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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. IV of IV

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

Other Counsel of Record:

William C. Dillard, Jr., Esquire (S.C. Bar No. 78986)
P. O. Box 96
Columbia, SC 29202
803-929-0096
will@belserpa.com
ATTORNEY FOR RESPONDENT
TOWN OF PAWLEYS ISLAND

N. David DuRant, Sr., Esquire (S.C. Bar No. 1803)
P.O. Box 14722
Surfside Beach, SC 29587
843-650-7800
ddurant@lawofficesofdurant.com
ATTORNEY FOR RESPONDENT
TOWN OF PAWLEYS ISLAND

Norwood D. DuRant, Jr. (S.C. Bar No. 101723)
P.O. Box 14722
Surfside Beach, SC 29587
843-650-7800
norwooddurant@lawofficesofdurant.com
ATTORNEY FOR RESPONDENT
TOWN OF PAWLEYS ISLAND

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*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

April 22, 2021 Landowner updated fee petition.

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.)	
)	

4/20/21
RESTATEMENT OF 1/24/21
AFFIDAVIT OF M. BARON STANTON
RE REASONABLE FEES AND EXPENSES IN CASE
TO 5/1/21
(A Second Supplement
and Third Amendment, Cumulative of
Prior Supplements and Amendments)

Personally appears under oath or making affirmation as set forth below, M. Baron ("Barry") Stanton, who being sworn and under penalty of perjury, states as follows:

A. My Affidavit of 1/24/21 stated, subject to supplementation, the minimum amount of fees and expenses requested as of 1/24/21, for responding to the Town's first condemnation suit commenced against Plaintiff. The Affidavit assumed minimal further proceedings in the matter.

B. The fees component included a separately identified block of a specific number of hours attributed to the beginnings of a case Plaintiff had to file in response to the second condemnation suit commenced by the Town against Plaintiff while the first condemnation suit by the Town was still being challenged and was stayed. (The second challenge suit filed by the

Plaintiff is referred to as the "Challenge II case.")

C. My Affidavit of 1/24/21 was amended in one or more cases 1/26/21 to correct a typo concerning the statement of a number in words in which the word "thousand" was removed.

D. Additional time was devoted to the case after 10:30 p.m. 1/24/21, which is where the stated time stopped in the 1/24/21 Affidavit.

E. Additionally, a court reporter granted a customer discount and rendered the actual bill on a previously estimated $1500 bill from her. That is, the court reporter kindly granted a $250 customer discount on the deposition expense previously estimated at $1,500.00 in the 1/24/21 Affidavit, reducing the actual deposition cost to $1,339.80, thus allowing a downward adjustment of that previously estimated cost by $53.40 per plaintiff.

F. On 2/5/21, this revision to the court reporter charge and the additional time were presented in a First Supplement and Second Amended Affidavit, which also estimated time from 2/4/21 through a selected future date of 2/20/21.

G. Further proceedings ensued. At the request of the Town, we are now far beyond 2/20/21. Actual, rather than estimated, time from 2/4/21 to 2/20/21 is now available. Actual time from 2/21/21 to 4/20/21 is also available, although not in the billing system. Additionally, estimated time can be provided from 4/21/21 through a selected date of 5/1/21, subject to supplementation or revision.

H. Additionally, the time in the previously included component for the beginnings of the Challenge II case, along with the $180.32 filing fee in that case, has now been backed out so that it can be added to the other time and expenses now incurred in the Challenge II case and be separately applied for in the Challenge II case, so as to avoid any confusion, argument, or further

delay in either matter.

I. I discovered that in previously tallying the time identified for the beginnings of the Challenge II case within the overall total for the instant case, I identified all the time and instances, but left out one of the identified days in adding up the total hours. The hours identified for the Challenge II case in the footnote of the 1/24/21 Affidavit should have been 54.9 rather than 49.5.

J. I therefore restate the Affidavit, cumulative of all the above, as follows:

1. I am the sole shareholder and designated director of Stanton Law Offices, P.A. and a member in good standing with the South Carolina Bar. I offer this Affidavit on my personal knowledge pursuant to this Court's January 20, 2021 Order granting Plaintiff's motion for 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 the Plaintiff, and permanently prohibiting the filing thereof." (Order at 1.)

2. Therein, the Court stated, "Any request for fees should be presented by separate petition/motion in this action." (Order at 24.) A brief motion based on this Affidavit was filed with the initial version of this Affidavit 1/24/21. A proposed order and proposed Form 4 were also filed at that time but will now need to be updated.

3. In this separate action successfully challenging the right of the Town to condemn all or part of a proposed easement on Plaintiff's property, which the Town sought to do in June 2020 by service of a condemnation notice, S.C. Code Ann. §28-2-510(A) provides that the landowner's reasonable costs and litigation expenses incurred "must be awarded" if the court determines that the condemnor has "no right to take" all or part of the landowner's property the

condemnor seeks to condemn. The court has so determined. S.C. Code Ann. §28-2-30(14) defines the recoverable "litigation expenses" to include reasonable fees and charges, disbursements and expenses necessarily incurred from the time of service of the condemnation notice, including reasonable attorney's fees.

4. I graduated from the University of South Carolina School of Law in 1986. I was admitted to the South Carolina Bar the same year. I have practiced law in South Carolina full-time and continuously since then.[1] I am in good standing; I am familiar with standards and

[1]My present law office was established in 1994. I have a listed phone number. I established and have continued the professional practice of Stanton Law Offices, P.A. without maintaining a resume, advertising, having a substantial sign or having website. I do not use a Facebook page or any social media for business or professional promotion. I do not apply to, respond to, pay, or provide any listings on or in, Martindale Hubbell, AVVO, Who's Who, Best Lawyers, Superlawyers, the Better Business Bureau, any chamber of commerce, Linked-In, or any lawyer-promoting, lawyer-ranking, lawyer-listing, or other lawyer-advertising or lawyer-referring web services or other publications. Any found are unauthorized, compiled robotically or in other unsanctioned manner, and are likely inaccurate.

I therefore am not presenting with this affidavit, a web-page printout or other literature written about me in third person introducing me or describing me or my routine court admissions.

I do not report my pro bono work in order to get recognition or credit for it. The identities of my clients are not discussed or ever advertised.

Exclusive of law-related work before law school in two law firms, an indigent legal services office, the state legislature and a summer in Washington, and exclusive of clerking with a firm throughout law school, I worked for two firms before opening my own office.

One, the successor to a firm opened by one of our former governors, engaged primarily in business and private international law and commercial litigation, in state and federal courts. I engaged in all those activities, as well as served as the firm's immigration law department at a time when I was one of few immigration lawyers in South Carolina. My first real estate closing my first year was an occupied office building consuming nearly an entire city block, and my first federal litigation commencing in my first year was multi-year litigation of a business dispute among three airlines involving claims of fraud, unfair trade practices, violation of the Sherman and Clayton Antitrust Acts, and violation of the Racketeer Influenced and Corrupt Organizations Act. The case, defended by a Miami in-house legal department and firms from Charleston, Atlanta, and New York, was resolved before the demise of the biggest defendant in the late 1980s.

The other firm, at the time a 90-year-old firm, provided a full range of services, and I was engaged in all, although primarily in civil litigation and transactional work, with a dash of white collar criminal work.

I have owned and run my own operation for the last twenty six years as of April of 2020.

I have formed -- and represented in consultation, transactions and litigation -- environmental engineering firms, technology companies, and real estate ventures.

I have sued and defended banks, construction companies, title insurance companies, sellers of products, and injurers of people. I have defended radio stations and sold radio stations in bankruptcy proceedings. I have overseen, litigated the successful result of, and defended on appeal, a corporate proxy battle, and have litigated the meanings of and applications of the provisions of the corporate and LLC codes. I have negotiated the sale of oil and gas reserves. I have sued for violations of the Securities Act of 1933, the Securities Exchange Act of 1934 and related laws.

I have done: mergers and acquisitions work; health- and-casualty-insurance inter-company negotiations and consulting; appellate work of all kinds (including work resulting in a published case on entitlement to and reasonableness of attorney's fees); injury and malpractice litigation; commercial lease negotiations and eviction litigation; closings of residential and commercial real estate sales; distributorship and international distributorship structuring and negotiation; occasional licensure and other administrative or regulatory proceedings and contested cases.

I have done: all sides of debtor-creditor law, from counseling, to asset structure planning, to strategic response to collections, to all phases of litigation, to debtor or creditor bankruptcy (from time to time); property tax and tax sale contested cases and litigation; condemnation defense and negotiation; land use, building and zoning work; horizontal property regime work and litigation (e.g., condominium and condominium-timeshare); coastal zone litigation; and some intellectual property drafting, negotiation, consulting and litigation.

I have also done: lawyer ethics and grievances representation; construction litigation; constitutional and state tort claims litigation; housing law litigation; litigation involving Articles 2, 3, 4, 5, 6, 7 and 9 of the UCC; trust and probate litigation; death and injury litigation; defamation litigation, occasionally bizarre family law; complex estate planning (now mostly from a consult-structure-and-refer standpoint); when required, criminal law (federal white collar, or magistrate or municipal court adjuncts to other cases); school law; labor and employment law and litigation; land use litigation; principal-surety and surety-beneficiary litigation; lender liability litigation; wreck cases; and things I, and often others, have never done before.

I have represented in litigation and otherwise, cow owners, dog owners, horse owners, car owners, Middle Eastern royalty, politicians, horse stables, server farms (a/k/a internet "clouds"), lawyers, banks, title insurance companies, engineers, musicians, writers, unconventional lenders, real estate brokers, real estate developers, contractors, automobile dealers, a produce company, a school, doctors, dentists, tradesmen, restaurant owners, homeowners, unit owners, landlords, tenants, debt and residual asset purchasers, heavy equipment and other industrial equipment companies, every-day working people, captains of

qualities of legal service rendered from town to town, county to county, state to state, and at times, to some extent, country to country; I am familiar with the rates of colleagues in the community, across the country and, from time to time, in some instances, in other parts of the world; I am familiar with the needs, demands, and results in the instant case; I am familiar with the factors of Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E. 2d 659 (1993) pertaining to the reasonableness of attorney's fees; and am familiar with the fee and expense recovery provisions in S. C. Code §§28-2-510(A) and 28-2-30(14), cited above, which mandate an award of litigation expenses to Plaintiff in this case.

5. I served as sole counsel in this proceeding. Others in my office, with whose work I am also familiar, and with whom I coordinated, and whom I trained and supervised, have, or

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industry, the poor, the injured, the convicted, the downtrodden, the disbarred, the depressed, the crazy, and the oppressed.

I have lectured to the bar over the years on such topics as defamation, lawyer ethics, and lender liability. I have been written about anonymously as a lawyer with interests in the economics of law practice and as a lawyer playing in a rock band, and have spoken on the radio about collection of judgments.

I have been a member of the Pawleys Island Civic Association for 24 years. I served on the board of an entirely private specialized instruction/special needs school for the nine year maximum (at times, vice-chairman, chair of development committee, and chair of building committee) and was heavily involved in the planning, siting, detailed design, architecture, legal, and construction oversight functions for two beautiful large buildings and grounds improvements. For the latter, I received the board's Ed Pulaski award, complete with genuine used Pulaski Tool, recognizing contribution of work and multi-purpose invention for no recognition or gain, simply out of desire to fill a need.

I have also served on the board of a homeowner's association for a mainland mobile home beach enclave, last as president. I am also a member of the Waverly Creek [owner's] Association. I have served as the live music provider and coordinator for the Pawley's Island Surf Club's efforts to raise funds for widows and families of dead surfers. Most of my community work and modest philanthropic activity (including pro bono cases lasting years), however, is unreported if not anonymous.

may have, also provided directly related services.

6. My own hourly rate of $190 in this case is in my estimation, lower than that customarily charged by others in the locality for similar services. We actually considered Charleston counsel with a focus or concentration in the area of condemnation law and practice, but the aspects of whose other practice background and local familiarity also might be expected to differ. His rate was approximately 2.6 times my rate, his partner's was about 2.3 times my rate, his associate's rate was about 1.4 times my rate, and his law clerks' and paralegals' rates approached 0.9 times my rate. I note that the rate of one of the Town's three opposing counsel of record in this case appears to be about 1.3 times my rate. These ranges are consistent with my general observation that I charge sometimes half to a third of the rate charged by peers with comparable experience, credentials and capabilities. In a fee-shifting situation such as this one, this is to the advantage of the opposing parties in this case in the event the opposing party does not prevail. My rates are, however, generally what I charge in the locality for similar services.

7. Given: (a) the nature, extent and difficulty of the legal services rendered; (b) the time and labor devoted to the case; (c) the professional standing of counsel; (d) the contingency of compensation, (e) the fee customarily charged in the locality for similar services; and (e) the beneficial results obtained: The fees and expenses of my office are reasonable and the fees and expenses sought by Plaintiff are reasonable. Fees and out-of-pocket expenses of at least $56,712.56 as of 5/1/21, directly associated with the challenge to the Condemnation Notice served, should be awarded as the costs and expenses, including reasonable attorney's fees, of Plaintiff up to this point in the case. Additional expenses of this nature should be awarded for work and outlays following 5/1/21 to the award and final conclusion of this case Plaintiff has

been required to bring. In this regard, I note that, after summary judgment was already preliminarily granted by Form 4 order, the Town filed a motion in which the Town sought to disqualify me as counsel to act in a bench trial of the Sunset and Beattie cases; I had to respond. I therefore do not know what further work may be generated by the Town between 5/1/21 and the conclusion of the case, upon which we have not yet expended efforts.

8. Following is a statement of time spent and expenses incurred. Time spent and expenses incurred in the matter for the approximately eight months (7/2/20 to 3/3/21) represented by the 8/5/20 through 3/12/21 statements of my office are as follows:

8/5/20 statement	M. Baron Stanton	166.8	hours[2]
9/18/20 statement	M. Baron Stanton	78.1	hours

[2] The August, September, October and November, statements made separate notations of time currently charged and time for which charges were currently deferred. The October statement confirmed the terms of this deferral as follows:

> "[Y]ou will have seen some entries on previous bills, of items "noted, not billed," and may see this on the present bill and future bills. Additionally, you may occasionally see an outright "courtesy discount" or "courtesy deferral" or like notation. I want to explain this. These are measures we are taking purely out of sympathy for the present situation, and are meant to temporarily lighten your burden. What I want to make clear is that these measures are for you and are not intended for the collateral benefit of any third party, and all the time spent on the matter was necessarily and reasonably spent on the matter. If we find ourselves in a situation where we are able to recover from a third party for the time and expense incurred on the matter, we will present these items and this money at that time. Additionally, if we recover any fund from the opponent in judgment or settlement or otherwise, we reserve the right to bill you for some or all of these accommodations.

The deferred time included in the above time subtotals was 23.2 hours in the 8/5/20 statement, 6.8 hours in the 9/18/20, 18.0 hours in the 10/9/20, and 8.9 hours in the 11/18/20. Our engagement agreement provides that matters presented in statements stand as stated unless any disagreement over them is presented within a specified time.

	Austin B. Tepper	0.4	hours
10/9/20 statement	M. Baron Stanton	128.5	hours
11/18/20 statement	M. Baron Stanton	72.5	hours
1/22/21 statement	M. Baron Stanton	209.7	hours
3/12/21 statement	M. Baron Stanton	173.6	hours
Less Ch.II time:			
11/11/20	"	(0.5)	hours
11/12/20	"	(6.4)	hours
11/13/20	"	(1.9)	hours
11/16/20	"	(1.0)	hours
12/15/20	"	(1.7)	hours
1/5/21	"	(6.8)	hours
1/6/21	"	(2.9)	hours
1/7/21	"	(4.0)	hours
1/8/21	"	(1.0)	hours
1/9/21	"	(5.6)	hours
1/10/21	"	(7.0)	hours
1/11/21	"	(3.0)	hours
1/12/21	"	(7.7)	hours
1/13/21	"	(5.4)	hours
Total of time from available			

Statements		774.3	hours[3] x	$190 =	$147,117.00
Expenses advanced	(e.g., filing fees, service of process, photocopies, postage, courier, court reporter, mileage at lower than federal reimbursement rate, mediator fee, etc. through 3/12/21 stmt.)				$885.68

9. Time spent and expenses incurred in the matter since the 3/12/21 statement, not yet in the billing system, for the time from 3/4/21 to 4/20/21 are as follows:

3/5/21	M. Baron Stanton	4.5	hours
3/10	"	1.9	"
3/11	"	6.2	"
3/12	"	4.1	"
3/13	"	2.0	"
3/14	"	6.4	"
3/15	"	10.1	"
3/16	"	12.8	"
3/17	"	6.1	"
3/18	"	6.8	"
3/19	"	8.5	"
3/20	"	2.2	"
3/22	"	0.8	"

[3] This total omits the 0.4 hours of Austin Tepper as de minimis in order to simplify the matter, as his time was billed at an hourly rate of $45.

3/23	"	1.2	"			
3/24	"	1.2	"			
3/25	"	7.2	"			
4/1	"	1.3	"			
4/8	"	1.2	"			
4/19	"	1.5	"			
4/20	"	0.5	"			
Total of time post-3/3/21 not yet in system		86.5	hours	x $190	=	$16,435.00
Expenses advanced	(e.g., post-3/12/21-stmt. filing fees, service of process, photocopies, postage, courier, court reporter, mileage at lower than federal reimbursement rate, mediator fee, etc. through 4/20/21)					$-0-

10. Additionally, I estimate that an average of 3 hours per day from 4/21/21 to 5/1/21, for a total of 30 hours, at a charge of $5.700.00 will be required to conclude this case, but based on past experience and the recent filings of the Town, this may be way under. This estimate is with a reservation of right to amend or supplement and assumes only a virtual motion hearing on papers, no further discovery or evidence by the Town, no further delay, and no appeal by the Town or Plaintiff.

11. Subject to these assumptions, and reserving the right to amend or supplement, Plaintiff hereby requests $57,303.01 as the award of fees and expenses, through May 1, 2021.

12. The foregoing time and expenses do not include some things. The expenditure of time and effort, including extensive legal and factual research and review, actually began at or

before May 18, 2020, but no time or charges are included until after July 1, 2020. I would estimate I spent 40-50 hours, but because I did not record all the time as such and reconstruction for purposes of a firmer estimate would require numerous hours itself, I would be confident of three-quarters of that figure, viz., 30 hours. Before May 18, 2020, the Town publicized its threats of condemnation. On May 18, 2020, the Town Council held a publicized, live-streamed meeting at which it voted to pursue condemnation. I increased research on the matter at that time. I commenced representation of Beattie and Sunset Lodge, in addition to myself, on June 23, 2020. The Town served a condemnation notice on Sunset Lodge June 22, 2020, on me June 23, 2020, and on Beattie, June 30, 2020. As previously noted, my statements start with July 2, 2020, not the earlier date of service of the condemnation notice.

13. In addition to the time from around May 18, 2020 to July 1, 2020, to my recollection, there was also time necessarily spent directly on the case from time to time, which I simply did not record. My estimate is thirty to as much as forty hours over the time the case has been pending. This includes miscellaneous phone calls and e-mails, inspecting or further examining the site and other sites, expediting of transmittals, re-reading of previous work product and items from third parties, late-night and weekend research during time previously set aside for personal or family activity or inactivity, etc.

14. The time included in statements also only includes travel time one-way for one of the two six hour round trips from Columbia to Georgetown for in-person hearings (the other round trip not being included at all and being attributed to the Challenge II case) and travel one-way to the Pawleys area for the deposition of the appraiser at the office of opposing counsel.

15. The time included in statements does include actual in-court or hearing time, but

the money calculations herein do not increase the applicable rate by one-third. Our fee agreement with Plaintiff in this case provides: "We may in our discretion, increase our rates by up to 1/3 for actual in-court or hearing time, depending upon the nature of the case." We have not exercised that increase for the seven hearings or in-court appearances in the case.

16. Unless copying was for a large batch by an out-of-house service, the expense charges generally do not include all out-of-pocket expense for copying. They also do not include all postage. They also do not include mileage other than one way from Columbia for the in-person hearing or deposition. They also do not include any other time or mileage from Columbia for any other trips to the area, nor do they include any overnight accommodations or meals charges. They also do not include service of process by personal delivery of three summonses and complaints for this action and three summonses and complaints for the challenges to the new notices delivered by the Town while the condemnation was stayed. They also do not include flash drives for producing voluminous records electronically.

17. The time and expense charges also do not include a mediator's fee or associated charges, as we resolved the case on summary judgment. The charges do, however, include the court reporter's charges for the one approximately 8-9 hour deposition of the appraiser commenced October 16, 2020, for all three cases, in each of which he had issued an approximately 60-page report. The transcript is accompanied by approximately 180 pages of exhibits.

18. There are no unrelated expenses to separate. The legal expense all relates to effort to quash the condemnation.

19. The litigation challenging the condemnation attempt by the Town was based on

related and intertwined legal theories all of which were oriented to quashing the condemnation and putting forth as many bona fide alternate sustaining grounds as possible for doing so.

20. The billing included only the time on the matter of quashing the condemnation, along with time to adjust the same work to apply to the two other cases, which were handled generally in tandem and often almost identically. One approach to reasonable fees to be charged by Stanton Law Offices, P.A. to Plaintiff for the case would have been to agree to start with a charge for the full amount of the total resulting fees for all the time reasonably and necessarily spent on the case, and then to subtract a reasonable amount for the extra time required to adjust small peripheral differences from case to case, such as the caption, the case number, the property description, or additional paragraphs of allegation for peculiar features such as the Town's unauthorized filing of a different easement in the Beattie matter, or the Town's vacillation on the features of the scope of the easement in the Stanton case including attempting to make extra changes to the condemnation notice after service, or Sunset Lodge actually not only having an easement and plat prepared at its own expense, but also attending to having it recorded at the Register of Deeds.

21. However, instead, by agreement, we divided the fees by three, producing a lower total fee for each party. This in some ways approximated lowering the fees incurred by each party to about one-third of what would have been incurred if each, including me, after being sued by the Town for condemnation, had hired a separate law firm. One third of the fees was for representation of myself, pro se. I prepared and sent myself a bill. There are case law and great policy arguments for why, as a pro se party who is also an attorney whose firm has been used to represent him in litigation he did not ask for, I should recover my attorney's fees just as any

other litigant who had to defend himself in a case with a fee-shifting statute. However, I am not petitioning for fees to be paid to me by the Town of Pawleys Island in my pro se matter.[4] This is so, even though this affidavit should demonstrate the amount of time and work required, at great, and real, opportunity cost to me. As a consequence, under one view, instead of the Town being charged with fees of $169,252.00 in each of three cases handled by different firms, for a total of $507,756.00 for three cases,[5] the Town is being charged for two-thirds of $169,252.00 for three cases, for a total of $112,834.66, before out-of-pocket expenses, for all three cases.

22. The actual entered billing records of my office available to date reflecting the legal services and actual expenses incurred and agreed by Plaintiff in connection with quashing the condemnation action consist of about forty-three pages over approximately seven (7) months from the 8/5/20 bill to the 3/12/21 bill.

23. As noted, work on the case has necessarily continued since the 3/12/21 bill, but we are mindful that the Town is also liable for the continuing legal expense. We are attempting to be practical with this fee application and minimize these expenses while being sufficiently thorough and accurate. Our billing records in this case span a substantial length of time, are lengthy, and particularly in light of the existence of the currently pending, related, litigation and the prospect of new or further litigation, are not suitable to be furnished to the Town or the Court without redaction of virtually all substantive detail. The bills in some instances are detailed in

[4] I am petitioning for $853.94 in expenses, which is $31.74 less than the expenses of the other two property owners, because of one less motion filing fee.

[5] The $169,252.00 and $507,756.00 fee figures, of course, also assume that the three firms would all be providing successful representation with the same level of competency, and at no more than my hourly rate.

referencing subjects of research, sometimes the results of research, attorney impressions, confidential client communications, and settlement overtures. The case and efforts to actually quash the Town's stated steadfast attempt to take the subject property without paying for it are still open and ongoing. As noted, the Town filed a post-ruling motion, which has only recently been denied. The Town has also requested that the Challenge II case be dismissed, so that the Town can sue Plaintiff a third time. The Town has also moved for discovery of private billing matters, to delay the determination of fees, and to deny merits discovery to Plaintiff and we do not know what other work we will be required to do to complete the matter. We therefore cannot present a single unprivileged bill with one total. This statement of hours expended and expenses incurred set forth in this Affidavit complies with the lodestar procedure described by Layman v. State and other cases cited in our briefs on the subject.

24. All the time incurred in the case and all the expenses advanced were legal expense necessarily and actually incurred in responding to a condemnation suit commenced by the Town, not Plaintiff, and all time and expense was for pursuing the quashing of the Condemnation Notices which are the subject of this action.

25. Although the Town started its condemnation attempt and sued Plaintiff during a worldwide pandemic, time was of the essence in the case, and still is, and thoroughness was required, and still is. Initially, we were presented with a complex case, with a prior fact pattern extending for over a year, and continuing while the case was pending. We were presented with a case in a specialized area of law in which the Town was moving rapidly, and improperly, including the Town filing emergency motions and requests for bonds intended to convey a threat of millions of dollars in liability in addition to threats to seek attorney's fees. We engaged in

discovery with nonparties resulting in hundreds of pages of documents to manage, and engaged in discovery with the Town as well, also exchanging hundreds of pages of documents to manage.

26. The Town was entitled to conduct its case consistently with its own determinations of strategy and perception of what would be beneficial to the Town. However, this conduct and these decisions by the Town necessarily impacted and dictated the time and work we had to put in on our case. While handling the case, we were subjected to public personal and professional aspersions, apparently designed to enhance public perception of the Town or dissuade us or any other lawyer for Plaintiff from the task of calling the facts the way they actually appeared. These aspersions included misstatements to the court and to the public of time spent on aspects of the case, such as a more than substantial overstatement of the time taken for a deposition,[6] a statement to a judge that a discovery response for which an ordinary extension had been timely sought was overdue by some large inaccurate number of days, and a motion to "disqualify" counsel from a bench trial after the Court had already ruled based on undisputed facts that there would likely be no trial.

27. We served a FOIA request on the Town early in the case, but had to duplicate the effort in discovery and were delayed in receiving the information. [7]

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[6] I.e., "17 hours" stated in a public, live-streamed broadcast, as opposed to closer to eight or nine hours under special circumstances.

[7] Having never received a response, despite repeated reference to the lack of a response, we later pressed the matter. We discovered that the Town had prepared a response which asked for money and produced nothing, and sent the response only by e-mail, to an invalid e-mail address. The Town, including the specific employees involved, had and used the correct e-mail address for years.

28. Although the Town filed at least five motions in the case prior to 1/24/21, only one was a motion to dismiss and the Town did not consult in an attempt to resolve any of the other motions before filing. Generally, we granted extensions when reasonably requested. When we followed up on our request for an extension of time to respond to interrogatories and requests for production, the Town did not respond, requiring us to file a motion for the routine extension.

29. After the Town delivered a new, backdated, condemnation notice while the condemnation was stayed, we asked what the purpose and procedural status of the new notice was. The Town did not respond, requiring us to file an additional challenge action to maintain the status quo. All of these are miscellaneous, illustrative, comments, not a comprehensive summary, and are not meant as a criticism, per se, but rather, an explanation that work we did and had to do was necessarily influenced by what the opponent did and did not do.

30. Having had little early indication from the Town's pleading, of the full factual or legal nature of its defense, we continued to be unsure from the Town's later motions and communications, the nature of the defense. The Town did not indicate a dispute of many of the public or otherwise documented facts upon which we based our challenges, but avoided discovery for some time, requiring us to engage in motions practice.

31. We went light on depositions until first trying to narrow the facts through interrogatories and obtaining documents. We commenced discovery, and began shaping the case early for summary judgment to avoid the expense of further discovery and trial for both parties. The case came up several times on motions rosters for various motions, and when opposing counsel, Mr. Durant, requested a continuance of our 8/21/20 motion for summary judgment and

our motion to compel discovery, we cooperated in every way feasible, including contacting the first assigned judge in an attempt to arrange an alternative time.

32. We continued to pursue discovery, including followups and motions to compel. Until January 2021, the Town had, not one, but two, able, learned counsel with good reputations, and in January 2021, added a third.

33. Again, while the Town was entitled to make strategic decisions aimed at benefitting its position, its tactical actions in litigation necessarily impacted the time we spent and the work we did or had to do in order to prevail. These actions taken by the Town, to which we were required to react, included: filing an affidavit inapplicable to a Rule 12(b)(6) motion (which is based solely on the face of the complaint), but not filing the affidavit contemporaneously with the motion (as required of all motions); filing a motion to block discovery from the Town after filing a motion to expedite the case; filing, without citation of authority or articulation of a supporting legal theory, a motion to require Plaintiff to post a ten million dollar bond as a condition of allowing Plaintiff to proceed with Plaintiff's statutorily authorized challenge action; not resolving the delinquencies or issues with the Town's discovery responses until at or on the eve of hearing of Plaintiff's motion to compel; and creating and delivering new condemnation notices while the condemnation action was stayed.[8]

[8] The additional challenge action has a separate case number from the instant action, but the new condemnation notice was on the same subject matter as the condemnation notice challenged in the instant case and the Town would not respond to inquiry as to whether the new notice was somehow intended as part of the present case or as a commencement of a new, duplicative, case, with a timetable of new deadlines for Plaintiff set in motion upon delivery of the new notice. Everything done with respect to the new notice was done to advance and preserve the existing challenge action and get a ruling on the defects complained of and initially the billings were not separate. I estimate that 54.9 hours were spent on the second challenge

34. Closer to the summary judgment hearing, we received a lengthy single-spaced affidavit and a briefing presented by the Town as issues. We spent many hours marshalling and comparing facts and researching issues and potential issues pertaining to an ever-peculiar, but undisputed, fact pattern. We spent many hours responding to the Town's discovery requests, which were largely our earlier requests to the Town with the parties reversed.

35. After the Town served the Condemnation Notice, no part of the dispute or easement terms was resolved and no part of the case was resolved without a hearing of the motion for summary judgment and a ruling. The results of the case were beneficial to Plaintiff, as the motion for summary judgment was granted for what was requested -- a quashing of the Condemnation Notice and an ending of the action it represented.

36. We attended all hearings. There had been three by 1/24/21. One was in person in Georgetown, which is a six hour round trip from my office and my residence. Two were by teleconference. There have been about four more court appearances as of 4/20/21, one 2/17/21 by teleconference being used for discussion and scheduling determinations, another 3/3/21 by teleconference being used for discussion and scheduling determinations, another 3/19/21 by teleconference being for consideration of the Town's motions to reconsider summary judgment and to conduct discovery on the fee petition, and another 4/1/21 in Georgetown being for

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action up to 1/24/21. Each owner also incurred a $180.32 filing fee. As stated above, the 54.9 hours and the filing fee have now been backed out of the application in the instant case, to be sought separately in the still pending Challenge II case. The Town did not respond to a request for the Town to accept service of the summonses and complaints in the Challenge II cases. We arranged for personal service with no assistance from the Town, but did so without incurring a process server's fee.

consideration of the Town's motion for protection quashing discovery sought before the 4/5/21 denial of the motion to reconsider.

37. We, as Plaintiff's counsel, never, to my recollection, sought for our own benefit, nor caused, any delay of hearing, delay of discovery (other than a 30-day extension to respond to interrogatories and request for production), or continuance. We did object to hearing a motion filed by the Town two days before a previously scheduled hearing.

38. The drafting of the proposed order granting summary judgment took several days of double-checking facts, added research, citation checking, drafting and editing to present it in a form useful for the presiding judge to adopt or further edit as desired.

39. The proposed order we submitted included a detailed account of the facts and the fact-based materials establishing them, extensive legal background on select bases for granting the motion, and a discussion of remedies.

40. The fees sought by Plaintiff are reasonable because they are based on no more than the actual time and expenses required. They are in fact based on less than the actual time and expenses required and give the opposing party the benefit of multiple representation as well as the benefit of self-representation by one plaintiff. I submit that they are reasonable fees to be charged to the Town in accordance with the statute mandating the award of reasonable fees and other litigation expenses to Plaintiff, and reasonable fees for my office, accordingly, to charge Plaintiff.

41. In my opinion, the total fees and out-of-pocket expenses of $164,437.68 recorded by my office for counsel services through 4/20/21 in connection with the case were reasonable, necessary and required, and the estimate of an additional $5,700.00 in fees and expenses through

5/1/21, subject to the assumptions stated, is also a reasonable estimate of what will be necessary and required, and $57,303.01[9] or more as of 5/1/21 should be an expense borne by the Defendant Town as required by statute, rather than by Plaintiff.

Pursuant to S.C. Sup. Ct. Order 2021-03-04-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify that the foregoing statements made by me are true. 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: 4-20-21

[9] Namely, a figure which includes one-third of the $169,252.00 ($147,117.00+$16,435.00+$5700.00) in recorded and estimated future time charges and includes expenses incurred ($885.68), but does not include an increase of our rates by up to one-third for actual in-court or hearing time before or after 4/20/21, and does not include any of the 60 hours or more of estimated unrecorded time in May or June 2020 and at other times during the ensuing ten months.

May 19, 2021 Landowner erratum re fee petition (erroneously designated by Landowners as May 5).

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.	)	
	)	

ERRATUM
(Typo in 4/20/21Restatement re Fees)

As the Court and counsel were informed by e-mail 4/23/21, there is a typo in the 4/20/21 updated affidavit that is clarified in the rest of the affidavit. On page 7, the dollar figure in Paragraph 7 should be $57,303.01, the same as stated on pages 11 and 22.

_s/M. Baron Stanton_____
M. Baron Stanton

Date: 5-19-21

[Not on C-Track: Redacted bills and engagement agreements first sent to Circuit Judge, with transmittal notes. (See separate Supplement Volume pursuant to Ct. App. Ord. filed July 28, 2023. "This separate volume will not be available on C-Track public access unless or until this court rules otherwise.")]

