in the attached document, but had forgotten he is likely trying to wrap up matters for the vacation he referenced.

Best,

Barry

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Sent:** Friday, March 19, 2021 4:03 PM  
**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Thank you, Mr. Dillard!

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Sent:** Friday, March 19, 2021 3:59 PM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>; Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

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Mr. Smith,

As directed by Judge Nettles, please find attached identical proposed orders (for production of fee statements and confidentiality protections) in the two cases with pending attorney fee petitions. The order is the same as included as an exhibit in our previously filed motions, except that it has been revised to (1) reflect different instructions that Judge Nettles provided during the hearing on specific issues (e.g., that footnotes are not required) and (2) in paragraph 5, using language from Mr. Stanton's proposed order, clarifying that any unredacted documents will remain under seal even if identified as part of any record on appeal.

I have also attached a redline copy showing the revisions for the reference of all parties.

I will be out of the office on a family vacation next week, but will do my best to respond to any communications in a timely manner.

Thank you,

Will

William C. Dillard, Jr., Esquire

BELSER & BELSER, P.A.

1325 Park Street, Suite 300 (29201)

P.O. Box 96, Columbia, SC 29202

Phone: (803) 929-0096

Fax: (803) 929-0196

Direct: (803) 999-1255

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Sent:** Wednesday, March 17, 2021 4:04 PM  
**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Thank you, Mr. Dillard! We have the previously filed motion relating to attorney fees as well. Please let me know if you have any questions!

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Sent:** Wednesday, March 17, 2021 3:46 PM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>; Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. **\*\*\***

Mr. Smith:

Good afternoon. Please find attached a copy of the Defendant/Town's Memorandum in Support of the Motion to Alter or Amend, which was filed today. The attached copy is from the Sunset Lodge case, and identical memos were filed in the other two cases.

Also attached, for ease of reference for all parties, are copies of records referenced in the memorandum that were previously filed in connection with the summary judgment motion.

A copy of the Defendant/Town's motion related to the attorney fee procedure was previously submitted in my March 5, 2021 email in the chain below. I will be happy to forward another copy upon request.

Thank you,

Will

William C. Dillard, Jr., Esquire

BELSER & BELSER, P.A.

1325 Park Street, Suite 300 (29201)

P.O. Box 96, Columbia, SC 29202

Phone: (803) 929-0096

Fax: (803) 929-0196

Direct: (803) 999-1255

[will@belserpa.com](mailto:will@belserpa.com)

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Sent:** Thursday, March 11, 2021 10:39 AM  
**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good morning Mr. Stanton and Mr. Dillard,

I just wanted to follow up from our conversations this morning. The hearing for the matter above, originally scheduled for Wednesday, March 17<sup>th</sup> at 10:00 am, will be moved to **Friday, March 19<sup>th</sup> at 10:00 am**. This hearing will be held via

Webex in Judge Nettles' Virtual Courtroom, as a court reporter could not be scheduled to appear for an in-person hearing.

Thank you for being so flexible with rescheduling the hearing, and please let me know if you have any questions!

**The link to the Virtual Courtroom:**

<https://www.sccourts.org/calendar/>

1. Once you click the link above, select "circuit" on the date of the hearing.
2. Then scroll down to Judge Nettles' name and click the link to his virtual courtroom.
3. Enter your name and email address and click the "join now" button.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith)  
**Sent:** Monday, March 8, 2021 1:41 PM  
**To:** 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>; Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good afternoon,

I just wanted to confirm that the motions below will be heard on March 17<sup>th</sup> at 10:00 am. Please let me know if you have any questions.

1. Defendant's January 29, 2021 ***Motion to Alter or Amend Judgment***; and
2. **Procedural/Scheduling matters relating to the attorney fee petitions**: Defendant's March 1, 2021 *Motion for a Protective Order for Production of Documents Relating to Plaintiff's Motion for Attorney Fees*, to include consideration of Defendant's request that the hearing on the attorney fee petition be scheduled at a time providing a reasonable opportunity for review of billing records. The Plaintiffs' various memoranda, proposed orders and other filings setting forth the Plaintiff's positions on these issues will be included within the scope of the hearing.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettlsc@sccourts.org](mailto:mnettlsc@sccourts.org)

---

**From:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Sent:** Friday, March 5, 2021 4:14 PM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlsc@sccourts.org](mailto:MNettlsc@sccourts.org)>; Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlscSC@sccourts.org](mailto:MNettlscSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Mr. Smith:

Good afternoon. I am writing to relay my understanding of what I understand Judge Nettles determined, and the parties consented, will be heard at the hearing to be held at **10:00am on March 17<sup>th</sup>, in person at the Florence County Courthouse**. I would be grateful if you would please respond to confirm for all parties that the following motions in the "Challenge Action #1" cases (-600, -601, and -602) will be taken up at the hearing:

1. Defendant's January 29, 2021 ***Motion to Alter or Amend Judgment***; and
2. **Procedural/Scheduling matters relating to the attorney fee petitions**: Defendant's March 1, 2021 *Motion for a Protective Order for Production of Documents Relating to Plaintiff's Motion for Attorney Fees*, to include consideration of Defendant's request that the hearing on the attorney fee petition be scheduled at a time providing a reasonable opportunity for review of billing records. The Plaintiffs' various memoranda, proposed orders and other filings setting forth the Plaintiff's positions on these issues will be included within the scope of the hearing.

Furthermore, I proposed, but it is my understanding that the Plaintiffs do not consent as of this time, that the following motions also be considered at the hearing:

1. Defendant's *Motion to Dismiss* in the "Challenge Action #2" cases -930, -931 and -932 (filed today, March 5<sup>th</sup>)
2. Defendant's *Motion for Protective Order Regarding Discovery* in both the "Challenge Action #1" and "Challenge Action #2" cases (filed March 3<sup>rd</sup>)

For everyone's reference, I have attached copies of Defendant's referenced motions from one of the cases (with identical motions filed in the companion cases).

Thank you, and I hope you have a nice weekend.

Best regards,

Will

William C. Dillard, Jr., Esquire

BELSER & BELSER, P.A.

1325 Park Street, Suite 300 (29201)

P.O. Box 96, Columbia, SC 29202

Phone: (803) 929-0096



Fax: (803) 929-0196

Direct: (803) 999-1255

[will@belserpa.com](mailto:will@belserpa.com)

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Sent:** Tuesday, March 2, 2021 11:09 AM  
**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Thank you! I will have these printed for Judge Nettles.

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Tuesday, March 2, 2021 10:59 AM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>; 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Thank you, Mr. Smith. Pursuant to my previous e-mail, attached are identical objections electronically filed just now.

Best,

Barry Stanton

M. Baron ("Barry") Stanton

STANTON LAW OFFICES, P.A.

Cell 803-530-2642

Offc. 803-929-1484 (currently undergoing work)

POB 245

Cola., SC 29202

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Sent:** Tuesday, March 2, 2021 9:52 AM  
**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; 'Will Dillard' <[will@elserpa.com](mailto:will@elserpa.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

I have informed Judge Nettles of the objections and recommendations. Judge Nettles would like go forward with the hearing as scheduled. We will have a court reporter available and everyone will be heard on all matters. All motions and objections will be placed on the record. Please let me know if you have any questions.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Tuesday, March 2, 2021 9:28 AM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>; 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

\*\*\* **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Thank you very much, Mr. Smith. I am about to file a formal objection to hearing the recent motion, but the short version is that I recommend that the hearing altogether just be rescheduled for after the hearing of the motion for reconsideration.

Best,

Barry Stanton

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Sent:** Tuesday, March 2, 2021 8:44 AM  
**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good morning Mr. Stanton and Mr. Dillard,

I will inform Judge Nettles and get back to everyone as soon as possible. As always, please feel free to call if you have any questions!

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Monday, March 1, 2021 5:01 PM  
**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

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Email truncated

----- Original message -----

From: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
Date: 4/23/21 10:14 AM (GMT-05:00)  
To: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
Cc: "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>, 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>  
Subject: RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Thanks. FYI, I found a typo in the updated affidavit that is clarified in the rest of the affidavit. On page

Barry

803 530 2642

----- Original message -----

From: "Nettles, Michael G. Law Clerk (Charles Smith)" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

Date: 4/23/21 9:16 AM (GMT-05:00)

To: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

Cc: "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>, 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>

Subject: RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Thank you, Mr. Stanton! We also received the billing materials.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Sent:** Thursday, April 22, 2021 3:40 PM

**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Dear Mr. Smith:

I am simply writing to provide Judge Nettles, you and Mr. Dillard status.

Earlier this week, we FedExed out to Judge Nettles and Mr. Dillard, their respective sets of copies of billing materials referenced in the recent order providing for in camera review. I trust they were received.

Today, we electronically filed an update to the fee petition, consisting of an update to the affidavit which provides the statement of time and charges. As a sample, I am attaching a copy of the Sunset filing, which is identical to the Beattie filing. The Stanton filing continues to request only expenses not including attorney's fees at this point, but the expense figure is revised.

Best,

Barry Stanton

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Sent:** Thursday, April 1, 2021 4:24 PM

**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>; 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>

**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Mr. Smith, I do not think the revised orders granting summary judgment have the change that was supposed to go roughly at page 9, in the form of an added footnote immediately following the sentence, "The renourishment is done."

That is, although I have not reviewed the whole document, I think it may be the same as the original order, with no changes.

I would like to call and walk through that with you in accordance with the input both lawyers have already provided.

Best,

Barry

Barry Stanton

Cell [803-530-2642](tel:803-530-2642)

Office [803-929-1484](tel:803-929-1484) (undergoing work)

Stanton Law Offices, P.A.

P.O. Box 245

Columbia, SC 29202

----- Original message -----

From: "Nettles, Michael G. Law Clerk (Charles Smith)" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

Date: 4/1/21 4:04 PM (GMT-04:00)

To: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>, 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>

Cc: "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

Subject: RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good afternoon,

Judge Nettles has reviewed the Proposed Orders above. Will you please E-file the documents for his E-signature. Please let me know if there are any issues.

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Tuesday, March 23, 2021 3:23 PM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; 'Will Dillard' <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Mr. Smith, in accordance with the foregoing e-mails and Judge Nettles's ruling March 19, I am attaching revisions of the three orders, adding a footnote at what was formerly page 9. This footnote is now note 2 at page 10. We earlier noted that we also saw a typo in the misspelling of "condemnees" on the same page and fixed that.

These are the only changes to the order documents you sent me. They were very helpful. Thank you.

I have also attached Form 4s for each matter in case that is helpful.

Best,

Barry Stanton

M. Baron ("Barry") Stanton

STANTON LAW OFFICES, P.A.

Cell 803-530-2642



Offc. 803-929-1484 (currently undergoing work)

POB 245

Cola., SC 29202

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Sent:** Tuesday, March 23, 2021 8:54 AM  
**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good morning,

I have attached the Orders in Word format. Please let me know if there are any issues or if you need any additional information!

Thank you,

Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Monday, March 22, 2021 5:43 PM  
**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Subject:** RE: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

July 13, 2021 to October 13, 2021 series of e-mails of the parties with the Court, including dates 6/21/21, 6/25, 7/13, 8/20, 8/20, 8/20, 8/20, 8/20, 8/20, 8/27, 8/30, 8/30, 8/30, 8/30, 8/30, 10/1, 10/1, 10/4, 10/4, 10/12, 10/13, and 10/13. (This string in this order has been e-mailed to Respondent's counsel.)

## Barry Stanton

---

**From:** Barry Stanton  
**Sent:** Wednesday, October 13, 2021 8:16 AM  
**To:** Nettles, Michael G. Law Clerk (Jacob Hofferth); Nettles, Michael G. Secretary (Sherrie E. Byrd)  
**Cc:** Will Dillard  
**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

You're welcome. It is in regular mail. Just wanted you to be on the lookout. The Post Office sometimes takes a while, sometimes not.

Best,

B

Barry  
803 530 2642

----- Original message -----

From: "Nettles, Michael G. Law Clerk (Jacob Hofferth)" <MNettlesLC@sccourts.org>  
Date: 10/13/21 8:03 AM (GMT-05:00)  
To: Barry Stanton <bstanton@stantonlaw.com>, "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <MNettlesSC@sccourts.org>  
Cc: Will Dillard <will@belserpa.com>  
Subject: RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

Mr. Stanton,

Thank you for the update.

Thank you,

**Jake Hofferth**

Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <bstanton@stantonlaw.com>  
**Sent:** Tuesday, October 12, 2021 4:34 PM  
**To:** Nettles, Michael G. Law Clerk (Jacob Hofferth) <MNettlesLC@sccourts.org>; Nettles, Michael G. Secretary (Sherrie E.

Byrd) <MNettlesSC@sccourts.org>

Cc: Will Dillard <will@belserpa.com>

**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Mr. Hofferth, we are mailing the duplicate unredacted copies referenced at the hearing.

Best,

Barry Stanton

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**From:** Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Sent:** Monday, October 4, 2021 6:25 PM

**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

**Cc:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

Mr. Stanton,

I will have these materials prepared for the Judge.

Thank you,

**Jake Hofferth**

Law Clerk to the Honorable Michael G. Nettles

181 N. Irby St., Suite 3610

Florence, SC 29501

(843) 292-7433 (Office)

(843) 292-7436 (Fax)

[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Sent:** Monday, October 4, 2021 5:09 PM

**To:** Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>; Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

**Cc:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Mr. Hofferth, in connection with the hearing at 2 Wednesday, I am attaching the following already filed materials and would be grateful if you would print them out for the Judge and yourself or whatever is your custom:

1. Sunset Reply to Town's opposition memorandum re Plaintiff's attorney fee request (29 pp.);
2. Exhibit A to the above, being a copy of an 8-23-21 e-mail of Mr. Fabbri and the accompanying "thread";
3. Reply affidavit of Frank Beattie; and
4. Reply affidavit of Charlie Howard.