[Delivered for in-camera review: Unredacted bills and engagement agreements first sent to Circuit Judge, with transmittal notes. (See separate package delivered separately from the Record on Appeal for in-camera review pursuant to Ct. App. Ord. filed July 28, 2023. Service of these documents on Respondent is not required and the documents "will be accessible only to the court, court personnel, and the Appellants' counsel unless or until this court rules otherwise.)]

[Not on C-Track: Redacted bills and engagement agreements returned by Circuit Judge. (See separate Supplement Volume pursuant to Ct. App. Ord. filed July 28, 2023. "This separate volume will not be available on C-Track public access unless or until this court rules otherwise.")]

September 10, 2021 Landowner update of January 25, 2021 fee petition, with attachments.

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.)	
)	

9/10/21
RESTATEMENT OF 1/24/21
AFFIDAVIT OF M. BARON STANTON
RE REASONABLE FEES AND EXPENSES IN CASE
TO 10/6/21
(A Third Supplement
and Fourth Amendment, Cumulative of
Prior Supplements and Amendments)

Personally appears under oath or making affirmation as set forth below, M. Baron ("Barry") Stanton, who being sworn and under penalty of perjury, states as follows:

Nature of the Case and the Matter Before the Court

1. Before the court are requests pursuant to statute, for fees and expenses of currently less than $200,000 in a suite of six cases in which the Town of Pawleys Island tried to condemn oceanfront land.

2. After threatening condemnation and publicly withdrawing the threat many months earlier, the Town attempted condemnation the first time in June 2020 by serving of a condemnation notice.

3. This is a separate action successfully challenging the right of the Town to

condemn all or part of a proposed easement on Plaintiff's property.

4. S.C. Code Ann. §28-2-510(A) provides that the landowner's reasonable costs and litigation expenses incurred "must be awarded" if the court determines that the condemnor has "no right to take" all or part of the landowner's property the condemnor seeks to condemn.

5. The court has so determined. This Court's January 20, 2021 Order granted Plaintiff's motion for 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 the Plaintiff, and permanently prohibiting the filing thereof." (Order at 1.)

6. S.C. Code Ann. §28-2-30(14) defines the recoverable "litigation expenses" to include reasonable fees and charges, disbursements and expenses necessarily incurred from the time of service of the condemnation notice, including reasonable attorney's fees.

7. In its January 20 order, the Court stated, "Any request for fees should be presented by separate petition/motion in this action." (Order at 24.) A brief motion based on the January 24, 2021 version of this Affidavit was filed with the initial version of this Affidavit 1/25/21. A proposed order and proposed Form 4 were also filed on January 25, 2021, but will now need to be updated.

<u>The Affiant's Personal Familiarity with the Matter Before the Court, Qualification to Make the Affidavit, Opinion of Lodestar Hourly Rate, and Conclusion of Fees and Expenses to Be Awarded</u>

8. I am the sole shareholder and designated director of Stanton Law Offices, P.A. and a member in good standing with the South Carolina Bar. I offer this Affidavit on my personal knowledge. I graduated from the University of South Carolina School of Law in 1986.

I was admitted to the South Carolina Bar the same year. I have practiced law in South Carolina full-time and continuously since then.[1] I am familiar with standards and qualities of legal service

[1]My present law office was established in 1994. I have a listed phone number. I established and have continued the professional practice of Stanton Law Offices, P.A. without maintaining a resume, advertising, having a substantial sign or having website. I do not use a Facebook page or any social media for business or professional promotion. I do not apply to, respond to, pay, or provide any listings on or in, Martindale Hubbell, AVVO, Who's Who, Best Lawyers, Superlawyers, the Better Business Bureau, any chamber of commerce, Linked-In, or any lawyer-promoting, lawyer-ranking, lawyer-listing, or other lawyer-advertising or lawyer-referring web services or other publications. Any found are unauthorized, compiled robotically or in other unsanctioned manner, and are likely inaccurate.

I therefore am not presenting with this affidavit, a web-page printout or other literature written about me in third person introducing me or describing me or my routine court admissions.

I do not report my pro bono work in order to get recognition or credit for it. The identities of my clients are not discussed or ever advertised.

Exclusive of law-related work before law school in two law firms, an indigent legal services office, the state legislature and a summer in Washington, and exclusive of clerking with a firm throughout law school, I worked for two firms before opening my own office.

One, the successor to a firm opened by one of our former governors, engaged primarily in business and private international law and commercial litigation, in state and federal courts. I engaged in all those activities, as well as served as the firm's immigration law department at a time when I was one of few immigration lawyers in South Carolina. My first real estate closing my first year was an occupied office building consuming nearly an entire city block, and my first federal litigation commencing in my first year was multi-year litigation of a business dispute among three airlines involving claims of fraud, unfair trade practices, violation of the Sherman and Clayton Antitrust Acts, and violation of the Racketeer Influenced and Corrupt Organizations Act. The case, defended by a Miami in-house legal department and firms from Charleston, Atlanta, and New York, was resolved before the demise of the biggest defendant in the late 1980s.

The other firm, at the time a 90-year-old firm, provided a full range of services, and I was engaged in all, although primarily in civil litigation and transactional work, with a dash of white collar criminal work.

I have owned and run my own operation for the last twenty six years as of April of 2020.

I have formed -- and represented in consultation, transactions and litigation -- environmental engineering firms, technology companies, and real estate ventures.

I have sued and defended banks, construction companies, title insurance companies, sellers of products, and injurers of people. I have defended radio stations and sold radio stations in bankruptcy proceedings. I have overseen, litigated the successful result of, and defended on appeal, a corporate proxy battle, and have litigated the meanings of and applications of the

provisions of the corporate and LLC codes. I have negotiated the sale of oil and gas reserves. I have sued for violations of the Securities Act of 1933, the Securities Exchange Act of 1934 and related laws.

I have done: mergers and acquisitions work; health- and-casualty-insurance inter-company negotiations and consulting; appellate work of all kinds (including work resulting in a published case on entitlement to and reasonableness of attorney's fees); injury and malpractice litigation; commercial lease negotiations and eviction litigation; closings of residential and commercial real estate sales; distributorship and international distributorship structuring and negotiation; occasional licensure and other administrative or regulatory proceedings and contested cases.

I have done: all sides of debtor-creditor law, from counseling, to asset structure planning, to strategic response to collections, to all phases of litigation, to debtor or creditor bankruptcy (from time to time); property tax and tax sale contested cases and litigation; condemnation defense and negotiation; land use, building and zoning work; horizontal property regime work and litigation (e.g., condominium and condominium-timeshare); coastal zone litigation; and some intellectual property drafting, negotiation, consulting and litigation.

I have also done: lawyer ethics and grievances representation; construction litigation; constitutional and state tort claims litigation; housing law litigation; litigation involving Articles 2, 3, 4, 5, 6, 7 and 9 of the UCC; trust and probate litigation; death and injury litigation; defamation litigation, occasionally bizarre family law; complex estate planning (now mostly from a consult-structure-and-refer standpoint); when required, criminal law (federal white collar, or magistrate or municipal court adjuncts to other cases); school law; labor and employment law and litigation; land use litigation; principal-surety and surety-beneficiary litigation; lender liability litigation; wreck cases; and things I, and often others, have never done before.

I have represented in litigation and otherwise, cow owners, dog owners, horse owners, car owners, Middle Eastern royalty, politicians, horse stables, server farms (a/k/a internet "clouds"), lawyers, banks, title insurance companies, engineers, musicians, writers, unconventional lenders, real estate brokers, real estate developers, contractors, automobile dealers, a produce company, a school, doctors, dentists, tradesmen, restaurant owners, homeowners, unit owners, landlords, tenants, debt and residual asset purchasers, heavy equipment and other industrial equipment companies, every-day working people, captains of industry, the poor, the injured, the convicted, the downtrodden, the disbarred, the depressed, the crazy, and the oppressed.

I have lectured to the bar over the years on such topics as defamation, lawyer ethics, and lender liability. I have been written about anonymously as a lawyer with interests in the economics of law practice and as a lawyer playing in a rock band, and have spoken on the radio about collection of judgments.

I have been a member of the Pawleys Island Civic Association for over 24 years. I served on the board of an entirely private specialized instruction/special needs school for the nine year maximum (at times, vice-chairman, chair of development committee, and chair of building committee) and was heavily involved in the planning, siting, detailed design, architecture, legal, and construction oversight functions for two beautiful large buildings and grounds

rendered from town to town, county to county, state to state, and at times, to some extent, country to country; I am familiar with the rates of colleagues in the community, across the country and, from time to time, in some instances, in other parts of the world; I am familiar with the needs, demands, and results in the instant case; I am familiar with the factors of Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E. 2d 659 (1993) pertaining to the reasonableness of attorney's fees; and am familiar with the fee and expense recovery provisions in S. C. Code §§28-2-510(A) and 28-2-30(14), cited above, which mandate an award of litigation expenses to Plaintiff in this case. I am also familiar with the required procedures and approach prescribed by our state Supreme Court in Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008) and related cases previously briefed by us, requiring a determination of lodestar hourly rate and the number of hours spent on the case.

9. I served as sole counsel in this proceeding. Others in my office, with whose work I am also familiar, and with whom I coordinated, and whom I trained and supervised, have, or may have, also provided directly related services.

10. My own hourly rate of $190 in this case is in my estimation, lower than that customarily charged by others in the locality for similar services. We actually considered

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improvements. For the latter, I received the board's Ed Pulaski award, complete with genuine used Pulaski Tool, recognizing contribution of work and multi-purpose invention for no recognition or gain, simply out of desire to fill a need.

I have also served on the board of a homeowner's association for a mainland mobile home beach enclave, last as president. I am also a member of the Waverly Creek [owner's] Association. I have served as the live music provider and coordinator for the Pawley's Island Surf Club's efforts to raise funds for widows and families of dead surfers. Most of my community work and modest philanthropic activity (including pro bono cases lasting years), however, is unreported if not anonymous.

Charleston counsel with a focus or concentration in the area of condemnation law and practice, but the aspects of whose other practice background and local familiarity also might be expected to differ. His rate was approximately 2.6 times my rate, his partner's was about 2.3 times my rate, his associate's rate was about 1.4 times my rate, and his law clerks' and paralegals' rates approached 0.9 times my rate. I note that, of the Town's three (3) opposing counsel of record in this case, the hourly rate of each of the Town's two (2) primary counsel is $250, which is about about 1.3 times my rate.

11. These ranges are consistent with my general observation that I charge sometimes half to a third of the rate charged by peers with comparable experience, credentials and capabilities. In a fee-shifting situation such as this one, this is to the advantage of the opposing parties in this case in the event the opposing party does not prevail. My rates are, however, generally what I charge in the locality for similar services.

12. Given: (a) the nature, extent and difficulty of the legal services rendered; (b) the time and labor devoted to the case; (c) the professional standing of counsel; (d) the contingency of compensation, (e) the fee customarily charged in the locality for similar services; and (e) the beneficial results obtained: The fees and expenses of my office are reasonable and the fees and expenses sought by Plaintiff are reasonable. Fees and out-of-pocket expenses of at least $61,093.33 as of 10/6/21, directly associated with the challenge action required by the Condemnation Notice served, should be awarded as the costs and expenses, including reasonable attorney's fees, of Plaintiff up to this point in the case.

13. Additional expenses of this nature should be awarded for work and outlays following 10/6/21 to the award and final conclusion of this case, including on any appeal.

14. With regard to expenses after 10/6/21, I note that, after summary judgment was already preliminarily granted by Form 4 order, the Town filed a motion in which the Town sought to disqualify me as counsel to act in a bench trial of the Sunset and Beattie cases; I had to respond. Additionally, after we first filed an application for fees and expenses on January 25, 2021, the Town moved to reconsider the summary judgment order and also sought to defer the consideration of the fee application and engage in discovery to delve into the fee request and its reasonableness. I therefore do not know what further work may be generated by the Town between 10/6/21 and the conclusion of the case, upon which we have not yet expended efforts.

15. For the nearly eight months since January 25, 2021, the Town has never disclosed what, if anything, the Town contends is unreasonable about the three plaintiffs' request for award of litigation expenses. I therefore set forth here some of what the three landowner-plaintiffs and their counsel faced in the suits.

16. This account has a bearing on the reasonableness of the fees and expenses sought in light of the constraints under which the three plaintiffs responded to the litigation commenced by the Town, in light of what was at stake, and in light of what they confronted.

The Constraints Under Which the Three Plaintiffs Responded to the Litigation Commenced by the Town, What Was at Stake, What They Confronted, and the Fee Request in the Context of the Overall Litigation

17. The instant case was one of three actions brought using one lawyer[2] to stop three separate condemnation suits which were brought by the Town of Pawleys Island with public

[2]One plaintiff, the undersigned, a lawyer, represented himself, and represented the other two plaintiffs as well. Although he represented himself pro se, for convenience of plural construction, he is referred to as counsel for all three plaintiffs.

funds against three of its citizen property owners.

18. In these three "challenge actions," which were generally handled in tandem, the three landowner-plaintiffs responded on compressed timetables to papers and motions of the Town without being afforded expedited handling of their own motions, or to their attempts to get discovery and be prepared for a lengthy and complicated merits hearing on multiple issues relating to the lack of bona fides of the condemnation attempts.

19. At stake in the cases was the Town's attempt to permanently ruin and devalue the titles to three improved, valuable, oceanfront properties. The inception of this attempt was accompanied by publicized advice of the Town's counsel that there would be nothing the three landowners could do to stop it.

20. Further at stake, once the plaintiffs' challenges were filed, were assertions by the Town that the three plaintiffs' suits were in bad faith and that the three plaintiffs should pay the Town's attorney's fees, which were being incurred at $250 per hour.

21. Further at stake were the Town's assertions that the three plaintiffs should also be held liable for damages of 10 million dollars each if they lost the cases. This latter assertion was made in a motion requesting the plaintiffs be required to post $30,000,000 in bonds.

22. All the while, the three plaintiffs and their counsel were the subject of a public misinformation campaign falsely characterizing the controversy – to neighbors, fellow citizens, the legal community and the general public -- as a refusal of the plaintiffs merely to allow sand to be put on the beach.

23. This was a strange implication, because at the time the Town commenced the condemnation actions, the Town had already put all the 1.1 million cubic yards of sand on the

beach, including the beach on the plaintiffs' properties. The plaintiffs' suits were thus characterized as a meritless legal proceeding trying to stop a condemnation for the sole purpose of putting sand on the beach, or of putting more sand on the beach at some future indeterminate time.

24. This mischaracterization, if not concealment, of the objections of the plaintiffs was consistently repeated in mass e-mails, briefs filed with the court, and live-streamed Town Council meetings, including the one initially authorizing the first condemnation attempt and another Town Council meeting preceding a second set of three condemnation suits commenced by the Town while the first three were stayed and being challenged.

25. The say-anything and stop-at-nothing approach of the Town also included an unsuccessful effort to disqualify the three plaintiffs' counsel by publicly asserting that the plaintiffs' counsel violated ethical rules governing the legal profession.

26. The stop-at-nothing approach of the Town apparent early in the litigation is not an observation confined to this affidavit; this approach was explicitly approved internally by the mayor in a recently discovered August 11, 2020 e-mail. There, confirming an interest in pursuing scorched-earth measures against the interests of these three constituents, he inquired to the Army Corps of Engineers as to whether the Corps knew of a "nuclear option" to pursue against the plaintiffs. (August 11, 2020 e-mail of B. Henry to J. Hinely and D. Steinbeiser, attached as "Exhibit A".)

27. The following extraordinarily simplified history of the case would be helpful to the Court in apprehending the context of the foregoing and the task of counsel for the three plaintiffs.

28. In early 2019, the Town of Pawleys Island represented to all island owners that it needed easements only from south end oceanfront landowners.

29. The Town stated publicly that the purpose of the easements was to allow the Town put sand on the 1.2 miles of beach on the south end as part of a 2.7 mile renourishment project which was not confined to the south end, but which ran nearly the entire length of the island.

30. The Town then privately and directly asked only such south end oceanfront landowners for signed easement grants under a compressed timetable with a fixed deadline.

31. However, the Town presented to south end landowners for signature, an easement grant virtually calling for a fee simple deed of the oceanfront portion of the landowner's oceanfront property. None on the Town Council had such south end property.

32. The proposed grant included perpetual public access and general use throughout the easement area. The easement area included oceanfront parts of the homes, like decks, stairs, showers, pilings, foundation elements, etc., and the landward boundary of the easement area was located two feet from the oceanside door.

33. The proposed grant also included a perpetual ability of the Town to conduct other activities, e.g., "patrolling and operating a public beach" on the landowner's property, and included a perpetual ability of the Town to substantially limit the owner's use of, and access to, the same property. The easement apparently left intact, only such things as the right of the landowner to be taxed on the property and, if not violating restrictions on the landowner's own access, pick up trash on it.

34. The three subject landowners did offer the Town signed perpetual easements

allowing sand to be put on their oceanfront land. However, the Town declared publicly that the landowners had refused to grant easements.

35. The Town first declared publicly, as a threat, an intent to condemn an easement to put sand on the beach if a landowner refused to grant an easement. But eventually the Town publicly abandoned the threats and the requests to those who had not provided the objectionable easement, and the Town then proceeded to place all the sand on the beach – to complete all the renourishment.

36. After publicly abandoning further easement requests and after all the sand placement was complete for the whole island, the Town then made easement requests again, only to south end owners including the three landowner-plaintiffs.

37. The Town again made the public accusations that the landowners had refused easements. The Town again made public threats to condemn easements to put sand on the beach. The Town Council then met, publicly recited that the landowners would not grant easements to put sand on the beach, and implied that the reasons the landowners would not grant easements to put sand on the beach were not known. The Town Council then authorized condemnation of easements to put sand on the beach.

38. The Town then proceeded to attempt to condemn easements not limited to putting sand on the beach.

39. Namely, the Town attempted to condemn easements containing the other features to which the three landowners objected.

40. The three landowner-plaintiffs were initially served with condemnation notices commencing actions and imposing a 30-day deadline for filing challenge actions, but the

landowner-plaintiffs were not provided proper appraisals for purposes of prior negotiation prior to service of the condemnation actions as required by statute.

41. The Town had obtained appraisals without giving the appraiser the terms of the easements he was appraising.

42. Although the Town made the "results" of the appraisals public and the "results" appeared in the paper, the Town delayed providing the appraisals to the landowners until the landowners demanded copies.

43. At the inception of the Town's attempt to condemn the three easements, the Town's counsel was quoted in the paper as stating to Town Council there would be nothing the landowners could do to stop the three condemnations. The proposed price to be paid for the easements was zero dollars.

44. Acting under a compressed timetable, the landowners promptly commenced three independent actions to stop the condemnations, which by statute stayed all proceedings in the condemnation suits.

45. Once the plaintiffs filed the challenge actions, they were then required to respond to expedited motions of the Town to dismiss, to require the plaintiffs to post $30,000,000 in bonds, to speed up the case overall, and to delay already commenced discovery against the Town.

46. In pages 18 and 19 of its August 28, 2020 brief, the Town publicly argued that the landowners' suits were brought in bad faith and the Town sought attorney's fees from the landowners.

47. None of the Town's motions were granted.

48. While a subsequent motion of the Town to put off the plaintiffs' summary judgment motion was pending, the Town, without notice, commenced three additional condemnation actions against the three landowner-plaintiffs on the same subject matter.

49. In the flawed three additional condemnation suits, the Town did not appear to have cured a single one of the defects in the first three suits and has never articulated what defects these suits corrected.

50. The Town never informed the landowners or their counsel of the purpose, impetus, or justification for the three additional suits.

51. Receiving no response to their inquiries to the Town, the landowners, again under a compressed timetable, responded with three more challenge suits, bringing the number of pending cases to twelve, being six condemnation suits and six challenge suits.

52. After the three plaintiffs' motion for summary judgment in the first three challenge cases was eventually heard and granted, the Town filed a motion to disqualify the three plaintiffs' counsel, which was filed with no prior consultation, and reported in the newspaper. The plaintiffs responded in full before the Town withdrew the motion.

53. During the case, the plaintiffs sought to prepare for a merits hearing in a case the Town had sought to fast-track. While not responding to discovery already due, the Town moved unsuccessfully to delay discovery but in fact delayed in responding. The plaintiffs moved more than once to compel, either in response to delay or inadequacy of response. The appraiser was finally deposed, but the Town Administrator was never deposed.

54. From the beginning, the three plaintiffs' counsel had to search for, assimilate and reconcile a large and varied amount of factual and legal information from widely ranging sources

including videos of meetings, agendas, minutes, FOIA-obtained materials, news media publications, web-based material, and mass e-mails or other public communications of status reports, memos, project data, solicitations of easements and threats of condemnation.

55. After summary judgment was granted against the Town in the first three challenge suits, the landowners applied in January 2021 pursuant to statute for their own fees and expenses incurred in the first three challenge suits.

56. The Town immediately sought a delay of four months or more to engage in discovery and challenge the landowners' requests to be paid their reasonable fees and expenses.

57. Without consent, the Town withdrew its second three condemnation suits, but declared it did so without prejudice to suing again. Almost simultaneously, even though the 1.1 million cubic yards of sand had long ago been placed on the beach, the mayor announced steadfast determination to continue pursuing "the easements."

58. On motion of the Town, based on the Town's unilateral withdrawal of its second three condemnation suits, a different judge of this Court dismissed the landowners' second three challenge suits as moot, and that order is on appeal.

59. This Court has set October 6, 2021 as a hearing date for the application for fees and expenses in the first three challenge suits. This September 10, 2021 affidavit is an update and restatement of the application made by the landowners January 25, 2021.[3]

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[3]For reference, if it should be necessary, the following tracking is provided:

A. My Affidavit of 1/24/21 stated, subject to supplementation, the minimum amount of fees and expenses requested as of 1/24/21, for responding to the Town's first condemnation suit commenced against Plaintiff. The Affidavit assumed minimal further proceedings in the matter.

B. The fees component included a separately identified block of a specific number of hours attributed to the beginnings of a case Plaintiff had to file in response to the second condemnation suit commenced by the Town against Plaintiff while the first condemnation suit by the Town was still being challenged and was stayed. (The second challenge suit filed by the Plaintiff is referred to as the "Challenge II case.")

C. My Affidavit of 1/24/21 was amended in one or more cases 1/26/21 to correct a typo concerning the statement of a number in words in which the word "thousand" was removed.

D. Additional time was devoted to the case after 10:30 p.m. 1/24/21, which is where the stated time stopped in the 1/24/21 Affidavit.

E. Additionally, a court reporter granted a customer discount and rendered the actual bill on a previously estimated $1500 bill from her. That is, the court reporter kindly granted a $250 customer discount on the deposition expense previously estimated at $1,500.00 in the 1/24/21 Affidavit, reducing the actual deposition cost to $1,339.80, thus allowing a downward adjustment of that previously estimated cost by $53.40 per plaintiff.

F. On 2/5/21, this revision to the court reporter charge and the additional time were presented in a First Supplement and Second Amended Affidavit, which also estimated time from 2/4/21 through a selected future date of 2/20/21.

G. Further proceedings ensued. At the request of the Town, we were then far beyond 2/20/21. Actual, rather than estimated, time from 2/4/21 to 2/20/21 was then available. Actual time from 2/21/21 to 4/20/21 was also available, although not in the billing system. Additionally, estimated time could be provided from 4/21/21 through a selected date of 5/1/21, subject to supplementation or revision.

H. Additionally, the time in the previously included component for the beginnings of the Challenge II case, along with the $180.32 filing fee in that case, was then backed out so that it could be added to the other time and expenses by then incurred in the Challenge II case and be separately applied for in the Challenge II case, so as to avoid any confusion, argument, or further delay in either matter.

I. I discovered that in previously tallying the time identified for the beginnings of the Challenge II case within the overall total for the instant case, I identified all the time and instances, but left out one of the identified days in adding up the total hours. The hours identified for the Challenge II case in the footnote of the 1/24/21 Affidavit should have been 54.9 rather than 49.5.

J. I therefore restated the Affidavit on 4/20/21, cumulative of all the above.

K. On 5/19/21, following up on an e-mail to the same effect, I filed an Erratum concerning a figure intended to be stated three times in the 4/20/21 restatement, but which in one mention, was the subject of a typographic error.

60. Following is a statement of time spent and expenses incurred. Time spent and expenses incurred in the matter for the approximately eight months from 7/2/20 to 3/3/21 are as follows:

8/5/20 statement	M. Baron Stanton	166.8	hours[4]
9/18/20 statement	M. Baron Stanton	78.1	hours
	Austin B. Tepper	0.4	hours
10/9/20 statement	M. Baron Stanton	128.5	hours
11/18/20 statement	M. Baron Stanton	72.5	hours
1/22/21 statement	M. Baron Stanton	209.7	hours
3/12/21 statement	M. Baron Stanton	173.6	hours

[4]The August, September, October and November, statements made separate notations of time currently charged and time for which charges were currently deferred. The October statement confirmed the terms of this deferral as follows:

> "[Y]ou will have seen some entries on previous bills, of items "noted, not billed," and may see this on the present bill and future bills. Additionally, you may occasionally see an outright "courtesy discount" or "courtesy deferral" or like notation. I want to explain this. These are measures we are taking purely out of sympathy for the present situation, and are meant to temporarily lighten your burden. What I want to make clear is that these measures are for you and are not intended for the collateral benefit of any third party, and all the time spent on the matter was necessarily and reasonably spent on the matter. If we find ourselves in a situation where we are able to recover from a third party for the time and expense incurred on the matter, we will present these items and this money at that time. Additionally, if we recover any fund from the opponent in judgment or settlement or otherwise, we reserve the right to bill you for some or all of these accommodations.

The deferred time included in the above time subtotals was 23.2 hours in the 8/5/20 statement, 6.8 hours in the 9/18/20, 18.0 hours in the 10/9/20, and 8.9 hours in the 11/18/20. Our engagement agreement provides that matters presented in statements stand as stated unless any disagreement over them is presented within a specified time.

Less Ch.II time:

11/11/20	"	(0.5)	hours			
11/12/20	"	(6.4)	hours			
11/13/20	"	(1.9)	hours			
11/16/20	"	(1.0)	hours			
12/15/20	"	(1.7)	hours			
1/5/21	"	(6.8)	hours			
1/6/21	"	(2.9)	hours			
1/7/21	"	(4.0)	hours			
1/8/21	"	(1.0)	hours			
1/9/21	"	(5.6)	hours			
1/10/21	"	(7.0)	hours			
1/11/21	"	(3.0)	hours			
1/12/21	"	(7.7)	hours			
1/13/21	"	(5.4)	hours			
Total of time for period		774.3	hours[5]	x $190	=	$147,117.00
Expenses advanced	(e.g., filing fees, service of process, photocopies, postage, courier, court reporter, mileage at lower than federal reimbursement rate, mediator fee, etc. through 3/12/21 stmt.)					$885.68

[5]This total omits the 0.4 hours of Austin Tepper as de minimis in order to simplify the matter, as his time was billed at an hourly rate of $45.

61. Time spent and expenses incurred in the matter since the 3/12/21 statement, for the time from 3/4/21 to 9/9/21 are as follows:

3/5/21	M. Baron Stanton	4.5	hours
3/10	"	1.9	"
3/11	"	6.2	"
3/12	"	4.1	"
3/13	"	2.0	"
3/14	"	6.4	"
3/15	"	10.1	"
3/16	"	12.8	"
3/17	"	6.1	"
3/18	"	6.8	"
3/19	"	8.5	"
3/20	"	2.2	"
3/22	"	0.8	"
3/23	"	1.2	"
3/24	"	1.2	"
3/25	"	7.2	"
4/1	"	1.3	"
4/8	"	1.2	"
4/19	"	1.5	"
4/20	"	0.5	"

4/21	“	8.6	“
4/22	“	5.5	“
4/28	“	3.0	“
4/29	“	0.4	“
5/5	“	0.9	“*
5/12	“	2.5	“
5/13	“	0.3	“*
5/18	“	0.3	“
5/19	“	0.4	“
5/25	“	0.7	“
5/26	“	1.2	“
5/27	“	3.0	“
6/4	“	1.4	“
6/7	“	1.1	“
6/8	“	1.4	“*
6/9	“	1.6	“
6/10	“	0.4	“
6/14	“	0.4	“*
6/28	“	0.7	“*
6/30	“	0.4	“
7/13	“	1.5	“*
7/27	“	0.7	“*

7/28	"	0.2	"*			
8/19	"	2.0	"*			
8/19	"	2.1	"*			
8/20	"	0.3	"			
8/22	"	1.5	"*			
8/23	"	0.3	"			
8/23	"	2.0	"*			
8/30	"	2.2	"*			
8/31	"	1.5	"*			
9/2	"	0.4	"			
9/3	"	0.2	"			
9/3	"	0.2	"*			
9/8	"	0.5	"*			
9/8	"	4.5	"			
9/9	"	5.4	"			
Total of time for period[6]		146.2	hours	x $190	=	$27,778.00
Expenses advanced	(e.g., post-3/12/21-stmt. filing fees, service of process, photocopies, postage, courier, court reporter, mileage at lower than federal reimbursement rate, mediator fee, etc. through 9/9/21)					$28.01[7]

[6]The entries marked with a "*" have been designated in the same manner previously described, as time incurred, noted, not billed yet, but subject to future billing.

[7]This is the party's one-third share of two instances of copying or sending materials by courier.

62. Additionally, I estimate that an additional thirty hours from 9/9/21 to 10/6/21, at a charge of $5.700.00, will be required to conclude this case, but based on past experience and the fact that I have no present notice of the nature of the Town's opposition, if any, this may be way under. This estimate is with a reservation of right to amend or supplement and assumes no surprise "witnesses," only one, timely, brief from the Town, only one hearing, no further delay, and no appeal by the Town or Plaintiff.

63. Subject to these assumptions, and reserving the right to amend or supplement, Plaintiff hereby requests $61,093.33 as the award of fees and expenses, through October 6, 2021.

64. The foregoing time and expenses do not include some things. The expenditure of time and effort, including extensive legal and factual research and review, actually began at or before May 18, 2020, but no time or charges are included until after July 1, 2020. I would estimate I spent 40-50 hours, but because I did not record all the time as such and reconstruction for purposes of a firmer estimate would require numerous hours itself, I would be confident of three-quarters of that figure, viz., 30 hours. Before May 18, 2020, the Town publicized its threats of condemnation. On May 18, 2020, the Town Council held a publicized, live-streamed meeting at which it voted to pursue condemnation. I increased research on the matter at that time. I commenced representation of Beattie and Sunset Lodge, in addition to myself, on June 23, 2020. The Town served a condemnation notice on Sunset Lodge June 22, 2020, on me June 23, 2020, and on Beattie, June 30, 2020. As previously noted, my statements start with July 2, 2020, not the earlier date of service of the condemnation notice.

65. In addition to the time from around May 18, 2020 to July 1, 2020, to my

recollection, there was also time necessarily spent directly on the case from time to time, which I simply did not record. My estimate is fifty to as much as sixty hours over the time the case has been pending. This includes miscellaneous phone calls and e-mails, inspecting or further examining the site and other sites, expediting of transmittals, re-reading of previous work product and items from third parties, late-night and weekend research during time previously set aside for personal or family activity or inactivity, etc.

66. The time included also only includes travel time one-way for one of the two six hour round trips from Columbia to Georgetown for in-person hearings (the other round trip not being included at all and being attributed to the Challenge II case) and travel one-way to the Pawleys area for the deposition of the appraiser at the office of opposing counsel.

67. The time included does include actual in-court or hearing time, but the money calculations herein do not increase the applicable rate by one-third. Our fee agreement with Plaintiff in this case provides: "We may in our discretion, increase our rates by up to 1/3 for actual in-court or hearing time, depending upon the nature of the case." We have not exercised that increase for the seven hearings or in-court appearances in the case.

68. Unless copying was for a large batch by an out-of-house service, the expense charges generally do not include all out-of-pocket expense for copying. They also do not include all postage. They also do not include mileage other than one way from Columbia for the in-person hearing or deposition. They also do not include any other time or mileage from Columbia for any other trips to the area, nor do they include any overnight accommodations or meals charges. They also do not include service of process by personal delivery of three summonses and complaints for this action and three summonses and complaints for the challenges to the new

notices delivered by the Town while the condemnation was stayed. They also do not include flash drives for producing voluminous records electronically.

69. The time and expense charges also do not include a mediator's fee or associated charges, as we resolved the case on summary judgment. The charges do, however, include the court reporter's charges for the one approximately 8-9 hour deposition of the appraiser commenced October 16, 2020, for all three cases, in each of which the appraiser had issued an approximately 60-page report. The transcript is accompanied by approximately 180 pages of exhibits.

70. There are no unrelated expenses to separate. The legal expense all relates to this suit to quash the condemnation and the suit was all directed to that effort.

71. The litigation challenging the condemnation attempt by the Town was based on related and intertwined legal theories all of which were oriented to quashing the condemnation and putting forth as many bona fide alternate sustaining grounds as possible for doing so.

72. The time includes time to adjust the same work to apply to the two other cases, which were handled generally in tandem and often almost identically. One approach to reasonable fees to be charged by Stanton Law Offices, P.A. to Plaintiff for the case would have been to agree to start with a charge for the full amount of the total resulting fees for all the time reasonably and necessarily spent on the case, and then to subtract a reasonable amount for the extra time required to adjust small peripheral differences from case to case, such as the caption, the case number, the property description, or additional paragraphs of allegation for peculiar features such as the Town's unauthorized filing of a different easement in the Beattie matter, or the Town's vacillation on the features of the scope of the easement in the Stanton case including

attempting to make extra changes to the condemnation notice after service, or Sunset Lodge actually not only having an easement and plat prepared at its own expense, but also attending to having it recorded at the Register of Deeds.

73. However, instead, by agreement, we divided the fees by three, producing a lower total fee for each party.

74. This in some ways approximated lowering the fees incurred by each party to about one-third of what would have been incurred if each, including me, after being sued by the Town for condemnation, had hired a separate law firm.

75. One third of the fees was for representation of myself, pro se. I prepared and sent myself a bill. There are case law and great policy arguments for why, as a pro se party who is also an attorney whose firm has been used to represent him in litigation he did not ask for, I should recover my attorney's fees just as any other litigant who had to defend himself in a case with a fee-shifting statute. However, I am not petitioning for fees to be paid to me by the Town of Pawleys Island in my pro se matter.[8] This is so, even though this affidavit should demonstrate the amount of time and work required, at great, and real, opportunity cost to me.

76. Under other circumstances, the Town could well have been charged with fees of $180,595.00 in each of three cases handled by different firms, for a total of $541,785.00 for three cases.[9] Instead, as a consequence of three parties using one lawyer and dividing the fees, and

[8]I am petitioning for $863.26 in expenses, which is $31.74 less than the expenses of the other two property owners, because of one less motion filing fee.

[9]The $180,595 and $541,785.00 fee figures, of course, also assume that the three firms would all be providing successful representation with the same level of competency, and at no more than my hourly rate.

my not seeking the third of the fees attributable to representing myself, the Town is being charged for two-thirds of $180,595.00 for three cases, for a total of $120,396.66, before out-of-pocket expenses, for all three cases.

77. For 7/2/20 to 9/9/21 alone, the actual billing records of my office reflecting the legal services and actual expenses incurred and agreed by Plaintiff in connection with this action consist of over fifty-five pages over approximately fourteen (14) months.

78. As noted, work on the case will necessarily continue after 9/9/21, but we are mindful that the Town is also liable for the continuing legal expense. We have attempted to be practical with this fee application and minimize these expenses while being sufficiently thorough and accurate. Our billing records in this case span a substantial length of time, are lengthy, and particularly in light of the existence of the still pending, related, litigation and the Town's explicit threat of new or further litigation, are not suitable to be furnished to the Town or the Court without redaction of virtually all substantive detail. The bills in some instances are detailed in referencing subjects of research, sometimes the results of research, attorney impressions, confidential client communications, and settlement overtures.

79. The Town nevertheless moved for discovery, under a protective order, of a representative segment of bills as well as discovery of other private billing matters, and was granted the requested discovery under a confidentiality order pursuant to which the requested materials were reviewed by the Court in camera, redacted, and provided to the Town under other strictures. The statement in this Affidavit of hours expended and expenses incurred complies with the lodestar procedure described by Layman v. State and other cases cited in our briefs on the subject.

80. All the time incurred in the case and all the expenses advanced were legal expense necessarily and actually incurred in responding to a condemnation suit commenced by the Town, not Plaintiff, and all time and expense was for pursuing the quashing of the condemnation attempts which are the subject of this action, and seeking to be made whole for the fees and other expense incurred in the case.

81. Although the Town started its condemnation attempt and sued Plaintiff during a worldwide pandemic, time was of the essence in the case, and still is, and thoroughness was required, and still is. Initially, we were presented with a complex case, with a prior fact pattern extending for over a year, and continuing while the case was pending. We were presented with a case in a specialized area of law in which the Town was moving rapidly, and improperly, including the Town filing emergency motions and requests for bonds intended to convey a threat of millions of dollars in liability in addition to threats to seek attorney's fees. We engaged in discovery with nonparties resulting in hundreds of pages of documents to manage, and engaged in discovery with the Town as well, also exchanging hundreds of pages of documents to manage.

82. The Town was entitled to conduct its case consistently with its own determinations of strategy and perception of what would be beneficial to the Town. However, this conduct and these decisions by the Town necessarily impacted and dictated the time and work we had to put in on our case. While handling the case, we were subjected to public personal and professional aspersions, apparently designed to enhance public perception of the Town or dissuade us or any other lawyer for Plaintiff from the task of calling the facts the way they actually appeared. These aspersions included misstatements to the court and to the public of time spent on aspects of the case, such as a more than substantial overstatement of the time taken

for a deposition,[10] a statement to a judge that a discovery response for which an ordinary extension had been timely sought was overdue by some large inaccurate number of days, and a motion to "disqualify" counsel from a bench trial after the Court had already ruled based on undisputed facts that there would likely be no trial.

83. We served a FOIA request on the Town early in the case, but had to duplicate the effort in discovery and were delayed in receiving the information. [11]

84. Although the Town filed at least five motions in the case prior to 1/24/21, only one was a motion to dismiss and the Town did not consult, as required by rule, in an attempt to resolve any of the other motions before filing. Generally, we granted extensions when reasonably requested. When we followed up on our request for an extension of time to respond to interrogatories and requests for production, the Town did not respond, requiring us to file a motion for the routine extension.

85. After the Town delivered a new, backdated, condemnation notice while the condemnation was stayed, we asked what the purpose and procedural status of the new notice was. The Town did not respond, requiring us to file an additional challenge action to maintain the status quo. All of these are miscellaneous, illustrative, comments, not a comprehensive

[10] I.e., "17 hours" stated in a public, live-streamed broadcast, as opposed to closer to eight or nine hours under special circumstances.

[11] Having never received a response, despite repeated reference to the lack of a response, we later pressed the matter. We discovered that the Town had prepared a response which asked for money and produced nothing, and sent the response only by e-mail, to an invalid e-mail address. The Town, including the specific employees involved, had and used the correct e-mail address for years.

summary, and are not meant as a criticism, per se, but rather, an explanation that work we did and had to do was necessarily influenced by what the opponent did, and did not do.

86. Having had little early indication from the Town's pleading, of the full factual or legal nature of its defense, we continued to be unsure from the Town's later motions and communications, the nature of the defense. The Town did not indicate a dispute of many of the public or otherwise documented facts upon which we based our challenges, but avoided discovery for some time, requiring us to engage in motions practice.

87. We went light on depositions until first trying to narrow the facts through interrogatories and obtaining documents. We commenced discovery, and began shaping the case early for summary judgment to perhaps avoid the expense of further discovery and trial for both parties. The case came up several times on motions rosters for various motions, and when opposing counsel, Mr. Durant, requested a continuance of our 8/21/20 motion for summary judgment and our motion to compel discovery, we cooperated in every way feasible, including contacting the first assigned judge in an attempt to arrange an alternative time.

88. We continued to pursue discovery, including followups and motions to compel. Until January 2021, the Town had, not one, but two, able, learned counsel with good reputations, and in January 2021, added a third.

89. Again, while the Town was entitled to make strategic decisions aimed at benefitting its position, its tactical actions in litigation necessarily impacted the time we spent and the work we did or had to do in order to prevail. These actions taken by the Town, to which we were required to react, included: filing an affidavit inapplicable to a Rule 12(b)(6) motion (which is based solely on the face of the complaint), but not filing the affidavit

contemporaneously with the motion (as required of all motions); filing a motion to block discovery from the Town after filing a motion to expedite the case; filing, without citation of authority or articulation of a supporting legal theory, a motion to require Plaintiff to post a ten million dollar bond as a condition of allowing Plaintiff to proceed with Plaintiff's statutorily authorized challenge action; not resolving the delinquencies or issues with the Town's discovery responses until at or on the eve of hearing of Plaintiff's motion to compel; and creating and delivering new condemnation notices while the condemnation action was stayed.[12]

90. Closer to the summary judgment hearing, we received a lengthy single-spaced affidavit and a briefing presented by the Town as issues. We spent many hours marshalling and comparing facts and researching issues and potential issues pertaining to an ever-peculiar, but undisputed, fact pattern. We spent many hours responding to the Town's discovery requests, which were largely our earlier requests to the Town with the parties reversed.

91. After the Town served the Condemnation Notice, no part of the dispute or

[12]The additional challenge action has a separate case number from the instant action, but the new condemnation notice was on the same subject matter as the condemnation notice challenged in the instant case and the Town would not respond to inquiry as to whether the new notice was somehow intended as part of the present case or as a commencement of a new, duplicative, case, with a timetable of new deadlines for Plaintiff set in motion upon delivery of the new notice. Everything done with respect to the new notice was done to advance and preserve the existing challenge action and get a ruling on the defects complained of and initially the billings were not separate. I estimate that 54.9 hours were spent on the second challenge action up to 1/24/21. Each owner also incurred a $180.32 filing fee. As stated above, the 54.9 hours and the filing fee have now been backed out of the application in the instant case, to be sought separately in the still pending Challenge II case. The Town did not respond to a request for the Town to accept service of the summonses and complaints in the Challenge II cases. We arranged for personal service with no assistance from the Town, but did so without incurring a process server's fee.

easement terms was resolved and no part of the case was resolved without a hearing of the motion for summary judgment and a ruling. The results of the case were beneficial to Plaintiff, as the motion for summary judgment was granted for what was requested -- a quashing of the Condemnation Notice and an ending of the action it represented.

92. We attended all hearings. There had been three by 1/24/21. One was in person in Georgetown, which is a six hour round trip from my office and my residence. Two were by teleconference. There had been about four more court appearances as of 4/20/21, one 2/17/21 by teleconference being used for discussion and scheduling determinations, another 3/3/21 by teleconference being used for discussion and scheduling determinations, another 3/19/21 by teleconference being for consideration of the Town's motions to reconsider summary judgment and to conduct discovery on the fee petition, and another 4/1/21 in Georgetown being for consideration of the Town's motion for protection quashing discovery sought before the 4/5/21 denial of the motion to reconsider.

93. We, as Plaintiff's counsel, never, to my recollection, sought for our own benefit, nor caused, any delay of hearing, delay of discovery (other than a 30-day extension to respond to interrogatories and request for production), or continuance. We did object to hearing a motion filed by the Town two days before a previously scheduled hearing.

94. The drafting of the proposed order granting summary judgment took several days of double-checking facts, added research, citation checking, drafting and editing to present it in a form useful for the presiding judge to adopt or further edit as desired.

95. The proposed order we submitted included a detailed account of the facts and the fact-based materials establishing them, extensive legal background on select bases for granting

the motion, and a discussion of remedies.

96. The fees sought by Plaintiff are reasonable because they are based on no more than the actual time and expenses required. They are in fact based on less than the actual time and expenses required and give the opposing party the benefit of multiple representation, as well as the benefit of self-representation by one plaintiff. I submit that they are reasonable fees to be charged to the Town in accordance with the statute mandating the award of reasonable fees and other litigation expenses to Plaintiff, and reasonable fees for my office, accordingly, to charge Plaintiff.

97. In my opinion, the total fees and out-of-pocket expenses of $174,895.00 recorded by my office for counsel services through 9/9/21 in connection with the case were reasonable, necessary and required, and the estimate of an additional $5,700.00 in fees and expenses through 10/6/21, subject to the assumptions stated, is also a reasonable estimate of what will be necessary and required, and $61,093.33[13] or more as of 10/6/21 should be an expense borne by the Defendant Town as required by statute, rather than by Plaintiff.

Pursuant to S.C. Sup. Ct. Order 2021-07-30-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are

[13]Namely, a figure which includes one-third of the $180,595.00 ($147,117.00+$27,778.00+$5700.00) in recorded and estimated future time charges and includes expenses incurred ($895.00), but does not include an increase of our rates by up to one-third for actual in-court or hearing time before or after 9/9/21, and does not include any of the 80 hours or more of estimated unrecorded time in May or June 2020 and at other times during the ensuing fourteen months.

willfully false, I am subject to punishment by contempt.

_s/M. Baron Stanton_____
M. Baron Stanton

Date: 9-10-21

September 13, 2021 Landowner erratum re fee petition.

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.	)	
	)	

ERRATUM
(Underinclusion in 9/10/21Restatement re Fees)

I erroneously understated figures in four places in the 9/10/21 affidavit, as a result of only using a third of $28.01 in calculations, when $28.01 was already a third of the additional total charges for copying and couriering. This created an $18.69 discrepancy.

That is, in calculations, I erroneously used $9.32 as the additional copying and couriering charges instead of $28.01. Accordingly, at page 31, the total other expense figure should be $913.69 rather than $885.00, and at pages 6, 21, and 31, the figure should be $61,112.02, rather than $61,093.33.

s/M. Baron Stanton
M. Baron Stanton

Date: 9-13-21

September 20, 2021 Town Memorandum in Opposition to the Landowner January 25, 2021 motion for fees and expenses, Opposing Affidavit of Pagliarini, Opposing Affidavit of DuRant, Opposing Affidavit of Henry, and Opposing Affidavit of Dillard.

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,	)	**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S PETITION FOR ATTORNEY FEES**
v.	)	
Town of Pawleys Island,	)	
Defendant.	)	

The Defendant, TOWN OF PAWLEYS ISLAND ("Town"), hereby submits its Memorandum in Opposition to Plaintiff's Motion for Expenses Including Attorney's Fees, as follows. Identical memoranda and supporting affidavits are being filed in the "Sunset Lodge" (2020-CP-22-0600) and "Beattie" (2020-CP-22-0601) cases.

Introduction

Plaintiff's fee petition seeks an award far in excess of "the landowner's reasonable costs and litigation expenses incurred [herein]." S.C. Code Ann. § 28-2-510(A) (emphasis added). The Plaintiffs in this and another closely related action (2020-CP-22-0600 and -0601), represented by the same counsel, seek a combined total expense award of **$120,396.67** based on proportionate amounts of a total of **950.5 hours** of attorney time averred to have been spent on those and a third closely related matter (2020-CP-22-0602). When factoring back in the proportionate amount of time for the third matter, the underlying premise of the Plaintiff's claim is that **$180,595** worth of legal time has been reasonably devoted to simultaneous work on the three essentially identical matters.[1]

[1] 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).

The 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[2] 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 Plaintiff also claims an additional 176.2 hours since March 3, 2021. These numbers would represent an unreasonable expenditure of time even if the Plaintiff had obtained the permanent relief it was truly seeking.

However, the fee request also reflects a lack of consideration of the actual extent of "beneficial results obtained" in the action. The Plaintiff did obtain a summary judgment ruling that will require the Town to initiate a new condemnation action if it still desires to pursue the beach renourishment easement. However, the Plaintiff did not achieve the real relief sought when the lawsuit was filed: a permanent bar on condemnation of the easement based on theories of alleged fraud, bad faith, and lack of necessity. As discussed in more detail below, the nature of the beneficial results obtained is an appropriate and necessary consideration in the Court's analysis of the fee request.

The Town acknowledges that the Plaintiff did not set out to have an easement acquired on its property, and also of course recognizes that the Court found deficiencies in the procedure used to initiate the condemnation. Nothing, however, entitles the Plaintiff to a fee award beyond what is generally reasonable and, of equal importance, appropriate in light of the results obtained. In this memorandum and the supporting materials, the Town seeks to provide the Court a detailed factual and legal basis for determination of what, if anything, would be a reasonable fee award.

[2] 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.

Standard for Attorney Fee Awards in Eminent Domain Challenge Actions

The S.C. Eminent Domain Procedure 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. Instead, "the court should consider the following six factors when determining a reasonable attorney's fee: (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." Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) (citing Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993)). "When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor." Blumberg at 494. "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.

"[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. The applicant should exercise 'billing judgment' with respect to hours worked[.]" Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S. Ct. 1933, 1941, 76 L. Ed. 2d 40 (1983).

> As part of his duty to claim only reasonable fees, an attorney must exercise "billing judgment[,]" . . . [which] is usually shown by the attorney writing off unproductive, excessive, or redundant hours. . . . An affidavit from a party or an attorney stating only the total amount of fees and that the amount is reasonable is not sufficient to satisfy the burden of proof.

Dishman v. First Interstate Bank, 362 P.3d 360, 365 (Wyo. 2015) (citing Hensley at 434; other internal citations omitted). "Block billing is problematic because it makes it more difficult for the party requesting fees to demonstrate the reasonableness of the billed hours; a party requesting attorneys' fees block bills at its own risk." Gurrobat v. HTH Corp., 346 P.3d 197, 204 (Haw. 2015).

Arguments

I. "Beneficial Results Obtained" in this Matter

The Plaintiff has obtained what is essentially temporary procedural relief based upon its stated position that "noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed[.]" (Amended Complaint p.11). While the Plaintiff has prevailed on its allegations to that extent, it has most certainly not obtained the permanent prohibitive relief that it actually filed this action to obtain.

Specifically, the relief obtained in the summary judgment order can be comprehensively summarized as follows:

1.) Per the Court, the condemnation was unauthorized because Town Council's general

authorization of condemnation of a beach renourishment easement did not include the specific details of the easement language and did not explicitly identify fact-based decision-making criteria. (Am. S.J. Order pp.14-15).

2.) Per the Court, the Town's pre-condemnation appraisal was inadequate to support the condemnation because it did not account for the specific details and burdens of the easement language reflected in the Condemnation Notice. (Am. S.J. Order pp.22-24).

3.) Per the Court, the Town's pre-condemnation procedure was deficient because, prior to and separate from service of the Condemnation Notice, the Town did not provide Plaintiff a copy of the appraisal report and formally offer to purchase the easement based on the appraised value ($0.00). (Am. S.J. Order pp.22-24).

4.) Based on the above findings, the Court granted summary judgment quashing this specific Condemnation Notice and attempt but did so "without prejudice to another attempt and attendant defenses if applicable." ((Am. S.J. Order pp.14, 25).

Critically, the order did not provide the permanent, prohibitive relief that the Plaintiff so exhaustively pleaded and sought based on theories of fraud, bad faith, and lack of necessity. Those non-prevailing claims are clearly what occupied the vast majority of Plaintiff's counsel's time and attention in this litigation. As reflected in the table of contents of the 61-page Amended Complaint, which includes 179 numbered paragraphs and an 8-page unnumbered "preliminary statement," the allegations on which the Plaintiff has actually prevailed are essentially limited to a portion of what is included on pages 54 – 55 (¶ 150 – 152) and pages 57 – 59 (¶ 163 – 172).

The focus of the Plaintiff's claims was instead its sweeping allegations of fraud, bad faith, and lack of necessity, all asserted in an effort to prevent not just the subject condemnation attempt but also any future attempt to condemn a similar easement, regardless of the procedure used to do

so. The claims at the heart of the plaintiff's challenge action included that, (a) "[v]ague, indeterminate, remote future 'need' after possibly more than 22 years is beyond the pale"; (b) "[e]xcessive scope is proven by the completed project no matter when an easement might be needed in the remote future"; (c) "[c]ertain features in the condemnation papers have already been agreed to be unnecessary and in some cases have been removed for others as unnecessary", (Am. S.J. Order, p. 13 (reciting Plaintiff's claims)); and (d) "the history of the Town's attempts to obtain the easements . . . is rife with, if not fraud and bad faith, then with an abuse of discretion." (Plaintiff's Motion for Summary Judgment, p. 2).[3]

As described in more detail in the Plaintiff's Motion for Summary Judgment, the fraud and bad faith claims included broad assertions that:

> [T]he 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

[3] Regarding the permanent prohibitive nature of the relief sought, *see also* Am. Complaint p.56, ¶ 158 ("[T]he 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."); Am. Complaint p.57, ¶ 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 . . . 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.").

> 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.

(Motion for Summary Judgment, pp. 2-3) (emphasis added).

None of these claims challenging the Town's fundament right to ever condemn the easements were addressed in the Order. The Court specifically 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). It is not surprising that the Court did not reach these highly fact-intensive claims given that the Plaintiff filed its Motion for Summary Judgment and supporting affidavit on literally the first day it was allowed to do so, exactly 31 days after the Complaint was filed. Rule 56(a), SCRCP. *See also* 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[.]").

While procedural protections for landowners under the Eminent Domain Procedure Act are serious and important, it is also true that, in this particular case, the relief obtained by the Plaintiff can be fairly characterized as limited and temporary in relation to what the action actually sought to achieve. It is difficult to escape the conclusion that that these procedural objections were raised

as a tactical means and only because of the underlying substantive objections to the easement. In reality, the Plaintiff is no better off than it was before the challenge action in terms of disputing the Town's basic position that it has the power to acquire the beach renourishment easement by means of eminent domain. Accordingly, any fee award to the Plaintiff should reflect the limited nature of the "beneficial results obtained."

II. The Plaintiff's Fee Petition Should be Denied

Under the specific circumstances and procedural posture of this case, the most appropriate fee award to the plaintiff would be no award at all. The plaintiff simply has not obtained a ruling "that the condemnor has no right to take all or part of any landowner's property," S.C. Code Ann. § 28-2-510(A), as required for an award of litigations expenses. This is analogous to denial of an attorney fee award to a plaintiff who has recovered only nominal damages and has therefore "succeeded in only a technical sense." Johnson v. City of Aiken, 278 F.3d 333, 338 (4th Cir. 2002) (citing Farrar v. Hobby, 506 U.S. 103, 114 (1992) ("This litigation accomplished little beyond giving petitioners the moral satisfaction of knowing that a federal court concluded that [their] rights had been violated")). Likewise, a fee award is properly denied in a case involving dismissal without prejudice because "[a] dismissal without prejudice . . . does not make any party a prevailing one." Dunster Live, LLC v. LoneStar Logos Mgmt., 908 F.3d 948, 951 (5th Cir. 2018).

However, to the extent that the Court may determine that a fee award is in fact appropriate, additional analysis regarding what would be a reasonable attorney fee is provided below.

III. Categories of Fees the Plaintiff is Not Entitled to Recover

a.) Plaintiff is not entitled to recover attorney fees associated with extensive amounts of time devoted to pursuing theories on which it did not prevail

The S.C. Supreme Court has recognized that it is appropriate to reduce a statutory attorney fee award to a plaintiff that has prevailed only in part. In Rice v. Multimedia, Inc., 318 S.C. 95,

456 S.E.2d 381 (1995), the plaintiff, a terminated radio advertisement salesman, filed a claim under the Wage Payment Act, S.C. Code Ann. § 41-10-10, et seq., for commissions alleged to be due on seven advertising contracts he had procured. The trial court granted the defendant a directed verdict on three of the contracts, but the jury found in favor of Rice on the other four. Although "Rice petitioned the trial court for attorney fees in the amount of $64,000[,] [t]he trial court limited the amount of attorney's fees to $32,100 since Rice prevailed only in part." Id. at 100, 456 S.E.2d at 384 (emphasis added). The Court explained that "the trial court thoroughly addressed each of the *Baron* factors in determining the award of attorney's fees. We find no abuse of discretion." Id. (citing Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)).

Clearly implicit in the Court's reasoning in Rice is that it is appropriate to reduce the fees awarded to a partially prevailing party based upon, among other things, the factor of "beneficial results obtained" Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) (listing six factors in attorney fee award); Baron, supra (same). Although South Carolina courts have not developed case law guiding this analysis under the Eminent Domain Procedures Act, the approach is well developed under closely analogous case law governing federal claims for civil rights violations.[4] These federal cases are instructive because, like this particular condemnation challenge action, civil rights cases often involve multiple alleged bases for challenging government conduct and result in varying degrees of success among the different theories.

As the U.S. Supreme Court established in Hensley v. Eckerhart, 461 U.S. 424 (1983), in civil rights cases "where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained." Id. at 440. As the

[4] See 42 U.S.C.A. § 1988(b) ("In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs[.]").

Court explained, "[t]he product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead the district court to adjust the fee upward or downward, including the important factor of the 'results obtained.' This factor is particularly crucial where a plaintiff is deemed 'prevailing' even though he succeeded on only some of his claims for relief." Id. at 434.

> Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters. If, on the other hand, a plaintiff has achieved **only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount**. . . . Again, **the most critical factor is the degree of success obtained**.

Id. at 435–36 (emphasis added). As the Court further explained,

> Application of this principle is particularly important in complex civil rights litigation involving numerous challenges to institutional practices or conditions. This type of litigation is lengthy and demands many hours of lawyers' services. Although the plaintiff often may succeed in identifying some unlawful practices or conditions, the range of possible success is vast. That the plaintiff is a "prevailing party" therefore may say little about whether the expenditure of counsel's time was reasonable in relation to the success achieved.

Id. at 436.

When "a plaintiff may present in one lawsuit distinctly different claims for relief that are based on different facts and legal theories . . . work on an unsuccessful claim cannot be deemed to have been 'expended in pursuit of the ultimate result achieved.'" Id. at 434–35. On the other hand, where it is "difficult to divide the hours expended on a claim-by-claim basis . . . the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." Id. "There is no precise rule or formula for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment." Id. at 436-37.

The Hensley case involved claims of six types of violations of the constitutional rights of patients in a Missouri state mental health facility. After a three-week trial, the court found constitutional violations in five areas ("physical environment; individual treatment plans; least restrictive environment; visitation, telephone, and mail privileges; and seclusion and restraint"), but found no violation in the area of staffing. Id. at 427-28. The defendant claimed that the staffing issue, on which the plaintiff did not prevail, accounted for "70%–80% of the attorney time in the case." Id. at 439, fn.15. The district court awarded attorney fees (for four attorneys over five years of litigation) in the amount of $133,333.25, an amount not reduced on account of the unsuccessful "staffing" claim. Id. at 428.

The Supreme Court reversed the fee award and remanded for further proceedings because the trial court "did not properly consider the relationship between the extent of success and the amount of the fee award." Id. at 438-39. "A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." Id. at 439. If, hypothetically, "respondents [had] prevailed on only one of their six general claims, for example the claim that petitioners' visitation, mail, and telephone policies were overly restrictive . . . , a fee award based on the claimed hours clearly would have been excessive." Id. at 436. Under the circumstances, the plaintiffs' "failure to prevail on their challenge to the staffing levels would be material in determining whether an award based on over 2500 hours expended was justifiable in light of respondents' actual success." Id. at 439, fn.15.

Other courts around the country have applied the Hensley analysis to appropriately reduce attorney fee awards to only partially prevailing plaintiffs. *E.g.*, Biery v. United States, 818 F.3d 704, 712 (Fed. Cir. 2016) (30% reduction of hours upheld where claims of 5 of 15 eminent domain "Rails to Trails" taking plaintiffs were dismissed (fee award under Uniform Relocation Assistance

and Real Property Act of 1970, 42 U.S.C. § 4654(c)); Est. of Borst v. O'Brien, 979 F.2d 511, 516 (7th Cir. 1992) (40% reduction upheld where plaintiff alleged conspiracy, false arrest, and other claims against four police officers but only prevailed on a single excessive force claim against one officer); Popham v. City of Kennesaw, 820 F.2d 1570, 1578–81 (11th Cir. 1987) (67% reduction upheld where plaintiff asserted eight causes of action, including malicious prosecution, false arrest, and First Amendment violations, but only prevailed on an excessive force claim); Vialpando v. Johanns, 619 F. Supp. 2d 1107, 1128-29 (D. Colo. 2008) (70% reduction applied where plaintiff asserted twelve employment claims including sex discrimination, age discrimination, national origin discrimination, and retaliation, but only prevailed on a single claim related to a reduced bonus). The Vialpando court, noting that "the bulk of the time spent by the plaintiff's counsel was in the development and presentation of factual issues," emphasized that "the facts underlying the [successful] bonus claim were simple and straightforward, whereas [the unsuccessful] claims relating to her job duties and classifications were far more complex." Id. at 1128-29.[5]

The Supreme Court of South Carolina has relied on Hensley in general review of statutory fee awards on more than one occasion. Hueble v. S.C. Dep't of Nat. Res., 416 S.C. 220, 234, 785 S.E.2d 461, 468 (2016) (review of fee award under 42 U.S.C.A. § 1988); Layman v. State, 376 S.C. 434, 461, 658 S.E.2d 320, 334 (2008) (review of fee award under the "state action" statute, S.C. Code Ann. § 15-77-300). The S.C. Court of Appeals also recently applied the Hensley "beneficial results" analysis, along with the Fourth Circuit Court of Appeals' discussion of the same, to a fee award under North Carolina law. O'Shields v. Columbia Auto., LLC, No. 2017-

[5] The court also noted that the plaintiff's "billing records are not sufficiently granular to permit the Court to precisely excise time spent developing anything other than the bonus claim, and thus, the Court can only make a wholesale percentage reduction to account for the unsuccessful claims. Vialpando at 1129.

000902, 2021 WL 3520840, at *8 (S.C. App. Aug. 11, 2021, Petition Reh. Filed August 30, 2021) ("[T]he final step as discussed in Hensley and Johnson, means the circuit court retains discretion—after making a decision about apportionment—to reduce the amount of fees based on the partial or limited success of the litigation, whether the claims are related or not.") (citing Johnson v. City of Aiken, 278 F.3d 333 (4th Cir. 2002)).

Accordingly, under South Carolina law including Rice and the Jackson line of cases requiring consideration of "beneficial results obtained," as well as relevant analogous federal authority under Hensley and associated cases, any fee award to the plaintiff should be reduced by a substantial amount from what is claimed by the plaintiff in order to account for the limited scope of claims on which the plaintiff prevailed and the limited scope of relief obtained.

b.) Plaintiff is not entitled to recover attorney fees associated with motions and specific issues on which it did not prevail.

In addition to the above discussion of non-prevailing claims, South Carolina law also bars the plaintiff from recovering fees associated with motions on which it did not prevail. Even where a party's success on the merits triggers statutory recovery of attorney fees, the party is not entitled to fees associated with motions on which it was not successful. Hardaway Concrete Co. v. Hall Contracting Corp., 374 S.C. 216, 232–33, 647 S.E.2d 488, 496 (Ct. App. 2007). As the Court of Appeals explained in Hardaway,

> [B]ecause Hardaway lost the motion . . . the fees were not recoverable. Nothing in the record supports the master's award of attorney's fees for the motion for sanctions, which Hardaway lost. Hardaway's attorney's did not obtain beneficial results from this particular motion, and nothing in the master's order supports the reasonableness of this fee. . . . The attorney's fees award shall be reduced by that amount.

Id.

Specifically, the plaintiff is not entitled to recover fees associated with its unnecessary,

unsuccessful objections to production of fee statements (discussed in more detail in the *Affidavit of William C. Dillard, Jr.*) or its unnecessary, unsuccessful opposition to the Town's motion for protection from a deposition that the plaintiff sought to take even after summary judgment.

c.) Plaintiff is not entitled to recover attorney fees for items listed as "NOT CHARGED" on initial invoices

The plaintiff also claims entitlement to what the plaintiff's fee affidavit characterizes as 56.9 hours of "deferred time" from the August, September, October and November 2020 invoices. (See 9/10/21 Aff. Stanton, p. 16 fn.4). In fact, these time entries were listed as "NO CHARGE" in the relevant invoices (review of the fee statements shows that only 44.6 hours, not 56.9, were actually "no-charged" in this manner). Beginning with the October 2020 invoice, plaintiff's counsel included a note on the final page stating that he would later "present" this time "[i]f we find ourselves in a situation where we are able to recover from a third party" (Fee Statements p.23).

This "no charge" time is not properly recoverable. The treatment of these time entries in the actual invoices makes it clear that plaintiff's counsel and the plaintiff viewed the entries as representative of excessive time under the circumstances of the case. Fees that were not considered appropriate for inclusion in billing to a client are not properly included in a later fee request. Furthermore, this portion of the claim would in reality represent an award to the attorney for non-existent fees that were expressly "no charge" items. "The award of attorney's fees is made to the party, not his lawyer." Jackson v. Speed, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997).

IV. Analysis of Six Factors in Determining a Reasonable Attorney Fee

The six factors identified under Jackson v. Speed and associated cases are analyzed below. The analysis is further supported by reference to the following attached affidavits:

a. ("**Exhibit 1**") *Affidavit of David Pagliarini*, an experienced eminent domain practitioner, providing an opinion regarding a reasonable combined attorney fee for the plaintiff in this and the

two related actions;

b. ("**Exhibit 2**") *Affidavit of N. David Durant, Sr.*, Town Attorney and original counsel of record for the Town, providing factual rebuttal of the claim that the Town's litigation approach led to any need for the significant number of hours included in the plaintiff's fee affidavit;

c. ("**Exhibit 3**") *Affidavit of Brian Henry*, Mayor of the Town of Pawleys Island, providing factual rebuttal of the claim that an email attached to the plaintiff's fee affidavit constituted approval of "stop-at-nothing" litigation measures against the plaintiff; and

d. ("**Exhibit 4**") *Affidavit of William C. Dillard, Jr.*, undersigned counsel of record for the Town, providing a factual summary of the dispute over production of plaintiff's fee statements and further providing itemized factual analysis in support of a reasonable attorney fee award.

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

The underlying claims in this challenge action were not particularly complex or difficult, either legally or factually. Plaintiff's arguments to the contrary are belied by the fact that it filed a motion for summary judgment at the beginning of the case on literally the first day it was permitted to do so. In any condemnation challenge action there are only a limited number of grounds for the challenge – fraud, bad faith, or abuse of discretion – and the limited relevant South Carolina case law makes it clear that governmental bodies are entitled to substantial deference in determining public use and necessity. E.g., Timmons, 254 S.C. at 396. Admittedly, the plaintiff's arguments regarding the "necessity" of an easement required by the Army Corps of Engineers for a long-term federal beach renourishment program present a scenario that does not come up in run-of-the-mill highway condemnation matters. However, there is nothing particularly complicated about the relevant facts or law. *See., e.g.*, S.C. Code Ann. § 28-2-50 ("A condemnor may comply with any federal statute, regulation, or policy prescribing a condition precedent to the availability or

payment of federal financial assistance for any program or project for which the condemnor is authorized to exercise the power of eminent domain.").

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 does not present a demanding task. The plaintiff did not identify any expert witnesses and, although plaintiff's counsel deposed the appraiser for the Town, no testimony from the deposition was referenced in the summary judgment order. Particularly with regard to the limited scope of procedural claims on which the plaintiff actually prevailed, the case by no means involved complex or difficult issues. As set forth in the *Affidavit of David Pagliarini*, this was a case of "limited complexity and scope" (¶ 31).