The filings in the Beattie case are identical except for the captions and signature block, so I am just sending the Sunset set.

We have a few more reply affidavits yet to file, but have had many disruptions and I thought we ought to go ahead and get the brief and these first couple of affidavits to you and the Judge and Mr. Dillard.

I will follow as soon as possible with the remainder.

Best,

Barry Stanton

M. Baron ("Barry") Stanton  
STANTON LAW OFFICES, P.A.  
Cell 803-530-2642  
Offc. 803-929-1484 (pending building changes)  
POB 245  
Cola., SC 29202

---

**From:** Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Sent:** Friday, October 1, 2021 8:55 AM

**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

**Cc:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

Mr. Stanton,

The hearing is scheduled to be in Florence in courtroom 3B.

Thank you,

**Jake Hofferth**

Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

**Sent:** Friday, October 1, 2021 6:51 AM

**To:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Cc:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Ms. Byrd, could you please remind me whether the October 6 hearing at 2:00 p.m. will be in Florence, or in Georgetown.

Do you know yet which courtroom?

Best

Barry Stanton

Barry  
803 530 2642

----- Original message -----

From: "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

Date: 8/30/21 11:04 AM (GMT-05:00)

To: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>, "Nettles, Michael G. Law Clerk (Jacob Hofferth)" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

Cc: Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

Subject: RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

You are very welcome. Look forward to seeing everyone on October 6<sup>th</sup>.

Sherrie Byrd

Administrative Assistant

Honorable Michael G. Nettles

181 North Irby Street, Suite 3610

Florence, SC 29501

Office: (843) 292-7433

Fax: (843) 292-7436

Email: [mnettlessc@sccourts.org](mailto:mnettlessc@sccourts.org)

---

**From:** Barry Stanton [<mailto:bstanton@stantonlaw.com>]

**Sent:** Monday, August 30, 2021 11:02 AM

**To:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Cc:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

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Thank you very much and the same to Judge Nettles.

Best,

Barry

---

**From:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

**Sent:** Monday, August 30, 2021 10:37 AM

**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

You are very welcome, Mr. Dillard.

Sherrie Byrd

Administrative Assistant

Honorable Michael G. Nettles

181 North Irby Street, Suite 3610

Florence, SC 29501

Office: (843) 292-7433

Fax: (843) 292-7436

Email: [mnettlessc@sccourts.org](mailto:mnettlessc@sccourts.org)

---

**From:** Will Dillard [<mailto:will@belserpa.com>]

**Sent:** Monday, August 30, 2021 9:47 AM

**To:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Thank you, Ms. Byrd.

William C. Dillard, Jr., Esquire  
BELSER & BELSER, P.A.  
1325 Park Street, Suite 300 (29201)  
P.O. Box 96, Columbia, SC 29202  
Phone: (803) 929-0096  
Fax: (803) 929-0196  
Direct: (803) 999-1255  
[will@belserpa.com](mailto:will@belserpa.com)

---

**From:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>  
**Sent:** Monday, August 30, 2021 9:45 AM  
**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

Good morning all:

I have presented Judge Nettles with your request for a hearing on the above referenced case. Judge Nettles stated he would like to schedule the case for Wednesday, October 6, 2021 at 2:00pm for 3 hours. I have requested a courtroom from the clerk. Once she has responded, I will provide the courtroom location.

Sincerely,

Sherrie Byrd  
Administrative Assistant  
Honorable Michael G. Nettles  
181 North Irby Street, Suite 3610  
Florence, SC 29501  
Office: (843) 292-7433  
Fax: (843) 292-7436  
Email: [mnettlessc@sccourts.org](mailto:mnettlessc@sccourts.org)

---

**From:** Barry Stanton [<mailto:bstanton@stantonlaw.com>]  
**Sent:** Friday, August 27, 2021 5:08 PM  
**To:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

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To follow up on the hearing of our January 25, 2021 fee application, I suggest we set times for any additional submissions, so that we can all go into the matter prepared. I would like adequate information far enough in advance that I will have time enough to respond well before the time for hearing.



As I mentioned, we have not updated the fee request in a while and there are probably additional charges for some additional time already spent and additional time estimated to conclusion. Summary judgment was granted December 4, a formal order was issued January 21, the fee application with proposed order was submitted January 25, and a confirmation of the summary judgment order after reconsideration was entered April 5. We submitted the ordered materials to Mr. Dillard July 13.

Mr. Dillard indicates that he may have additional submissions to make in opposition to the fee application, but has not indicated by when they will be submitted.

As the moving party, I certainly would like adequate notice of any further response, including any opposing affidavit, and an opportunity to get information and reply.

If the target is as late as the week of September 20 because of Mr. Dillard's schedule, I would suggest we should have Mr. Dillard's brief or other submissions by, say, September 3, so that we will have ten days to reply, putting our reply around September 13. If so, I could get in an update to the application promptly.

Not knowing the nature or extent of Mr. Dillard's further response, I still do not know how to estimate time required for a hearing, but his estimate of 90 minutes might be a good tentative estimate, and if we get in written submissions as I suggest well beforehand, we might gain some efficiencies.

Best,

Barry Stanton

Cell 803 530 2642

---

**From:** Barry Stanton

**Sent:** Friday, August 20, 2021 4:12 PM

**To:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>; Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

My apologies. My "smart" phone has gone crazy, and sent a fragment in the foregoing e-mail. I intended:

As for estimating length of hearing, I would need to know if Mr. Dillard is going to present any materials of his own, including any testimony by affidavit or otherwise, and also whether he will present any further briefing. I will check with him directly on that.

As for setting our January 25, 2021 motion a month or more from now, I will work with schedules, but would note that the request for fees the Town has caused my clients to incur has been pending a very long time, and we sent the requested and ordered materials a month ago.

Best,

Barry

Barry  
803 530 2642

----- Original message -----

From: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
Date: 8/20/21 4:02 PM (GMT-05:00)  
To: Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>, "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>, "Nettles, Michael G. Law Clerk (Jacob Hofferth)" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
Subject: RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

I would need to know if Mr. Dillard is going to present any materials of his own, including any testimony by affidavit or otherwise, and also whether he will present any further briefing. I will check with him directly on that.

As for setting it more than a m

Barry  
803 530 2642

----- Original message -----

From: Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
Date: 8/20/21 3:31 PM (GMT-05:00)  
To: "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>, Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>, "Nettles, Michael G. Law Clerk (Jacob Hofferth)" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
Subject: RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

Ms. Byrd,

Thank you for your email. Due to my upcoming schedule, I would be grateful if the hearing could be scheduled no earlier than the week of September 20<sup>th</sup>.

Regarding the length of the hearing, I anticipate that the parties would not have difficulty filling up 90 minutes. Mr. Stanton may think a different amount of time would be appropriate.

Best regards,

Will

William C. Dillard, Jr., Esquire  
BELSER & BELSER, P.A.  
1325 Park Street, Suite 300 (29201)  
P.O. Box 96, Columbia, SC 29202  
Phone: (803) 929-0096  
Fax: (803) 929-0196  
Direct: (803) 999-1255  
[will@belserpa.com](mailto:will@belserpa.com)

---

**From:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

**Sent:** Friday, August 20, 2021 3:08 PM

**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Cc:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

Good afternoon Mr. Stanton and Mr. Dillard:

Judge Nettles is fine with moving forward on your request. How much time do you believe this hearing will take, so I can schedule accordingly?

Sincerely,

Sherrie Byrd

Administrative Assistant

Honorable Michael G. Nettles

181 North Irby Street, Suite 3610

Florence, SC 29501

Office: (843) 292-7433

Fax: (843) 292-7436

Email: [mnettlessc@sccourts.org](mailto:mnettlessc@sccourts.org)

---

**From:** Nettles, Michael G. Secretary (Sherrie E. Byrd)

**Sent:** Friday, August 20, 2021 1:10 PM

**To:** 'Barry Stanton' <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>; Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

**Cc:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** RE: Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

Good afternoon Mr. Stanton,

I will consult with Judge Nettles regarding your request.

Sincerely,

Sherrie Byrd

Administrative Assistant

Honorable Michael G. Nettles

181 North Irby Street, Suite 3610

Florence, SC 29501

Office: (843) 292-7433

Fax: (843) 292-7436

Email: [mnettlessc@sccourts.org](mailto:mnettlessc@sccourts.org)

---

**From:** Barry Stanton [<mailto:bstanton@stantonlaw.com>]

**Sent:** Friday, August 20, 2021 12:27 PM

**To:** Nettles, Michael G. Law Clerk (Jacob Hofferth) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>; Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>

**Cc:** Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

**Subject:** Plaintiffs' January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset, Beattie, and Stanton; Cases 2020CP2200600, 601, and 602

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Dear Judge Nettles:

Plaintiffs prevailed on summary judgment in these three cases December 4, 2020 and the last order confirming same was entered April 5, 2021.

I wondered if we could move toward scheduling a determination of my clients' January 25, 2021 requests, as amended, for statutory fees and expenses in these three cases. I have updated the application a few times, but was waiting for an idea of the schedule before doing it again.

Best,

Barry Stanton  
803 530 2642

----- Original message -----

From: Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>

Date: 7/13/21 4:55 PM (GMT-05:00)

To: Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>

Cc: "Nettles, Michael G. Secretary (Sherrie E. Byrd)" <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>, "Nettles, Michael G. Law Clerk (Charles Smith)" <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>

Subject: RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Will, pursuant to the June 30, 2021 order of Judge Nettles in each of the cases, I will be dropping off today or tomorrow, with a copy of this e-mail, confidential copies of the billing materials as marked by Judge Nettles.

I am simply copying Mr. Smith and Ms. Byrd for their and Judge Nettles's information.

I am sending you exactly what Judge Nettles sent me, except I added control numbers 20001 to 20082 to the feet of the pages. The Sunset pages start with 20001, the Beattie, with 20051, and the Stanton, with 20071.

Since what Judge Nettles marked still had the sticker, "Unredacted" on it to indicate his source document, that is reproduced, even though the copies obviously bear redactions. On the 20001 page, the sticker, "Judge Nettles Redacted Copy" is reproduced.

Since this is identical to what Judge Nettles sent me, I am not mailing him a copy, but can always make one with the control numbers if that is desired.

I was out last week and believe you are out this week.

Best,

Barry

M. Baron ("Barry") Stanton  
STANTON LAW OFFICES, P.A.  
Cell 803-530-2642  
Offc. 803-929-1484 (pending building changes)  
POB 245  
Cola., SC 29202

---

**From:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Sent:** Friday, June 25, 2021 1:43 PM  
**To:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

Good afternoon,

Please see the attached Orders for the above referenced matters. The Orders will be e-filed shortly. Please let me know if you have any questions.

Thank you,  
Chase Smith  
Law Clerk to the Honorable Michael G. Nettles  
181 N. Irby St., Suite 3610  
Florence, SC 29501  
(843) 292-7433 (Office)  
(843) 251-6057 (Cell)  
(843) 292-7436 (Fax)  
[mnettleslc@sccourts.org](mailto:mnettleslc@sccourts.org)

---

**From:** Barry Stanton <[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)>  
**Sent:** Monday, June 21, 2021 11:01 AM  
**To:** Nettles, Michael G. Law Clerk (Charles Smith) <[MNettlesLC@sccourts.org](mailto:MNettlesLC@sccourts.org)>  
**Cc:** Nettles, Michael G. Secretary (Sherrie E. Byrd) <[MNettlesSC@sccourts.org](mailto:MNettlesSC@sccourts.org)>; Will Dillard <[will@belserpa.com](mailto:will@belserpa.com)>  
**Subject:** RE: Redactions: Sunset, Beattie, and Stanton; Fees; Cases 2020CP2200600, 601, and 602

\*\*\* **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Roger.

Thanks.

May 18, 2020 formal resolution of Town Council [not included here, but included once as attachment to Town November 24, 2020 brief in opposition to motion for summary judgment].

July 27, 2020 Landowner first request for production [not included here, but included once as exhibit to August 27, 2020 motion to compel].

August 3, 2020 Town Rule 12(b)(6), SCRCF motion to dismiss.



|                         |   |                                         |
|-------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT OF THE             |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT              |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600       |
|                         | ) |                                         |
| Sunset Lodge, LLC       | ) |                                         |
|                         | ) |                                         |
| Plaintiff,              | ) | <b>DEFENDANT'S MOTION TO DISMISS</b>    |
| v.                      | ) | <b>PURSUANT TO RULE 12(b)(6), SCRCP</b> |
|                         | ) |                                         |
| TOWN OF PAWLEYS ISLAND, | ) |                                         |
|                         | ) |                                         |
| Defendant.              | ) |                                         |
| _____                   | ) |                                         |

**TO: THE PLAINTIFF ABOVE NAMED**

YOU WILL PLEASE TAKE notice that the Defendant, Town of Pawleys Island, by and through its undersigned attorneys, N. David DuRant, Sr., and Norwood D. DuRant, Jr., will within ten (10) days after service hereof or as soon thereafter as counsel may be heard, or within a shorter time period, if the Court so allows, move to dismiss the Plaintiff's Amended Complaint pursuant to Rule 12(b)(6), SCRCP.

The grounds for this motion are that Plaintiff has failed to state a claim for which relief can be granted; and/or, Plaintiff has failed to state facts sufficient to constitute a cause of action; and/or, even if all the factual allegations set forth in the Amended Complaint are true, they are insufficient to establish a valid cause of action. Thus, Plaintiff's claims fail as a matter of law and must be dismissed with prejudice.