(2) <u>The time necessarily devoted to the case</u>

Plaintiff's counsel states that he has or will work 950.5 hours in connection with this and, simultaneously, the other two related cases. This is excessive in light of the actual needs of the case, even factoring in reasonable time spent on motions that the Town lost or withdrew. As set forth in the *Affidavit of N. David Durant, Sr.*, although the Town did push for early dismissal of the case and sought a requirement for posting bond, it certainly did not pursue a "scorched earth" litigation strategy as plaintiff's counsel claims.[6] Even if the Town had hypothetically pursued an exceptionally aggressive approach to the litigation, which it demonstrably did <u>not</u> do, it is difficult to imagine how this would have resulted in a need for plaintiff's counsel to work nearly a thousand hours over what was in effect a period of a few months.

The plaintiff has presented only non-itemized, "block billed" fee statements, and has in fact declined to provide any fee statements or time descriptions at all for the 176.2 hours claimed since March 5, 2021 (9/10/21 Stanton Aff. ¶ 61-62). The plaintiff bears the burden to support its

[6] See also the *Affidavit of Brian Henry*, factually rebutting the claim of plaintiff's counsel that the Town employed a "stop-at-nothing approach". (9/10/21 Stanton Aff. ¶ 26).

claim and is certainly not entitled to any 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).

As supported by the additional factual analysis in the *Affidavit of David Pagliarini* and *Affidavit of William C. Dillard, Jr.*, a more appropriate estimate of the total time reasonably and necessarily devoted in tandem to this and the other two related cases is approximately **125 hours**.

The Pagliarini affidavit accounts for reasonable efforts necessary to assert not only the procedural claims but also fraud, bad faith, and lack of necessity claims (i.e., the 125 hours does not exclude time for the non-prevailing claims). The "Proposed Reductions" table attached to the Dillard affidavit, which allots reasonable amounts of time (127 hours total) to the actual tasks described in the plaintiff's specific fee statement time entries, including based on consideration of the Pagliarini affidavit, reinforces the conclusion that 125 hours is an appropriate estimate of time necessarily devoted to the case.

(3) Professional standing of counsel

Plaintiff's counsel presents credentials to support a finding that he has general professional standing. It is worth noting that plaintiff's counsel, while admittedly having been in practice for many years, does not appear to have significant, ongoing experience or practice emphasis in what

he describes as the "specialized area of law" involved in this case. (9/10/21 Stanton Aff. ¶ 81).

(4) <u>Contingency of compensation</u>

This factor does not appear relevant under the circumstances of this case.

(5) <u>Beneficial results obtained</u>

As discussed in more detail above, the plaintiff has obtained what is essentially temporary procedural relief based upon its stated position that "noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed[.]" (Amended Complaint p.11). The plaintiff did not obtain any permanent prohibitive relief or any declaration that the Town lacks authority to pursue the easement in the future. Accordingly, the relatively limited scope of "beneficial results" obtained requires that any fee award be substantially less than what the plaintiff claims and, among other things, account for time spent on claims and motions on which the plaintiff did not prevail.

The "Proposed Reductions" table attached to the *Affidavit of William C. Dillard, Jr.* demonstrates that, of an estimated total of 127 hours reasonably devoted to the actual tasks listed in the plaintiff's fee statements, at least 26.3 hours (i.e., 21% of the total) would be clearly and reasonably attributable to the fraud, bad faith, and lack of necessity claims on which the plaintiff did not prevail. This would justify the Court in reducing the 125 hour by 20% to 100 hours, and most certainly provides additional justification for the reasonableness of the 125 hours itself.

Of the actual 950.5 hours that the plaintiff is claiming, it is clear from the substance of the plaintiff's filings that much more than 20% of that excessive time is clearly attributable to the non-prevailing fraud, bad faith, and lack of necessity claims. In other words, the record demonstrates that the excessive 950.5 hours were even more heavily weighted toward those unsuccessful claims. For example, of the 61-page Amended Complaint, only a handful of pages relate to the procedural

claims on which the plaintiff prevailed. Similarly, the 24-page summary judgment order includes 13 pages of general background/conclusion and 11 pages of analysis specific to the prevailing procedural claims. However, as noted in the plaintiff's February 3, 2021 *Memorandum in Opposition* to reconsideration of summary judgment (p.3), the proposed order submitted by the plaintiff was over 50 pages (i.e., the proposed order included another 26 pages or more relating to the non-prevailing "fraud/bad faith" claims). It is clear that at least 50%, and more realistically at least 75%, of the claimed 950.5 hours related exclusively to the non-prevailing fraud, bad faith, and lack of necessity theories. Again, this amply justifies an award based on the 125 hours provided for in the Pagliarini affidavit for the full scope of claims, to be divided between the three plaintiffs.

Finally, as previously discussed, the plaintiff is not entitled to recover fees associated with its opposition to production of fee statements or the Town's request for protection from the plaintiff's effort to depose the Town Administrator after summary judgment. *See* Hardaway Concrete Co., supra. These unnecessary efforts served no purpose other than to drive up costs. This time was specifically deducted in the "Proposed Reductions" table in the Dillard affidavit.

(6) Customary legal fees for similar services

As set forth in the *Affidavit of David Pagliarini*, plaintiff counsel's claimed rate of **$190/hour** is within the range of what is reasonable and customary based upon his professional standing and relevant experience in the subject matter of this case. The circumstances of this and the two related cases, in which the essentially identical claims of three plaintiffs were pursued jointly and, according to plaintiff's counsel, billed in thirds, also necessitate that any fee award to the plaintiff be limited to 1/3 of the total reasonable amount for all three cases.

V. Application of the Lodestar Analysis

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

$190 x 125 hours = $24,000 (rounded) x 1/3 = **$8,000 attorney fee.**

To the extent that any award is made, the Town does not dispute the claimed out-of-pocket expenses in the amount of **$304.56** (i.e., 1/3 of $913.69).

Conclusion

As set forth above, the facts and applicable law support an outright denial of the plaintiff's petition for attorney fees under the specific circumstances of this case and the Town requests that the Court enter an order to that effect. In the alternative, in the event that the Court determines that an award of reasonable attorney fees is appropriate, the Town requests that the Court award attorney fees of no more than $8,000 and out-of-pocket expenses of no more than $304.56. Finally, the Town requests that the subject action be dismissed, without prejudice to any future condemnation attempts.

Respectfully submitted,

s/ William C. Dillard, Jr.
William C. Dillard, Jr. (S.C. Bar No. 78986)
BELSER & BELSER, P.A.
Post Office Box 96
Columbia, SC 29202
(803) 929-0096
will@belserpa.com

Attorneys for Town of Pawleys Island

September 20, 2021

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
C/A NO. **2021-CP-22-00600-00602**

Sunset Lodge, LLC

Plaintiff,

VS.

Town of Pawleys Island,

Defendant,

And

Franklin D. Beattie, as Trustee of the Franklin D. Beattie Preservation Trust,

Plaintiff,

VS.

Town of Pawleys Island,

Defendant,

And

M. Baron Stanton,

Plaintiff,

VS.

Town of Pawleys Island,

Defendant.

AFFIDAVIT OF DAVID G. PAGLIARINI

Exhibit 1

PERSONALLY appeared before me, David G. Pagliarini, Esquire, who, being duly

sworn, deposes and says as follows, to-wit:

1. I am a licensed attorney in the State of South Carolina and am the sole member of the Pagliarini Law Firm, LLC with an office located in Charleston, South Carolina.

2. I graduated from The Citadel, The Military College of South Carolina, in 1991 and received my J.D. from The University of South Carolina School of Law in 1995. I passed the South Carolina Bar in 1995 and have continuously practiced law in South Carolina since that time.

3. I have practiced in the eminent domain field for over twenty years and have litigated a significant number of condemnation and challenge actions. I also practice municipal law and handle real estate transactions.

4. My eminent domain clients over the past twenty years include the South Carolina Department of Transportation, Town of Mount Pleasant, Berkeley County, Dorchester County, Beaufort County, Georgetown County, City of Hardeeville, Town of James Island, Town of Hollywood, South Carolina Public Service Authority, Georgetown County Water & Sewer District, Lowcountry Water System, Georgia Department of Transportation and others. My most recent CV is attached is attached as Exhibit A.

5. I have handled multiple major projects for many of these entities which have resulted in numerous direct condemnation cases and many statutory challenge actions. I have tried a number of these cases and have significant experience in all facets of litigation.

6. I have been retained by the Town of Pawleys Island (the "Town) to review and provide an opinion on the reasonableness of a claim for attorney fees made by M. Baron Stanton, Esquire. The claim relates to work Mr. Stanton performed on behalf of three plaintiffs in three separately filed statutory challenge actions which stem from three separate condemnation actions

brought by the Town. I do not, and have never, represented the Town. I do not know Mr. Stanton and I do not believe that I have been involved in a case with him.

7. I have been provided copies of the relevant pleadings, written discovery and documents, motions and supporting memos, orders, attorney fee affidavits and redacted attorney invoices. Additionally, I have reviewed the Georgetown County Public Index which includes all case filings. The Index for the Sunset Lodge, LLC case is attached as Exhibit B and it is representative of the other cases. Finally, I have reviewed a case timeline prepared by legal counsel for the Town of Pawleys Island and the same is attached as Exhibit C.

8. I understand that Mr. Stanton filed three statutory challenge actions on behalf of three separate plaintiffs (of which Mr. Stanton is one.) The three cases are identified in the caption to this affidavit and are referenced herein as the Sunset Lodge, Beattie and Stanton cases. I further understand that the legal and factual issues among the three cases are similar and that Mr. Stanton essentially treated all three claims as one. His three sets of invoices are similar in that they reflect the total amount of time spent on all three cases and then allocate a percentage (one third) to each client. Finally, Mr. Stanton has reduced the total claim by one third as he is not seeking recovery of attorney fees, but is seeking costs, in his own case.

9. My initial review of the respective affidavits (one for each of the three cases) prepared by Mr. Stanton and filed with the court on April 22, 2021, indicates that Mr. Stanton's claim for attorney fees and costs was $114,606.00 as of May 1, 2021. Mr. Stanton indicates that this sum represents approximately two-thirds of the total amount of accrued fees and costs, which is represented to be approximately $172,000. Of the $114,606 claim, Mr. Stanton allocates $57,303 respectively to the Sunset Lodge and Beatty cases.

10. On September 10, 2021, Mr. Stanton filed updated affidavits to include fees and

costs through September 9, 2021 plus an estimate of an additional $5,700.00 in fees and costs through October 6, 2021. Additional affidavits were filed on September 13, 2021. Mr. Stanton's claims for attorney fees and costs, on behalf of his clients, through October 6, 2021 are:

Beattie:	$61,112.02
Sunset Lodge:	$61,112.02
Stanton:	$881.95
TOTAL:	$123,105.99

11. Respective complaints were filed in Georgetown County on behalf of Sunset Lodge, Beatty and Stanton on July 21, 2020. The cases are couched as statutory challenge actions in accordance with section 28-2-470 of the South Carolina Eminent Domain Procedure Act. Summary judgment was granted in all cases by order of the court filed January 20, 2021. This claim for attorney fees and costs is made pursuant to South Carolina Code section 28-2-510(A).

12. My review is divided into three general areas: a) Reasonableness of the billing rate; b) Reasonableness of the time spent on various tasks in the case; and c) Overall reasonableness of the invoices in cases of this type and complexity.

13. My opinion is also based on Jackson v. Speed, 486 S.E.2d 750, 326 S.C. 289 (1997), where the South Carolina Supreme Court provided: "the court should consider the following six factors when determining a reasonable attorney's fee: (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."

14. Mr. Stanton's billing rate is $190 per hour. This rate is on the lower side for an attorney with Mr. Stanton's general experience and therefore, in my opinion, is reasonable. I note

that Mr. Stanton does not claim any recent or material experience in eminent domain matters and while the hourly rate is reasonable this lack of experience may have resulted in significant additional time spent on research, drafting of pleadings and other work not relevant to challenge actions. I further note that Mr. Stanton did not utilize the services of a paralegal or legal assistant. Many of the items billed are ministerial in nature and are charged at the rate of $190 hour as opposed to a more reasonable rate of $65-$75 per hour.

15. The challenge actions were largely litigated between July 2020 (the filing of the respective complaints) and January 2021 when Orders granting summary judgment in favor of the three plaintiffs were filed. The major case events include the filing of complaints, written discovery, one deposition, various motions including a motion for dismissal, a motion for summary judgment, various discovery motions, a motion for reconsideration and a motion for attorney fees and costs, and two motion hearings. There was no trial.

16. Between July 1, 2020 and March 3, 2021 Mr. Stanton claims to have billed approximately 774 hours (with additional uncharged time) on the three related cases. It is noted that the three cases were essentially handled as one with minor differences in pleadings, motions and discovery. This equates to almost 100 billed hours per month over this period.

17. Mr. Stanton billed and/or estimated an additional 96.5 hours through May 1, a period of limited case activity, for a total of approximately 890 hours. The most recent affidavits reflect actual claimed time through May 1 as well as an additional 42.2 hours from May 1, 2021 through September 9, 2021. Overall, Mr. Stanton indicates that he has worked well over 900 hours on the cases.

18. I provide these numbers for context given that I consider a 2,000 hour billed year for a lawyer very difficult to achieve. Mr. Stanton purports to have (or will) bill more than half of

that time over a one-year period on one matter limited in scope and with few significant events. I will address the limited scope and complexity of this case later in the affidavit.

19. The invoices reflect that in July 2020 Mr. Stanton spent approximately 162.8 hours working on the cases and billed 143.6 hours. Mr. Stanton reports that he worked on the cases on 27 of the 31 days in July. This equates to an average of over six hours per day for 27 days worked. The invoice reflects that the majority of the time spent on the case was for document/case history review, research, drafting pleadings and drafting written discovery requests.

20. On July 21, 2020, Mr. Stanton filed an initial complaint in each case consisting of 57 pages and 169 paragraphs. On July 31, 2020, Mr. Stanton filed amended complaints totaling 61 pages and 179 paragraphs. The amended pleading contains 55 pages of facts and background information including exhaustive and verbose recitations of Town and USACE procedural actions, emails, public meetings, project history and other events.

21. Not only are the pleadings largely unintelligible, but the sheer volume of information presented is wholly unnecessary and contrary to rules of pleading. Rule 8 of the South Carolina Rules of Civil Procedure provides that pleadings shall contain "(1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled."

22. The lengthy pleadings are one example of voluminous documents prepared by Mr. Stanton. Other examples include:

Stanton's Affidavit in support of SJ Motion: 26 pages

Return to Motion for Protection from Discovery:	7 pages
Stanton Affidavit re Motion for Protection:	6 pages
Memo in Opposition to Motion to Dismiss:	61 pages
Motion to Compel/Expenses	14 pages
Memo is Support of Summary Judgment:	50 pages
Answers to Interrogatories	64 pages
Memo in Opposition to Motion for Fee Records:	43 pages
Fee Affidavits:	22 pages
Updated Fee Affidavits:	32 pages

23. Mr. Stanton's billing records are not specific in that time is not assigned to specific tasks. Rather, he generally assigns time for all tasks performed on a given day. Additionally, time from May 1, 2021 provides no explanation or reference to the work performed. While this is an appropriate form of billing (at least through May 1, 2021) it is difficult to determine how much time is spent on each tasks. Therefore, the following is a rough estimate of time spent on major case tasks:

Legal Research/Preparation of Pleadings:	112 hours
Summary Judgment Affidavit:	44 hours
Summary Judgment Brief:	66 hours
Proposed Order:	29 hours
Fee Claim and Affidavit (through October 6, 2021)	50-70 hours*

*As indicated the time claimed from May 1, 2021 is provided without context and without explanation. My review of the case history and filings indicates that this period of the litigation largely centers on the attorney fee claims.

24. I also note that Mr. Stanton deposed an appraiser over a period of many hours over two separate days. While the deposition is appropriate, it appears that the only relevant issue for the appraiser, given the plaintiff's causes of action, is the scope of the specific easement interest being condemned. Valuation methodology and conclusions, typically the main issue in appraiser depositions, are not relevant in statutory challenge actions. In my years of eminent

domain practice, in many significant and complicated cases, I have never taken part in an appraiser deposition which lasted more than five or six hours.

25. The billing records provided reflect that Mr. Stanton billed over eight hours per day on numerous occasions. It appears that Mr. Stanton billed more than 10 hours on 17 different days. This includes multiple days of more than 12 hours billed and on January 25, 2021, he billed 19.8 hours.

26. The length of the various documents, the time spent on each task, and the questionable necessity of several of the documents and tasks would be unreasonable in most cases. Specifically, for example, a 26-page affidavit executed by an attorney in support of a summary judgment motion, which largely tracks the facts presented in the pleadings, is unnecessary. In fact, the affidavit was prepared prior to case discovery.

27. Mr. Stanton's work must also be placed in the context of this case. Challenge actions are limited in scope and relevant case law is also limited. This is evident in Mr. Stanton's pleadings wherein he essentially pled two causes of action: a) fraud and bad faith in the context of public necessity; and 2) South Carolina Eminent Domain Procedure Act violations. Summary judgment was granted solely on the procedural violations and the condemning authority may decide to pursue the acquisitions at a later date.

28. The scope of the pleadings, discovery and motions in this case are limited and the volume of work claimed is overwhelmingly unnecessary and unreasonable.

29. In my experience, challenge actions of this nature with limited discovery and no trial can be successfully managed in one-tenth of the time claimed here. An experienced attorney should be aware of the relevant case law and have available basic pleadings, discovery and motions relied upon in past cases.

30. In fairness to the plaintiffs, defense counsel filed unsuccessful motions that plaintiffs' counsel was forced to deal with. Specifically, defendant filed a Motion to Disqualify Plaintiffs' counsel and a Motion to Post Bond.

31. Given the limited complexity and scope of the case it is my opinion that 125 hours is a reasonable and fair amount of time to prosecute these challenge actions. This considers the limited eminent domain experience of plaintiffs' counsel, the time necessary to handle motions filed by defense counsel, and the preparation of attorney fee affidavits.

32. My opinion is based on the following estimates related to major case elements and tasks:

Document Review/Case History/Research: 15
Drafting Pleadings: 10
Written Discovery: 15
Depositions/Preparation: 12
Motion Preparation/Briefs: 20
Motion Hearings: 10
Order Preparation: 10
Attorney Fee/Cost Affidavits and claim: 10
Administrative/Client Consultation: 20 (considers repetitive admin duties for three cases)

33. At counsel's hourly rate it is estimated that $24,000 is a fair and reasonable attorney fee to handle all three cases. This opinion is based on my experience handling statutory challenge actions. Further, it is my opinion that the claim for costs is reasonable.

34. It is also my opinion that Mr. Stanton's time spent developing a basis for the attorney fee claim, including his resistance to producing bills as reflected in the filings, is unreasonable. In my experience, providing invoices is fundamental to supporting such a claim, and nothing related to the circumstances in this case, including the possibility of future related litigation, justifies the resistance to providing the invoices.

David G. Pagliarini, Esquire
State Bar No. 8850
Pagliarini Law Firm, LLC
145 River Landing Drive, Suite 101 B
Charleston, South Carolina 29492
(843) 971-8646
david@lawyershmp.com

September 20 2021
Charleston, South Carolina

SWORN to and subscribed before me
this 20th day of September2021

Notary Public for South Carolina
My Commission Expires: 03/01/2026

DENISE D. MYERS
Notary Public-State of South Carolina
My Commission Expires
March 01, 2026

DAVID G. PAGLIARINI, ESQUIRE

PAGLIARINI LAW FIRM, LLC

145 River Landing Drive, Suite 101-B
Daniel Island, South Carolina 29492
(843) 971-8646
(843) 971-8745 (f)
david@lawyershmp.com

Our Firm:

Pagliarini Law Firm, LLC was established in 2021 by David G. Pagliarini following 20 years in practice with Hinchey, Murray & Pagliarini, LLC. PLF offers a wide range of legal services and representation in the areas of eminent domain, government, real estate, professional negligence, and general litigation.

Areas of Practice:

My practice areas include eminent domain, real estate, zoning, municipal law, land use, professional negligence, and general litigation. Eminent domain and professional negligence are litigation intensive. In my eminent domain practice I represent condemning authorities in matters involving government projects in South Carolina. I have handled multiple inverse condemnation and statutory challenge cases. I am an approved attorney for the South Carolina Department of Transportation. My professional negligence practice centers on defense of professional appraisers. In addition to my litigation practice I handle commercial and residential real estate transactions.

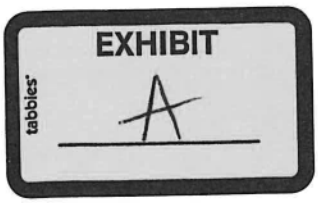
Experience:

2021- Present	Pagliarini Law Firm, LLC – Charleston, South Carolina
2001 – 2021	Hinchey, Murray & Pagliarini, LLC – Charleston, South Carolina
1999 – 2001	Stuckey, Murphy & Hinchey, LLC – Charleston, South Carolina
1996 – 1999	Qualey & DeAntonio, P.A. – Charleston, South Carolina
1995 – 1996	Bamberg/Barnwell County Public Defender - Bamberg, South Carolina

Education:

B.A. History, The Citadel, The Military College of South Carolina, Charleston, 1991

J.D., University of South Carolina, Columbia, 1995



Professional Licenses/Memberships:

South Carolina Bar, admitted 1995

Licensed to practice in the South Carolina Supreme Court

Licensed to practice in the Unites States Fourth Circuit Court of Appeals

Charleston County Bar Association

Rotary Club of Daniel Island

Seminar Speaker:

SCDOT Eminent Domain Seminar, 2019

Eminent Domain in South Carolina, 2006 and 2008

Boundary Law in South Carolina, 2005

Partial Client List:

Town of Mount Pleasant, South Carolina

South Carolina Department of Transportation

South Carolina Public Service Authority (Santee Cooper)

Lowcountry Water System

City of Hardeeville, South Carolina

Town of Hollywood, South Carolina

Town of James Island, South Carolina

Beaufort County, South Carolina

Dorchester County, South Carolina

Georgetown County, South Carolina

Berkeley County, South Carolina

Georgia Department of Transportation

Georgetown County Water & Sewer District

Central Electric Power Cooperative, Inc.

LIA Administrators & Insurance Services

Edisto Island Open Land Trust

Charleston County Parks and Recreation Department

National Bank of South Carolina

Charleston Residential Appraisals

Atlantic Appraisals, LLC

Reported Eminent Domain Cases:

Georgia Department of Transportation v. Jasper County, 355 S.C. 631, 586 S.E.2d 853 (2003)

Partial List of Eminent Domain Projects on Behalf of Condemning Authorities

Coleman Boulevard Revitalization (Town of Mount Pleasant)

Hungry Neck Boulevard Phases I-IV (Town of Mount Pleasant)

Sweetgrass Basket Parkway Phases I and II

Highway 17 Widening (Town of Mount Pleasant)

Highway 17 Interchange (Town of Mount Pleasant)

Bowman Road Phases I and II (Town of Mount Pleasant)

Longpoint Road Realignment (Town of Mount Pleasant)

Mathis Ferry Road Realignment (Town of Mount Pleasant)

Laurel Hill Outfall (Town of Mount Pleasant)

Bessemer Road Roundabout (Town of Mount Pleasant)

Mark Clark Extension (SCDOT)

I-26 Port Access Road (SCDOT)

Glenn's Bay Road Overpass (SCDOT)

Clement's Ferry Road Widening (SCDOT)

Highway 52 Overpass (SCDOT)

Cooper River Bridge (SCDOT)

James Island Town Hall (Town of James Island)

Boundary Street Revitalization (Beaufort County)

Georgetown County Airport (Georgetown County)

Georgetown County
Fifteenth Judicial Circuit
Public Index

Switch View

Sunset Lodge Llc VS Pawleys Island Town Of

Case Number:	2020CP2200600	**Court Agency:**	Common Pleas	**Filed Date:**	07/21/2020
Case Type:	Common Pleas	**Case Sub Type:**	Fraud/Bad Faith 150	**File Type:**	Mediator - Non Jury
Status:	Pending/ADR Sanctions	**Assigned Judge:**	Clerk Of Court C P, G S, And Family Court		
Disposition:		**Disposition Date:**		**Disposition Judge:**	
Original Source Doc:		**Original Case #:**			
Judgment Number:	2020CP2200600	**Court Roster:**			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Sunset Lodge Llc	NEF(09-13-2021 05:36:13 PM) Notice/Other	Filing		09/14/2021-08:22		
Sunset Lodge Llc	Notice/Erratum	Filing		09/13/2021-17:36		
Sunset Lodge Llc	NEF(09-10-2021 09:45:09 PM) Affidavit/Attorney Fees	Filing		09/13/2021-08:52		
Sunset Lodge Llc	Affidavit/Attorney Fees	Filing		09/10/2021-21:45		
Sunset Lodge Llc	NEF(06-30-2021 10:58:37 AM) Order/Other	Filing		06/30/2021-11:03		
Sunset Lodge Llc	NEF(06-30-2021 11:02:15 AM) Order/Electronic Form 4	Filing		06/30/2021-11:02		
Sunset Lodge Llc	Order/Electronic Form 4/See Formal Order	Order		06/30/2021-11:02		
Sunset Lodge Llc	Order	Order		06/30/2021-10:58		
Sunset Lodge Llc	ADR/Notice of ADR	Action		06/18/2021-10:56		
Sunset Lodge Llc	NEF(05-19-2021 04:30:00 PM) Notice/Other	Filing		05/19/2021-16:37		
Sunset Lodge Llc	Notice/Erratum	Filing		05/19/2021-16:30		
Sunset Lodge Llc	NEF(05-18-2021 10:56:14 AM) ADR/Notice of ADR	Filing		05/18/2021-10:56		
Sunset Lodge Llc	NEF(04-22-2021 03:02:22 PM) Amended/Other	Filing		04/22/2021-15:23		
Sunset Lodge Llc	Amended/Affidavit	Filing		04/22/2021-15:02		
Pawleys Island Town Of	NEF(04-05-2021 03:07:37 PM) Order/Protective Order	Filing		04/05/2021-15:12		
Pawleys Island Town Of	Order Protective for Prod of Doc Relating Mot for Atty Fees	Order		04/05/2021-15:07		
Sunset Lodge Llc	NEF(04-05-2021 02:03:59 PM) Order/Judgment Amended and F...	Filing		04/05/2021-14:04		
Sunset	Order Form 4	Order		04/05/2021-		

EXHIBIT B tabbies

Lodge Llc				14:03		
Sunset Lodge Llc	NEF(04-05-2021 02:03:17 PM) Order/Judgment Amended and F...	Filing		04/05/2021-14:03		
Sunset Lodge Llc	Order Amended Summary Judgment	Order		04/05/2021-14:03		
Pawleys Island Town Of	NEF(04-05-2021 09:31:48 AM) Order/Order Cover Sheet $25....	Filing		04/05/2021-11:36		
Sunset Lodge Llc	NEF(04-01-2021 06:01:19 PM) Proposed Order/Judgment Amen...	Filing		04/05/2021-09:56		
Pawleys Island Town Of	Order/Order Cover Sheet $25.00	Filing		04/05/2021-09:31		
Sunset Lodge Llc	Order/Order Cover Sheet $25.00	Filing		04/01/2021-18:01		
Sunset Lodge Llc	NEF(04-01-2021 04:15:29 PM) Order/Electronic Form 4	Filing		04/01/2021-16:23		
Sunset Lodge Llc	Elect Form 4/Def Mot For Protect From Disc Partial Granted	Order		04/01/2021-16:15		
Stanton, M. Baron	4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		03/25/2021-09:14		
Stanton, M. Baron	4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		03/25/2021-09:14		
DuRant, Norwood David Sr.	4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		03/25/2021-09:14		
DuRant, Norwood David Sr.	4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		03/25/2021-09:14		
Dillard, William Clayton Jr.	4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		03/25/2021-09:14		
Dillard, William Clayton Jr.	4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		03/25/2021-09:14		
Sunset Lodge Llc	NEF(03-18-2021 07:03:31 PM) Memo/Memo in Opposition	Filing		03/19/2021-09:14		
Sunset Lodge Llc	Memo/Memo in Opposition	Filing		03/18/2021-19:03		
Pawleys Island Town Of	NEF(03-17-2021 01:58:48 PM) Memo/Memo in Support	Filing		03/17/2021-16:10		
Pawleys Island Town Of	Memo/Memo in Support of Motion to Amend Judgment	Filing		03/17/2021-13:58		
Sunset Lodge Llc	NEF(03-17-2021 12:15:15 PM) Memo/Memo in Opposition	Filing		03/17/2021-13:46		
Sunset Lodge Llc	Memo/Memo in Opposition	Filing		03/17/2021-12:15		
Pawleys Island Town Of	NEF(03-09-2021 08:27:56 AM) Order/Protection from Court ...	Filing		03/09/2021-08:28		
Pawleys Island Town Of	Order/Protection from Court Appearance	Order		03/09/2021-08:27		
Pawleys Island Town Of	NEF(03-05-2021 12:13:47 PM) Proposed Order/Protection fr...	Filing		03/05/2021-13:22		
Pawleys Island Town Of	Order/Order Cover Sheet $25.00	Filing		03/05/2021-12:13		
Pawleys Island Town Of	NEF(03-03-2021 02:24:03 PM) Motion/Protection from Disco...	Filing		03/03/2021-14:59		
Pawleys Island Town Of	Motion/Protection from Discovery/Dillard	Motion		03/03/2021-14:24	04/01/2021-14:24	
Sunset Lodge Llc	NEF(03-02-2021 10:52:03 AM) Notice/Other	Filing		03/02/2021-11:20		

Sunset Lodge Llc	Plaintiff Objection to Hearing on March 3 2021	Filing		03/02/2021-10:52		
Sunset Lodge Llc	NEF(03-01-2021 01:48:29 PM) Memo/Memo in Support	Filing		03/01/2021-15:49		
Pawleys Island Town Of	NEF(03-01-2021 03:14:04 PM) Motion/Discovery and Disclos...	Filing		03/01/2021-15:47		
Pawleys Island Town Of	Mot Protect Ord Prod Doc Relating Mot for Att Fees/Dillard	Motion		03/01/2021-15:14	04/05/2021-15:14	
Sunset Lodge Llc	Memo/Memo in Support	Filing		03/01/2021-13:48		
Sunset Lodge Llc	ADR/Alternative Dispute Resolution (Workflow)	Action		02/16/2021-07:47	08/16/2021-07:47	
Sunset Lodge Llc	NEF(02-09-2021 10:02:17 AM) Reply/Other	Filing		02/09/2021-10:21		
Sunset Lodge Llc	Reply	Filing		02/09/2021-10:02		
Sunset Lodge Llc	NEF(02-08-2021 11:37:16 AM) Order/Electronic Form 4	Filing		02/08/2021-11:37		
Sunset Lodge Llc	Order/Electronic Form 4/Mot to Strike Withdrawn	Order		02/08/2021-11:37		
Pawleys Island Town Of	NEF(02-05-2021 02:39:33 PM) Memo/Memo in Opposition	Filing		02/05/2021-14:47		
Pawleys Island Town Of	Memo/Memo in Opposition to Motion for Expenses	Filing		02/05/2021-14:39		
Dillard, William Clayton Jr.	2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		02/05/2021-12:51		
Dillard, William Clayton Jr.	2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		02/05/2021-12:51		
DuRant, Norwood David Sr.	2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		02/05/2021-12:51		
DuRant, Norwood David Sr.	2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		02/05/2021-12:51		
Stanton, M. Baron	2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		02/05/2021-12:51		
Stanton, M. Baron	2/25/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		02/05/2021-12:51		
Sunset Lodge Llc	NEF(02-04-2021 04:55:05 PM) Reply/Other	Filing		02/05/2021-09:02		
Sunset Lodge Llc	Reply to Opposition to Motion for Fees	Filing		02/04/2021-16:55		
Sunset Lodge Llc	1st Supplement to 2nd Amended Affidavit of Fees	Filing		02/04/2021-16:55		
Sunset Lodge Llc	NEF(02-03-2021 02:33:28 PM) Memo/Memo in Opposition	Filing		02/03/2021-14:54		
Sunset Lodge Llc	Memo/Memo in Opposition	Filing		02/03/2021-14:33		
Pawleys Island Town Of	NEF(02-03-2021 10:26:21 AM) Notice/Notice of Appearance	Filing		02/03/2021-10:26		
Pawleys Island Town Of	Notice/Notice of Appearance	Filing		02/03/2021-10:26		
Sunset Lodge Llc	NEF(02-02-2021 02:04:27 PM) Order/Compel	Filing		02/02/2021-14:04		
Sunset Lodge Llc	Amended Order Granting Motion to Compel	Order		02/02/2021-14:04		
Sunset Lodge Llc	NEF(02-01-2021 06:44:22 PM) Notice/Other	Filing		02/02/2021-08:48		
Sunset Lodge Llc	Notice of Proposed Order	Filing		02/01/2021-18:44		

DuRant, Norwood David Sr.	2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/29/2021-14:42		
Stanton, M. Baron	2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/29/2021-14:42		
Pawleys Island Town Of	NEF(01-29-2021 12:22:27 PM) Notice/Other	Filing		01/29/2021-14:39		
Pawleys Island Town Of	NEF(01-29-2021 11:55:21 AM) Motion/Alter and/or Amend	Filing		01/29/2021-14:31		
Pawleys Island Town Of	Notice/Motion/Disqualification of Counsel for the Plt	Filing		01/29/2021-12:22		
Pawleys Island Town Of	Motion/Alter and/or Amend/Durant	Motion		01/29/2021-11:55	03/17/2021-11:55	
Sunset Lodge Llc	NEF(01-27-2021 12:34:47 PM) Order/Electronic Form 4	Filing		01/27/2021-12:34		
Sunset Lodge Llc	Order/Electronic Form 4/See Form 4	Order		01/27/2021-12:34		
Sunset Lodge Llc	NEF(01-26-2021 09:59:32 PM) Memo/Memo in Opposition	Filing		01/27/2021-10:47		
Sunset Lodge Llc	Memo/Memo in Opposition	Filing		01/26/2021-21:59		
Sunset Lodge Llc	NEF(01-26-2021 03:18:44 PM) Amended/Other	Filing		01/26/2021-15:52		
Sunset Lodge Llc	Amendment to Affidavit RE Reasonable Fees and Expenses	Filing		01/26/2021-15:18		
Sunset Lodge Llc	NEF(01-25-2021 02:26:36 PM) Motion/Attorney Fees	Filing		01/25/2021-16:38		
Sunset Lodge Llc	Motion/Attorney Fees/Stanton	Motion		01/25/2021-14:26	03/17/2021-14:26	
Sunset Lodge Llc	Affidavit/Attorney Fees	Filing		01/25/2021-14:26		
Stanton, M. Baron	2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/21/2021-16:09		
Stanton, M. Baron	2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/21/2021-16:09		
DuRant, Norwood David Sr.	2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/21/2021-16:09		
DuRant, Norwood David Sr.	2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/21/2021-16:09		
DuRant, Norwood David Sr.	2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/21/2021-16:04		
DuRant, Norwood David Sr.	2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/21/2021-16:04		
Stanton, M. Baron	2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/21/2021-16:04		
Stanton, M. Baron	2/4/2021_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/21/2021-16:04		
Sunset Lodge Llc	NEF(01-20-2021 01:17:27 PM) Order/Summary Judgment	Filing		01/20/2021-13:17		
Sunset Lodge Llc	Order/Summary Judgment	Order		01/20/2021-13:17		
Pawleys Island Town Of	NEF(01-15-2021 12:06:37 PM) Certification/Attorney Certi...	Filing		01/15/2021-13:08		
Pawleys Island Town Of	Certification/Attorney Certification	Filing		01/15/2021-12:06		
Sunset Lodge Llc	NEF(01-14-2021 11:05:14 PM) Motion/Strike	Filing		01/15/2021-08:31		
Sunset	Motion/Strike/Stanton	Motion		01/14/2021-	02/08/2021-	

Lodge Llc				23:05	23:05	
Pawleys Island Town Of	NEF(01-14-2021 12:23:04 PM) Motion/Disqualify	Filing		01/14/2021-13:17		
Pawleys Island Town Of	Motion/Disqualification of Counsel for the Plt/DuRant	Motion		01/14/2021-12:23	01/29/2021-12:23	
Sunset Lodge Llc	NEF(01-08-2021 01:22:47 PM) Order/Electronic Form 4	Filing		01/08/2021-13:22		
Sunset Lodge Llc	Order/Electronic Form 4/See Form 4	Order		01/08/2021-13:22		
Stanton, M. Baron	1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		01/07/2021-10:18		
Stanton, M. Baron	1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		01/07/2021-10:18		
DuRant, Norwood David Sr.	1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		01/07/2021-10:18		
DuRant, Norwood David Sr.	1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		01/07/2021-10:18		
DuRant, Norwood David Sr.	1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		12/20/2020-16:41		
DuRant, Norwood David Sr.	1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		12/20/2020-16:41		
Stanton, M. Baron	1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		12/20/2020-16:41		
Stanton, M. Baron	1/20/2021_MOTION_Roster/Notice of Case Roster Publication Se	Action		12/20/2020-16:41		
Sunset Lodge Llc	NEF(12-06-2020 12:07:46 PM) Affidavit/Affidavit of	Filing		12/07/2020-09:01		
Sunset Lodge Llc	Affidavit of Condem Notice & Associated Papers First Served	Filing		12/06/2020-12:07		
Sunset Lodge Llc	NEF(12-03-2020 10:35:50 PM) Memo/Memo in Support	Filing		12/04/2020-08:13		
Sunset Lodge Llc	Memo/Memo in Support	Filing		12/03/2020-22:35		
Stanton, M. Baron	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		12/01/2020-10:38		
Stanton, M. Baron	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		12/01/2020-10:38		
Stanton, M. Baron	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		12/01/2020-10:38		
DuRant, Norwood David Sr.	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		12/01/2020-10:38		
DuRant, Norwood David Sr.	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		12/01/2020-10:38		
DuRant, Norwood David Sr.	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		12/01/2020-10:38		
Pawleys Island Town Of	NEF(11-24-2020 11:10:40 AM) Memo/Memo in Opposition	Filing		11/24/2020-12:39		
Pawleys Island Town Of	Memo/Memo in Opposition to Motion of Summary Judgment	Filing		11/24/2020-11:10		
Sunset Lodge Llc	NEF(11-20-2020 03:31:58 PM) Motion/Enlarge Time	Filing		11/23/2020-09:17		
Sunset Lodge Llc	Motion/Enlarge Time/Stanton	Motion		11/20/2020-15:31	01/27/2021-15:31	
Pawleys Island Town Of	NEF(11-20-2020 12:30:05 PM) Affidavit/Affidavit of	Filing		11/20/2020-12:53		
Pawleys	Affidavit/Affidavit	Filing		11/20/2020-		

Island Town Of				12:30		
Sunset Lodge Llc	NEF(11-05-2020 04:34:43 PM) Motion/Compel	Filing		11/06/2020-08:53		
Sunset Lodge Llc	Motion/Compel and Expenses/Stanton	Motion		11/05/2020-16:34	01/27/2021-16:34	
DuRant, Norwood David Sr.	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		11/05/2020-15:30		
DuRant, Norwood David Sr.	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		11/05/2020-15:30		
DuRant, Norwood David Sr.	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		11/05/2020-15:30		
Stanton, M. Baron	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		11/05/2020-15:30		
Stanton, M. Baron	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		11/05/2020-15:30		
Stanton, M. Baron	12/4/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		11/05/2020-15:30		
Pawleys Island Town Of	NEF(10-21-2020 09:40:36 AM) Order/Continuance	Filing		10/21/2020-09:40		
Pawleys Island Town Of	Order/Continuance Until the Next Available Term of Court	Order		10/21/2020-09:40		
Sunset Lodge Llc	NEF(10-14-2020 10:24:06 PM) Memo/Memo in Opposition	Filing		10/15/2020-08:53		
Sunset Lodge Llc	Memo/Memo in Opposition	Filing		10/14/2020-22:24		
Sunset Lodge Llc	Affidavit/Affidavit in Response	Filing		10/14/2020-22:24		
Pawleys Island Town Of	NEF(10-14-2020 03:54:19 PM) Motion/Continuance	Filing		10/14/2020-16:48		
Pawleys Island Town Of	Motion/Continuance/DuRant	Motion		10/14/2020-15:54	10/21/2020-15:54	
Stanton, M. Baron	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		10/12/2020-10:05		
Stanton, M. Baron	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		10/12/2020-10:05		
Stanton, M. Baron	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		10/12/2020-10:05		
DuRant, Norwood David Sr.	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		10/12/2020-10:05		
DuRant, Norwood David Sr.	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		10/12/2020-10:05		
DuRant, Norwood David Sr.	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		10/12/2020-10:05		
DuRant, Norwood David Sr.	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		09/28/2020-10:26		
Stanton, M. Baron	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		09/28/2020-10:26		
Stanton, M. Baron	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		09/28/2020-10:25		
DuRant, Norwood David Sr.	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		09/28/2020-10:25		
DuRant, Norwood David Sr.	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		09/28/2020-10:25		
Stanton, M. Baron	10/30/2020_MOTION_Roster/Notice of Case Roster Publication S	Action		09/28/2020-10:25		

Sunset Lodge Llc	NEF(09-18-2020 12:11:44 PM) Answer/Answer To Amended Com...	Filing		09/18/2020-13:28		
Sunset Lodge Llc	Answer/Answer To Amended Complaint	Filing		09/18/2020-12:11		
Sunset Lodge Llc	NEF(09-11-2020 02:26:07 PM) Order/Electronic Form 4	Filing		09/11/2020-14:26		
Sunset Lodge Llc	Elect Form 4/Mot to Dismiss&Mot for Priority Denied	Order		09/11/2020-14:26		
Stanton, M. Baron	9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		09/08/2020-08:51		
Stanton, M. Baron	9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		09/08/2020-08:51		
DuRant, Norwood David Sr.	9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		09/08/2020-08:51		
DuRant, Norwood David Sr.	9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		09/08/2020-08:51		
Sunset Lodge Llc	NEF(09-07-2020 11:03:43 PM) Memo/Memo in Opposition	Filing		09/08/2020-08:21		
Sunset Lodge Llc	Memo/Memo in Opposition	Filing		09/07/2020-23:03		
Pawleys Island Town Of	NEF(09-01-2020 03:11:31 PM) Filing/Other	Filing		09/01/2020-15:53		
Pawleys Island Town Of	Exhibit C to Memo in Support of Motion to Dismiss	Filing		09/01/2020-15:11		
Pawleys Island Town Of	NEF(08-28-2020 12:44:04 PM) Memo/Memo in Support	Filing		08/28/2020-13:35		
Pawleys Island Town Of	Memo/Memo in Support of Motion to Dismiss	Filing		08/28/2020-12:44		
Sunset Lodge Llc	NEF(08-27-2020 05:13:42 PM) Motion/Compel	Filing		08/28/2020-09:38		
Sunset Lodge Llc	Motion/Compel and for Expenses/Stanton	Motion		08/27/2020-17:13	01/08/2021-17:13	
Sunset Lodge Llc	NEF(08-27-2020 04:40:18 PM) Memo/Memo in Opposition	Filing		08/27/2020-16:57		
Sunset Lodge Llc	Return To Towns Motion For Protection From All Discovery	Filing		08/27/2020-16:40		
Sunset Lodge Llc	Affidavit In Support Of Return To Towns Motion For Protectio	Filing		08/27/2020-16:40		
Pawleys Island Town Of	NEF(08-25-2020 11:44:01 AM) Motion/Protection from Disco...	Filing		08/25/2020-12:05		
Pawleys Island Town Of	Motion/Protection from Discovery/Durant	Motion		08/25/2020-11:44	01/08/2021-11:44	
Sunset Lodge Llc	NEF(08-21-2020 03:24:18 PM) Motion/Summary Judgment	Filing		08/21/2020-16:00		
Sunset Lodge Llc	Motion/Summary Judgment/Stanton	Motion		08/21/2020-15:24	01/08/2021-15:24	
Sunset Lodge Llc	Affidavit of Stanton	Filing		08/21/2020-15:24		
Stanton, M. Baron	9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		08/17/2020-14:00		
Stanton, M. Baron	9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		08/17/2020-14:00		
DuRant, Norwood David Sr.	9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		08/17/2020-14:00		
DuRant, Norwood David Sr.	9/11/2020_MOTION_Roster/Notice of Case Roster Publication Se	Action		08/17/2020-14:00		
Sunset Lodge Llc	NEF(08-11-2020 08:05:20 PM) Memo/Memo in Opposition	Filing		08/12/2020-08:49		

Sunset Lodge Llc	Return To Motion For Priority And For Bond	Filing		08/11/2020-20:05		
Pawleys Island Town Of	NEF(08-10-2020 04:58:18 PM) Motion/Other	Filing		08/11/2020-08:53		
Pawleys Island Town Of	Motion For Priority And For An Order Requiring The Plaintiff	Motion		08/10/2020-16:58	09/11/2020-16:58	
Pawleys Island Town Of	NEF(08-03-2020 03:14:43 PM) Motion/Dismiss	Filing		08/04/2020-09:07		
Pawleys Island Town Of	Motion/Dismiss/DuRant	Motion		08/03/2020-15:14	09/11/2020-15:14	
Sunset Lodge Llc	NEF(07-31-2020 05:00:58 PM) Amended/Amended Complaint	Filing		08/03/2020-09:06		
Sunset Lodge Llc	Amended/Amended Complaint	Filing		07/31/2020-17:00		
Pawleys Island Town Of	NEF(07-27-2020 02:43:44 PM) Notice/Notice of Appearance	Filing		07/27/2020-14:44		
Pawleys Island Town Of	Notice/Notice of Appearance	Filing		07/27/2020-14:43		
Sunset Lodge Llc	Summons & Complaint	Filing		07/21/2020-07:47		

Challenge Action #1 Case Events
(Sunset Lodge, LLC and Beattie)

Date	Plaintiff Events	Defendant Events	Hearings/Orders
6/9/20		Date of Condemnation Notice	
7/21/20	Summons/Complaint filed (57 pages, 169 paragraphs)		
7/27/20	Pl. First Requests for Production served (attached to 8/27/20 Motion to Compel)		
7/31/20	Amended Summons/Complaint filed (61 pages, 179 paragraphs)		
8/3/20		Def. Motion to Dismiss filed (2 pages)	
8/10/20		Def. Motion for Priority and Posting Bond filed (2 pages)	
8/11/20	Pl. Return to Motion for Priority/Bond filed (6 pages)		
8/13/20	Pl. First Set of Interrogatories served (attached to 11/5/20 Motion to Compel)		
8/21/20	Pl. Motion for Summary Judgment (3 pages) and Affidavit of Baron Stanton (26 pages) filed		
8/25/20		Def. Motion for Protection from Discovery filed (2 pages)	
8/27/20	Pl. Return to Motion for Protection from Discovery (7 pages), Affidavit of Baron Stanton (6 pages), and Motion to Compel (req. for production) and for Expenses (2 pages) filed		
8/28/20		Def. Memo. in Supp. of Motion to Dismiss (20 pages) and Affidavit of Ryan Fabbri (2 pages) filed	
9/7/20	Pl. Memo. in Opp. to Motion to Dismiss filed (61 pages)		
9/11/20			Hearing (in person) before Judge Culbertson on Def. Motion to Dismiss and Motion for Priority/Bond; Form 4 Order (Judge Culbertson) entered denying Def. Motion to Dismiss and Motion for Priority/Bond
9/18/20		Answer to Amended Complaint filed (5 pages)	
10/6/20		Def. First Set of Interrogatories and Requests for Production served (see 10/14/20 Motion for Continuance)	

Challenge Action #1 Case Events
(Sunset Lodge, LLC and Beattie)

10/14/20	Pl. Memo. in Opp. to Motion for Continuance (5 pages) and Affidavit of Baron Stanton (5 pages) filed	Def. Motion for Continuance of hearing on pending motions (2 pages)	
10/16/20	Deposition of Appraiser Donovan, Day 1 (see Pl. fee statements)		
10/21/20	Deposition of Appraiser Donovan, Day 2 (see Pl. fee statements)		Order entered granting Def. motion for continuance of hearing (Judge Culbertson)
10/26/20		Def. Answers to Interrogatories served (attached to 11/5/20 Motion to Compel)	
11/5/20	Pl. Motion to Compel (interrogatories) and for Expenses filed (14 pages)		
11/20/20		Aff. of Ryan Fabbri in opposition to Motion for Summary Judgment filed (8 pages)	
11/20/20	Pl. Motion for Extension to Respond to Discovery filed (1 page)		
11/24/20		Def. Memo. in Opp. to Motion for Summary Judgment (13 pages) and exhibits filed	
12/3/20	Pl. Memo. in Support of Motion for Summary Judgment filed (50 pages)		
12/4/20			Hearing (virtual) before Judge Nettles on Def. Motion for Summary Judgment
12/6/20	Pl. "Stanton Affidavit of Condemnation Notice and Associated Papers First Served" (2 pages) and exhibits filed		
12/10/20	Pl. Answers to Interrogatories served (64 pages) (attached to 1/14/21 Motion to Disqualify)		
1/8/21			Form 4 (Judge Nettles) granting summary judgment and disposing of pending discovery motions entered
1/14/21		Def. Motion to Disqualify Pl. Counsel filed (2 pages)	
1/14/21	Pl. Motion to Strike (Motion to Disqualify) filed (8 pages)		
1/15/21		Def. Rule 11 Certification (Motion to Disqualify) filed (1 page)	
1/20/21			Order Granting Summary Judgment (Judge Nettles) entered

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Challenge Action #1 Case Events
(Sunset Lodge, LLC and Beattie)

1/25/21	Pl. Fee Petition (1 page) and Stanton Attorney Fee Affidavit (18 pages) filed		
1/26/21	Pl. Amended Fee Affidavit filed (1 page); Pl. Memo. in Opp. to Motion to Disqualify filed (6 pages)		
1/27/21			Form 4 (Judge Price) entered granting Pl. Motion to Compel and for Expenses (Sunset Lodge case only)
1/29/21		Def. Motion to Alter/Amend Summary Judgment Order filed (3 pages); Def. Notice of Withdrawal of Motion to Disqualify Plaintiff's Counsel filed (1 page)	
2/2/21			Order Granting Motion to Compel (Amending Form 4) (Judge Price) entered
2/3/21	Pl. Memo. in Opp. to Motion to Alter/Amend Summary Judgment filed (7 pages)		
2/4/21	Pl. Second Amended Fee Affidavit (3 pages) and Pl. supplemental Reply in support of fee petition (9 pages) filed		
2/5/21		Def. Reply in Opp. to Fee Petition (including a request for scheduling order) filed (3 pages)	
2/8/21			Form 4 (Judge John) noting withdrawal of Pl. Motion to Strike (Motion to Disqualify) entered
2/9/21	Pl. Memo. in Response regarding fee petition matters filed (6 pages)		
3/1/21	Pl. Memo. regarding fee petition matters filed (14 pages)	Def. Motion for production of billing records and establishment of confidentiality and in camera review procedures filed (10 pages)	
3/2/21	Pl. Objection to Hearing filed (4 pages)		
3/3/21		Def. Motion for Protection from Discovery (regarding Notice of Deposition of Town Administrator) filed (2 pages)	Hearing (virtual) before Judge Nettles regarding production of billing materials (see Pl. fee statements)
3/17/21	Pl. Memo. in Opp. Def. Motion for production of billing records filed (43 pages)	Def. Memo. in Supp. of Motion to Alter/Amend Summary Judgment filed (12 pages)	

3/18/21	Pl. Memo. in Objection/Opposition to Def. Memo. in Supp. of Motion to Alter/Amend filed (9 pages)		
3/19/21			Hearing (virtual) before Judge Nettles on Def. Motion to Alter/Amend Summary Judgment Order
4/1/21			Hearing (in person) before Judge Culbertson on Def. Motion for Protection from Discovery (along with Motions to Dismiss second set of challenge action cases); Form 4 entered (Judge Culbertson) partially granting Def. Motion for Protection from Discovery
4/5/21			Amended Summary Judgment Order (Judge Nettles) entered; Order granting Def. motion for production of billing records and establishment of confidentiality and in camera review procedures entered (Judge Nettles)
4/19/21	Pl. redacted billing records served on Def.		
4/22/21	Pl. Third Amended Fee Affidavit filed (22 pages)		

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN Sunset Lodge, LLC, Plaintiff, v. Town of Pawleys Island, Defendant.	IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2020-CP-22-00600 **Exhibit 2** **AFFIDAVIT OF N. DAVID DURANT, SR.**

PERSONALLY APPEARED BEFORE ME, N. DAVID DURANT, SR., ESQUIRE, WHO BEING DULY SWORN AND UNDER PENALTY OF PERJURY DEPOSES AND STATES AS FOLLOWS:

1. My name is N. David Durant, Sr. I am over the age of 18 and make this affidavit of my own personal knowledge.

2. I serve as Town Attorney for the Town of Pawleys Island. I was the original counsel of record for the Town in this action and served as lead counsel until approximately the time that William C. Dillard, Jr. entered an appearance on February 3, 2021.

3. I was admitted to the South Carolina Bar in 1983 and since that time have been engaged in private practice. I am an active member of the South Carolina Bar and am engaged in practice in the State and Federal Courts of this jurisdiction with approximately sixty percent (60%) of my practice in Civil Litigation, thirty percent (30%) in Real Estate and ten percent (10%) in Probate. I represented the Town of Surfside Beach, South Carolina for twenty-two (22) years, having prosecuted its criminal cases in addition to handling all other municipal matters. I have served as the Town Attorney for the Town of Pawleys Island since 1996.

4. In the case at hand, I have reviewed the September 10, 2021 amended fee affidavit of plaintiff's counsel as well as the original affidavit and prior amendments.

5. Based upon my first-hand knowledge of the proceedings, I firmly deny the claim of plaintiff's counsel that the Town has engaged in a "stop at nothing" approach to the litigation (Stanton Aff. ¶ 28). Nothing in the Town's approach to the case created any need for the many hundreds of hours that plaintiff's counsel states he worked on this and the other two related cases.

6. I pursued certain motions on behalf of the Town based on a good faith belief, notwithstanding the Court's later summary judgment ruling on certain issues, that the plaintiff's positions lacked merit. I also determined that it was in the Town's interest to pursue a disposition of the case as early as possible because, frankly, I believed that plaintiff's counsel would make even routine matters unnecessarily tedious, difficult, and costly. This proved to be the case, as is illustrated by the numerous excessively lengthy filings that plaintiff's counsel has submitted over the course of the action, beginning with the 57-page Complaint.

7. I also found that it was often extremely difficult to engage in productive communications with plaintiff's counsel and that, for example, consultation or further consultation prior to filing motions would have served no useful purpose.

8. Early in the case, on behalf of the Town, I filed a *Motion to Dismiss* on August 4, 2020, a *Motion for Priority and for an Order Requiring the Plaintiff to Post Bond* on August 10, 2020, and a *Motion for Protection from Discovery* pending disposition of the Rule 12(b)(6) motion on August 25, 2020. The first two motions were denied soon thereafter on September 11, 2020, rendering the third moot as well. Nothing related to these promptly resolved motions created any need for the hundreds of hours that plaintiff's counsel states he worked in these cases.

9. With regard to the motion for posting bond, the Town's underlying concern was that delay of a commitment to a long-term federal beach renourishment program would endanger the Town's access to federal funds in the event that a hurricane washed out portions of the beach that the Town had just spent many millions of dollars to renourish.

10. Later, on behalf of the Town, I also filed a *Motion for Disqualification of Counsel for the Plaintiff* on January 14, 2021 (followed by a Rule 11 certification on January 15, 2021) based on plaintiff's identification of its attorney as a fact witness. Not long after, on January 29, 2021, I filed a notice withdrawing the motion. Nothing related to this promptly disposed motion created any need for the hundreds of hours that plaintiff's counsel states he worked in these cases.

11. It is true that there were disagreements between counsel over discovery responses and production, which is not an uncommon occurrence in litigation. Respectfully, I believe that the driving factor in these disagreements was the unnecessarily difficult and tedious approach of plaintiff's counsel to the discovery process (as illustrated, for example, by the excessive length of the plaintiff's 64-page interrogatory answers). Regardless, nothing about any disagreements over

the Town's discovery responses created any need for the hundreds of hours that plaintiff's counsel states he worked in these cases.

12. I also deny the claim of plaintiff's counsel that the Town engaged in a "public misinformation campaign falsely characterizing the controversy" outside of the litigation (Stanton Aff. ¶ 22). However, even if the plaintiff or counsel disagreed with statements made during Town Council meetings or at other times, that disagreement would not have created any need for the many hundreds of hours that plaintiff's counsel states he worked in the litigation.

13. No other actions by or on behalf of the Town, including any acts alleged in the affidavit of plaintiff's counsel, created any need for the many hundreds of hours that plaintiff's counsel states he worked in these cases.

N. David Durant, Sr.

Sworn to and subscribed before me this 17 day of September 2021, by the affiant, who is personally known to me.

Christina B. Judge
Notary Public, State of South Carolina

Name: Christina B. Judge

My Commission Expires: 09/25/2023

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,	)	
v.	)	**AFFIDAVIT OF BRIAN HENRY**
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
	)	

Exhibit 3

PERSONALLY APPEARED BEFORE ME, BRIAN HENRY, WHO BEING DULY SWORN AND UNDER PENALTY OF PERJURY DEPOSES AND STATES AS FOLLOWS:

1. My name is Brian Henry. I am over the age of 18 and make this affidavit of my own personal knowledge.

2. I serve as Mayor of the Town of Pawleys Island.

3. I have reviewed the email printout attached as "Exhibit A" to the September 10, 2021 affidavit of plaintiff's counsel in this matter.

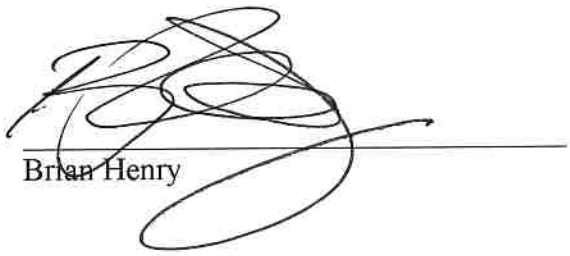
4. In the email in question, dated August 11, 2020, I asked a representative of the Army Corps of Engineers whether there was a "nuclear option" to expedite the process of moving forward with a long-term federal beach renourishment program after three landowners filed suit to bar condemnation of easements needed for the program.

5. Paragraph 26 of the affidavit of plaintiff's counsel mischaracterizes my reference to a "nuclear option" as being a statement "confirming an interest in pursuing scorched-earth measures against the interests of these three constituents".

6. In reality, I was intending to initiate discussion of the possibility for an arrangement in which the Corps would agree to adjust the project boundaries for the program to exclude the portion of the beach adjacent to the three properties at issue, even if only temporarily, in order to allow the Town and Corps to commit to the long-term renourishment program as soon as possible.

7. I considered this option a last resort and a worst-case scenario because of the potential for problems with leaving "gaps" in the project, including potential impacts to nearby property owners

8. My goal in bringing up this approach was certainly not to endorse so-called "scorched earth" tactics against the plaintiff. Instead, I was simply seeking to discuss potential measures to secure federal renourishment program participation for the beach adjacent to as many Pawleys Island properties as possible.



Brian Henry

Sworn to and subscribed before me this 17th day of September 2021, by the affiant, who is personally known to me.

Notary Public, State of South Carolina

Name: Preston Tanco

My Commission Expires: June 4, 2031

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00600
	)	
	)	**Exhibit 4**
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	
v.	)	**AFFIDAVIT OF WILLIAM C. DILLARD, JR.**
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, WILLIAM C. DILLARD, JR, ESQUIRE, WHO BEING DULY SWORN AND UNDER PENALTY OF PERJURY DEPOSES AND STATES AS FOLLOWS:

1. My name is William C. Dillard, Jr. I am over the age of 18 and make this affidavit of my own personal knowledge.

2. I am counsel of record for the Town in this action and have served as lead counsel since approximately the time that I entered an appearance on February 3, 2021.

3. I was admitted to the South Carolina Bar in 2010 and since that time have been engaged in private practice with a focus on civil litigation. I devote a substantial amount of my practice to eminent domain litigation, including representation of both governmental entities and private landowners. I also have experience in various aspects of municipal law and serve as City Attorney for a South Carolina municipality with a population of more than 10,000.

4. In the case at hand, I have reviewed the September 10, 2021 amended fee affidavit of plaintiff's counsel as well as the original affidavit and prior amendments. In addition to all of the case filings that have occurred since I appeared in the case, I have also reviewed, in varying degrees of detail, most if not all of the case filings that occurred prior to that time.

5. Additionally, based on my review of the case history, I prepared a 4-page "Case Events" table (attached as "Exhibit C" to the *Affidavit of David Pagliarini*) providing a chronological timeline of the case filings, hearing, orders, and other significant events appearing on the record from the initiation of the case through the plaintiff's April 22, 2021 amended fee

affidavit. The table also specifies the page lengths of the parties' various filings. To the best of my knowledge, the table accurately sets forth the timing and nature of the relevant case events.

6. I personally calculated that, as set forth in the *Memorandum in Opposition to Plaintiff's Attorney Fee Petition*, the plaintiff's fee claim equates to an average of 4.2 hours every weekday, including holidays, over a six-and-a-half-month period through January 21, 2021 (600.7 hours over 143 weekdays), and an average of 5.1 hours every weekday, including holidays, over the subsequent seven week period through March 3, 2021 (173.6 hours over 34 weekdays).

7. Based upon (1) detailed review of the redacted fee statements and fee affidavits submitted on behalf of the plaintiff, (2) my own first-hand knowledge of case events since I became involved, (3) my detailed review of events and records prior to that time, and (4) consideration of the analysis and conclusions set forth in the *Affidavit of David Pagliarini*, I have also prepared a table analyzing the time entries of plaintiff's counsel in detail and providing for specified reduction of entries that are unreasonable or otherwise unrecoverable. (Attached as **"Exhibit A"**). Deductions based on work related to the plaintiff's non-prevailing fraud, bad faith and necessity claims are highlighted in light gray and tallied at the end of the table. To the best of my knowledge based upon the time descriptions in the fee statements, the table does not deduct any time claimed by plaintiff's counsel in responding to the Town's motions to require bond or to disqualify counsel. In my opinion, the detailed factual analysis included in the explanation of the reductions provides the Court a sound basis for determination of a reasonable attorney fee.

8. The plaintiff also claims many thousands of dollars of attorney fees associated with the dispute over production of redacted fee statements. Breakdown of the fee statements and affidavit indicates that 150 – 200 hours or more of attorney time related to that issue is being claimed. In my view, those fees are entirely the result of the plaintiff's unnecessary refusal to produce the fee statements in a reasonable manner. To explain this conclusion and clarify the sequence of events for the Court and the record, I believe it is necessary to provide the following admittedly cumbersome summary of relevant events:

a. January 25, 2021 – The plaintiff filed its fee petition and original attorney fee affidavit, claiming 686.9 hours of attorney fees over a period of less than 7 months ($87,007.33 total for the *Sunset Lodge* and *Beattie* cases). The plaintiff did not provide copies of fee statements or any kind of itemized breakdown of how the time was spent, and only monthly totals of when the time was spent.

b. January 29, 2021 – The Town filed its *Motion to Alter or Amend* the summary judgment order. In response to the plaintiff's significant and non-itemized fee request, the motion included a request that the Court "require that, in the event the Court deems it appropriate to consider Plaintiff's petition for attorney fees and costs, an evidentiary hearing be scheduled for the same after a reasonable opportunity, and no less than 120 days, for the parties to conduct discovery relevant to that issue."

c. February 2, 2021 – I notified plaintiff's counsel by telephone that a less robust procedure, involving simple production of reasonably redacted itemized fee statements and a reasonable amount of time to review the same, would likely be sufficient, and requested further discussion of the same in order to avoid unnecessary dispute.

d. February 3, 2021 – Plaintiff filed a memorandum in opposition to the Town's *Motion to Alter or Amend*, which included a detailed objection to the Town's initial request for a discovery period and evidentiary hearing.

e. February 4, 2021 – The plaintiff filed a (second) amended fee affidavit increasing its attorney fee claim by 95.2 hours for the period from 1/24/21 – 2/20/21 (to $99,066 total for the *Sunset Lodge* and *Beattie* cases).

f. February 5, 2021 – Two days after I appeared in the case, the Town filed its *Initial Reply* to the attorney fee petition (3 pages), in which we withdrew the initial request for a 120-day discovery period and evidentiary hearing and instead simply requested a scheduling order providing for (1) production of plaintiff's itemized billing statements, reasonably redacted if necessary, and (2) a hearing to determine the fee request based upon written submissions, affidavits, and oral arguments, to be scheduled at least 60 days after production of the fee statements.

g. February 9, 2021 – The plaintiff filed a *Memorandum in Response* on fee petition matters (6 pages), in which it proposed that itemized fee statements could be produced in redacted form and subject to a protective order. The memorandum also asserted broad, vague grounds for redaction.[1]

[1] E.g., "[a]lso redacted are matters which because of context, time of occurrence or subject matter, might be of interest to an opposing party wishing to depose any one of the plaintiffs in this or other currently pending litigation or any additional planned litigation by the Town. Also redacted are such matters an opposing party might use in fishing for a way, again, to create a situation to disqualify and get rid of present counsel for Plaintiff."

h. February 17, 2021 – The Court held a telephone status conference with counsel to discuss fee statement production. Based on my recollection and review of my contemporaneous notes, it was my understanding from the status conference that Judge Nettles directed counsel to attempt to agree on a consent protective/confidentiality order providing that (1) the plaintiff would produce redacted fee statements with specific privilege claims and other redactions footnoted and (2) the Court would then review unredacted copies in camera and rule on the redactions.

i. February 18, 2021 – The Court notified counsel by email that the fee petition would be heard on April 14, 2021.

j. February 25, 2021 – I notified the Court by email that, after several days of communications between counsel, we had been unable to agree upon the terms of a proposed protective order.

k. March 1, 2021 – Prior to a scheduled hearing, the Court notified counsel by email that "Judge Nettles would like to review the un-redacted attorney's fees statement prior to the hearing on March 3rd." Plaintiff's counsel responded to notify the Court that he objected to providing the fee statements prior to entry of a protective order.

l. March 1, 2021 – The plaintiff filed a *Memorandum* on fee petition matters (14 pages, including 4 pages of proposed protective order terms). The memorandum included a list of 13 broad, vague categories of purported bases to redact the fee statements (p.6, fn.6). The proposed order would have required that "greater than reasonable care" be used in storage of the fee statements (¶ 6) and would have subjected the Town to contempt or other sanctions even if some third-party violated the order (¶ 8). Importantly, the proposed order would have allowed the plaintiff to make redactions, without specifying the basis for the redaction, based upon any of the broad purported bases for redaction cited in the memorandum. The Town would then have had just 10 days to identify any specific redactions with which it was concerned and, only then, request that the plaintiff explain the basis for any such redactions. The plaintiff's memorandum and proposed order deferred the question of how disputes over redactions would actually be handled, but the memorandum specifically objected to providing the Court a complete unredacted copy of statements for in camera review (¶ 22).

m. March 1, 2021 – The Town filed its *Motion for a Protective Order* for confidential production of redacted plaintiff fee statements (10 pages, plus a 5-page proposed order). Page 4 of the motion set forth the Town's position regarding production of redacted fee statements:

> "Under the timing and circumstances of this matter, the Plaintiff's unredacted billing statements and fee agreement should be submitted to the Court for in camera review of the necessity of redactions without the need for any further motion on the part of the Town. It is clear based on the parties' prior filings that there is a fundamental dispute over the scope of what may properly be redacted and that a request by the Town for review is inevitable. The broad scope of redaction proposed by Plaintiff's counsel could arguably justify redacting virtually any description of work performed in the matter, leaving counsel for the Town with no way of seeking confirmation of the legitimacy of redactions without requesting review by the Court. Furthermore, scheduling considerations also favor in camera review of the unredacted documents without need for specific request by the Town, as the fee petition hearing is scheduled to occur on April 17, 2021."