This motion may be supported by a memorandum of law, as well as the South Carolina Rules of Civil Procedure, oral arguments by counsel, affidavits, and/or any other evidence properly submitted prior to the time of the motion hearing.

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/N. David DuRant, Sr.

N. David DuRant, Sr., Esquire (SCB# 1803)

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)

Attorney for Defendant

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/Norwood D. DuRant, Jr.

Norwood D. DuRant, Jr. (SCB #101723)

P.O. Box 14722

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Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: [norwooddurant@lawofficesofdurant.com](mailto:norwooddurant@lawofficesofdurant.com)

Attorney for Defendant

August 3, 2020

August 10, 2020 Town motion for priority and to require Ten Million (\$10,000,000.00)  
Dollar bond.

|                         |   |                                      |
|-------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT OF THE          |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT           |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600    |
|                         | ) |                                      |
| Sunset Lodge, LLC       | ) |                                      |
|                         | ) | <b>DEFENDANT'S MOTION</b>            |
| Plaintiff,              | ) | <b>FOR PRIORITY AND FOR AN ORDER</b> |
| v.                      | ) | <b>REQUIRING THE PLAINTIFF TO</b>    |
|                         | ) | <b>POST A BOND</b>                   |
| TOWN OF PAWLEYS ISLAND, | ) |                                      |
|                         | ) |                                      |
| Defendant.              | ) |                                      |
| _____                   | ) |                                      |

**TO: THE PLAINTIFF ABOVE NAMED AND ITS ATTORNEY, M. BARON STANTON, ESQ.**

YOU WILL PLEASE TAKE notice that the Defendant, Town of Pawleys Island (the "Town"), by and through its undersigned attorneys, N. David DuRant, Sr., and Norwood D. DuRant, Jr., will within ten (10) days after service hereof or as soon thereafter as counsel may be heard, or within a shorter time period, if the Court so allows, move for an Order: a) pursuant to Rule 40(h), SCRCPP, to give this case precedent over civil cases on the non-jury roster and, accordingly, schedule the hearing of Defendant's Rule 12(b)(6) motion at the earliest possible time; b) require the Plaintiff to post a sufficient bond against any and all expenses arising out of any injury to the Town caused by the delay of the proceedings under the Town's condemnation notice; and, c) such other and further reliefs as the Court may deem just and proper.

The Town respectfully submits that the resolution of this matter is a truly urgent concern. This challenge action by the Plaintiff automatically stayed all proceedings under the Town's condemnation notice. With the devastation of previous hurricanes fresh in our minds, there is serious apprehension that all of the Town's beach renourishment activities, with a cost of fourteen million four hundred thirty-one thousand (\$14,431,000.00) dollars, will be shattered and wiped out. Hurricane season is already upon us, and high winds and coastal erosion can negatively impact the Town's beach renourishment efforts and dissipate all the work that has been done. There is a real possibility that a storm surge from a major hurricane will destroy the beach and wash away all the sand that has been added recently. Unless the Town is able to proceed with condemnation and obtain the easements required by the U.S. Army Corps of

Engineers to keep the Town's beach renourishment project in the federal project system, any damage to the beach will not be repaired by the federal government. This matter needs to be decided in a particularly expedited manner. The Town is exposed to the risk of total destruction of the beach with consequent loss of millions of dollars spent in renourishment, not to mention the responsibility to carry out expensive repair and reconstruction tasks.

In light of the urgent and exceptional circumstances involved in this matter, the Town further respectfully asks the Court to require the execution by the Plaintiff of a sufficient bond, in the amount of ten million (\$10,000,000.00) dollars, to indemnify the Town against the harm that this challenge action is likely to cause, including but not limited to any and all expenses, claims, liabilities, and damages arising out of injury to the renourished beach and coastal structures and/or resulting loss and destruction of properties and businesses along the coast.

This motion may be supported by a memorandum of law, as well as the South Carolina Rules of Civil Procedure, oral arguments by counsel, affidavits, and/or any other evidence properly submitted prior to the time of the motion hearing.

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/N. David DuRant, Sr.

N. David DuRant, Sr., Esquire (SCB# 1803)

P.O. Box 14722

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Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)

Attorney for Defendant

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/Norwood D. DuRant, Jr.

Norwood D. DuRant, Jr. (SCB #101723)

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Facsimile: (843) 650-8090

Email: [norwooddurant@lawofficesofdurant.com](mailto:norwooddurant@lawofficesofdurant.com)

Attorney for Defendant

August 10, 2020

August 11, 2020 Landowner return to motion for priority and bond.

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
|                         | ) |                                   |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) | RETURN TO MOTION                  |
|                         | ) | FOR PRIORITY AND FOR              |
| Plaintiff,              | ) | BOND                              |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |

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On August 10, 2020 the Defendant, Town of Pawleys Island filed a motion and Plaintiff received an NEF noting that a motion of some nature was filed.

On August 11, 2020, Plaintiff received and was able to review a copy of the motion. The motion is a motion to give the Town's previously filed Rule 12(b)(6) motion priority for hearing on the nonjury docket, and for an order requiring Plaintiff to post a bond.

Plaintiff hereby files a return to the motion, and reserves the right to file a brief in support of this return and in opposition to the Town's motion.

The motion should be denied – no priority should be afforded for the hearing of the Town's 12(b)(6) motion and no bond should be required -- because:

1. The instant motion is without any evidentiary support, the 12(b)(6) motion the Town moves to expedite is not a designated "Priority Matter" under the South Carolina Rules of Civil Procedure, and the instant motion is made without compliance with the Rules of Civil Procedure;

2. The bond the instant motion seeks violates the provisions of the South Carolina Eminent Domain Procedure Act, the provisions of which “constitute the exclusive procedure” to be followed;

3. The 12(b)(6) motion the Town seeks to expedite is both without merit and moot;

4. Plaintiff has only begun discovery, to which the Town, with no urgency, has not yet responded, and as alleged in the Amended Complaint, the Town, with no urgency, has not responded at all or as legally required to a previous FOIA request having a bearing on the matter;

5. The factually unsupported putative urgency upon which the Town bases its motion actually does not exist and the Town’s assertions are both legally and factually incorrect; and

6. To the extent the Town feels or states any urgency – real or not – the Town ignored opportunities to work out an easement offered by Plaintiff at no charge for over a year, and chose instead to delay, publicly misrepresent the matter, and then wait until the summer of 2020 to seek to condemn Plaintiff’s property, and any urgency is of the Town’s own making.

#### Further Elucidation

#### No evidence, noncompliance with rules, and inaccurate unsworn assertions

The Town bases its motion entirely upon sweeping unsworn hysterical factual assertions claiming dire urgency,<sup>1</sup> and yet is unaccompanied by any evidentiary matter at all in support.

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<sup>1</sup> The Town states, not in a sworn affidavit, but in the unsworn body of its motion:

With the devastation of previous hurricanes fresh in our minds, there is serious apprehension that all of the Town’s beach renourishment activities, with a cost of fourteen million four hundred thirty-one thousand (\$14,431,000.00) dollars, will be shattered and wiped out. Hurricane season is already upon us, and high winds and coastal erosion can negatively impact the Town’s beach renourishment efforts and dissipate all



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the work that has been done. There is a real possibility that a storm surge from a major hurricane will destroy the beach and wash away all the sand that has been added recently. Unless the Town is able to proceed with condemnation and obtain the easements required by the U.S. Army Corps of Engineers to keep the Town's beach renourishment project in the federal project system, any damage to the beach will not be repaired by the federal government. This matter needs to be decided in a particularly expedited manner. The Town is exposed to the risk of total destruction of the beach with consequent loss of millions of dollars spent in renourishment, not to mention the responsibility to carry out expensive repair and reconstruction tasks.

Not only are these statements that "there is apprehension" unsworn, but the people with the supposed apprehension are unidentified and unsworn, and the statements are inadmissible hearsay of inadmissible opinion of anonymous people, if the people exist.

If the Town were to ever make these statements under oath or penalty of perjury, Plaintiff would then show that the Corps of Engineers has expressed interest in only a fraction (perhaps 1/3 or 1/2) of the project the Town spent over \$14,000,000 on, but that the Corps is not involved in even that part at this point. Contrary to the Town's unsworn statement, "the Town's beach renourishment project" is not "in the federal project system" and no part of it is.

The Town made a previous, deliberate, fiscal, logistical and political decision to do the entire described project without the Corps ever being involved. It was not a crisis then and it is not one now. The project was then completed, without the Corps. The nature of the Corps's unproven recent interest is not yet known, as the Town has not produced requested documents yet and Plaintiff has barely had time to engage in any other discovery.

In any event, contrary to the Town's statements in its motion, the remainder of the project has nothing to do with the Corps or the easement, the Corps will never have anything to do with the rest of the project, and many property owners have not been asked for an easement like the one the Town seeks to condemn and take from Plaintiff.

Further, contrary to the Town's statements in its motion, the Town has stated in its various campaigns that after a major storm of the sort described by the Town in its motion, damage to the beach will indeed be, at least in a substantial part, "repaired by the federal government," and that this federal assistance would be for the whole island, easements or not, Corps involvement or not. In addition, as detailed in the Amended Complaint with reference to Town source documents, the Town itself estimated last year that no further renourishment may be needed for as much as twenty-two (22) years, or longer if the 400,000 cubic yard trigger point is ignored.

The day the Town filed its motion, August 10, 2020, the Town had at its disposal, a coastal science engineer who appeared by invitation in the Town Council's live-streamed Town Council meeting and he stated that the recent hurricane, Isaias, passed by Pawleys Island during the worst possible tide for purposes of erosion and damage, i.e., at the maximum height of an extraordinarily high tide, and that, while his estimates were not complete, it appeared that the total project may have lost only as much as three (3%) percent of the sand added in the project.

Certainly nothing the Town says is stated under penalty of perjury, nor shows the personal knowledge and other competence of the proponent as a witness. These statements cannot be considered and cannot support the motion.

When a motion is to be supported by affidavit, the affidavit shall be served with the motion. Rule 6(d), SCRCPP. No affidavit was served. The motion is deficient and defective and should be summarily denied.

12(b)(6) motion moot and unmeritorious

Additionally, the Rule 12(b)(6) motion the Town seeks to expedite is moot. The Town's 12(b)(6) motion is directed to the Complaint and was filed in lieu of answering the allegations in the Complaint. Plaintiff timely amended the Complaint and the Town has neither answered the Amended Complaint, nor filed an allowed motion in lieu of answer. The motion the Town did file was without merit,<sup>2</sup> but is now moot.

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<sup>2</sup> The Court is familiar with the standard for such a motion, requiring that all the allegations of the complaint be assumed as true for purposes of the motion, and that all reasonable inferences that may be made from those facts in favor of the plaintiff be similarly assumed. A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999); see also Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999)(declaring that if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper).

Here, the Complaint (as does the Amended Complaint) seeks to disallow, in whole or in part, the condemnation the Town seeks. The Complaint (as does the Amended Complaint) sets forth extensively facts showing the Town has been dishonest or reckless, or both, in mischaracterizing the nature and true, full, scope of the easement sought, that the easement is not necessary, that the Town has stated and concluded publicly that the entire easement sought was "not necessary," that the Town has failed both legislatively and administratively to consider the excessiveness and harm of the scope of the easement sought, that the Town has acknowledged both the speculativeness and remoteness of actual Corps involvement or fiscal support at any time in the future, that aspects of the easement sought are an exaction not supported by statute or valid regulation, that the Town has filed false statements and certifications in the pleadings intended to commence the condemnation process, and that the Town has failed to comply with the South Carolina Eminent Domain Procedure Act in other respects, including failing to provide

Bond violating the Eminent Domain Procedure Act

After making, in its motion, wild and inaccurate, unsworn, inadmissible statements about the scope of the project, the nature of the Corps's involvement and noninvolvement, the likelihood of loss of sand, the already spent dollar amount involved in the portion of the project the Corps has a potential undefined interest in – and after entirely avoiding addressing the profoundly speculative and remote prospects of putative future monetary benefits which might inure to the Town if the Corps were involved, the Town pulls a number out of the air. The Town requests this number be used to require Plaintiff to post a bond. The Court may not legally require such bond.

The provisions of Chapter 2 of Title 28, constituting the Eminent Domain Procedure Act, “constitute the exclusive procedure” for the matters covered thereby. S.C. Code Ann. §§ 28-2-60 and 28-2-210. One of those provisions in Chapter 2 is S.C. Code Ann. § 28-2-470. Section 470 establishes an automatic, statutory, stay of any condemnation proceedings following the timely filing of an action to challenge a condemnation that has been begun by serving the statutorily prescribed condemnation notice. Section 470 contains only one exception to this statutory stay, i.e., “unless the landowner and the condemnor consent otherwise.” There is no proviso for court ordered dissolution of the landowner's statutory right. This makes sense, because if the condemnation were allowed to proceed in spite of a landowner challenge, the property would change hands and irreversible damage would be done not only to the landowner but also to the legislatively and constitutionally recognized integrity of the landowner's rights in property. The condemnation notice itself is statutorily required to advise the landowner of the availability of

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a clear statement of precisely what it is that the Town seeks to condemn. Accepting these allegations as true (and they are), the condemnation must be denied in whole or in part.

and deadline for such a challenge action. See S.C. Code Ann. §28-2-280(C)(7)(setting forth wording of required notice). There is no authority for requiring a bond, which would violate the act the Town invoked when deciding to attempt condemnation. The Town's request must therefore be denied.