The Town's proposed order was drafted to comply with the terms specified by the Court during the February 17, 2021 telephone status conference.

n. March 3, 2021 – The Court held a virtual hearing on fee statement production, but continued the hearing to provide the plaintiff time to respond to the Town's March 1, 2021 motion.

o. March 17, 2021 – The plaintiff filed its *Memorandum in Opposition* to the Town's motion for production of fee statements under a protective order (43 pages, plus a 4-page proposed protective order). The plaintiff took the position that the fee statements should be withheld altogether[2] or, in the alternative, produced with redactions based on unspecified objections, leaving it to the Town to then request the basis for any specific redaction. (pp.35-37). The plaintiff also continued to object to in camera review of the complete unredacted fee statements. (p.35). The proposed order included similar terms to what was included in the plaintiff's March 1, 2021 filing.

p. March 19, 2021 – The Court held a virtual hearing on fee statement production. Judge Nettles ruled that fee statements would be produced, and redactions reviewed, in a manner consistent with the Town's March 1, 2021 proposed order, with the exception that the plaintiff would not be required to provide footnotes identifying the basis for each redaction. Judge Nettles instructed me to revise the proposed order to reflect that change and stated that a hearing on the fee petition would be scheduled after the Court's review of redactions.

q. April 5, 2021 – The Court entered a *Protective Order for Production of Documents* consistent with what was approved at the March 19, 2021 hearing.

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[2] "In summary, Plaintiff proposes either to entirely deny the discovery sought by the Town or to redact, and leave redacted, all confidential matters . . . ." (Plaintiff's 3/17/21 Memo p.37).

r. April 19, 2021 – The plaintiff served redacted and, upon the Court only, unredacted copies of the fee statements.

s. April 26, 2021 – I submitted to the Court a 2-page letter directing the Court's attention to certain specific redactions that I requested be considered in the Court's in camera review.

t. April 28, 2021 – Plaintiff's counsel emailed the Court with objections to the requests in my April 26, 2021 letter.

u. May 21, 2021 - The Court notified counsel by email that its initial in camera review was complete and that it was forwarding to plaintiff's counsel the Court's revisions to the redactions, subject to an opportunity for plaintiff's counsel to submit objections.

v. May 27, 2021 – Plaintiff's counsel emailed the Court a document identifying objections to the Court's revisions (5 pages).

w. June 3, 2021 – The Court notified counsel by email that it declined to alter its initial revisions to the redactions.

x. July 13, 2021 – Plaintiff's counsel delivered to my office copies of revised redacted fee statements presented to me as being the Court's revisions to the original redactions.

y. This affidavit and other materials in opposition to the attorney fee petition are being submitted just a little more than 60 days after production of the final redacted fee statements, which is the approximate amount of time the Town stated it would need in the February 5, 2021 *Initial Reply* to the fee petition.

9. As outlined above, the Town's basic position on production of fee statements did not change from its February 5, 2021 *Initial Reply*. After hearing from the parties, the Court issued an order validating the Town's request for "a meaningful opportunity to review the substance of Plaintiff's claim, obtain an opposing affidavit if deemed necessary, and respond prior to the Court's determination." (2/5/21 Initial Reply p.2).

10. It is true that the plaintiff's February 9, 2021 filing proposed that redacted records could be produced subject to a confidentiality order. My initial concern with a confidentiality order, during the brief period of time from approximately February 9 through February 17, 2021, was my belief that it was an unnecessary complication of a matter in which the plaintiff was requesting expedited scheduling of a hearing (or even an award of attorney fees "on the briefs" without a hearing). Additionally, I was concerned that a confidentiality order would interfere with the ability of the Town Attorney and myself to fully discuss with our client what had become an

important and potentially costly issue in the case. However, as soon the Court informed counsel during the February 17, 2021 status conference that it was agreeable to confidentiality protections, I immediately began to proceed accordingly and, as detailed above, took what steps I could to obtain a protective order corresponding to the Court's specified procedure in as efficient a manner as possible, over the plaintiff's lengthy objections.

11. Furthermore, as detailed above based upon the record, subsequent to the February 17, 2021 status conference, once both sides undertook to discuss the details of a protective order, the plaintiff took the position that significant additional protections were required and even objected outright to producing any redacted statements at all. Accordingly, there is no reason to believe that my brief initial concern with agreeing to confidentiality protections was the cause of the ensuing dispute.

12. As a practical matter, plaintiff counsel's time-intensive efforts objecting to the Court's specified procedural approach after the February 17, 2021 status conference did not serve any issue preservation function, as plaintiff' counsel has not, to my knowledge, refused to comply with any material requirements of the Court's eventual *Protective Order*. Instead, the only effect of those efforts was to increase expenses for both sides.

13. None of the redacted documents delivered to me were marked "CONFIDENTIAL" as required under paragraph 11 of the April 5, 2021 *Protective Order*, and the documents were therefore not technically subject to its confidentiality provisions. However, in order to comply with the spirit of the Court's direction to the parties, I marked the documents "CONFIDENTIAL" prior to submission to any third-party for review as permitted under the Order, and have and will continue to treat the documents as subject to the Order.

William C. Dillard, Jr.

Sworn to and subscribed before me this 20th day of September 2021, by the affiant, who is personally known to me.

Patricia R. Dreyfuss
Notary Public, State of South Carolina

Name: Patricia R. Dreyfuss

My Commission Expires: 6-18-2023

Exhibit A
PROPOSED REDUCTIONS TABLE

August 5, 2020 Invoice				
Date	**Invoice Hours**	**Basis for Reduction**	**Deducted Hours**	**Remaining Hours**
7/1/20 - 7/23/20	128.8	(Excessive time) Two and a half 8-hour days was more than sufficient to perform legal and factual research, draft complaint, and communicate with client regarding the same.	(108.8)	10.0
		(Non-prevailing claim) Further deduction of estimated reasonable time for research and pleading drafting for non-prevailing "fraud/bad faith" issues.	(10.0)	
7/23/2020 (2nd entry)	4.1	(Excessive time) Two hours was more than sufficient to draft requests for production; futher factual review was duplicative of prior work.	(2.1)	2.0
7/26/20 - 7/27/20	6.2	(Excessive time) Additional research, administrative, and communication time was duplicative/excessive.	(6.2)	0.0
7/28/20 - 7/31/20	23.7	(Excessive time; Outside scope of action) 1 hour was more than sufficient to amend Complaint and communicate with clients during this period. Time related to "beach grass" and drafting a proposed ordinance was outside the scope of the litigation and excessive.	(22.7)	1.0
Totals:	**162.8**		**(149.8)**	**13.0**

September 18, 2020 Invoice				
Date	**Invoice Hours**	**Basis for Reduction**	**Deducted Hours**	**Remaining Hours**
8/3/20 - 8/5/20	4.3	(Excessive time) One half hour was sufficient to communicate with clients and review FOIA provisions.	(3.8)	0.2
		(Non-prevailing claim) Further deduction of estimated reasonable time for FOIA review related to non-prevailing "fraud/bad faith" issues.	(0.3)	
8/10/20 - 8/11/20	8.3	(No reduction) Prepared Return to Motion for Bond, etc.	0.0	8.3

8/12/2020	4.2	(Excessive time) 2 hours was sufficient to draft interrogatories and deposition notices and engage in related communications.	(2.2)	1.5
		(Non-prevailing claim) Further deduction of estimated reasonable time for portion of interrogatory drafting and communications related to non-prevailing "fraud/bad faith" issues.	(0.5)	
8/13/20 - 8/21/20	44.3	(Excessive time) 5 hours was sufficient to draft summary judgment motion/affidavit and engage in noted communications.	(39.3)	2.5
		(Non-prevailing claim) Further deduction of estimated reasonable time for portion of summary judgment motion/affidavit drafting related to non-prevailing "fraud/bad faith" issues.	(2.5)	
8/23/20 - 8/24/20	5.4	(Excessive time) Half hour was sufficient for noted communications and file organization. Remainder of time was excessive and duplicative of prior work.	(4.9)	0.5
8/26/20 - 8/27/20	10.6	(Excessive time) 1 hour was sufficient for drafting discovery motions/memoranda and related work and communications.	(9.6)	1.0
Totals:	**77.1**		**(63.1)**	**14.0**

October 9, 2020 Invoice

Date	**Invoice Hours**	**Basis for Reduction**	**Deducted Hours**	**Remaining Hours**
8/28/20 - 9/8/20	71.2	(Excessive time) 5 hours was sufficient for researching/drafting in response to Motion to Dismiss and related communications.	(66.2)	3.5
		(Non-prevailing claim) Further deduction of estimated reasonable time for addressing non-prevailing "fraud/bad faith" issues in motion to dismiss.	(1.5)	
9/10/20 - 9/11/20	8.8	(Excessive time; no description) The deduction is for the "unbilled" 9/11/20 time entry. The entry is unsubstantiated and excessive in relation to the tasks described in the prior entry for that day.	(2.0)	6.8

9/14/20 - 9/25/20	5.7	(Excessive time) 2 hours was sufficient for referenced pleadings review, document review, and communications.	(3.7)	1.0
		(Non-prevailing claim) 9/15/20 and 9/17/20 entries regarding USACE documents relate to non-prevailing "fraud/bad faith" issues.	(1.0)	
9/30/20 - 10/6/20	7.5	(Excessive time) 1 hour was sufficient for noted document/discovery response review and communications.	(6.5)	0.5
		(Non-prevailing claim) Further deduction of estimated reasonable time for review of USACE documents related to non-prevailing "fraud/bad faith" issues.	(0.5)	
Totals:	**93.2**		**(81.4)**	**11.8**

November 18, 2020 Invoice

Date	**Invoice Hours**	**Basis for Reduction**	**Deducted Hours**	**Remaining Hours**
10/7/20 - 10/13/20	8.4	(Excessive time) The deduction includes the "No Charge" time on the invoice, with the reduced hours reflecting the appropriate amount of time for the referenced communications and discovery review.	(6.4)	2.0
10/14/2020	9.1	(Excessive time) 0.5 hour was sufficient to respond to Defense motion for continuance and conduct referenced communications.	(8.6)	0.0
		(Non-prevailing motion) Unsuccessful opposition to motion for continuance was not time reasonably incurred.	(0.5)	
10/15/2020	3.1	(No reduction) Deposition preparation and travel.	0.0	3.1
10/16/20 - 10/28/20 (1st entry)	17.3	(Excessive time) 4 hours was more than sufficient to depose appraiser on limited scope of potentially relevant issues in challenge action and conduct related communications and local travel.	(13.3)	4.0

10/28/20 (2nd entry) - 11/10/20 (1st entry)	16.2	(Excessive time) 3 hours was sufficient to review discovery responses and production, draft reasonable motion to compel, and respond to Defense motion for continuance and conduct referenced communications.	(13.2)	2.0
		(Non-prevailing claim) Further deduction of estimated reasonable time for discovery response review and motion to compel preparation related to non-prevailing "fraud/bad faith" issues.	(1.0)	
11/10/20 (2nd entry) - 11/12/20	16.4	(Plaintiff stipulation) Challenge Action II time	(6.9)	2.0
		(Excessive time) 3 hours was sufficient to prepare reasonable discovery responses and conduct referenced communications.	(6.5)	
		(Non-prevailing claim) Further deduction of estimated reasonable time for discovery response preparation related to non-prevailing "fraud/bad faith" issues.	(1.0)	
Totals:	**70.5**		**(57.4)**	**13.1**

January 22, 2021 Invoice				
Date	**Invoice Hours**	**Basis for Reduction**	**Deducted Hours**	**Remaining Hours**
11/13/20 - 11/16/20	4.4	(Plaintiff stipulation) Challenge Action II time	(2.3)	0.5
		(Excessive time) Half hour was sufficient for any portion of referenced communications related to this action.	(1.6)	
11/17/20 - 12/3/20	69.7	(Excessive time) 8 hours was sufficient to brief summary judgment motion, review Defense filings in response to same motion, prepare a 1-page motion for extension, and conduct noted communications. Additional discovery response preparation noted on 11/20/20 was excessive and duplicative of prior work.	(61.7)	3.0
		(Non-prevailing claim) Further deduction of estimated reasonable portion of time for summary judgment briefing related to non-prevailing "fraud/bad faith" issues.	(5.0)	

12/4/2020	2.3	(No reduction) Summary judgment hearing, etc.	0.0	2.3
12/5/20 - 12/7/20	29.1	(Excessive time) 3 hours was more than sufficient to prepare proposed summary judgment order after extensive prior briefing and to conduct referenced communications.	(26.1)	1.5
		(Non-prevailing claim) Further deduction of estimated reasonable portion of time for proposed order preparation related to non-prevailing "fraud/bad faith" issues.	(1.5)	
12/8/20 - 1/1/21	40.3	(Plaintiff stipulation) Challenge Action II time	(1.7)	1.5
		(Excessive time) 3 hours was sufficient to prepare and produce discovery documents and conduct referenced client updates and other communications. Additional discovery response preparation noted on 12/9/20 - 12/10/20 was excessive and duplicative of prior work.	(35.6)	
		(Non-prevailing claim) Further deduction of estimated reasonable time for discovery response preparation related to non-prevailing "fraud/bad faith" issues.	(1.5)	
1/5/21 - 1/13/21	58.6	(Plaintiff stipulation) Challenge Action II time	(43.4)	0.5
		(Excessive time; Unsubstantiated; Outside scope of this action) Based on the representation in the Plaintiff's Affidavit that 7 hours of the 1/10/21 entry is related to "Challenge II", 6.1 hours are apparently alleged to be related to noted unspecified (redacted) "Research." Based on the context of time entries for the days before and after this date, it is apparent that this research relates to "Challenge II" as well. If the research did relate to this action, it was excessive and duplicative of significant prior research time.	(6.1)	

		(Excessive time; Unsubstantiated; Outside scope of this action) Based on the representation in the Plaintiff's Affidavit that 3 hours of the 1/11/21 entry is related to "Challenge II", 8.1 hours are apparently alleged to be somehow related to this action.However, nothing in the entry, including observing a Council meeting taking place several months after this case was filed, reasonably relate to this action.	(8.1)	
		(Excessive time) 30 minutes was sufficient for any portion of referenced communications related to this action.	(0.5)	
1/14/21 - 1/15/21	5.3	(No reduction) Return to Motion to Disqualify, etc.	0.0	5.3
Totals:	**209.7**		**(195.1)**	**14.6**

March 12, 2021 Invoice				
Date	**Invoice Hours**	**Basis for Reduction**	**Deducted Hours**	**Remaining Hours**
1/15/21 - 1/20/21	4.7	(Outside scope of this action) Three of the six deposition notices referenced in the 1/15/21 time entry relate to the Challenge II actions.	(0.5)	4.2
1/21/21 - 1/25/21	35.5	(Excessive time) 10 hours was an amply sufficient amount of time for preparation of the fee petition, affidavit, and (although not included in this submission) preparation of appropriately redacted fee statements and any additional memoranda in support.	(25.5)	10.0
1/26/2021	1.0	(No reduction) Return to Motion to Disqualify, etc.	0.0	1.0
1/27/2021	2.8	(Excessive time; Unecessary tasks) Half hour was sufficient for the referenced communicatiosn and review. Review of a deposition transcript was unnecessary in this action after the grant of summary judgment.	(2.3)	0.5
1/28/21 - 1/29/21	3.8	(Excessive time) Half hour was sufficient for the referenced communications and (unspecified, redacted) drafting.	(3.3)	0.5

1/30/2021	2.9	(Excessive time) Half hour was sufficient for the referenced communications and legal procedural research.	(2.4)	0.5
2/1/2021	2.9	(Excessive time) Half hour was sufficient time for drafting proposed order compelling discovery (after prior 14 page briefing on the same) and referenced communications.	(1.9)	1.0
1/31/21 & 2/2/21	10.0	(Excessive time) 2 hours was sufficient time to review, research, and draft initial response to Defendant's Motion to Alter or Amend the summary judgment order, along with referenced communications. (The subject of "research" on 1/31/21 is completely redacted, but no matter was pending at the time other than the Motion to Alter or Amend and the attorney fee petition).	(8.0)	2.0
2/3/21 - 2/9/21	37.2	(Excessive time/Outside scope of this action) 2 hours was sufficient time to draft response to Defendant's request for scheduling and document production in the fee petition matter (i.e., making arguments set forth in Plaintiff's 2/4/21 and 2/9/21 briefs) and for other noted communications, drafting and review. Time in 2/3/21 entry devoted to responding to Defendant's Motion to Alter or Amend was excessive and duplicative of work from 2/2/21 time entry. Time devoted to setting forth basis for entitlement to attorney fees and preparing redacted bills was excessive and duplicative of efforts that should reasonably have been included in the hours alloted in 1/21/21 - 1/25/21 time entries for the attorney fee petition. Preparation of "acceptable easement" terms noted on 2/9/21 was not work within the scope of this action, particularly at this stage after summary judgment.	(35.2)	0.0

		(Fee statement objections) Defendants are not entitled to recovery of fees for time spent unsuccessfully seeking to avoid production of attorney fee statements and to have attorney fees awarded immediately and without a hearing.	(2.0)	
2/10/21 - 2/16/21	10.0	(Excessive time/Outside scope of this action) Half hour was sufficient for referenced communications and general review. Work related to "easement solution" and potential communications with the Army Corp of Engineers (including Corps Savannah District Chief of Acquisitions John Hinely) was not within the scope of this action, particularly at this stage after summary judgment. Ongoing work on discovery dispute (noted on 2/16/21) was unecessary and excessive at this stage of the litigation after summary judgment.	(9.5)	0.5

2/17/21 - 2/18/21	15.9	(Excessive time/Outside scope of this action/Fee statement objections) One and a half hours was sufficient to prepare for and attend status conference with Court regarding fee petition procedures and engage in noted communications. Work related to potential communications with John Hinely of the Army Corps of Engineers regarding proposed easement language was outside the scope of this action. Time associated with preparing a proposed protective order and research regarding fee statement matters was excessive, duplicative of efforts that should reasonably have been included in the significant hours alloted in 1/21/21 - 1/25/21 time entries for the attorney fee petition, and relate to the Plaintiffs' unsuccessful effort to place extensive limitations on production of billing statements. (While the subject of "Research" is redacted, the Town had not yet filed its memorandum in support of its Motion to Alter/Amend and no other matters were pending at the time. Accordingly, the research would have only related to fee statement matters if within the scope of this action).	(14.4)	1.5
2/19/2021	4.1	(Excessive time/Outside scope of this action) 1 hour was amply sufficient for general review of caselaw related to Defendant's Motion to Alter or Amend (the Defendant's legal brief had not yet been filed) and to engage in the noted communications. Review of the memo opposing Defendant's motion to disqualify was unnecessary because that motion was withdrawn on 1/29/21.Communications on 2/19/21 with John Hinely of the Army Corps of Engineers regarding proposed easement language was outside the scope of this action.	(3.1)	1.0

2/23/21 - 3/2/21	37.5	(Excessive time; Fee statement objections) 3 hours was amply sufficient for noted review, research, drafting and communications. Time associated with researching and briefing regarding fee statement matters was excessive and duplicative of efforts that should reasonably have been included in the hours alloted in 1/21/21 - 1/25/21 time entries for the attorney fee petition. (Note, while the subject of "Research" is completely redacted, the Defendant had not yet filed its memorandum in support of its Motion to Alter or Amend and no other matters were pending at the time. Accordingly, the research would have only related to fee statement matters if within the scope of this action).	(34.5)	0.5
		(Fee statement objections) Time associated with reviewing, researching and briefing regarding fee statement matters, even if reasonably reduced, relates to the Plaintiffs' unsuccessful effort to place extensive limitations on production of billing statements. (Note, while the subject of "Research" is completely redacted, the Defendant had not yet filed its memorandum in support of its Motion to Alter or Amend and no other matters were pending at the time. Accordingly, the research would have only related to fee statement matters if within the scope of this action).	(2.5)	
3/3/2021	5.3	(Excessive time) 2 hours was sufficient to prepare for and attend brief, continued hearing on attorney fee statements and to engage in communications regarding the same.	(3.3)	0.0
		(Fee statement objections) The time relates to the Plaintiffs' unsuccessful effort to place extensive limitations on production of billing statements.	(2.0)	
Totals:	**173.6**		**(150.4)**	**23.2**

Additional time listed in September 10, 2021 Fee Affidavit*
(*Note, the fee affidavit does not include task descriptions for the claimed time entries. The allocation below is based on the timing of filings and hearings relative to the time entries and the limited scope of pending matters at the time. If within the scope of this action, the time entries would have only related to the identified matters).

Date	Invoice Hours	Basis for Reduction	Deducted Hours	Remaining Hours
3/5/21 - 3/16/21	48.0	(Excessive time) 4 hours was sufficient to draft reasonable response to Defendant's 3/3/21 motion for production of fee statements, particularly given the hours alloted in 1/21/21 - 1/25/21 time entries for the attorney fee petition. (Note, the Defendant had not yet filed its memorandum in support of its Motion to Alter or Amend and no other matters were pending at the time.).	(44.0)	0.0
		(Fee statement objections) Time associated with fee statement objection matters, even if reasonably reduced, relates to the Plaintiffs' unsuccessful effort to place extensive limitations on production of billing statements.	(4.0)	
3/17/21 - 3/18/21	12.9	(Excessive time) 6 hours was sufficient to review Defendant's Memorandum in Support of its Motion to Alter or Amend and draft reasonable response to same, particularly in light of extensive prior research and briefing of related issues.	(6.9)	6.0
3/19/2021	8.5	(Excessive time) 4 hours was sufficient to prepare for and attend 3/19/21 virtual hearing on Defendant's Motion for Production of Fee Statements and Motion to Alter/Amend Summary Judgment Order and to draft and submit minor revisions to a proposed Amended Summary Judgment Order submitted 3/23/21.	(4.5)	4.0

3/20/21 - 9/9/21 (plus estimated 30 hours from 9/10/21 - 10/6/21)	107.6	(Excessive time; Fee statement objection; Non-prevailing motion) After the 3/19/21 hearing, the only remaining issue in the case was the fee petition. One hour was amply sufficient for preparation of a simple fee affidavit update and miscellaneous communications. Time spent on fee statement redaction and production, the only other matter pending at this time, were duplicative of efforts that should reasonably have been included in the hours alloted in 1/21/21 - 1/25/21 time entries for the attorney fee petition. Any time associated with the 4/1/21 hearing on Defendant's motion for protection from Plaintiffs' attempts to depose the Town Administrator was not necessary in the context of this action after the grant of summary judgment.	(106.6)	1.0
Totals:	**177.0**		**(166.0)**	**11.0**

	Invoice Hours		**Deducted Hours**	**Remaining Hours**
TOTALS:	**963.9**		**(863.2)**	**100.7**
Hours deducted for work on non-prevailing "fraud/bad faith" claims:				**26.3**
Total remaining hours including work on non-prevailing claims:				**127.0**

September 24. 2021 Town pre-hearing 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,	)	
	)	**DEFENDANT'S PRE-HEARING**
Plaintiff,	)	**MOTION REGARDING**
v.	)	**FEE PETITION MATTERS**
	)	
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 ("Town"), by and through its undersigned attorneys, will move this Court at the hearing on Plaintiff's petition for litigation expenses scheduled for 2:00 p.m. on October 6, 2021, or at such other time that Plaintiff's petition may be heard, for issuance of an Order or Orders providing the following relief:

1.) Consolidation. Defendant moves pursuant to Rule 42, SCRCP, that 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) be consolidated under a single civil action number in order to streamline any appeal. On information and belief, the Plaintiff consents to consolidation.

2.) Filing of Submitted Fee Records Under Seal. Defendant moves, pursuant to Rule 41.1, SCRCP, that the entire set of Plaintiff's redacted (labeled "20001 – 20082") and unredacted (submitted to the Court for in camera review) fee agreements/statements be filed under seal, or confirmed as such, as part of the record. Counsel for the Town contends that these submissions are already part of the record based on the terms of the April 5, 2021, *Protective Order* (p.3, ¶ 5, 7), but

requests confirmation from the Court and general identification on the record of what was submitted as set forth above. This request does not seek to alter the in camera status of the unredacted records.

3.) Removal of Fee Statement Redactions. Town places on the record its request, as set forth in paragraph 2(b) of undersigned counsel's April 26, 2021, letter to the Court ("Exhibit 1"), that all dollar amounts on the final page(s) of the Plaintiff's fee statements be unredacted, and moves the Court for an Order directing that such redactions be removed. The objected to redactions contain information that is material to analysis of an award of reasonable attorney fees under S.C. Code Ann. § 28-2-510(A) and the six factors identified under Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997), and are not privileged or otherwise protected from disclosure.[1] As has been communicated to Plaintiff's counsel, counsel for the Town understands that the Court has previously had an opportunity to consider this issue and, while the Town would welcome reconsideration by the Court, this motion is filed primarily for issue preservation purposes. The Town does not seek to oblige either party to devote further time or briefing to the topic, other than any desired formal filing of prior relevant informal submissions to the Court.

Rule 11 Certification

Pursuant to Rule 11, SCRCP, undersigned counsel hereby certifies that he consulted with opposing counsel to resolve the issues underlying this motion and determined that further consultation would serve no useful purpose.

Respectfully submitted,

s/ William C. Dillard, Jr.
William C. Dillard, Jr. (S.C. Bar No. 78986)
BELSER & BELSER, P.A.
Post Office Box 96
Columbia, SC 29202
(803) 929-0096
will@belserpa.com
Attorneys for Town of Pawleys Island

September 24, 2021

[1] Dollar amounts in billing records are not "confidences disclosed within the relationship", State v. Doster, 276 S.C. 647, 651, 284 S.E.2d 218, 219 (1981), subject to privileged attorney-client.

C. HEYWARD BELSER, SR.
(1918-1994)
CLINCH H. BELSER, JR.
H. FREEMAN BELSER
MICHAEL J. POLK
WILLIAM C. DILLARD, JR.
CHARLES H. McDONALD
ROBERT YOUNG, P.A.
OF COUNSEL
CHARLES L. DIBBLE
OF COUNSEL

ATTORNEYS AND COUNSELORS AT LAW
BELSER & BELSER
belserpa.com
COLUMBIA SOUTH CAROLINA

POST OFFICE BOX 96
COLUMBIA, SC 29202

TELEPHONE: 803-929-0096
FACSIMILE: 803-929-0196

OFFICE LOCATION:
1325 PARK STREET
SUITE 300
COLUMBIA, SC 29201

Exhibit 1

April 26, 2021

The Honorable Michael G. Nettles
Florence City-County Complex
181 North Irby Street, Suite 3610
Florence, SC 29501

Re: *Franklin D. Beattie v. Town of Pawleys Island* (Civil Action No. 2020-CP-22-0601)
Sunset Lodge, LLC v. Town of Pawleys Island (Civil Action No. 2020-CP-22-0600
*M. Baron Stanton v. Town of Pawleys Island (*Civil Action No. 2020-CP-22-0602)

Dear Judge Nettles:

I am in receipt of redacted copies of the plaintiffs' fee agreements and billing statements in the above referenced matter. It is my understanding that Mr. Stanton, counsel for the plaintiffs, has forwarded unredacted copies to your office for in camera review. The April 5, 2021 *Protective Order for Production of Documents* provides the Town an opportunity, even after the Court's review, to seek an additional ruling on particular redactions. However, for the sake of efficiency, I am writing to provide the Court a list of certain items identified during my initial review of the redacted materials.

My intent is not to submit this letter as a formal request for relief or a comprehensive list of matters requested to be unredacted, but instead to bring these issues to your attention for preliminary consideration during your in camera review. Specifically, I note the following items for the Court's consideration:

1.) Fee Agreements

a. Town requests that the **dates** of the emails confirming the fee agreements be unredacted, as the effective date of the agreement affects the client obligation to pay fees.

b. Town requests that the **following material** be unredacted to the extent that it affects the basis, calculation, or client obligation to pay fees, including any continency for such payment:

i. (4th paragraph) Material following the statement, "This letter will also confirm our consultation with you regarding _____*redacted*_____."

ii. (Sunset Lodge agreement Page 2, Beattie agreement Pages 2 – 3) Four full redacted paragraphs placed between other discussion of fees, giving rise to an inference that some or all of the redacted material may relate to fees.

iii. Any other material the Court finds should be unredacted.

2.) Billing Statements

a. Town requests that the **recipient** indicated on Page 1 of each invoice be unredacted. Without such information, it does not appear possible to confirm from the invoice itself the party to which it relates.

b. Town requests that the **dollar amounts** on the final page(s) of each invoice be unredacted. Without this information, it is difficult if not impossible to ascertain what amounts were actually invoiced, paid, "deferred", etc., and in relation to which party. This would also include the amounts of the "Deferred Charges" added to the invoice dated January 22, 2021 (i.e., two days after entry of the summary judgment order).

c. Town requests that the **subjects of research, drafting, and other work**, redacted on numerous entries throughout the statements, be unredacted except where necessary to protect the substance of privileged attorney-client communications or specific attorney mental impressions.

d. Any other material the Court finds should be unredacted.

Thank you for your consideration of these items. It is understood that Mr. Stanton has relayed his position in writing to the Court, and that he will have further opportunity to respond to any finding that certain materials should be unredacted.

Sincerely,

William C. Dillard, Jr.
Counsel for Town of Pawleys Island

WCD/rhs

cc: The Honorable Michael G. Nettles (via email, [redacted])
M. Baron Stanton, Esq. (via email)

October 4, 2021 Landowner reply brief, with e-mail re nuclear option, affidavit of Beattie, affidavit of Howard, and counteraffidavits by Stanton to affidavits of Dillard, Pagliarini, DuRant and Henry.

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.)	
)	

10/4/21
REPLY BRIEF OF PLAINTIFF TO
9/20/21 MEMORANDUM OF TOWN IN OPPOSITION TO
1/25/21 MOTION OF PLAINTIFF FOR
AWARD OF ATTORNEY'S FEES AND
OTHER LITIGATION EXPENSES

On January 21, the Court entered an initial formal summary judgment order against the Town, quashing and dismissing the subject condemnation action.

On January 25, 2021, the plaintiff filed a motion for award of attorney's fees and other expenses, an affidavit of fees and costs, a proposed order, and a proposed Form 4A. (Collectively, the motion and the periodically updated affidavit may be referred to as the "fee petition.")

Subsequently, between the filing of the plaintiff's fee petition January 25, 2021 and September 19, 2021, there were various proceedings initiated by the Town relative to opposing the fee petition, as well as other activities in the case, such as the Town's motion for reconsideration.

The fee-related proceedings included, among other things, briefs of the parties relative to requests by the Town (e.g., plaintiff's briefs 2/5/21, 3/1/21 and 3/17/21), entry of a protective order, production of selected billing materials in redacted form to the Town and in redacted and unredacted form to the Court for in camera review, and periodic updates by the plaintiff of the time spent litigating this case to conclusion, including the fee request.

On April 5, 2021, the Court entered the final formal summary judgment order against the Town.

On September 10, 2021 the plaintiff filed the last of the updates to the fee petition. It is comprehensive of earlier affidavits.

In the last update, the plaintiff requests an award of litigation expenses of $61,112.02.

On September 20, 2021, the Town filed approximately one hundred and four (104) pages of additional materials, including a Memorandum in Opposition to the January 25, 2021 Motion for fees and expenses, an Opposing Affidavit of Pagliarini, an Opposing Affidavit of DuRant, an Opposing Affidavit of Henry, and an Opposing Affidavit of Dillard.

Subsequently, the Town also filed "Pre-hearing motions."

Overview

The sum total of the Town's response is that for prevailing in the case, the plaintiff should recover litigation expenses of approximately one-tenth (1/10) of what the Town itself has spent using three lawyers and a fourth outside lawyer hired to give an opinion on fees. The plaintiff hereby replies.

Brief Response

The task before the Court is not nearly as complicated as the Town makes it. The plaintiff's fee petition alone provides a sufficient basis for this Court to make a fair award, as follows.

The plaintiff has requested an award of $60,198.33 in attorney's fees in the case through October 6, 2021.

Together with $913.69 in other out-of-pocket expenses, the total requested award of litigation expenses is $61,112.02[1] through October 6, 2021.

This request includes the work in the case in order to prosecute the fee request itself to conclusion. This is legally proper,[2] but the legal side is largely ignored by the Town. It makes

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1 This figure includes an estimate of $5700 made on September 10, 2021, before receiving Mr. Pagliarini's affidavit, of the work required between September 9 and October 6, 2021. Responding to Mr. Pagliarini's affidavit will require the plaintiff to exceed this estimate.

2 A statute requiring that the court award the prevailing party attorney's fees "reasonably incurred in litigating the proceedings" contemplates all the proceedings, including the portion of the proceedings devoted to pursuing attorney's fees incurred in obtaining the primary relief sought in the case. Ex parte Gregory, 378 S.C. 430, 663 S.E.2d 46 (2008)(holding that attorney's fees for seeking attorney's fees under Frivolous Proceedings Act were included in the fees required to be awarded); see Austin v. Stokes-Craven Holding Corp., 406 S.C.187, 750 S.E .2d 78 (2013)(holding that a statute mandating an award of attorney's fees mandated an award of trial-level fees, subsequent appellate fees, and subsequent post-appellate fees in the trial court, in which post-appellate trial-court proceedings, fees incurred in earlier stages were sought).

The policies supporting this rule are obvious, and are already applicable in the instant case. In Commissioner, Immigration and Naturalization Service v. Jean, 496 U.S. 154 (1990), the U.S. Supreme Court held that fees for obtaining fees are allowed under the fee shifting provisions of the Equal Access to Justice Act.

The Court held that, under the EAJA, a prevailing party may recover attorneys' fees for services rendered in seeking a fee award without regard to whether the position of the United States was substantially justified. Namely, if the prevailing party is entitled to fees in the main

no sense, for example, to award a prevailing party $200,000 in fees incurred in one part of a case, if in order to obtain the award, the party then has to incur another $200,000 in noncompensable fees in another part of the case. This would only incentivize increased litigation by the nonprevailing party and establish a regime in which the prevailing party is discouraged and never made whole.

Mr. Dillard has indicated agreement with this principle. However, he indicated this to a different judge in a case with the same parties, subject matter. In the instant case, he argues the opposite. The same landowner-plaintiffs brought a second of set of challenge cases (2020CP2200930, 931, and 932) when they were sued by the Town condemnation a second time while the instant action was still pending.

The Town wanted those challenge cases dismissed after losing the instant challenge cases, and particularly did not want the Town Administrator deposed or for the landowner-plaintiffs to pursue any further discovery.

There, Mr. Dillard assured a different judge of this Court that the plaintiffs' concerns with being sued yet a third time by the Town, still without discovery being sought, were misplaced, stating that "statutory rights to recover attorney fees and costs in the event of a

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action, then he is automatically entitled to fees for the time spent seeking fees. To hold otherwise could "spawn a 'Kafkaesque judicial nightmare' of infinite litigation for the last round of litigation over fees." *Id.* at 163. See also, e.g., Tri-County Metro. Transp. Dist. of Or. v. Aizawa, 362 Or. 1,___, 403 P.3d 753, 754 (2017) ("Ordinarily, a party entitled to recover attorney fees incurred in litigating the merits of a fee-generating claim also may receive attorney fees incurred in determining the amount of the resulting fee award."); and see Crandon Capital Partners v. Shelk, 219 Or. App. 16, 42, 181 P3d 773, __ (2008) (describing that rule as reflecting "longstanding precedent in Oregon").

condemnation abandonment or a successful challenge action ... clearly disincentive any condemnor from attempting to use 'multiplicity of litigation' to gain leverage over a landowner."[3]

Under the procedure described in Layman v. State,[4] the fees of the one plaintiff in this one case may be reasonably calculated as follows: 1000.5 hours x $250 per hour = $250,125.00.[5]

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3 He so stated at page 5 of the Town's 6/2/21 memorandum opposing reconsideration of dismissal in Case 2020CP2200932. There, Mr. Dillard argued:

> The General Assembly deemed it appropriate to protect landowners from the expense of condemnation disputes by, among other things, providing statutory rights to recover attorney fees and costs in the event of a condemnation abandonment or a successful challenge action. These statutory protections satisfy considerations of equity and due process, and clearly disincentive any condemnor from attempting to use "multiplicity of litigation" to gain leverage over a landowner.

4 376 S.C. 434, 658 S.E.2d 320 (2008).

5 As succinctly stated by Judge Miller in Maybank v. BB&T (Greenville County Court of Common Pleas, Order, Case 2011-CP-23-8578, Nov. 10, 2014):

> The specific award of attorneys' fees and costs is left to the discretion of this Court, and must be determined using a lodestar analysis. *Layman v. State*, 376 S.C. 434, 444, 457-58, 658 S.E.2d 320, 325, 332-33 (2008). This analysis requires determining a reasonable hourly rate and hours worked and then considering any exceptional circumstances justifying an enhancement of the lodestar figure. *Id.* at 458-61, 658 S.E.2d at 33-35. This requires considering the following: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Id.* at 458, 658 S.E.2d at 333(citing *Jackson*, 326 S.C. at 308, 486 S.E.2d at 760).

Maybank v. BB&T (Greenville County Court of Common Pleas, Order, Case 2011-CP-23-8578, Nov. 10, 2014)(16 pages, single spaced), aff'd in pertinent part 416 S.C. 541,787 S.E.2d 498 (2016), reh. den.

In Maybank v. BB&T (Common Pleas, Case 2011-CP-23-8578), Judge Miller made his determination of "hours worked" as follows: "I have reviewed the fee affidavit of Plaintiff's counsel detailing the hours worked by each attorney and submitting their current hourly market rates."

In Maybank v. BB&T, 416 S.C. 541, 787 S.E.2d 498 (2016)(42 pages, single spaced), reh. den., the South Carolina Supreme Court affirmed Judge Miller's determination of "hours worked" from prevailing counsel's affidavit setting forth "hours worked."

The South Carolina Supreme Court rejected the appellant's argument that "the affidavit of attorneys' fees and costs submitted by Maybank's counsel was inadequate and lacked the necessary detail that would enable Appellants to respond." 416 S.C. at 5801, 787 S.E.2d at 518. The South Carolina Supreme Court rejected the appellant's argument that "Maybank failed to provide detailed billing statements to identify how the billed hours correlated to the claims alleged, especially since Maybank prevailed on only five of his eleven claims, and the Trust lost on all its claims." 416 S.C. at 5801, 787 S.E.2d at 518.

The Court also rejected the appellant's argument that "the insufficiency in the billing statements make it difficult to ascertain and delineate the work completed in furtherance of the UTPA claim -- which is the only claim upon which attorneys' fees and costs may be awarded." 416 S.C. at 5801, 787 S.E.2d at 518. Instead, the Court ruled: "We find all of Maybank's claims shared the same common facts and required combined efforts throughout the litigation process." The Court found to be a reasonable estimation, the trial court's reduction of fees by twenty percent to account for a distinction in the claims and the time allotted to defend claims unrelated to the UTPA claim, which was the only claim in the group of claims for which attorney's fees were allowed to be recovered. 416 S.C. at 5801, 787 S.E.2d at 518.

In this calculation pursuant to Layman and related cases, the 1000.5 hours are the hours sworn in the fee petition to have been actually reasonably devoted to the case after July 1, 2021. (See restated fee affidavit of September 10, 2021.) Layman does not require or recommend that private billing statements be presented.[6] As detailed in the fee petition, the plaintiff's counsel did not work these hours only over an even spread of daylight hours on weekdays, as the fictional calculations of Mr. Dillard would imply. The details provided clearly show that the plaintiff's counsel works nights and weekends.

The $250 per hour rate in the above calculation is the reasonable rate for a lawyer in the vicinity with comparable experience to charge, without an additional lodestar enhancement in the discretion of the Court for extraordinary demands or conditions on prevailing counsel, the difficulty of the case, the beneficial result obtained, or other factors.[7] The $250 per hour rate is

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Thus, South Carolina case law does not require that a fee application be supported with the lawyer's and client's actual confidential bills.

Neither does the applicable fee recovery statute in this case. Nor is the production of actual confidential bills required in states in which the detailed procedure for applying for fees is actually set forth in the state's rules of civil procedure. See, e.g., O.R.C.P. 68, Pleading, Allowance, and Taxation of Attorney Fees and Costs and Disbursements (nowhere specifying production of bills). There are reasons for this and they are amply set forth in the plaintiff's briefs to this Court.

Nevertheless, the Town moved, over the plaintiff's objection, for production of a healthy sampling of the plaintiff's representative bills, and was granted production of them, with many of the more sensitive or privileged matters fairly redacted, while the Court reviewed the bills in camera and determined fewer redactions to be made. No error whatsoever in the number of hours recounted in the plaintiff's counsel's fee affidavit has been alleged since then.

6 See the discussion in the preceding footnote.

7 Alternatively, the Court could use a lower hourly rate such as $190, and then increase the

the same rate charged by both Mr. DuRant, the first lead counsel hired by the Town, and Mr. Dillard, the second lead counsel hired by the Town, as verified by publications online by the Town and Town responses to FOIA requests.

However, the plaintiff has conservatively requested a fee award based on only 950.5 hours, and based on only $190 per hour.

Further, the request is conservatively based on the resulting fee then being divided by three. This request results straightforwardly in aforestated requested fee award of $60,198.33 for the plaintiff.

Further, the plaintiff has requested that the court take notice that, of the two similarly situated plaintiffs in the two related separately filed cases handled by the same attorney, one asks for only the same $60,198.33, and the other does not request a fee award. This is collectively a discount of another one-third. This effectual thirty-three and one third (33 1/3%) reduction for all three cases more than accounts for any possible quibbles or attempts of the Town to re-litigate every detail of the plaintiff's successful case in dim hindsight now.

All of these conservative steps result in a total fee award of only $120,396.64 for all three related cases, rather than a conceivable and defensible total fee award of $750,375.00, had the three landowner-plaintiffs not combined and shared one lawyer, who represented himself in one of the cases.

The fee award requested is reasonable, and should be awarded.

Further Discussion of the Town's Contentions

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total fee by a multiplier of 1.31, taking into account the lowness of the rate. The result is the same.

The Town's 9/20/21 Opposition Memorandum is based on four (4) affidavits on seemingly every conceivable aspect of the case, so the plaintiff will address them before further reply to any argument in the Opposition Memorandum. First, however, this memorandum must address, as well, the Town's "pre-hearing motions," on three subjects.

The Town's "Pre-hearing Motions"

As to the three things the Town requests, as the plaintiff previously advised the Town, the plaintiff consents to the first, and the other two are unnecessary. None should take up extra court time.

That is, the plaintiff consents to consolidation of the three related cases under the case number for the Sunset Lodge case.[8]

The remaining two requests by the Town are already covered by the protective order and rulings of this Court and are unnecessary to be requested again, argued again, submitted again, or reconsidered.

This is with one exception, as the plaintiff has previously advised the Town. The Town wishes for both the redacted and unredacted billing statements submitted by the plaintiff to the Court for in camera review to be filed by the Court under seal in this case. The Court's 4/5/21 Order "protective order," compelling production of billing statements under protective order under stated conditions, allows that.

The plaintiff does not consent to this per se, because the plaintiff did not agree with all

8 This is just as the plaintiff moved for in the other three challenge actions which the landowner-plaintiffs filed when the Town sued each of them for condemnation a second time. Although we may be close to the end of the proceedings in this Court, if either party argues further or takes an appeal, it will likely cut down on the number of papers, filings, and filing fees.

aspects of the order itself. But the Order allows the Town to request that the Court file the materials in this manner. Assuming the Court agrees to do that, the plaintiff's objection in this regard can be noted and the matter can move forward. There is no need to hear further from the Town on the matter at the hearing of the plaintiff's motion for litigation expenses pursuant to statute.

The Opposing Affidavit of Mr. Pagliarini

As will be detailed further in reply affidavits, there are serious problems with the affidavit of Mr. Pagliarini.

His affidavit should be disallowed and the testimony of Mr. Dillard relying on it should be disallowed. Among other things, (i) Mr. Pagliarini is incompetent as a fact fitness, having no personal familiarity with the matter, (ii), he is incompetent as an opinion, or "expert," witness, because he lacks education or experience of any degree that will be of assistance to the Court as a factfinder, (iii) his testimony makes clear that he has not actually read or examined many of the things on which he bases his opinions, or otherwise grossly misunderstands what he has read, (iv) he relies on information selectively supplied by others, which in turn was not the product of personal familiarity or expertise, and which will be shown to be grossly erroneous and untrustworthy, and (v) his own observations, conclusions or opinions will be shown to be an inseparable mixture of insufficient or incorrect factual information and incorrect legal conclusions, the latter being the province of the court in any event.

Among other things, Mr. Pagliarini's opinion is materially based on unsworn materials subjectively, and erroneously, prepared by Mr. Dillard. Mr. Pagliarini expressly states that he relies on the materials supplied by Mr. Dillard. These materials are grossly incomplete and

grossly incorrect, and Mr. Dillard, new counsel in the case, has no personal familiarity with the case either, until after the time summary judgment was granted to the plaintiff.

Even if allowed, Mr. Pagliarini's testimony is materially incorrect and incomplete and, for reasons which will be further detailed, cannot be given any credibility.

The Opposing Affidavit of Mr. DuRant

As will be detailed further in reply affidavits, Mr. DuRant's affidavit is incorrect.

He denies the plaintiff's counsel's characterization of the Town as an adversary which will (i) "say anything" and (ii) "stop at nothing."

Reply affidavits for the plaintiff actually give specific examples instead of empty adjectives or denials with no specifics. The vacillation of Mr. Henry, the mayor, on his e-mail to the Corps of Engineers inquiring about the availability of a "nuclear option," is but one example. The case(s) and the events also speak for themselves to a large extent.

A self-described "Bulldog" on his website, Mr. DuRant now denies that he was a bulldog. Undeniably he made considerable work for the plaintiff's counsel. In general, this is no crime, but the statutes require that the Town now pay for that work, instead of denying that the work occurred or denying that the work caused by the Town was necessary, or denying that the plaintiff won the case.

Mr. Durant incorrectly states that the summary judgment ruling included rulings that "certain issues lacked merit." Once again, saying this does not make it so. As a corollary, nor does the Town saying it repetitively make it so.

There is not a single instance of such a ruling. There is not one single merits ruling by the Court in favor of the Town. "Litigants in good faith may raise alternative legal grounds for a

desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee." Hensley v. Eckerhart, 461 U.S. 424 at 435–36 (1983).

There were issues in favor of the plaintiff which the Court did not see a need to fully reach in order to dismiss the condemnation on summary judgment. But there was not a single ruling against the plaintiff, and for that matter, there was not a single finding that the facts the plaintiff presented as undisputed were anything other than undisputed. Not one.

On the other hand, even in the summary judgment proceedings, the Town contended that a proposed easement granting "public use and access" did not grant public use and access. Instead, the Town said that it was a mere construction easement for the deposit of sand. Saying this did not make it so. The Court expressly ruled on the fallacy of this contention as well in its order at 6.

In the related challenge cases the landowner-plaintiffs were forced to bring by being sued twice, Mr. Dillard also contradicts these unsubstantiated remarks by Mr. DuRant in which Mr. DuRant incorrectly implies that there were merits determinations adverse to the plaintiff.

Mr. Dillard's statements in the other cases – that the plaintiff won everything that could be won -- also contradict his own arguments in this case, in which he now adopts Mr. DuRant's casual statements and argues that although summary judgment was granted in favor of the plaintiff and the condemnation was quashed, the plaintiff did not really prevail at all.[9]

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9 Mr. Dillard specifically argued that the plaintiff had obtained all the relief that was possible under both sets of challenge actions.

In the Town's 6/2/21 memorandum opposing reconsideration of dismissal in Case 2020CP2200932, Mr. Dillard argued throughout that generally no permanent injunction was attainable. He asserted that virtually all relief ever granted in a successful challenge action -- and

Mr. DuRant, on a course of logic no more valid or fact specific than making ad hominem arguments, joins in Mr. Dillard's and Mr. Pagliarini's page-counting arguments. He states that the Amended Complaint was "excessively lengthy at 57 pages." Impliedly, prevailing counsel should therefore be hated for this or judged incompetent, and his clients should recover only an eighth to a tenth of the fees they have actually incurred.

Yet, those were the same 57 pages containing much of the material that resulted in a grant of summary judgment. Under the Rules of Civil Procedure, it is not an excuse for denying the truth of all 57 pages, that the defendant's counsel considered them long.

In another extraordinary example of curative fiction, Mr. DuRant also incorrectly states that he found it extremely difficult to engage in productive communications with the plaintiff's counsel, and never cites a single example.

This is his excuse for not trying to communicate, as required by the rules, or else

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all relief abandoned when the condemnor abandons -- is essentially without prejudice to attempting condemnation again another way.

These arguments are substantially at odds with his brand new argument, in the instant case – after eight months of engaging in for "fee discovery" -- that the plaintiff did not prevail in the instant challenge case.

This brand new argument also makes flies in the face of the legislature's intention to award fees regardless of whether the landowner wins the challenge action or whether, under threat of such victory, the condemnor abandons the underlying condemnation attempt. Mr. Dillard elsewhere acknowledges that the legislature intended to award attorney's fees to the landowner and make the landowner completely whole at the end of each action in either event.

By his new reasoning, confronted with ten reasons why condemnation cannot go forward, the condemnor can temporarily abandon the condemnation and then argue that the landowner's attorney's fees should be reduced because maybe the landowner would have lost on a few of them if there had ever been a merits trial. The statute does not read this way.

certifying futility, which he did not do either. As shown in reply affidavits, when there were consultations, they were actually cordial, if not productive, and the main problem and the thing that cost the plaintiff and the Court time, was Mr. DuRant not communicating at all, and filing the things he filed. Again, this is not an indictment of Mr. Durant's strategy, but an explanation of what the Plaintiff had to contend with in the case and the time and expenses which were accordingly incurred.

The Opposing Affidavit of Mr. Henry

As will be detailed further in reply affidavits, Mr. Henry's testimony now purporting to state what he meant by "nuclear option" when asking the Corps if it was available is completely false. His actions show that he will say anything expedient.

Attached as "Exhibit A" is the 8/23/21 e-mail of the Town Administrator, Mr. Fabbri, who, just weeks ago, relayed that Mr. Henry stated that he did not remember what he meant by "nuclear option" when he asked if such an option were available to deploy against his constituents, the landowner-plaintiffs.

Specifically, Mr. Fabbri advised: "I'm not sure what the 'nuclear option' was and I've asked Mayor Henry to explain what was meant by that comment, and he could not recall. There were no emails, notes, memos, or any other kind of documentation regarding a 'nuclear option'."

Opposing Affidavit of Dillard

For such opinion as Mr. Dillard offers, he states that one of his material sources is the opinion of Mr. Pagliarini.

However, Mr. Pagliarini states that he formed his opinion by relying on materials prepared by Mr. Dillard. These materials are shown in the reply affidavits to be subjectively

compiled, and replete with error. See the Stanton Reply Affidavit to Pagliarini Affidavit. Mr. Dillard had no familiarity with this case before summary judgment was granted against the Town, and Mr. Pagliarini has no first-hand familiarity with the case at all.

Their testimony is expressly inextricably intertwined. The plaintiff objects to both. Neither is competent as a fact witness to much, and neither is competent or credible as an opinion witness at all. Therefore, Mr. Dillard's affidavit should be stricken, and otherwise be accorded no credibility. It provides no assistance to the Court as factfinder, and consists of largely slickly disparaging innuendo.

About half of Mr. Dillard's affidavit is devoted to a putative timeline on the one phase of the case which did involve him, the "fee discovery" phase. As outlined in the Stanton Reply Affidavit to Dillard Affidavit and as is apparent from the other papers in the case, that timeline is incomplete and inaccurate.

The Town's Arguments and Other Matter in its Opposition Brief

A. Averaging of Hours

The Town makes pointless calculations of what the average hours worked by the plaintiff's counsel would be if they had been worked other than at the time worked. As shown in the fee petition, the plaintiff's counsel worked nights and weekends, often on a compressed schedule, not solely on business hours over a five day week, not with an even distribution of burden.

This is reiterated in the Stanton Reply Affidavit to Pagliarini Affidavit. What the purpose or point of these calculations is other than pseudo-science or pseudo-analysis is still never made. There is no apparent point to these observations of the Town, unless they are for innuendo that

the hours were not worked. This cannot be backed up by the Town, who in other places appears to set about proving that the plaintiff's attorney did a great volume of work. No matter how hours might be averaged, their total remains. The total is 1000.5.

B. After Eight Months of Waiting, A New Argument, I.E., That Plaintiff Did Not Prevail or Otherwise that the Result Was Not Beneficial Enough to Allow an Enhancement of the Lodestar Calculation of Rate Multiplied by Actual Hours

The Town argues that the plaintiff did not obtain permanent relief, and therefore actually failed when the plaintiff got the Town's condemnation action quashed and dismissed on summary judgment. At another point in its brief, the Town describes this relief as "essentially temporary procedural relief."

This ill-founded argument, which could have been made eight months ago when the matter was fresh in the memory of those who were actually there, is refuted in this brief above at footnotes 3 and 7 and accompanying text. There, the arguments of Mr. Dillard himself regarding the purpose and application of the EDPA attorney's fees provisions are discussed, as well as his contention elsewhere that the plaintiff obtained all the relief that is usually possible in a challenge case.

It should also be noted that the plaintiff has not even requested a Layman multiplier to enhance the result of multiplying the rate by the number of actual hours. The attack on benefits obtained is therefore irrelevant in addition to be factually and legally incorrect. The Town argues that a negative "multiplier" should be used to penalize the plaintiff on the basis that winning summary judgment on undisputed facts and sparing the parties and the Court a trial was not good enough. This argument speaks for itself.

In the Stanton Reply Affidavit to Pagliarini Affidavit is additional discussion of the

lasting effects of the result in the case, e.g., the inability of the Town to proceed again with a false appraisal, as it has now done not once, but twice.

The plaintiff still owns the subject one-third of the plaintiff's land, free any right of the public to traverse it or camp out on it, free of any right of Town agents to go four-wheeling on it with the vehicles currently being used for that purpose, free of any right of the Town to put giant trash cans on it, free of any right of the Town "or its assignees" to destroy the plaintiff's deck, steps or other improvements, and free of many other burdens.

This is a significant and highly beneficial result. It should be noted, however, that the fee request calculated by the plaintiff is without any enhancement of the lodestar calculation for the beneficial result obtained and this is still within the Court's discretion to add.

C. The Recurring Fallacious Characterization of the Town's Fatally Unacceptable Acts as Mere "Procedural Deficiencies" Not Involving Falsity, Dishonesty or Purposefully Prejudicial Omissions, Nondisclosures or Concealment

Much like the proposed easements themselves, the main of the Town's overall brief and argument is dependent on willingness to accept curative fiction stated by the Town, and analysis employing the facts not as they truly are.

In further press of its argument that summary judgment dismissal of the Town's action is not enough success or any success at all, the Town makes much argument under the false premise that the acts and omissions of the Town forming the basis of the Amended Complaint were "either/or" facts which were either exclusively "procedural" or exclusively "fraud."

The Town similarly stakes its arguments on the false premise that the acts and omissions of the Town forming the basis for summary judgment were exclusively "deficiencies in procedures."

As explained in detail in the Stanton Reply Affidavit to Pagliarini Affidavit, the "deficiencies" in behavior by the Town were fundamentally infused with dishonest practices and material effects on the proposed condemnation.

Even if, hypothetically, one believed that lying is not dishonest, or that engaging in activities which repetitively and successively result in false acts is not fraudulent, the facts which the plaintiff alleged to constitute dishonest behavior were the same facts on the basis of which summary judgment was granted.

For example, the plaintiff alleged that keeping the easement terms from the appraiser was dishonest and resulted in an appraisal of something different from what was being condemned. If, hypothetically, one thought the appraisal was the result of honest behavior -- in spite of the consistency of the misrepresentation of the easement with multiple prior Town misrepresentations of the nature and scope of the proposed easement -- the lack of an appraisal by an appraiser who was given the terms of what he was appraising was still fatal to the condemnation, requiring it to be dismissed. The "fraud" facts and alleged "fraud" acts, and the "procedural" facts and alleged "procedural" acts, were not mutually exclusive and were largely the same.

The facts were further inextricably intertwined, as were the numerous theories of recovery arising from them.

For an example of how just a few were woven together, (i) the fact that the Town had already declared the whole easement was unnecessary, just as it was for mid-island, and (ii) the fact that the plaintiff contended the easement was unnecessary in light of the burdens imposed, and (iii) the fact that the Town had already acknowledged that certain discrete features were not

necessary and could be feasibly changed, and (iv) the fact that the project was already finished and any later project was not certain to occur at all, all were matters for Town Council to consider in weighing the question of whether to condemn, and, if so, what to condemn.

On summary judgment, the Court ruled that the failure of Town Council to fairly deliberate, taking into consideration relevant factors, was fatal to the condemnation. These facts therefore all folded into, among others, the "failure to truthfully deliberate" theory of recovery successfully advanced by the plaintiff and affirmatively ruled on by the Court.

Softball descriptions of the several instances of the Town's behaviors as "procedural" do not make any of the underlying interrelated facts go away.

In authorizing condemnation, the Town Council publicly described the easement to be condemned fundamentally differently from the one the Town tried to condemn.

In thereafter preparing for condemnation, the Town did not give the appraiser the terms of the easement which defined the very thing he was supposed to put a value on, and which were the very things that defined its value and the burdens it imposed.

In thereafter pursuing condemnation, the Town knowingly used the false appraisal, and incorporated the materially incorrect value in the offer made in the condemnation notice, which, under the EDPA, was the same amount the Town would thereafter have to post with the court for the landowner's security before the Town could go forward if the condemnation had gone forward. The Town was supposed to make the appraisal available to the landowner before suing the landowner, i.e., before serving the landowner with a condemnation notice, but did not. But the Town falsely certified in the condemnation notice that the Town did so.

To address the impropriety of the above described several acts and omissions, the

landowner-plaintiff was required to bring a challenge action. That is, the landowner was not legally allowed to bring these things up as a defense in the "direct condemnation action" brought by Town and could only do so by bringing the landowner's own separate challenge action. The plaintiff did so, and won, and the condemnation action of the Town was quashed and dismissed.

The acts described above were the things that formed the so-called "procedural deficiencies" which were described in granting summary judgment. That the same acts were both dishonest and a per se violation of the EDPA does not make them different or unrelated acts.

D. The Heart of the Challenge: to Successfully Challenge the Condemnation Attempt

In order to inaccurately set the stage for its arguments that the result for the plaintiff was not beneficial enough or beneficial at all, the Town indulges in more curative fiction in its brief at 6, where the Town selectively lists, not the eight or nine theories of recovery listed by the Court in the summary judgment order or the eight examples of dishonest acts in a brief of the plaintiff quoted by the Town at 6-7, but a nonexclusive enumeration of four items the Town here calls the claims "at the heart of the plaintiff's challenge action."

In doing so, the Town does not even cite the same source for the four selected heart pieces. The effect of this selectivity and artificial truncation is to avoid items tending to highlight the intertwinedness of the facts and legal theories.

In this and the rest of its brief, the Town does not once recite accurately and comprehensively the theories of recovery implicated in the Amended Complaint or the large mass of overlapping facts which support numerous bases for the same relief – quashing the condemnation and dismissing it. The relief was not to require an amendment to correct a mere

procedural or typographical deficiency. The deficiencies were, among other things, time-sensitive, and dependent on underlying acts and content, and could not be corrected by amendment like a scrivenor's error as the Town repetitively implies in its pat descriptions. The relief was to quash and dismiss the action for material acts that could not be changed by amendment.

E. Calling Facts and Acts "Claims"

Our courts do not segregate attorney's fees for efforts spent on proving, or preparing to prove, intertwined facts. The Town calls facts "claims," so that the Town can argue that even though a fact was part of the basis for summary judgment, the decision of the Court to grant summary judgment based on the fact without reaching the question of all the qualitative features and implications of the fact means a "claim" "failed." The facts were all intertwined and the plaintiff was successful in having the condemnation case dismissed.

The fraud facts were not just "broad," as the Town states in its brief at 6, although calling them "claims." There, the Town recounts an eight-point enumeration by the plaintiff of fraudulent acts by the Town. The facts were also – as not acknowledged by the Town – specific and detailed.[10] The Town argues that none of these "claims" challenging the Town's "fundamental right to ever condemn the easements" were "addressed" in the Order. What the Town avoids in choosing these words is that every single one of the enumerated facts – all eight

10 These and other interrelated facts resulted in a multi-paragraph Amended Complaint the length of which the Town repeatedly complains of as a substitute for actual analysis. That papers are long or hours are long is no more logical a form of argument or analysis of content than name-calling.

of them – were facts that supported the Court's order and were largely employed by the Court in deciding to dismiss the condemnation.

For example, item "(vi)" in the list, "attempting, dishonestly, to condemn interests in real estate which were different or greater in scope than the interests in real estate which were the subjects of the appraisals," is exactly what the Judge based summary judgment on. This is with the exception that he did not state that the huge discrepancy between what the appraiser appraised and what the Town attempted to condemn was "dishonest" or the result of dishonesty.

He instead concluded that this fundamental disconnect was per se a violation of the EDPA, and invalidated the condemnation papers and the condemnation attempt without need of proof of fraud or bad faith. He therefore stated he did not feel it "appropriate" to go into analysis of fraud, but never at any time stated there was no fraud or dishonesty shown by the facts.

This was a summary proceeding and a summary disposition and not a merits trial after more discovery by the plaintiff. The plaintiff had not even yet gotten to the point of presenting, in a trial setting, other potential evidence bearing on the existence, or depth or breadth of fraud and bad faith. For example, as discussed in the Stanton Reply Affidavit to Pagliarini Affidavit, the withholding of the information from the appraiser while also supplying him with incorrect information resulted in potentially a $270,000 to $400,000 difference in the appraisal of each property.

The plaintiff may not have even presented the fact that the Town Administrator told the appraiser that the Town Administrator "did not have" the language of the easements. These appraisals were done in May to June of 2020, a year after the Town Administrator had begun collecting signed easements to file and had engaged in exchanges with property owners like

Stanton about specific landowner objections to the language and scope of the proposed easements.

There was no merits determination against the plaintiff on any claim. It is also obvious the Town never moved for summary judgment that no fraud, bad faith or abuse of discretion could be proved. The Town would have lost such a motion.

The Town filed a notice of condemnation stating that it had done what was required to take the property and stating that it had the right to take. The Court dismissed the action commenced by that notice, not allowing the Town to take. This is success in a challenge.

The EDPA provides attorney's fees to a successful challenge action plaintiff and also, in a sibling subsection of the same section of the statute, provides that attorney's fees are recoverable any time the condemnor abandons a condemnation. The clear legislative intent is to compensate the landowner for fees incurred any time the attempt is discontinued, whether involuntarily by court order, or voluntarily, by abandonment. Thus, conceptually, any time a condemnation is curtailed after a challenge, it is treated as a success of the challenger.

F. Misplaced Concept of "Non-Prevailing Theories" and Incorrect Facts Presented in Support

The Town's argument of no compensation for "non-prevailing theories" is, first, incorrectly applied even to the Town's fictional characterization and segregation of intertwined facts, as there was not a single merits determination against the plaintiff. Secondly, the Town's argument is based on the Court first accepting the pure fiction that the facts were not intertwined and none of the "procedural deficiencies" (e.g., lying in the course of authorizing condemnation, preparing for condemnation and pursuing condemnation) were relied on as part of the claims of dishonesty and none of the lying or falsity was involved in any of the "procedural deficiencies."

The notion of docking fees for not prevailing on a significantly distinct claim (e.g., one with a generally separate core of facts or a legal theory of recovery with few if any overlapping required elements, if not also a different remedy) requires the otherwise prevailing party to have the claim affirmatively determined against him on the merits, usually in a merits trial.

No issue or claim was determined against the plaintiff on the merits. The notion of excising compensation for so-called non-prevailing claims, to the extent recognized in South Carolina, generally does not apply to additional sustaining theories not reached by the Court on summary judgment for the prevailing party or not presented by the prevailing party because not in a posture for summary disposition or because of other factors.

The case cited by the Town, Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995), involved seven truly distinct claims (commission based on being the effective cause of procurement of seven different contracts, on which the plaintiff won on four and lost on three). In Rice, there was a full merits jury trial. There was an actual determination against the otherwise prevailing party on certain claims in a multi-claim case in which each commission claim turned on a different set of facts. "Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee." Hensley v. Eckerhart, 461 U.S. 424 at 435–36 (1983)(reducing fees after merits determination, in three week trial, against prevailing party on distinct claim relating to staffing, as opposed to other successful claims for which the staffing claim did not provide grounds).

G. Alleged "Unnecessary Unsuccessful Objection" "Associated With" Production of Fee Statements

The Town cites one case for the proposition that fees should be excised for unsuccessful opposition associated with motions. The Town contends that fees "associated with" objection to "production of fee statements" should somehow be identified and excised.

Among the problems with the Town's argument are that the precedent requires wholly unsuccessful opposition to a motion, that was unnecessary and not beneficial. The example is bringing a sanctions motion and losing it flatly and completely.

As more fully addressed in the Stanton Reply Affidavit to Dillard Affidavit, the Town can barely identify a motion it made instead of emerging requests embedded in briefs with no formal statement of grounds. When the Town made a motion for production of billing statements, the plaintiff had already volunteered to produce them. The main objection to the motion was not to "production of billing statements," but to a change in the terms the plaintiff's counsel reasonably believed were necessary to protect his client's confidential information under the Rules of Professional Conduct.

The contested part of the defendant's motion was not successful. Nor was the plaintiff's objection to the contested part of the defendant's motion wholly successful. The sample of billing records was produced as originally volunteered by the plaintiff's counsel, but the Court allowed fewer redactions than the plaintiff preferred and more than the defendant preferred. And the production was additionally subject to a protective order the original prototype of which was drafted by the plaintiff and changed over the course of various exchanges.

The plaintiff definitely was not wholly unsuccessful. The defendant was no more successful than the plaintiff. The actions taken were reasonable under the Rules of Professional Conduct and the results were beneficial in that the confidential information of the plaintiff

received some degree of protection from disclosure and was not subject to wholesale exposure as originally sought by the defendant.