Emergencies, especially when manufactured, don't suffice

Although it has already been shown that the Town has failed to timely present evidence to support its claim of urgency, that the unsworn assertions of the Town are incorrect, and that urgency is legally irrelevant to both the hearing of the Town's moot 12(b)(6) motion and the Town's motion to require a bond for something which is, rather, clearly established by statute, it is worth adding that the Amended Complaint details the prior pattern of use of "emergencies" by the Town. There, it will be seen that the Town purposefully postpones frank, factual, legally astute, timely discussion of what the Town truly seeks, so that under guise of emergency and manufactured "deadlines," the Town can stampede others into uninformed decision on obscured serious matters. This is another instance of what Friedrich August von Hayek described when he stated, "'Emergencies' have always been the pretext on which the safeguards of individual liberty have been eroded." The Town's claim of preferential urgency should be disregarded and the parties should cooperate in the usual manner to expedite litigation.

For the foregoing reasons and others, the Town's motion should be denied.

Respectfully,

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)

Stanton Law Offices, P.A.

PO Box 245

Columbia, SC 29202

Tel: (803) 929-1484

[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)

*Attorney for Sunset Lodge, LLC*

8/11/20

August 13, 2020 Landowner first interrogatories to Town [not included here, but included once as attachment to November 5, 2020 L motion to compel].

August 17, 2020 e-mail roster notice of September 11, 2020 hearing of Town motion to dismiss.

## Barry Stanton

---

**From:** Courtmail22\_DoNotReply@sccourts.org  
**Sent:** Monday, August 17, 2020 2:02 PM  
**To:** Barry Stanton  
**Cc:** jlawrence@gtcounty.org  
**Subject:** Motion "MDISMS-Motion/Dismiss/DuRant" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 9/11/2020 at 11:30 AM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator @ jlawrence@gtcounty.org or 843-545-3114 or Lucinda LeSane @ llesane@gtcounty.org or 843-545-3228. (401 Cleland St., Georgetown, SC).

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

August 17, 2020 e-mail roster notice of September 11, 2020 hearing of Town motion for priority and Ten Million (\$10,000,000.00) Dollar bond.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Monday, August 17, 2020 2:02 PM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MOFREE-Motion For Priority And For An Order Requiring The Plaintiff" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 9/11/2020 at 11:30 AM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator @ jlawrence@gtcounty.org or 843-545-3114 or Lucinda LeSane @ llesane@gtcounty.org or 843-545-3228. (401 Cleland St., Georgetown, SC).

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

August 21, 2020 Landowner motion for summary judgment and supporting affidavit.

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | NOTICE OF MOTION                  |
| Plaintiff,              | ) | AND MOTION                        |
|                         | ) | FOR SUMMARY JUDGMENT              |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

Plaintiff hereby moves the Court pursuant to Rule 56(c), SCRCP for an order granting summary judgment, declaring the inability of the Defendant Town of Pawleys Island to condemn Plaintiff's property, forbidding same, quashing the condemnation notice and associated papers served upon Plaintiff, and permanently prohibiting the filing thereof.

The grounds for this motion are that the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that Plaintiff is entitled to a judgment as a matter of law.

To wit, the pleadings, the affidavit on file and any other materials that may legally be considered show that:

a. The Town of Pawleys Island eventually began proceedings in attempts to condemn oceanfront "renourishment" easements from three landowners on the south end of the island. However, in doing so, the Town undisputably exceeded the authority granted by the Town Council to take "basically simply an easement to put sand on the beach," and the condemnation notices and associated papers served by the Town are therefore an ultra vires act, which should be quashed as invalid.

b. In attempting to condemn, the Town also undisputably failed in numerous respects to comply with the strict mandates of the Eminent Domain Procedure Act, which is the “exclusive procedure” for condemnation. As a consequence, the condemnation notices and associated papers served by the Town should be quashed. These failings include: (i) not furnishing appraisals to the owners as required by statute before serving condemnation notices; (ii) not negotiating reasonably and diligently -- and indeed not negotiating at all -- with the owners as required by statute before serving the condemnation notices,<sup>1</sup> particularly where such negotiating was required to relate to purchase of the limited interests in real estate which were described in the appraisals and not some other interests described in the condemnation papers; (iii) falsely certifying in the condemnation notices that (i) and (ii), above, were done; and (iv) not describing in the condemnation notices and associated papers, as required by statute, the same interests in real estate which were described in the statutorily mandated appraisals – thus illegally and dishonestly seeking in the condemnation papers, to condemn a greater interest in real estate than was appraised.

c. In addition to the above failings being ultra vires because not within the authorization granted by Town Council and not in compliance with the Eminent Domain Procedure Act, the history of the Town’s attempts to obtain the easements – from making first requests in 2019, through the Council meeting in 2020, and through the service of condemnation notices in 2020 – is rife with, if not fraud and bad faith, then with an abuse of discretion. As such, this history requires the attempted condemnation to be disallowed and ended now by quashing the served condemnation papers and foreclosing any further action. The instances

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<sup>1</sup> This one failing is stated by S.C. Code § 28-2-70 (B) not to be a defense to condemnation, but this statute does not provide any exception for falsely certifying compliance with this requirement.

referred to include: (i) knowing, false descriptions of the wording and meaning of the requested easements by some Town actors, while other Town actors either completely abdicated their responsibility to know what the Town was doing or, worse, knew and pretended not to know; (ii) knowing, false implications or statements by some Town actors that the owners had refused any easements at all, while other Town actors either abdicated their responsibility to know the contrary or, worse, did know and pretended not to know; (iii) knowing concealment and omission by some Town actors of issues some owners had raised concerning the wording and scope of the proposed easements, while other Town actors were either ignorant of these issues or, worse, pretended to be ignorant of them; (iv) legal error or misinformation that the easements proposed to property owners allowed no more than placing sand on the beach and did not affect the property rights of the owners in any way; (v) failure to timely provide appraisals to owners (constituting not only straight noncompliance with statutory mandate as described above, but also a deliberate concealment and delay as an instance of bad faith); (vi) falsely certifying to the court, the public, and the owners, in the condemnation notices, that negotiations with respect to the conclusions of the appraisals were timely conducted when in fact such negotiations were not conducted at all; (vi) attempting, dishonestly, to condemn interests in real estate of different and greater scope than the interests in real estate which were the subjects of the appraisals; and (vii) attempting, dishonestly, to condemn interests in real estate of different and greater scope than the interests in real estate of which Town Council publicly authorized condemnation.

Respectfully submitted,

s/M. Baron Stanton

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8/21/20

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | AFFIDAVIT OF STANTON              |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
| _____                   | ) |                                   |

1. I believe the following facts to be without genuine dispute by the Town.
2. Most are established by public record or by statements in writing by the Town or its agents. This is also the case with most of the facts in the 170 or more paragraphs of the Amended Complaints in the three subject lawsuits.
3. This affidavit is provided separately to focus primarily on the following facts in those suits:
  - a. some, but not all, facts pertinent to the Third Cause of Action (dealing in with fraud, bad faith or abuse of discretion as a limit and disqualifier of condemnation power);
  - b. facts pertinent to the Fourth Cause of Action (dealing with violation of, failure to invoke statutory power under, and essentially a failure to establish a cause of action under the Eminent Domain Procedure Act, the sole procedure for condemnation); and
  - c. facts pertinent to only part of the Fifth Cause of Action (dealing in part with lack of necessity of the interest sought in the condemnation papers to achievement of the limited purpose stated, considered, and authorized by Town Council).
4. Of my own knowledge, the following facts are true in all material respects.

5. The following facts will be further substantiated in Paragraphs 6-130 of this affidavit below:

a. The Town of Pawleys Island eventually began proceedings in attempts to condemn oceanfront “renourishment” easements from three landowners on the south end of the island. However, in doing so, the Town undisputably exceeded the authority granted by the Town Council to take “basically simply an easement to put sand on the beach,” and the condemnation notices and associated papers served by the Town are therefore an ultra vires act, which should be quashed as invalid.

b. In attempting to condemn, the Town also undisputably failed in numerous respects to comply with the strict mandates of the Eminent Domain Procedure Act, which is the “exclusive procedure” for condemnation. As a consequence, the condemnation notices and associated papers served by the Town should be quashed. These failings include: (i) not furnishing appraisals to the owners as required by statute before serving condemnation notices; (ii) not negotiating reasonably and diligently -- and indeed not negotiating at all -- with the owners as required by statute before serving the condemnation notices,<sup>1</sup> particularly where such negotiating was required to relate to purchase of the limited interests in real estate which were described in the appraisals and not some other interests described in the condemnation papers; (iii) falsely certifying in the condemnation notices that (i) and (ii), above, were done; and (iv) not describing in the condemnation notices and associated papers, as required by statute, the same interests in real estate which were described in the statutorily mandated appraisals – thus illegally

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<sup>1</sup> This one failing is stated by S.C. Code § 28-2-70 (B) not to be a defense to condemnation, but this statute does not provide any exception for falsely certifying compliance with this requirement.

and dishonestly seeking in the condemnation papers, to condemn a greater interest in real estate than was appraised.

c. In addition to the above failings being ultra vires because not within the authorization granted by Town Council and not in compliance with the Eminent Domain Procedure Act, the history of the Town's attempts to obtain the easements – from making first requests in 2019, through the Council meeting in 2020, and through the service of condemnation notices in 2020 – is rife with, if not fraud and bad faith, then with an abuse of discretion. As such, this history requires the attempted condemnation to be disallowed and ended now by quashing the served condemnation papers and foreclosing any further action. The instances referred to include: (i) knowing, false descriptions of the wording and meaning of the requested easements by some Town actors, while other Town actors either completely abdicated their responsibility to know what the Town was doing or, worse, knew and pretended not to know; (ii) knowing, false implications or statements by some Town actors that the owners had refused any easements at all, while other Town actors either abdicated their responsibility to know the contrary or, worse, did know and pretended not to know; (iii) knowing concealment and omission by some Town actors of issues some owners had raised concerning the wording and scope of the proposed easements, while other Town actors were either ignorant of these issues or, worse, pretended to be ignorant of them; (iv) legal error or misinformation that the easements proposed to property owners allowed no more than placing sand on the beach and did not affect the property rights of the owners in any way; (v) failure to timely provide appraisals to owners (constituting not only straight noncompliance with statutory mandate as described above, but also a deliberate concealment and delay as an instance of bad faith); (vi) falsely certifying to the court, the public, and the owners, in the condemnation notices, that negotiations with respect to



the conclusions of the appraisals were timely conducted when in fact such negotiations were not conducted at all; (vi) attempting, dishonestly, to condemn interests in real estate of different and greater scope than the interests in real estate which were the subjects of the appraisals; and (vii) attempting, dishonestly, to condemn interests in real estate of different and greater scope than the interests in real estate of which Town Council publicly authorized condemnation.

6. For others to more fully understand the magnitude and persistence of the foregoing, it may be necessary to state the undisputed plain requirements of the Eminent Domain Procedure Act, to state the undisputed deliberations and decision of Town Council with regard to the scope of what it authorized condemnation of, and to provide a more particular undisputed history showing that, if the Town did not engage in concertedly fraudulent or bad faith actions with regard to the proposal of the easements, and the authorization, and pursuit of, condemnation, the Town acted in an “abuse of discretion,” as that term is applied in these instances.

7. For these purposes, because “fraudulent” in a legislative, administrative or procedural context is not ordinarily amenable to analysis as a civil tort for fraud and deceit, my understanding of “fraudulent” is “any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design,” bearing in mind that “fraud,” in this sense, “assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.”

8. Similarly, for these purposes, my understanding of “bad faith” in this context is that it includes “lack of honesty in fact.”

9. My understanding of “abuse of discretion” for present purposes is that it is constituted by any one of: the failure to exercise discretion when one has it (whether out of ignorance, neglect, misdirection or legal error); intellectual dishonesty in deciding a matter; deciding a matter arbitrarily; deciding a matter capriciously; making a decision which is clearly unsupported any facts or by the facts which are stated; or making a decision which is guided by or influenced by an error of law.

10. Long before 2019, the Town of Pawleys Island announced to property owners, plans to pursue “beach renourishment” on the south end, middle island, and parts of the north end.

11. To my knowledge, before 2019, the Town made no mention to property owners, and therefore, made no explanation, of any need for any easements at all for renourishment.

12. At times, the Town stated its pursuit of renourishment would involve, or potentially involve, at least in some part of the project, the U.S. Army Corps of Engineers.

13. In 2018, the Town proceeded with plans to do a project on its own.

14. Again, to my knowledge, there was no mention of any need for any easement at all.

15. However, then the Town announced the Town would wait and do a project that involved the Corps on part of it.

16. In early 2019, the Town of Pawleys announced to property owners for the first time that the Town would need easements over land involved in any portion of the project done by the Corps.

17. At this time, this meant easements would be sought only over land on the south end.

18. In “selling” property owners on the course the Town was taking, the Town speakers and writers on the subject described the requested easement as essentially an easement to allow the Town to place additional sand on the beach and to allow access for the personnel, machinery and other equipment necessary to do so.

19. Town Administrator Ryan I. Fabbri explained in writing in March 2019, that the Town had already drawn up easements and that in February the Town had begun mailing out proposed easements documents for owners to sign.

20. He had seen the documents drafted by the Town. He was the one sending them out.

21. Fabbri explained in the same writing in March 2019, “The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.”

22. Fabbri did not state one word or give any indication, then, previously, or subsequently, about easements granting perpetual 24/7/365 public access over land of the owners or other radical, onerous conditions.

23. It was the Town which drafted the easement documents the Town sent out.

24. The Town sent perpetual easement documents only to south end property owners.

25. The Town obtained some, but not all, easements the Town requested for the Corps portion of the larger work.

26. However, after delays and uncertainties associated with the Corps, the Town then decided to do all the work on its own, as it had planned to do previously, without the Corps or

any present or future reliance on Corps financing or assistance, and without getting any more easements.

27. At this time the Town Council expressly determined easements were “not necessary.”

28. The Town then completed all the renourishment work in late 2019 and early 2020, depositing all the 1,100,000 cubic yards of sand on the beach and incurring liability of in excess of \$14,000,000, which the Town had fully considered before proceeding.

29. Afterwards, the Corps expressed interest in still getting involved.

30. The Town then began to request easements again in 2020 from south end owners on the basis of the prospect of Corps involvement in possible future projects.

31. In 2019 and 2020, in the course of the foregoing events and later, the Town made various repeated separate assurances that the Town would not damage owner improvements implicated in the proposed easement and that the purpose of the easement was simply to allow placement of sand on the beach and to allow access for purposes of doing so.

32. Despite these assurances, primarily from Fabbri on behalf of the Town, some south end property owners had concerns.

33. The concerns, further set out below, were about the written terms the Town included, without prior warning, acknowledgement or explanation, in the proposed easements drafted by the Town and sent out as final for signature.

34. By May of 2020, Fabbri and Mayor Brian Henry had been put on notice of these concerns in the following ways:

a. Questions were posed to Fabbri before and during the public, recorded, meeting of April 20, 2019, at which he mentioned only some of these questions;

- b. Explicit changes were made by landowners to the proposed document, including changes by three who would later become plaintiffs in actions challenging condemnation;
- c. Explicit discussions were had and e-mails were exchanged by an owner, Stanton, and perhaps others, with Fabbri;
- d. Discussion by Stanton, and perhaps others, occurred with the Town Attorney about problems with the proposed document;
- e. Events occurred which were related to cancellation by the Town of an ostensible easement on the Beattie property, which public records indicate was not the easement intended by Beattie and was filed by Fabbri for the Town without authorization; and
- f. Materials were provided in April 2020 by Stanton to Henry, setting forth an extensive history of issues with the proposed easement and Stanton's efforts to correct it, along with a markup of the proposed document, containing comments explaining each problem and the suggested change.

35. In 2019, of the three landowners who would later become plaintiffs in actions challenging condemnation: one sent the Town a signed easement – free of charge -- redrafted in a form he agreed to, and when the Town rejected it, sent one or more markups indicating an easement he would be willing to grant free of charge and offered cooperation and assistance in any further discussion, negotiation or drafting needed; public records reflect that another owner drafted and tendered – free of charge -- an easement in a form he agreed to, but later discovered Fabbri, for the Town, had recorded a different one and had the Town cancel it; and public records reflect that another owner drafted an easement in a form the owner agreed to and – free of charge -- recorded it.

36. All three of the foregoing proper, formal easements allowed – free of charge -- placement of sand on the beach in front of the owners’ homes and had provisions accommodating such placement. Importantly, this was essentially what the Town Council would later vote to condemn and pay for.

37. Among the issues some property owners have had with the document as initially drafted and proposed by the Town through Fabbri were the following:

a. Within very long-running, typographically flawed, and poorly punctuated sentences in the legal document, there were material provisions included which were not necessary to permitting the work of depositing sand on the owner’s property;

b. The accesses allowed and activities permitted to the Town, to its assigns and to the public, throughout the area covered, included “to patrol and operate a public beach” on the landowner’s land and improvements and “public use and access” on the landowner’s land and improvements, and these provisions applied not only to the owner’s yard itself, but also to any improvements such as decks, stairs, slabs, and other structures; to be clear, the easement allowed permanent public access to the owner’s yard, and under the most restrictive reading of the document, did so up to two feet from the main pilings of the owner’s house;

c. The easement was not limited to the stated project of a few months of adding sand to the beach; the easement was forever, i.e., “perpetual,” thus requiring, unless changed to being temporary, even more attention to the stated scope of uses and activities allowed by the easement, and the restrictions imposed by the easement on the landowner;

d. In some cases, the map attached to the document showed an easement area which included parts of the landowner’s improvements, such as decks, stairs, slabs, and other structures;

e. In addition to public access, the activities the Town and its assigns were specifically permitted to perform throughout the area covered included to “trim, cut, fell, and remove” from the landowner’s land, “obstructions, structures and obstacles,” including the landowner’s improvements, such as decks, stairs, slabs, and other structures;

f. Despite the map attached to the document, the granting clause of the document literally stated, in plain English, that the easement “and right of way” ran “over, upon, through, and under” the entire described lot of the landowner;

g. Even if the foregoing inclusion of the entire lot could be cleared up,<sup>2</sup> the attached map, which apparently designated only a portion of the lot for the easement, still placed the easement – and all the activities and accesses it allowed -- only two feet from the main walls and supports of the house;

h. Also among the rights irrevocably granted forever to the Town and anyone to whom the Town might assign the easement was to “limit access” [of anyone] to something vaguely called “dune areas” on the landowner’s land, including limiting the access of the owner, the owner’s family, heirs, agents, contractors and guests;

i. The easement was not limited to use or effectiveness only in periods of active renourishment (including planning, preparation, work, withdrawal and cleanup), but was effective twenty-four hours a day, seven days a week and twelve months a year;

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<sup>2</sup> The Town cannot dispute that, through Fabbri, the Town eventually began offering to clear up this defect for some landowners (as well as, for some owners, a few other defects), and did so, but the Town cannot dispute that the Town later stated in writing by the paralegal for the Town Attorney, that at least for Stanton, the Town intends to condemn an easement not containing the clarification. I.e., the Town has as much as admitted that out of spite, reckless caprice, effort to intimidate or other impetus, the Town is seeking things which even Fabbri has previously confirmed in writing are not necessary.

j. The easement was not limited to use by the Town, did not revert to the owner if not used, and could be assigned by the Town to others; and

k. Even with all the above broad and grave encumbrances on the land and improvements, the easement was not conditioned on an enforceable agreement for the Corps to actually provide any actual benefit; that is, the easement was not even conditioned on the Corps – whose history of authorization and participation was fickle at best -- receiving funding from Congress, or being involved in the work, or continuing to be involved after doing only a small amount of work, was not conditioned upon the work being done within a certain number of years, or being maintained, or ever being done at all, and was not set up to terminate or revert to the owner upon failure of one of these events.

38. The proposed easement was thus, instead of being permission to put sand on the beach on the owner's property, a land grab.

39. The proposed easement, while called an "easement" in favor of the Town, was tantamount to a reversal of the stated relationship, i.e., it was tantamount to the owner deeding a parcel of land to the Town and to "the public," and reserving only thin rights to the owner amounting to no more than a limited easement in favor of the owner.<sup>3</sup>

40. This parcel was to be between the ocean and the owner's formerly oceanfront house, consuming all the land all the way up to a point two feet from the main pilings of the house.

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<sup>3</sup> Here, I refer to the familiar holdings of the United States Supreme Court, in such cases as Kaiser Aetna, Pruneyard, and Loretto, that one of the essential sticks in the "bundle of property rights" is the right to exclude others, and that a permanent physical occupation of another's property is perhaps the most serious form of invasion of an owner's property interests, such that to do so does not simply take a single strand from the bundle of property rights, but "chops through the bundle, taking a slice of every strand."



41. The conveyance of this parcel would essentially make the owner's property no longer oceanfront, and would create a separate parcel of very different character between the owner's remaining parcel and the ocean.

42. The rights of the owner retained in the parcel conveyed would not include the right of the owner to exclude others.

43. The rights retained by the owner would not include the right of the owner to access and occupy the parcel if prohibited by the Town or others on the vague basis of "facilitating preservation" of dunes or vegetation.

44. The rights retained by the owner would not include the right to prohibit destruction of existing improvements located within the parcel.

45. The rights retained would only include the illusory right to build a "walkover" structure if an unspecified Town "designee" subjectively decided to allow it.

46. Even then, the walkover would at all times be subject to destruction by the Town or others with impunity if deemed to be in the way of the "construction, operation, maintenance repair, rehabilitation and replacement"<sup>4</sup> of a chameleon referred to as "the project."

47. Additionally, any such walkover would be public.

48. As set out in more detail below:

a. The Town did not consider any of the above concerns in deliberating on whether to condemn "easements."

b. In proposing condemnation to Town Council in May 2020, the Town's Administrator pretended these concerns did not exist or were never explained and presented the

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<sup>4</sup> For those unfamiliar with government work, this subordination includes the prospect of a 45,000 pound skid steer or an even larger earth mover some days or years or decades later intentionally or accidentally running over, or through, the walkover.

matter simply as if the owners had refused any easement at all and that they provided no explanation.

c. In proposing condemnation to Town Council, the Town's Administrator, Fabbri, also never brought up or presented or recited to Town Council for approval, the words in the document causing the concerns, or any other parts of the actual proposed document.

d. In authorizing condemnation, Town Council either was ignorant of these matters or pretended to be.

e. Before authorizing condemnation, Town Council had not read the proposed document.

f. In authorizing condemnation, Town Council, did not read the proposed document.

g. In authorizing condemnation, Town Council received erroneous legal advice, at the meeting, on the record, that the easement altered no rights of the owners and that the easement did no more than allow sand to be placed on the beach and would be worth nothing.

h. The Town Council authorized only condemnation of an easement "basically, simply to put sand on the beach."

49. To wit, on May 18, 2020, the Town Council of the Town of Pawleys Island met (live-streamed and now recorded, found at <https://www.facebook.com/TownofPawleysIsland/>).

50. Other than a previous meeting in which Council determined no easements were necessary at all for the Town to renourish the beach, this May 18, 2020 meeting was the sole meeting at which Council considered and deliberated upon what interest in real estate, if any, was reasonably necessary to follow up on the completed project the Town had before it at that time.

51. This May 18, 2020 meeting was the sole meeting at which Council considered and deliberated upon whether to condemn the three easements the Town later sought to condemn.

52. It is obvious to a person with knowledge of the true facts that unless the May 18, 2020 meeting was accompanied by illegally secretive activities, and was completely fraudulent, and was a sham for purposes of a public showing,<sup>5</sup> Town Council operated with a complete dearth of necessary facts, with other facts falsely presented to it, and under the guide of erroneous legal assumptions.

53. There, the Council, then consisting of Henry, Guerry Green, Rocky Holliday, Ashley Carter, and Sarah Zimmerman, joined by Fabbri as Town Administrator, first had an off-the-record "executive session" with the Town Attorney, David Durant, to get "legal advice."

54. In the meeting, the Council then indicated publicly that it couldn't understand why the subject owners wouldn't "sign" "an easement" or "the easement," and the Council simultaneously never mentioned in the entire meeting or discussed the fact that all three owners had actually signed and tendered easements, but had serious concern and disagreement only with the terms and scope of the easements as drafted by the Town.

55. The clear and only implication of these statements and omissions was that Council believed the three owners had refused to grant any renourishment easement at all.

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<sup>5</sup> This is a plausible case, also supporting a bar to condemnation, because for Fabbri or the Council to publicly discuss the implications of the objectionable wording and excessive scope of the document would be to alarm other owners of a betrayal by Council and admit that the Town had led over a hundred other owners to create a separate class of beachfront property for about a third of the length of the island and ruin the titles of those owners.

56. The clear and only implication of these statements and omissions was that Council believed the three owners had refused to allow placement of sand on the beach in front of their homes.

57. In the meeting, Fabbri assured the Council on the record that he had worked diligently on the matter of obtaining easements for "a year and a half."

58. In the meeting, Fabbri stated to Town Council (at 59:10) that "for whatever reasons," the owners in question had not "signed."

59. Fabbri did not disclose to Council that all three owners who would later become plaintiffs in actions challenging condemnation had, in fact, signed, easements.

60. In the meeting, Fabbri did not disclose to Council that he had personally received the explicit "reasons" from at least one owner why what the owner did sign differed from what was drafted by the Town.

61. In the meeting, Fabbri did not disclose to Council that all three owners who would later become plaintiffs in actions challenging condemnation had either filed or provided to him directly, easement documents with differences which unmistakably showed the "reasons" the documents were different, e.g., by striking the words "public," "obstacles," "structures," etc.

62. No mention was made in the entire meeting of a public record stating that one subject owner, Beattie, actually gave Fabbri an easement to deposit sand in front of the owner's house, in person, on or about April 25, 2019, at Fabbri's office, and that what happened after that was that Fabbri filed a different, unauthorized document in the title records of Georgetown County.

63. No mention was made by Fabbri or any other person present of a public record stating Beattie's later discovery of the more-than-a-little-inauthentic recorded document, letter to Fabbri, and efforts to get his title corrected.

64. No mention was made in the entire meeting of whether, as part of Fabbri's 1 ½ years of claimed diligence, Fabbri or anyone with the Town ever asked that owner, Beattie, again in 2019 for an easement.

65. No mention was made in the entire meeting of whether, as part of Fabbri's 1 ½ years of claimed diligence, Fabbri or anyone with the Town ever asked that owner, Beattie, again in 2020 for an easement.

66. No mention was made in the entire meeting of another owner's (Stanton's) tendering a signed easement to Fabbri on April 8, 2019 for deposit of sand, and that owner's extensive, if not extraordinarily personally time-consuming and exhaustive, efforts to accommodate the Town, and give it every opportunity to work out an acceptable easement.

67. No mention was made in the entire meeting that another of the owners, Sunset Lodge, had long ago, at its own expense, actually signed in June 2019 and directly recorded in July 2019, an easement responsive to the publicly stated needs of the Town for an "easement basically simply to put sand on the beach."

68. No specific information was provided or discussed in the entire meeting about, what part, if any, of Fabbri's 1 ½ years of claimed dialogue or diligence, involved Fabbri or anyone with the Town communicating with this owner before pressing Council for condemnation.

69. Contrary to the stated impressions of Town Council at the May 18, 2020 meeting, and contrary to statements and implication of those furnishing information to Council at the

meeting for purposes of guiding a decision on whether to condemn a sand-deposit easement, the documents tendered by all three of the referenced owners indicated they had been willing, since the previous year, to grant the Town – free of charge -- the right to renourish in front of their homes, and the right “simply to put sand on the beach.”

70. At the meeting, Fabbri acutely knew that it was false to imply that the reasons why three of the subject owners had refused to grant any easement at all were unknown.

71. However, doing so allowed Fabbri to avoid disclosing his knowledge of the reasons why the documents offered by the three owners differed in scope from the Town’s proposal.

72. Fabbri’s publicly making this false implication and avoiding disclosure of his knowledge to Council avoided a deliberation by Council on the issues of the excessive, reckless and unnecessary scope of the easement requested, which Council would have been honor bound to consider, weigh, and decide, publicly.

73. At the meeting, Fabbri added, when addressing Council, “they do not owe us an explanation.”

74. In so stating, Fabbri clearly implied, falsely, again, that no easement was agreeable to the landowners, that no explanation was given for refusal, and that no reason for refusal was known.

75. Having been so briefed, council member Ashley Carter confirmed this implication and stated for the record in the May 18, 2020 meeting, simply, "I can’t understand it."

76. In the meeting, Henry stated that he had gone to bat for concerned owners.

77. However, Henry stated absolutely nothing to the other Council members about the nature of the concerns.

78. Henry also stated absolutely nothing about to whose concerns he referred.

79. Henry also stated absolutely nothing about his position or opinion as to whether the unidentified concerns were reasonable or any other position on the unidentified concerns.

80. Henry also stated absolutely nothing about what he did to go to bat.

81. Not one Council member mentioned in the entire Council meeting ever having read the proposed easement.

82. The few questions and comments also indicated a lack of first hand familiarity with the document and indicated reliance, rather, on statements of Fabbri and counsel.

83. Not one Council member mentioned in the entire Council meeting, knowing the contents of the proposed easement, nor was there any indication from any other source in the meeting that any Council member knew the contents of the proposed document, other than possibly the vague statement of Henry alone, that he had somehow been to bat over concerns he then did not describe.

84. Not one Council member had south end property for which an easement was requested and therefore clearly not one Council member had signed the subject requested easement.

85. In the meeting, David Durant, the Town Attorney providing legal guidance to the Council for purposes of its decision, stated and advised Council, definitively that the owners "would still have all the same rights they had before granting the easement."

86. This statement was erroneous. However, it was at least indicative of his reference to an easement with the most minimal scope conceivable, not resembling what Fabbri had been seeking.

87. Town Attorney, Durant, added: “property owners will still have title to the property.” This consideration was meaningless to the point of being capricious, not providing any description of the extent and quality of the remaining title, as altered by the easement, but at least was indicative of his overt reference to an easement with the most minimal scope conceivable, not resembling the easement Fabbri had been seeking.

88. In the meeting, Zimmerman, at time stamp 1:02:35, asked Town Attorney Durant, on the record, for legal guidance in making the decision whether to condemn, "and the easement basically is simply to put sand on the beach, right, David?"

89. Durant officially replied, advising Council, definitively, "Yes, that is correct."

90. Thus, having exhibited the clear perception and understanding that the easement was limited to merely putting sand on the beach, the Town Council then made virtually no mention in the entire meeting of the level of certainty or uncertainty or enforceability of actual future Corps involvement, future Corps decision making, future funding by the Corps, future funding of the Corps by Congress, or future performance by the Corps. The subject meeting of Council was held during the worldwide novel corona virus pandemic and over two months into the COVID-19 crisis in the United States, after Congress had authorized expenditure of over two trillion dollars (more than the size of the economy of Canada and over three times U.S. annual spending on defense) on COVID-related management and COVID-related economic stimulus and relief. At least a trillion or two more will be or has been committed. It has been explained by Fabbri only that what would be accomplished would be “being in the club” of communities with whom the Corps might do something, as opposed to “not being in the club.” For this, the Town Council was willing to condemn the properties of its constituent owners, but officially only in order to obtain permission to “put sand on the beach.”



91. I.e., no examination was made of whether any easement at all would likely serve any real and reasonably certain present purpose, and certainly nothing was done to weigh the injury to the landowner against the actual probability of actually needing the easement. This weighing was avoided by only considering and approving condemnation of an easement drastically less onerous than what Fabbri had been seeking. The only certain purpose of obtaining the easement, other than for the comparatively miniscule purpose of having the Corps plant grass and install sand fence costing as much as approximately one half of one (0.5%) percent of what the Town had already spent, was to have the easement “just in case,” someday, a benefit alleged to be conditioned upon the easement might arise and actually be available and be provided. This fact is not disputed.

92. As far as can be discerned from the video display, similar to the verbal statements and omissions in the meeting, the proposed resolution before the Council for a vote at the meeting recited as a preface, numerous putative facts taken into account in deciding to condemn, but again recited none relating to the willingness of subject landowners to grant an easement of different scope, and again recited none relating to the concerns of landowners with the excessive, reckless and unnecessary scope of the easement Fabbri had been seeking.

93. Notably, the proposed resolution was prepared in advance and partially displayed in the video.

94. The resolution also, like the verbal part of the Council meeting, did not reflect the details of the easement the Town Council was authorizing to be condemned, other than that it was for renourishment, which is defined generally as adding sand. Avoided like the plague and obscured with every device convenient, were the only issues that mattered -- any actual issues with the wording of the proposed easement Fabbri had been seeking.

95. As will be described below, this fraud was carried forward into the later condemnation proceedings themselves.

96. That is, the typewritten resolution also made no further mention of the different nature or of the previously described invasive terms of the previously proposed easement, made no mention of any concern expressed about the unnecessary scope of the easement Fabbri had been seeking, and made no mention of any specific wording of the easement the Council was authorizing the Town to condemn.

97. Thus, in the May 18, 2020 meeting, the Council based its decision to seek condemnation solely on the following findings:

- a. That all the Town needed was an easement “basically simply to put sand on the beach”;
- b. That the three subject owners had refused to grant such an easement; and
- c. That it was possible that the Town might benefit from Corps involvement at some time in the future if such easements were acquired.

98. Thus, in the May 18, 2020 meeting, the Council authorized only the condemnation of an easement “basically simply to put sand on the beach.”

99. An easement of this scope actually authorized by Council is radically different, less invasive, and unquestionably much less costly to acquire, than the interest in real property Fabbri had been seeking up to the time of the Council meeting.

100. For condemnation to occur, the Eminent Domain Procedure Act requires the Town to first obtain an appraisal of the “interest in real property” to be acquired.

101. For condemnation to occur, the Eminent Domain Procedure Act then requires the Town to provide that appraisal to the landowner.

102. For condemnation to occur, the Eminent Domain Procedure Act then requires the Town to negotiate for purchase of that interest in real property based on the appraisal of that interest in real property.

103. For condemnation to occur, the Eminent Domain Procedure Act then – if negotiation is unsuccessful -- requires the Town to serve a condemnation notice which (a) must describe the same “interest to be taken” which was previously appraised and (b) must offer to pay the same amount as stated in the appraisal of the same “interest in real property” to be acquired.

104. For condemnation to occur, the Eminent Domain Procedure Act then – if the offer is not accepted (and if no challenge action is timely filed) – allows and requires the Town to file the condemnation notice and take the same “interest to be taken” which was appraised (not a different interest), after which the parties may litigate the appropriate compensation for the interest that was appraised and taken.

105. As set forth further below, here, however, the Town obtained an appraisal of an interest in real estate not including any of the wording of the easement previously sought by Fabbri.

106. As set forth further below, the Town fraudulently skipped required pre-service negotiation and offered in the condemnation notice to pay a figure based only on the appraisal of a the interest in real estate described in the appraisal, which did not include any of the wording of the easement previously sought by Fabbri.

107. However, as set forth further below, in the condemnation notice and associated papers, the Town seeks to condemn something very different without ever having it appraised, namely, the easement previously sought by Fabbri.

108. As set forth further below, the Town seeks to condemn something very different without ever offering to pay anything relevant with respect to it, and, more importantly, seeks to do so without the Town Council ever having authorized condemnation of anything of the scope the Town now seeks to condemn.

109. This makes a farce of the Town Council's proceeding and of the landowner protections built into the Eminent Domain Procedure Act.

110. Unbeknownst to the landowners until later,<sup>6</sup> in pursuing condemnation, the Town did first obtain appraisals.

111. As explained below, the affected landowners would verify only later that the Town did not obtain appraisals of the interests in real property Fabbri had been seeking up to the time of the Council meeting.

112. Rather, when receiving the appraisals much later than they were required to be provided, the landowners verified that the appraisals only valued an easement with a general purpose of renourishment and essentially no other known wording at all.

113. I.e., the appraisals valued only what was described by Zimmerman and the Town Attorney at the Council meeting as "an easement basically, simply to put sand on the beach." This was essentially what all three of the owners had previously offered the Town free of charge.

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<sup>6</sup> It should be undisputed that in yet another arrogated "emergency" caused by no one other than the Town, no one asked the owners for access to their property or notified them of any intended trespass.

114. Essentially concluding that in giving permission only to put sand on the beach and to only do it periodically, the owner would not be giving up much, the appraiser placed a low proposed purchase price on this easement he was told to appraise.<sup>7</sup>

115. He was not given the wording of the easement he was asked to appraise.

116. The easement was instead “described” to him “by Town officials.”

117. Yet, in a continuing jumble of confusion, rule-breaking, and falsity, the Town served legal papers apparently seeking the opposite of what was appraised: the Town served condemnation notices apparently seeking to condemn the highly invasive and onerous interest Fabbri had been previously seeking, and yet did so without ever having obtained an appraisal of it in accordance with law or offering to pay for it in accordance with law.

118. The Town sought instead to pay a price based on an appraisal of something unquestionably different and less onerous than was sought in the condemnation notices.

119. The Town thus served legal documents which sought easements that exceeded the authorization granted by Town Council.

120. The Town thus served legal documents which sought easements that were different from the easements described in the appraisals the Town had obtained but had not yet provided to the owners.

121. The Town served legal documents which contained falsehoods.

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<sup>7</sup>The appraisals have other curious features. They assume the sand from the completed renourishment is not yet in front of the owners’ houses, but it is; the appraisals assume the owners’ lots are not improved, but they are; and the appraisals assume the easements sought would not allow anything more than access one month a year to deposit sand, but the easements sought in the condemnation notices do. These features, other than the last one, do not need to be discussed at length for present purposes.

122. In the condemnation notices, the Town falsely stated that the Town had performed statutorily required elements, including previously making appraisals available to the owners and negotiating reasonably and diligently with respect to compensation in light of the appraisals of the interest to be taken.

123. The Town did not make the appraisals available before serving the condemnation notices, as required by law.

124. The Town did not make the appraisals available as part of any negotiation or offer before serving the condemnation notices, as required by law.

125. The Town did not make an offer to purchase the limited easements described in the appraisals before serving the condemnation notices, as required by law.

126. Some landowners had previously offered or recorded easements of very similar if not greater scope than the easements described in the appraisal -- without all the excessive scope -- and might have sold the Town an easement with all the onerous, radical wording omitted, as contemplated in all the appraisals.

127. The Town also did not make the appraisals available at the time of serving the condemnation notices, and these notices were themselves a limited-time offer to purchase based on the appraisals.

128. What the Town did do was serve condemnation notices which contained fraudulent offers. The condemnation notices contained statements that the appraisals determined stated values or prices applicable to the more onerous easements which were the subjects of the condemnation notices, when in truth, the stated values and prices were applicable to the less onerous easements actually appraised by the appraiser.

129. The condemnation notices fraudulently contained purchase offers based on these appraisals of easements of a different scope than the easements the Town offered to buy in the condemnation notices and for which the limited-time tender was made, and the Town did not send the appraisal reports, which were over 50 pages, with the notice.

130. Therefore, in addition to the Town's efforts to acquire the presently sought easements being contaminated by fraud, bad faith and abuse of discretion, as described above, the condemnation notices simply exceed the authority granted by Council, and also, in addition to the other described violations, simply seek to take an interest in real estate that was not previously appraised, in violation of the Eminent Domain Procedure Act.

Pursuant to S.C. Sup. Ct. Order 2020-04-22-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify the foregoing and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

s/M. Baron Stanton  
M. Baron Stanton

Date: 8-21-20

August 25, 2020 Town motion to halt discovery against Town.



|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT OF THE       |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT        |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
|                         | ) |                                   |
| Sunset Lodge, LLC       | ) |                                   |
|                         | ) |                                   |
| Plaintiff,              | ) | <b>DEFENDANT'S MOTION FOR</b>     |
| v.                      | ) | <b>PROTECTION FROM DISCOVERY</b>  |
|                         | ) |                                   |
| TOWN OF PAWLEYS ISLAND, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

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**TO: THE PLAINTIFF ABOVE NAMED AND ITS ATTORNEY, M. BARON STANTON, ESQ.**

YOU WILL PLEASE TAKE notice that the Defendant, Town of Pawleys Island (the "Town"), by and through its undersigned attorneys, N. David DuRant, Sr., and Norwood D. DuRant, Jr., will within ten (10) days after service hereof or as soon thereafter as counsel may be heard, or within a shorter time period, if the Court so allows, move the Court to issue a Protective Order that discovery not be had against the Defendant pending the resolution of the Defendant's Rule 12(b)(6) Motion to Dismiss, and such other reliefs and remedies that the Court may deem just and proper under the circumstances.

The discovery sought by the Plaintiff in this case would require the retrieval, review, and production of voluminous documents. The Town respectfully submits that a stay of discovery while a dispositive motion is pending serves as a guard against significant time and costs of unnecessary discovery requests. There are compelling arguments in support of outright dismissal of the Plaintiff's Amended Complaint which, if granted, would terminate litigation. The discovery in this case is likely to be extensive and very costly to the parties. Allowing discovery to proceed prior to a decision on the Town's Rule 12(b)(6) Motion to Dismiss would impose avoidable and unnecessary costs to the parties. In addition, if discovery disputes arise while the Defendant's said motion is pending, it will tax the Court's resources.

For all these reasons, the Town respectfully asks that the Court enter an Order of Protection from Discovery while the Court considers the Town's Rule 12(b)(6) Motion to Dismiss.

This motion may be supported by a memorandum of law, as well as the South Carolina Rules of Civil Procedure, oral arguments by counsel, affidavits, and/or any other evidence properly submitted prior to the time of the motion hearing.

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/N. David DuRant, Sr.

N. David DuRant, Sr., Esquire (SCB# 1803)  
P.O. Box 14722  
Surfside Beach, SC 29587  
Telephone: (843) 650-7800  
Facsimile: (843) 650-8090  
Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)  
Attorney for Defendant

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/Norwood D. DuRant, Jr.

Norwood D. DuRant, Jr. (SCB #101723)  
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Email: [norwooddurant@lawofficesofdurant.com](mailto:norwooddurant@lawofficesofdurant.com)  
Attorney for Defendant

August 25, 2020

August 27, 2020 Landowner return and affidavit opposing motion to halt.

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
|                         | ) |                                   |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) | RETURN TO TOWN'S                  |
|                         | ) | MOTION FOR PROTECTION             |
| Plaintiff,              | ) | FROM ALL DISCOVERY                |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |

The Town's stated basis for an earlier motion it filed was urgency. The Town now moves for a delay of discovery and, essentially, a delay of any progress by Plaintiff in prosecuting Plaintiff's case. For this and other reasons, the motion should be denied.

#### BACKGROUND

On July 21, 2020, the Summons and Complaint were served in this case, alleging, among other things, concealment of facts by Town actors, a shell game in defining the contents and necessary scope of the easement sought, and a flouting of the rules for pursuing condemnation.

On July 23, 2020, Plaintiff served requests for production, including, among other things, requests for information pertaining to the appraisal, which, as alleged in the Complaint and in a later summary judgment affidavit, the Town had outright failed to serve before serving a condemnation notice as required by statute.

On July 31, 2020, Plaintiff served the Amended Complaint.

On August 3, 2020, the Defendant Town of Pawleys Island filed a Rule 12(b)(6) motion to dismiss the Amended Complaint, which the Town filed in lieu of answering the factual allegations of the Amended Complaint.

However, the Town filed no brief and cited no statutes or case law in support of the 12(b)(6) motion.

On August 10, 2020, the Defendant Town of Pawleys Island filed a motion to give priority to the case in general and for an expedited hearing on the nonjury docket for the Town's as yet unbriefed Rule 12(b)(6) motion. The Town's stated basis was urgency.

However, the Town served no affidavit in support of the motion, and did not serve a brief or cite any statutes or case law in support of the motion.

In its August 10 motion to expedite its motion to dismiss the Amended Complaint, the Town also moved for an order requiring Plaintiff to post a bond as a condition of staying the Town's condemnation attempt, which the Town began before the instant suit was filed.

However, despite the fact that the stay is already in effect, is unconditional, and is automatically established by the condemnation statute exclusively governing the matter, the Town filed no brief or affidavit, and cited no statutes or case law in support of the motion for a \$10,000,000 bond.

On August 11, 2020, Plaintiff filed a return to the motion for priority and bond. There, Plaintiff stated, among other things, that the motion was unsupported by any affidavit (and thus had zero supporting evidence<sup>1</sup>), and unsupported by any authority for the questionable proposition that a stay established unequivocally and unconditionally by the condemnation statute can be simply disregarded upon a condemnor's claim of urgency, whether factually supported or not.

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<sup>1</sup> In the return, Plaintiff outlined the ability to file a counter-affidavit, and in which particulars the casually stated, unsupported, claims forming the basis of the Town's motion were incorrect. The Town did not reply.

Plaintiff further noted in the August 11 return, with citation of authority and references to the record, that the August 3 Rule 12(b)(6) motion, still not briefed by the Town, should be denied.

On August 12, 2020, continuing to press forward with Plaintiff's case, Plaintiff served a notice of deposition of the Town's appraiser, Mr. Donovan, for August 27, accompanied by correspondence requesting prompt consultation on any requested change in schedule or place.

No consultation or other communication from the Town was forthcoming with respect to the deposition.

On or around August 13, 2020, Plaintiff also served interrogatories on the Town. Responses will be due around September 17.

No consultation with regard to any problem with the interrogatories has been forthcoming from the Town.

On August 17, 2020, the Town's motions to dismiss, for priority, and for bond were scheduled for September 11, 2020.

On August 21, 2020, Plaintiff filed a motion for summary judgment with an extensive supporting affidavit, outlining some of the several independent reasons why the condemnation attempt must be permanently dismissed and quashed as a matter of law.

On August 25, 2020, the Defendant Town of Pawleys Island filed the instant motion for protection from discovery against the Town, seeking an overall delay of same.

### ARGUMENT AND DISCUSSION

Despite its prior claims of urgency and expense, the Town did not consult over the motion to delay discovery, served no affidavit in support of the motion to delay discovery, and did not serve a brief or cite any statutes or case law in support of the motion.

The Town simply stated, unsworn, in its motion, that materials sought in the request for production were “voluminous,” without any further factual explanation, and similarly that discovery in the case is “likely to be extensive and very costly.”

The Town added that “there are compelling arguments” for dismissal of the suit, but did not state what those arguments are and has nowhere else set them forth or cited a single case or statute in support of its motion to dismiss.

Plaintiff reserves the right to file a brief in support of this return and in opposition to the Town’s motion.

The Town’s motion to delay Plaintiff’s discovery should be denied because:

1. Some of the subject discovery was already sought and had come due or was within hours of becoming due before the Town made any motion;
2. The instant motion for delay is without any evidentiary support for its bald unsworn, factually unspecific claims of “voluminous documents” and this assertion fails to address any other discovery such as the interrogatories or the deposition of Mr. Donovan which was noticed for August 27, 2020;
3. The request for production is only one item of discovery timely pursued by Plaintiff, and that item asks for e-mails, an alleged agreement with the Corps of Engineers, easements, instructions provided to the appraiser, and other things which should be neither voluminous nor hard to find;
4. If there are any difficulties, they are not explained or substantiated;
5. The motion is unaccompanied by an affidavit as required by Rule 6(d), SCRCPP (i.e., Defendant does not have leave to surprise Plaintiff at the last minute by serving an affidavit

only later), and the instant motion is made without compliance with Rule 11(a), SCRPC, requiring consultation before filing;

6. The 12(b)(6) motion on which the Town predicates its request to delay discovery is without merit because the motion conditionally admits the well-pled facts of the over 170 paragraphs of the Amended Complaint, which include allegations of, among other things: (a) bright-line noncompliance with the exclusive procedure for condemnation; (b) the condemnation papers exceeding the scope decided by and authority granted by Town Council; (c) lack of necessity in whole or in part of the easement sought for the purpose stated by the Town; and (d) fraud, bad faith and abuse of discretion throughout the Town's actions<sup>2</sup>;

7. If for purposes of the motion, the Town admits that it did not follow mandatory procedure, that it overstepped the power authorized by Town Council, that it pursued something that was unnecessary in whole or in part, and that it acted overall fraudulently, in bad faith and in an abuse of discretion, the Town must, as a matter of law, be denied the ability to condemn, which is exactly what the Amended Complaint prays for;

8. Plaintiff timely began discovery, to which the Town, with no urgency, did not respond at all within the time allowed and did not seek an extension or make any motion until the

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<sup>2</sup> The Court is familiar with the standard for such a motion, requiring that all the allegations of the complaint be assumed as true for purposes of the motion, and that all reasonable inferences that may be made from those facts in favor of the plaintiff be similarly assumed. A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999); see also Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999)(declaring that if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper).



time had expired or virtually expired, after Plaintiff's counsel communicated in attempt to determine status and consult over the matter;

9. When Plaintiff's counsel made contact to consult before filing a motion to compel, the consultation was postponed and the Town's motion was then filed without consultation and without certification of consultation, in violation of Rule 11(a)<sup>3</sup>;

10. As alleged in the Amended Complaint, the Town did not respond at all or as legally required to a previous, pre-suit FOIA request having a bearing on the matter and covering similar material to that in the request for production, which gave the Town notice of certain items even before suit was filed, and which independently requires response regardless of whether any motions are pending, granted or denied in the instant case;

11. Plaintiff discovered yesterday that the Town sent an acknowledgement of the FOIA request to the wrong, nonexistent, address and therein demanded a substantial deposit of money before even beginning to comply with requests for materials pertaining to the Town's attempt to take Plaintiff's land;

12. The factually unsupported putative urgency upon which the Town based its motion for priority and bond is completely incongruent with its request to delay discovery in the case, because when the Town's motion to dismiss is denied, the parties then will not have enough time to get their discovery done amidst further and continued claims of urgency by the Town;

13. However, the Town's request to delay discovery is consistent with the allegations of the Amended Complaint that the Town has sought to conceal what it has been doing and

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<sup>3</sup> As noted in the affidavit accompanying this return, consultation occurred afterwards, an agreement was thought to have been reached, and then no agreement was confirmed.

conceal the true facts, is consistent with not responding factually to the Amended Complaint, is consistent with not serving factual affidavits with two of the Town's motions, is consistent with not responding to the request under FOIA for factual materials bearing on the contents of the subject easements and attempts at condemnation, and is consistent with ignoring responses to requests for production and communications seeking to schedule a deposition until Plaintiff followed up.

The Town has accordingly failed to establish good cause for its request for delay.

For the foregoing reasons and others, the Town's motion should be denied.

Respectfully,

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)

Stanton Law Offices, P.A.

PO Box 245

Columbia, SC 29202

Tel: (803) 929-1484

[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)

*Attorney for Sunset Lodge, LLC*

8/27/20

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
|                         | ) |                                   |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) | AFFIDAVIT IN SUPPORT OF           |
|                         | ) | RETURN TO TOWN'S                  |
| Plaintiff,              | ) | MOTION FOR PROTECTION             |
|                         | ) | FROM ALL DISCOVERY                |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |

1. The Town's stated basis for an earlier motion it filed was urgency. The Town now moves for a delay of discovery and, essentially, a delay of any progress by Plaintiff in prosecuting Plaintiff's case.

2. On July 21, 2020, the Summons and Complaint were served in this case, alleging, among other things, concealment of facts by Town actors, a shell game in defining the contents and necessary scope of the easement sought, and a flouting of the rules for pursuing condemnation.

3. On July 23, 2020, Plaintiff served requests for production, including, among other things, requests for information pertaining to the appraisal, which, as alleged in the Complaint and in a later summary judgment affidavit, the Town had outright failed to serve before serving a condemnation notice as required by statute.

4. On July 31, 2020, Plaintiff served the Amended Complaint.

5. On August 3, 2020, the Defendant Town of Pawleys Island filed a Rule 12(b)(6) motion to dismiss the Amended Complaint, which the Town filed in lieu of answering the factual allegations of the Amended Complaint.

6. However, the Town filed no brief and cited no statutes or case law in support of the 12(b)(6) motion.

7. On August 10, 2020, the Defendant Town of Pawleys Island filed a motion to give priority to the case in general and for an expedited hearing on the nonjury docket for the Town's as yet unbriefed Rule 12(b)(6) motion. The Town's stated basis was urgency.

8. However, the Town served no affidavit in support of the motion, and did not serve a brief or cite any statutes or case law in support of the motion.

9. In its August 10 motion to expedite its motion to dismiss the Amended Complaint, the Town also moved for an order requiring Plaintiff to post a bond as a condition of staying the Town's condemnation attempt, which the Town began before the instant suit was filed.

10. However, despite the fact that the stay is already in effect, is unconditional, and is automatically established by the condemnation statute exclusively governing the matter, the Town filed no brief or affidavit, and cited no statutes or case law in support of the motion for a \$10,000,000 bond.

11. On August 11, 2020, Plaintiff filed a return to the motion for priority and bond. There, Plaintiff stated, among other things, that the motion was unsupported by any affidavit (and thus had zero supporting evidence), and unsupported by any authority for the questionable proposition that a stay established unequivocally and unconditionally by the condemnation statute can be simply disregarded upon a condemnor's claim of urgency, whether factually supported or not.

12. In the return, Plaintiff outlined the ability to file a counter-affidavit, and in which particulars the casually stated, unsupported, claims forming the basis of the Town's motion were incorrect. The Town did not reply.

13. Plaintiff further noted in the August 11 return, with citation of authority and references to the record, that the August 3 Rule 12(b)(6) motion, still not briefed by the Town, should be denied.

14. On August 12, 2020, continuing to press forward with Plaintiff's case, Plaintiff served a notice of deposition of the Town's appraiser, Mr. Donovan, for August 27, accompanied by correspondence requesting prompt consultation on any requested change in schedule or place.

15. No consultation or other communication from the Town was forthcoming with respect to the deposition.

16. On or around August 13, 2020, Plaintiff also served interrogatories on the Town. Responses will be due around September 17.

17. No consultation with regard to any problem with the interrogatories has been forthcoming from the Town.

18. On August 17, 2020, the Town's motions to dismiss, for priority, and for bond were scheduled for September 11, 2020.

19. On August 21, 2020, Plaintiff filed a motion for summary judgment with an extensive supporting affidavit, outlining some of the several independent reasons why the condemnation attempt must be permanently dismissed and quashed as a matter of law.

20. Plaintiff asked if the motion could be heard at the same time as the other scheduled motions, but the Town wrote the court and stated the Town did not consent.

21. On August 25, 2020, the Defendant Town of Pawleys Island filed a motion for protection from discovery against the Town, seeking an overall delay of same.

22. Despite its prior claims of urgency and expense, the Town did not consult over the motion to delay discovery, served no affidavit in support of the motion to delay discovery, and did not serve a brief or cite any statutes or case law in support of the motion.

23. The Town simply stated, unsworn, in its motion, that materials sought in the request for production were “voluminous,” without any further factual explanation, and similarly that discovery in the case is “likely to be extensive and very costly.”

24. The Town added that “there are compelling arguments” for dismissal of the suit, but did not state what those arguments are and has nowhere else set them forth or cited a single case or statute in support of its motion to dismiss.

25. Some of the subject discovery was already sought and had come due or was within hours of becoming due before the Town made any motion;

26. The motion for delay is without any evidentiary support for its bald unsworn, factually unspecific claims of “voluminous documents” and this assertion fails to address any other discovery such as the interrogatories or the deposition of Mr. Donovan which was noticed for August 27, 2020;

28. The request for production is only one item of discovery timely pursued by Plaintiff, and that item asks for e-mails, an alleged agreement with the Corps of Engineers, easements, instructions provided to the appraiser, and other things which should be neither voluminous nor hard to find;

29. If there are any difficulties, they are not explained or substantiated by the Town;

30. The motion is unaccompanied by an affidavit as required by Rule 6(d), SCRCP (i.e., Defendant does not have leave to surprise Plaintiff at the last minute by serving an affidavit only later), and the instant motion is made without compliance with Rule 11(a), SCRCP, requiring consultation before filing and certification regarding same;

31. The well-pled facts of the over 170 paragraphs of the Amended Complaint include allegations of, among other things: (a) bright-line noncompliance with the exclusive procedure for condemnation; (b) the condemnation papers exceeding the scope decided by and authority granted by Town Council; (c) lack of necessity in whole or in part of the easement sought for the purpose stated by the Town; and (d) fraud, bad faith and abuse of discretion throughout the Town's actions;

32. Plaintiff timely began discovery, to which the Town, with no urgency, did not respond at all within the time allowed and did not seek an extension or make any motion until the time had expired or virtually expired, after Plaintiff's counsel communicated in attempt to determine status and consult over the matter;

33. When Plaintiff's counsel made contact to consult before filing a motion to compel, the consultation was postponed and the Town's motion was then filed without consultation and without certification of consultation, in violation of Rule 11(a);

34. Consultation occurred afterwards, an agreement was thought to have been reached, including agreements regarding the request for production and the scheduling of the deposition, and then no agreement was confirmed when Plaintiff followed up to confirm.

35. As alleged in the Amended Complaint, the Town did not respond at all or as legally required to a previous, pre-suit FOIA request having a bearing on the matter and covering similar material to that in the request for production, which gave the Town notice of certain

items even before suit was filed, and which independently requires response regardless of whether any motions are pending, granted or denied in the instant case;

36. Plaintiff discovered yesterday that the Town sent an acknowledgement of the FOIA request to the wrong, nonexistent, address and therein demanded a substantial deposit of money before even beginning to comply with requests for materials pertaining to the Town's attempt to take Plaintiff's land; and

37. The Town has offered no assurance that when the Town's motion to dismiss is denied, the parties then will have enough time to get their discovery done amidst further and continued claims of urgency by the Town.

Pursuant to S.C. Sup. Ct. Order 2020-04-22-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify the foregoing and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

s/M. Baron Stanton  
M. Baron Stanton

Date: 8-27-20



August 27, 2020 Landowner motion to compel response to first request for production with exhibits including subject discovery papers.

|                         |   |                                        |
|-------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS           |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600      |
| Sunset Lodge, LLC,      | ) |                                        |
| Plaintiff,              | ) | NOTICE OF MOTION                       |
| v.                      | ) | AND MOTION                             |
| Town of Pawleys Island, | ) | TO COMPEL AND FOR EXPENSES             |
| Defendant.              | ) | <b>(Rule 40(a)(2) Priority Matter)</b> |

Plaintiff hereby moves the Court pursuant to Rule 37, SCRPC, for an order compelling Defendant to answer the interrogatories and/or respond to the requests for production here listed:

**Plaintiff's First Request for Production, All Items.**

If the motion is granted, Plaintiff also moves pursuant to Rule 37(a)(4), SCRPC for an award of the expenses of making the motion, including reasonable attorney's fees.

Copies of these discovery requests, their certificate(s) of service, and any responses received are attached hereto.

The grounds for this motion are that the requests were duly served on the dates indicated and:

XX that no response has been received within the time prescribed, or within the time of any applicable extension: Item(s) All.

\_\_\_\_\_ that the responses are evasive or nonresponsive to the request and are therefore equivalent to a failure to respond: Item(s) \_\_\_\_\_.

\_\_\_\_\_ that an unspecific or otherwise unsupported claim of privilege is asserted: Item(s) \_\_\_\_\_.

\_\_\_\_\_ that the objection stated is invalid or otherwise unsupported by facts:

Item(s) \_\_\_\_\_ .

\_\_\_\_\_ that the responses are not provided under oath as required by rule.

\_\_\_\_\_ that \_\_\_\_\_.

Accordingly, this Court should enter its order compelling full responses to these requests within fifteen (15) days of the date of entry of the order, or within any shorter period prescribed by the Court.

The undersigned hereby affirms

\_\_\_\_\_ that the opposing party is pro se, and no consultation is required, or

XX that prior to filing this motion he has communicated orally or in writing with opposing counsel and has attempted in good faith to resolve the matter, or

XX that consultation would serve no useful purpose, or

XX that consultation could not timely be held, or

\_\_\_\_\_ that \_\_\_\_\_.

Respectfully submitted,

s/M. Baron Stanton  
M. Baron Stanton (Bar#7970)  
Stanton Law Offices, P.A.  
PO Box 245  
Columbia, SC 29202  
Tel: (803) 929-1484  
[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)  
*Attorney for Sunset Lodge, LLC*

8/27/20

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
|                         | ) |                                   |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | PLAINTIFF'S FIRST                 |
| Plaintiff,              | ) | REQUEST FOR PRODUCTION            |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: Please respond in writing in accordance with Rule 34, SCRCF, within thirty (30) days of the date of service hereof, stating with respect to each type or description of document or other thing set put below, that you will produce all responsive items for inspection and copying, at the time and place stated, and if you will not, stating your particular objection including the factual basis for same:

Place and time: The office of the undersigned, 10:00 a.m. thirty-five (35) days after the date of service hereof.

Documents (as broadly defined) or other things:

1. All minutes of Town Council meetings after 2-18-20; and
  2. The executed memorandum of understanding with the U.S. Army Corps of Engineers;
- and
3. All minutes, written accounts or summaries, or recordings of Town owner/resident/interested-citizen meetings, or P.I.C.A. meetings (as opposed to Council

meetings), or Town committee meetings, at which renourishment and public access easements are discussed; and

4. All signed easement grant documents accepted by the Town but not recorded before March 1, 2020; and

5. All signed easement grant documents received by the Town (regardless of whether accepted) but not recorded before March 1, 2020; and

6. All communications setting forth:

a. the terms of engagement of Jayroe Appraisal Company or any other appraiser or appraisal company in doing any appraisals for purposes of possible condemnation of, or compensation for, any renourishment and public access easement; or

b. to Jayroe Appraisal Company or any other appraiser or appraisal company in doing any appraisals for purposes of possible condemnation of, or compensation for, any renourishment and public access easement, the specific terms of the easement sought; or

c. special instructions, assumptions to be made, or compensation of Jayroe Appraisal Company or any other appraiser or appraisal company in doing any appraisals for purposes of possible condemnation of, or compensation for, any renourishment and public access easement; and

7. All communications by any Town employee, councilperson, mayor, former mayor, Town attorney or other Town official, on Town or personal media (e.g., on Town or personal e-mail address, IM, stationery, text, etc.) between January 1, 2017 and the time of your response to this request, by e-mail, letter, text, or otherwise, with the U.S. Army Corps of Engineers regarding:

- a. easements required on any part of the Island; or
  - b. easements not yet obtained at the time of the communication; or
  - c. the requested, suggested or required contents or form or format thereof; or
  - d. proposed, requested, allowed, or denied changes, alterations, noncompliance, or permitted variations in such easements; or
  - e. the source of the law, regulation or policy, if any, requiring or dictating the contents, form or format of such easements; or
  - f. if the contents, form or format of the easements is prescribed by a policy, rather than a law or regulation, any request by the Town, and any response obtained, for information about who adopted the policy, in what manner or procedure it was adopted, when it was adopted, or where it can be found officially stated in written form.
8. Written consent and approval of the appraiser to publish parts of the contents of the appraisal, without publishing limitations, assumptions and qualifications.

7/27/27

s/M. Baron Stanton  
M. Baron Stanton (Bar#7970)  
Stanton Law Offices, P.A.  
PO Box 245  
Columbia, SC 29202  
Tel: (803) 929-1484  
[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)  
*Attorney for Sunset Lodge, LLC*

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
|                         | ) |                                   |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | CERTIFICATE OF SERVICE            |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
| _____                   | ) |                                   |

The undersigned does hereby certify that the undersigned has this date served the foregoing by causing a copy thereof to be e-mailed as indicated in the attached e-mail copy pursuant to S.C. Sup. Ct. Ord. 2020-04-22-01, to the address indicated below:

ddurant@lawofficesofdurant.com  
(N. David DuRant, Sr., Esquire)

s/M. Baron Stanton  
M. Baron Stanton

Date: 7/27/20

**B stanton**

---

**From:** B stanton <bstanton@stantonlaw.com>  
**Sent:** Monday, July 27, 2020 4:28 PM  
**To:** 'David Durant'  
**Cc:** litigation@lawofficesofdurant.com; 'Gladys Oranga'  
**Subject:** Stanton v Town of Pawleys Island, 2020CP2200602; Also Sunset L v. ... 00600, and Beattie v. ... 00601  
**Attachments:** Sunset L First RFP 7-27-20.pdf; Beattie First RFP 7-27-20.pdf; Stant First RFP 7-23-20.pdf

David, attached and hereby served on the Town are requests for production from Sunset L. and Beattie in those respective actions. FYI, these are identical to the request from Stanton served last week, by mail to the Town Clerk. A courtesy copy of the latter document is also attached.

Best,

Barry

Cell 803-530-2642  
Offc. 803-929-1484 (currently undergoing work)  
POB 245  
Cola., SC 29202



STIPULATION TO SUFFICIENCY OF ONE REPRESENTATIVE COPY OF EACH DESIGNATED PAPER FROM ONE OF THE THREE CASES, TO INCLUDE LESS THAN ALL MATERIAL ORIGINALLY DESIGNATED, AND TO ABILITY OF ANY PARTY TO SUPPLEMENT THE RECORD WITH COPIES FROM THE OTHER TWO CASES IN THE EVENT THE PARTY DEEMS NECESSARY

The parties stipulate that reference to a paper in this Challenge I action, or reference to a paper in the subsequent Challenge II action, be taken as an accurate reference to the corresponding substantially similar or identical papers and passages in the other two Challenge I or Challenge II actions. The parties stipulate to including in the Record on Appeal, less than all the material previously designated, to wit, including, where substantially identical in all three actions, one designated representative pleading, order, or other paper from one Challenge action rather than all three. The parties stipulate that either party may later supplement the record with the separate additional counterpart of such an item from the other two Challenge actions if that party deems it desirable to do so.

SO STIPULATED:

s/M. Baron Stanton  
M. Baron Stanton  
Attorney for Appellants

s/William C. Dillard, Jr.  
William C. Dillard, Jr.  
Attorney for Respondent

Certificate of Counsel

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties, and no other material.

s/M. Baron Stanton  
M. Baron Stanton (S.C. Bar No. 7970)  
STANTON LAW OFFICES, P.A.  
1230 Richland Street  
P. O. Box 245  
Columbia, SC 29202  
803-929-1484 (Use 803-530-2642.)  
bstanton@stantonlaw.com  
ATTORNEY FOR APPELLANTS  
SUNSET LODGE, LLC AND  
FRANKLIN D. BEATTIE, AS TRUSTEE

Date: August 28, 2023

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

---

CASE NO. 20-CP-22-00600  
CASE NO. 20-CP-22-00601

---

Sunset Lodge, LLC, .....Appellant,

v.

Town of Pawleys Island,.....Respondent.

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie  
Preservation Trust, .....Appellant,

v.

Town of Pawleys Island,.....Respondent.

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CERTIFICATE OF SERVICE

---

I, M. Baron Stanton, do hereby certify that I have, on this date, served the foregoing  
**Record on Appeal** upon the Respondent by causing a copy to be e-mailed in accordance with  
current rules to [will@belserpa.com](mailto:will@belserpa.com) . The postal mailing address of the above addressee is:

William C. Dillard, Jr., Esquire  
Post Office Box 96  
Columbia, SC 29202

s/M. Baron Stanton  
M. Baron Stanton

Date: August 28, 2023