This matter is addressed at length in the Stanton Reply Affidavit to Dillard Affidavit. There is no basis for reducing fees of the prevailing party based on isolated, eight-months-delayed, sub-evaluations of motions in the course of the case. The motion handling involved reasonable action by any responsible lawyer in the course of handling a case, and that action was not unsuccessful and it did produce a beneficial result.

H. Alleged "Unnecessary Unsuccessful Opposition" "Associated With" the Town's Motion to Motion to Quash Town Administrator's Deposition

This argument is fully refuted by the facts set forth in the Stanton Reply Affidavit to Dillard Affidavit.

The deposition was noticed 1/15/21, before, not after, summary judgment was granted.

It was noticed in both the instant case and in the still pending second challenge case. The notice came with a note stating, "Attached and served are notices of deposition in each of the three new challenge cases, the "900 series," for the new condemnation notices. I have also included notices in the 600 series in case there is anything left to do in those."

The Town had moved for reconsideration of the summary judgment order entered on January 21, 2021, and the final summary judgment order was not entered until April 5, 2021.

Cooperating with opposing counsel, the plaintiff's counsel even agreed to reschedule the date on convenience grounds, conditioned on preservation of the Town's counsel's ability to object to the deposition on other grounds. He eventually did so, and there is no record in the instant case of objection filed by the plaintiff's counsel, who handled the motion with brief

colloquy at a hearing of other matters, including matters in the other challenge cases.

Time in due course was consumed discussing discovery matters with the defendant's counsel when the discovery was now straddling two cases. The plaintiff's counsel did not split hairs along the way as to which case the deposition was for, as the intent was to let it serve in both cases to the extent applicable. Other than normal review and reflection and going to the hearing, little or no time was spent opposing the motion in the instant case per se once summary judgment was finalized, but the plaintiff's counsel did object to dismissing the second challenge cases, and accordingly objected to curtailing discovery in those cases if the cases were not going to be dismissed.

So there was some argument or discussion, and reasonably so, in the other cases. There, to paraphrase, the judge said, "I think what I'll do is if I don't dismiss the case, I will not grant the motion for protective order; if I do dismiss the case, I will grant the protective order."

There is nothing wrong with the way this was handled by the plaintiff's counsel, particularly when it was the Town that started the multiple litigation by commencing a second set of condemnation cases.

I. "NO CHARGE" Entries on Plaintiff's Counsel's Billing Statements Which Plaintiff's Counsel's Billing Software Will Not Render Any Other Way

The Town argues that "NO CHARGE" entries appearing on plaintiff's counsel's billing statements were not charges and should not be recovered. As recapped in the Stanton Reply Affidavit to Affidavit of Dillard (for lack of a better place), and as is covered in the fee petition, these entries were, to the contrary, charged and billed.

As is obvious from the manually added description, "(Noted, not billed.)," included in

each of the subject entries on the bills themselves, as well as in an explicit explanation footnoted to the bills, these are entries of deferred time, are not free, and are subject to being charged on a later bill. The clients perfectly understood this and had no contrary agreement or understanding. That is, the entries are expressly not actually "no charge" items, but the plaintiff's counsel's billing software will not render the entries any other way using any other automatically generated wording, and still have the items show on a present bill but with no present charge.

As confirmed in the fee petition, and the referenced Reply Affidavit, these time items were indeed later billed. Plaintiff doubts that there is a math error in how many items initially were deferred, and has not checked it yet, as it does not matter, because the charges were billed. The plaintiff's counsel will be happy to look.

J. Case Not Difficult

It was, and is.

K. Appraiser's Deposition Not Necessary

It was necessary. This is fully addressed in the Stanton Reply Affidavit to Pagliarini Affidavit. Mr. Pagliarini and the Town could not be more wrong.

L. With All the Pseudo-Precise Quibbling, the Town's Failure to Ever Address or Account For the Effectual 1/3 Deduction Already Built Into the Plaintiff's Reasonable Fee Request

The Town so fails.

M. Argument that the Plaintiff's Counsel Does Not "Appear" to Have Special Knowledge (Impliedly in Eminent Domain Matters)

This is wrong. He does. See Stanton Reply Affidavit to Affidavit of Pagliarini.

N. Repeated Reference to "Proposed Reduction Table"

The reduction table is a homemade monstrosity of impropriety, error and inadmissibility,

as described in factual detail in the Stanton Reply Affidavit to Pagliarini Affidavit. It should be ignored entirely.

O. False Statement by Town that the Plaintiff's Counsel Worked Nearly a 1000 hours over "A Few Months"

As set forth in the fee petition, the Plaintiff's counsel worked, rather, 1000.5 hours over, rather, one (1) year, two (2) months, and (1) week.

P. Further Correct Legal Authorities

The footnotes in the previous sections of this reply brief set forth adequate law on the law of attorney's fees, but the referenced 2/5/21, 3/1/21 and 3/17/21 briefs of the plaintiff, which the Court may wish to consult again, set forth additional cases commenting on the lead cases, and many historical cases leading to the present state of the law, and the plaintiff respectfully incorporates them herein and is at the disposal of the court to supply research on any principle in doubt.

The fee petition should be granted, with leave given to the plaintiff to submit supplemental post-9/9/21 actual fees and expenses (net of prior estimate) to be added to the award.

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
Attorney for Sunset Lodge, LLC

10/4/21

From: Barry Stanton <bstanton@stantonlaw.com>
Date: Monday, August 23, 2021 at 5:51 PM
To: Ryan Fabbri <rfabbri@townofpi.com>
Cc: Preston Janco <pjanco@townofpi.com>
Subject: FOIA Request 7-19-2021

Thanks.

1. And also no emails, notes, memos, or any other kind of documentation -- to or from anybody, whether to or from USACE or not -- regarding a "three-part easement"?

2. Understood on the reimbursements or not. Understood on the appraisals. $700 each for the three inquired about.

3. Roger.

4. Roger.

Best,

Barry

Barry

803 530 2642

-------- Original message --------

From: Ryan Fabbri <rfabbri@townofpi.com>

Date: 8/23/21 4:04 PM (GMT-05:00)

To: Barry Stanton <bstanton@stantonlaw.com>

Cc: Preston Janco <pjanco@townofpi.com>

Subject: Re: FOIA Request 7-19-2021

Barry,

Please see below.

Ryan Fabbri

Town Administrator

Town of Pawleys Island

T: (843) 237-1698

C: (843) 424-5065

F: (843) 237-7083

E: rfabbri@townofpi.com

W: www.townofpawleysisland.com

From: Barry Stanton <bstanton@stantonlaw.com>
Date: Monday, August 23, 2021 at 1:25 PM
To: Ryan Fabbri <rfabbri@townofpi.com>
Cc: Preston Janco <pjanco@townofpi.com>
Subject: FOIA Request 7-19-2021

Thanks, Ryan.

1. So there are also no documents reflecting communications, NOT with USACE, but with others, concerning a "nuclear option" or a "three-part easement"? ***I'm not sure what the "nuclear option" was and I've asked Mayor Henry to explain what was meant by that comment, and he could not recall. There were no emails, notes, memos, or any other kind of documentation regarding a "nuclear option".***

2. Just so you understand the followup on the out-of-pocket reimbursements of Mr. DuRant, if you look at Mr. Dillard's bills, they add reimbursement requests for such things. What you produced from Mr. Durant does not. I could not tell whether what you got and first produced is simply a time recap generated later, omitting reimbursements that may have appeared on actual bills, or whether Mr. Durant simply didn't charge those things back, or, less likely, charged them separately. ***Durant's office does not bill us separately for out-of-pocket reimbursements, they invoice us monthly for whatever work they do on behalf of the Town and payment is approved by council. Clearly Mr. Durant and Mr. Dillard differ in how they invoice their clients.***

So you did pay Jayroe $3000 for the four condemnation appraisals at $750 each? I.e., the costs inquired about in Item 13 on attempts to condemn oceanfront easements on three properties on the south end of Pawleys Island would be $2,250? Again, you produced the contracts, but not the invoices or checks showing actual bill or actual payment. ***While reviewing all the information I've provided I'm sure you noticed there were initially 4 properties listed on the original Town Council resolution to condemn. Our agreement with Jayroe included appraisals on all 4 properties listed, but 718 Springs Ave. decided to provide the signed easement prior to the Town needing it. Another property at 542 Myrtle Ave. was added to the list when the Town did not receive their signed easement as promised. It was added to the appraisal list as a contingency in case the property owner failed to follow through on their promise to provide the easement, but ultimately it was provided. Jayroe knocked the price down to $700 per appraisal since it took almost twice as much time to produce the appraisal reports than what was initially agreed to. Invoice and check for $3,500 attached. Invoice for $8,500 attached and I've requested a copy of the canceled check from the bank. I will forward it to you as soon as I have it. Invoice and check for deposition attached.***

3. So you did not include with the Beattie easement to be recorded, the small plat he left with you and asked you to include with the easement when recorded? This is still unclear. What did you do with it? ***I attached the plat to the easement signed by Frank and Durant's office picked it up. I've asked Durant's office the whereabouts of the plat on numerous occasions, no one has ever been able to locate it.***

4. So there are also no documents reflecting communications, NOT with USACE, but with others, concerning alternatives such as omitting the three properties "from the footprint of the federal project" and Ms. Robbins of USACE arranging meetings "with the larger group"? ***That is correct.***

Best,

Barry

Barry

803 530 2642

-------- Original message --------

From: Ryan Fabbri <rfabbri@townofpi.com>

Date: 8/23/21 11:11 AM (GMT-05:00)

To: Barry Stanton <bstanton@stantonlaw.com>

Cc: Preston Janco <pjanco@townofpi.com>

Subject: Re: FOIA Request 7-19-2021

Barry, please see responses below.

Ryan Fabbri

Town Administrator

Town of Pawleys Island

T: (843) 237-1698

C: (843) 424-5065

F: (843) 237-7083

E: rfabbri@townofpi.com

W: www.townofpawleysisland.com

From: Barry Stanton <bstanton@stantonlaw.com>
Date: Monday, August 23, 2021 at 9:41 AM
To: Ryan Fabbri <rfabbri@townofpi.com>
Cc: Preston Janco <pjanco@townofpi.com>
Subject: FOIA Request 7-19-2021

Ryan, I am not asking for a debate. In response to your foregoing e-mail, the list of specific information requested is literally in the FOIA request. It is directed to the Town, and not confined to you and Mr. Durant.

My recent e-mail gives some examples of items definitely missed and others possibly missed, and that should help you.

Those include, but are not limited to the following, whether Mr. Durant has them or someone else acting for the Town does:

1. Whatever further responsive records (whether notes, memoranda, minutes or e-mails) there are about "the nuclear option," "the three part easements" referred to by Mr. Henry, and similar such matters, no matter who has them. ***I've provided you with all documented communications with USACE and I couldn't tell you what the mayor meant by "the nuclear option". I've provided you with all communications provided to me by Mayor Henry, and he's stated that he had no further communications with the Army Corps.***

2. September 2020 Invoice of Law Offices of N. David Durant & Associates for $4,537.50; any other records of legal or other expenses for condemnation, including but not limited to Mr. Durant's charges, if any, for May-June 2020 and January 2021 on; any out-of-pocket reimbursement for things like filing fees for motions, travel, gas, consultants, certified mail, couriers, etc; and the money actually spent on the appraiser and anyone else. ***I've attached a copy of the September 2020 invoice from Durant's office. I can't explain why September 2020 was omitted from the summary of charges they provided. I will forward your request to Durant's office for information regarding "any out-of-pocket reimbursement for things like filing fees for motions, travel, gas, consultants, certified mail, couriers, etc;". I've already provided supporting documentation for the three payments written to Jayroe Appraisal.***

3. Materials pertaining to the recording of the Beattie plat which you have sworn in a previous affidavit filed with the court that you recorded. ***I don't know how many times I have to tell you that I did not record the easement. I collected the signed easements and they were picked up by Durant's paralegal. I will forward your request to Durant's office for a response.***

4. What else there is in the way of e-mails or other documents pertaining to alternatives such as omitting the three properties "from the footprint of the federal project" and Ms. Robbins of USACE arranging meetings "with the larger group" to discuss such alternatives and future courses of action, including but not limited to scheduling communications or any other communications in the six months ensuing after your February 2021 inquiry, and all notes and memoranda of the telephone communications on this important topic and notes and memoranda of any reports to anyone on Town Council. ***Again, I've already provided copies of all documented communications with the Army Corps. There are no notes or memos.***

Best,

Barry

Barry

803 530 2642

-------- Original message --------

From: Ryan Fabbri <rfabbri@townofpi.com>

Date: 8/23/21 8:16 AM (GMT-05:00)

To: Barry Stanton <bstanton@stantonlaw.com>

Cc: Preston Janco <pjanco@townofpi.com>

Subject: Re: FOIA Request 7-19-2021

Barry,

There's no misunderstanding and I'm not the least bit interested in wasting time debating you about any misgivings you may have about the information I've provided. I've supplied all the information that you've requested, but I do recognize that Durant's office might have information that I don't have access to. Please send me a list of specific information you want from Durant's office, and I will forward it to them for a response.

Best,

Ryan Fabbri

Town Administrator

Town of Pawleys Island

T: (843) 237-1698

C: (843) 424-5065

F: (843) 237-7083

E: rfabbri@townofpi.com

W: www.townofpawleysisland.com

From: Barry Stanton <bstanton@stantonlaw.com>
Date: Sunday, August 22, 2021 at 2:57 PM
To: Ryan Fabbri <rfabbri@townofpi.com>
Cc: Preston Janco <pjanco@townofpi.com>
Subject: FOIA Request 7-19-2021

Thank you, Ryan. I think some of your responses are incorrect.

Since I am asking for things I largely don't have and am trying to find out about, this naturally leads to apprehension over what else is incorrect or incomplete and not properly researched. I am additionally concerned that you and the Town may misunderstand the scope of the request. Since the general subject with which the 15 requests are concerned involves matters on which we have asserted problems with previous purposeful misinterpretation and dishonest dealing by the Town, this is a real apprehension.

Taking the scope first, the scope of the request is not limited to records generated by or in the possession of, as you describe them, "administrative employees" involved with acquiring easements and coordinating with the Army Corps. In short, the request is for what is requested, and is not confined to documents and townofpi.com e-mail in the possession of Ryan Fabbri.

That is, the request is for any and all records of the conduct of Town business on the stated items, regardless of by whom conducted, or by what e-mail account or other means the person used to conduct that business. Therefore it is not germane that, as you state, the Town only had two administrative employees at the time, except that I am sure you assume the BULK of the things requested in Item 1 of the 15 requested items would be found in your own Town e-mail.

The Town has a council of five, including the mayor. The Town also has an official Town Attorney. For that matter, the Town has its own police force, and, as I understand it, also contracts out some official functions, including, perhaps,

building department matters and some law enforcement. The Town Council also uses committees of unelected, nonemployed people, and also has "boards" which also consist of unelected, nonemployed people.

In the materials produced after I followed up on some that were missing were an e-mail from the mayor, Brian Henry, sent, as mayor, using his own private "pimentocheese.com" e-mail account.

There, he asks the Corps in August 2020 whether there is a "nuclear option" available for dealing with me and the other two landowners the Town has now sued twice and threatens to sue a third time.

Such an e-mail of an elected official, officially expressing interest in taking devastating destructive actions against a citizen who has previously asked for assistance and cooperation from the mayor is the sort of thing the Freedom of Information Act is designed to provide access to.

So you may understand my concern and desire to get the full story and all the documents, whether they relate to the "nuclear option" Mr. Henry sought, or some other matter we have inquired about.

In the materials received after I followed up, there is also an e-mail in which you forward from your personal e-mail, ryfab77@gmail.com, to your Town e-mail, rfabbri@townofpi.com, the mayor's aforedescribed "nuclear option" e-mail, which he copied you on with your personal, rather than Town, e-mail address, along with council member Guerry Green at screentight.com and Town Attorney, David Durant at lawofficesofdurant.com. What else is there?

I must emphasize the importance of producing, and not deleting or allowing the loss of, responsive information, no matter who generated it, no matter who has it, and no matter where it is found.

Here are other items I have questions about:

1. What further records (whether notes, memoranda, minutes or e-mails) are there about "the nuclear option," "the three part easements" referred to by Mr. Henry, and similar such matters, no matter who has them?

2. Moving to the discrete item of records of legal expenses, in response to my observation that September 2020 charges of Mr. Durant and perhaps other charges are missing, you have advised that what you produced are the only bills the Town received from Mr. Durant's office that were specifically labeled for working on attempted condemnation.

I don't believe this is correct.

One of the two items you produced pertaining to Mr. Durant's charges specifically states that it is for the Town's information, is not a bill, and that it should not be paid. Rather than a bill, it appears to be a recap of several months' charges, in which someone apparently overlooked including September 2020.

Attached is an agenda for the Town Council's October 12, 2020 meeting, in which Item 4 (IV) on the agenda is "IV. Approve Payment to Law Offices of N. David Durant & Associates for $4,537.50 (September 2020 Invoice)."

I think you are wrong and that you got a September bill. I remain less than confident that other charges inquired about have been adequately researched, such as May-June 2020 and January 2021 on, and any out-of-pocket reimbursement for things like filing fees for motions, travel, gas, consultants, certified mail, couriers, etc. (I do know that under the peculiar condemnation procedure, the first six suits commenced against me and the other two by Mr. Durant for the Town were without filing fees, because the Town was sued in challenge actions before the Town got to the point of filing the papers which were used to commence the suits.)

Regarding the money spent on the appraiser, you advise that there were two separate agreements between the Town and Jayroe Appraisal Company for appraisal reports (2-7-2019 & 5-19-2020), and that copies of both signed agreements were included in the Dropbox.

The agreements were included in the Dropbox under an item other than Item 13 pertaining to money spent.

They speak prospectively. Are there no actual bills showing the amount later actually paid? The first agreement was to appraise 113 properties in 2019 for $8500. As I recall, the appraisal report later presented was for 109 properties. The second agreement was to appraise 4 properties in 2020 at $750 each for a total of $3000. The Town commenced condemnation suits on three. Are there records of what the Town actually spent?

3. The response to Items 10 and 11 is still lacking in that no materials pertaining to the recording of the Beattie plat were produced, and the response notes that the recording functions inquired about were performed by the Town Attorney. Town Attorney is an official position with the Town. No records of his pertaining to the recording were provided.

In response to my followup, you have stated that you were the only administrative staff person dealing with the Corps and coordinating easements. This does not answer the matter and is contradictory to the earlier response that the

recording was done, not by you, but by the Town Attorney. Ryan, you have sworn in a previous affidavit filed with the court that you recorded the Beattie plat. Where are the records of you -- or anybody -- doing so?

4. I have followed up on e-mails in early February 2021 (6 months ago) referencing your wanting to know more about alternatives such as omitting the three properties "from the footprint of the federal project" and Ms. Robbins of USACE arranging meetings "with the larger group" to discuss such alternatives and future courses of action.

Specifically, I have asked what else there is in the way of e-mails or other documents pertaining to these anticipated activities or communications, and whether there were any other pertinent communications in the ensuing six months.

In response, you have advised that no written documentation of these conversations WOULD exist. You reason that since all communications to discuss “alternatives” took place over the phone, no written documentation of the communications exists.

In direct contradiction, however, you state that "e-mail was only used to schedule and coordinate those discussions." First, I did not only ask for e-mails. Please produce all notes and memoranda of the telephone communications on this important topic on which you made specific inquiry and on which a larger group including USACE people was rounded up and consulted.

One would think that surely, you took some notes, and reported to at least someone on Town Council, on this important topic that was worth inquiring about. Secondly, please produce all the "e-mail used only to schedule and coordinate those discussions." Those fit the description of Item 1, which reads: "1. All communications with the Corps of Engineers or any people associated therewith."

Best,

Barry

Barry

803 530 2642

-------- Original message --------

From: Ryan Fabbri <rfabbri@townofpi.com>

Date: 8/19/21 4:37 PM (GMT-04:00)

To: Barry Stanton <bstanton@stantonlaw.com>

Cc: Preston Janco <pjanco@townofpi.com>

Subject: Re: FOIA Request 7-19-2021

Barry,

Please see my responses below. Don't hesitate to contact me with any additional questions.

Best,

Ryan Fabbri

Town Administrator

Town of Pawleys Island

T: (843) 237-1698

C: (843) 424-5065

F: (843) 237-7083

E: rfabbri@townofpi.com

W: www.townofpawleysisland.com

---------- Forwarded message ---------
From: **Barry Stanton** <bstanton@stantonlaw.com>
Date: Thu, Aug 19, 2021 at 10:41 AM
Subject: RE: FOIA Request 7-19-2021
To: Preston Janco <pjanco@townofpi.com>

Preston, as a further update to the below:

(a) The response to Item 13, the total legal expenses for attempted condemnation, including consulting/appraisal expense, seems lacking. I have attached what was included.

None of Mr. Durant's September 2020 charges are included.

You might also want to check before June 9, 2020 and after January 29, 2021.

There is also nothing before June 9, 2020, although the Town Council met May 18, 2020 and authorized condemnation of easements "to put sand on the beach" and obtained three 60-page appraisal reports dated June 3, 2020. There is also nothing after January 29, 2021.

Additionally, there are no records of money paid to the appraiser for three appraisals and the reports dated June 3, 2020 or paid to him for anything else, nor are there records showing filing fees, postage, consulting or other expenses incurred, by Mr. Durant's firm in 2020 or any other time if he did charge those to the Town. Mr. Dillard's bills do include filing fees and other out of pocket expenses charged back, but he did not get involved until 2021, and certainly may do his billing differently.

These are the only bills we received from Mr. Durant's office that were specifically labeled for working on attempted condemnation.

There were two separate agreements between the Town and Jayroe Appraisal Company for appraisal reports (2-7-2019 & 5-19-2020). Copies of both signed agreements were included in the Dropbox.

I'm now reminded that Mr. Donovan had been deposed and the Town was invoiced for his time. I've attached a copy of the invoice to this email, in addition to placing a copy in the Dropbox folder.

(b) The response to Items 10 and 11 is lacking in that no materials pertaining to the recording of the Beattie plat were produced, and the response notes that the recording functions inquired about were performed by the Town Attorney. Town Attorney is an official position with the Town.

Were no responsive documents sought from the Town Attorney for this or other items? Do the responses include any records gathered from – or by -- anyone else other than Mr. Fabbri? The request was not limited to records created, stored or searched for by Mr. Fabbri.

The Town administrative staff is comprised of 2 individuals. Other than the Town clerk acting as a notary on various signed documents, I was the only administrative employee involved with acquiring easements and coordination with the Army Corps.

(c) With respect to Item 1, as referenced earlier in this thread with an attachment of Mr. Fabbri's August 21, 2021 e-mail to Ms. Steinbeiser:

- Where is the e-mail dated in the week of August 9-August 15, 2020 from Ryan Fabbri to Dorothy Steinbeiser, "regarding the email from our Mayor," as referred to by Mr. Fabbri in his e-mail of August 21, 2020 to Ms. Steinbeiser? (He asks, "Did you get my email last week regarding the email from our Mayor?") I do not find it in the 34 files produced for Item 1.

- Where is the "the email from our Mayor," as referred to by Mr. Fabbri in his e-mail of August 21, 2020 to Ms. Steinbeiser?

I did not have a copy of this email and I asked Mayor Henry to forward it to me if it did indeed exist. I've attached a copy of that email to this email, in addition to placing a copy in the Dropbox folder. I asked the mayor to confirm that this email and the emails sent in APR/MAY 2020 were his only direct communications with USACE and that no others existed, to which he confirmed.

The response to Item 1 also includes e-mails in early February 2021 (6 months ago) referencing Mr. Fabbri wanting to know more about alternatives such as omitting the three properties "from the footprint of the federal project" and Ms. Robbins arranging meetings "with the larger group" to discuss such alternatives and future courses of action, but lacks much in the way of e-mails or other documents pertaining to these anticipated activities or communications. Were there no other pertinent communications in the ensuing six months?

No written documentation of these conversations would exist since all communications to discuss "alternatives" took place over the phone. Email was only used to schedule and coordinate those discussions. The only email

communications in the ensuing six-month period covered sand fence installation and turtle nests. These emails were included in the Dropbox folder.

The materials you produced are numerous. Thank you. I will continue to look through them but wanted to go ahead and get you the above questions for now.

Best,

Barry

-------- Original message --------

From: Barry Stanton <bstanton@stantonlaw.com>

Date: 8/19/21 8:03 AM (GMT-05:00)

To: Preston Janco <pjanco@townofpi.com>

Subject: RE: FOIA Request 7-19-2021

Preston, further to the below, I opened the link to Dropbox again and now it displays a 2, 3, 4, etc. I will take a look. Something tells me I will still want to know about "our mayor's e-mail" and Mr. Fabbri's transmittal, as referenced in the below.

Best,

Barry

Barry

803 530 2642

-------- Original message --------

From: Barry Stanton <bstanton@stantonlaw.com>

Date: 8/18/21 9:03 PM (GMT-05:00)

To: Preston Janco <pjanco@townofpi.com>

Subject: RE: FOIA Request 7-19-2021

Preston, I did receive your e-mail. Thank you.

The e-mail had a link to Dropbox. There, I found 34 files, under a heading, "**1. STANTON FOIA REQUEST from Ryan Fabbri (Pawleys Island).**"

I have a few questions.

1. Did I find the complete response? I clicked around and Dropbox did not display anything else, but I want to make sure there was not some tab I was failing to click.

2. Is there a "2."? Or any records gathered from – or by -- anyone else other than Mr. Fabbri? The request was not limited to records created, stored or searched for by Mr. Fabbri.

I believe I saw a few e-mails that involved Mr. Henry, but they may have been in threads or "chains" Mr. Fabbri had. No documents were identified as withheld, and therefore there was also no reason stated for the withholding of anything that was responsive but which was withheld. I am serious about this FOIA request and assume the Town is and intends to fully comply with the law, but as further explained below, I am left scratching my head about whether I have gotten what was intended.

3. My other question at this point arises from the attached document which was provided in the 34 files, which also has my questions annotated to it:

a. Where is the e-mail dated in the week of August 9-August 15, 2020 from Ryan Fabbri to Dorothy Steinbeiser, "regarding the email from our Mayor," as referred to by Mr. Fabbri in his e-mail of August 21, 2020 to Ms. Steinbeiser? (He asks, "Did you get my email last week regarding the email from our Mayor?") I do not find it in the 34 files.

b. Where is the "the email from our Mayor," as referred to by Mr. Fabbri in his e-mail of August 21, 2020 to Ms. Steinbeiser?

For your convenience, I am setting forth below, the text of my July 19, 2021 FOIA request, and would ask you to confirm that, if it is the case, the 34 files provided on Dropbox August 18, 2021 (today) constitute the full and only response.

You can see, for example (and only as one example), that I would wonder why the response does not contain the prototype Mr. Fabbri retained on his laptop computer for the "Beattie easement" that Mr. Fabbri initially filed or any of the other things in requests 9, 10, and 11; additionally, and as only an example, none of the materials described in requests 13, 14, and 15 are present and many of these materials must in fact exist; for that matter, are there no appraisals or materials referring to appraisals during the period for the last year, August 15, 2020 to August 15, 2021 as requested in requests 5 and 6? Here is the July 19, 2021 request:

Unless stated otherwise in a particular request, the time covered by this request is for documents or information from August 15, 2020 to three days before actual production of information requested.

The locations or sources covered by this request are all central files, individual desk files, computers, laptops, phones or other devices of the Town, regardless of the phone, device, account, application, e-mail address, phone number, or medium of creation, transmittal, or storage of the information, and also includes the files, computers, laptops, phones or other devices of individuals such as the administrator, mayor, other council members, attorney, etc., if used for Town business or Town endeavors.

Requested documents or information:

1. All communications with the Corps of Engineers or any people associated therewith.

2. All communications other than with the Corps or any people associated therewith, about or regarding communications with the Corps.

3. All agreements, understandings, or arrangements with the Corps or people associated with the Corps. This includes but is not limited to extensions, clarifications, modifications, reaffirmations, or alterations of prior or existing understandings, agreements or arrangements.

4. All documents confirming, acknowledging, or requesting an agreement, understanding or arrangement with the Corps.

5. All agreements, understandings, or arrangements with, or requests or inquiries to, an appraiser or any other person for appraisal of, or an appraisal report on, or valuation opinion of, any property on

Pawleys Island. This includes but is not limited to extensions, clarifications, modifications, reaffirmations, or alterations of prior or existing understandings, agreements, arrangements or reports.

6. All appraisal reports for any property on Pawleys Island.

7. All communications or other documents pertaining to the scope and meaning of easements requested, required, obtained, appraised, or condemned by other towns, other jurisdictions, or any agencies.

8. All communications or other documents pertaining to the scope and meaning of easements requested, required, obtained, appraised, condemned or attempted to be condemned on Pawleys Island. This request does not include communications with Beattie, Stanton, or Sunset Lodge or nonpublic communications of Mssrs. Fabbri, Henry, Holliday, Green or Carter or Ms. Zimmerman with attorneys for the Town with no one other than any of those present. This request does include communications by Town actors including attorneys, with any other person including owners, visitors, renters, residents, other politicians/office holders, government agency employees, appraisers, newspaper or other media reporters, title insurance companies, prospective purchasers, third parties' lawyers, realty companies, rental companies, property managers, banks, assessors, or anyone else.

9. The actual file in its original format (e.g., Word or PDF) of the Beattie easement Mr. Fabbri stated he printed off Mr. Fabbri's laptop on April 25, 2019 and had Mr. Beattie sign.

10. Any cover letter or other evidence or memorandum of transmittal by Mr. Fabbri or the Town to the Georgetown County Register of Deeds, of the plat Mr. Fabbri stated Mr. Beattie brought in and left with Mr. Fabbri on April 25, 2019 and that Mr. Fabbri stated he thereafter filed.

11. Any receipt, confirmation copy or returned original, receipt for filing fee, or other acknowledgement of the filing of that Beattie plat by Mr. Fabbri or the Town.

12. All communications with the Corps or any other person regarding the appraisal of 109 properties the Town obtained for the Corps in 2019, including but not limited to communications or documents pertaining to the failure of the appraisal report to include the language of the easement as required by Corps regulations or the inclusion in the report of assumptions appearing on their face to result in inaccurate valuation and inaccurate land acquisition cost as a result of misinformation given by Mr. Fabbri to the appraiser regarding the scope and terms of the subject easements.

13. Such documents as will show the actual legal, appraisal, consulting and other expense incurred by the Town from May 10, 2020 to three days before actual production of information requested, on attempts to condemn oceanfront easements on three properties on the south end of Pawleys Island. This includes but is not limited to all twelve legal actions and the expenses incurred with Mr. Durant, Mr. Dillard, and their firms.

14. Any records of any discussion or consideration of fixing so-called procedural defects in the first round of condemnation attempts on three properties on the south end of Pawleys Island (commenced in June 2020), including but not limited to records pertaining to what the so-called procedural defects were and what would be done to fix them. The period covered by this request is from September 1, 2020 to three days before actual production of information requested.

15. Any record of authorization by Town Council of the commencement of three additional condemnation actions in October 2020 on the same subject matter as the three previous and then still pending condemnation actions which were the subject of court actions challenging them.

If any of the above are published on the Town's website as of July 19, 2021, but in the form of video, please advise if the video can be captured and sent for a reasonable cost and what that approximate cost is, as well as whether there are plans or policies in place for when the videos will be taken down off the site. If any of the above can be provided electronically, as, for instance, a PDF or an eml file, that may be acceptable.

If there are any fees for searching or copying these records, please inform me if the cost will exceed $100. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the process actually followed by the Town in dealing with the Corps and in obtaining easements from some of its oldest standing owners and properties. This information is not being sought for commercial purposes.

Best regards,

Barry Stanton

From: Preston Janco <pjanco@townofpi.com>
Sent: Wednesday, August 18, 2021 1:11 PM
To: Barry Stanton <bstanton@stantonlaw.com>
Subject: FOIA Request 7-19-2021

Barry Stanton,

Here is the FOIA information for the request that you sent on 7-19-2021. If you have any questions please let me know. Please confirm that you have received this email.

https://www.dropbox.com/sh/o78oluirxir20oq/AABrpYBp6LlBv2zagjZrhzk7a?dl=0

Have a great day!

--

Preston Janco

Town Clerk

Town of Pawleys Island

(843) 237-1698

--

Preston Janco

Town Clerk

Town of Pawleys Island

(843) 237-1698

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.)	
)	

REPLY AFFIDAVIT OF BEATTIE TO AFFIDAVITS OF PAGLIARINI, DURANT AND DILLARD

1. I disagree with the affidavit testimony of Mr. Pagliarini, a lawyer never before participating in any of these cases. I also disagree with the affidavits of both of the lawyers of record for the Town of Pawleys Island, only one of whom was in the case during the time the Court ruled against the Town on its motion to dismiss, its motion to speed up the case, its motion to be allowed to not respond to discovery from the plaintiffs, its motion to require a bond, & the plaintiffs' motions for summary judgment against the Town. The other lawyer is limited mostly to participating in motions to reconsider and motions for "fee discovery."

2. I was licensed to practice law from 1961 to 2014, at which latter time I terminated the license as a result of my other retirement activities. Previously, I served in the Airforce and over the years I have been involved in many community, local, state and broader activities, including matters commercial, civic, spiritual and political. I have observed and worked directly with many fine lawyers over the years and have hired some of them. During most of my 53 years as a licensed attorney, I actively practiced. In early years, the litigation I was involved in was about equally divided between representing plaintiffs and defendants, the latter work often involving work paid by insurance carriers. My litigation migrated more toward the plaintiff's side and I was one of the founders of the Trial Lawyers' Association.

3. During much of my time in practice I was involved in litigation and appeals on many subjects, and probably was involved in about ten to twelve appeals. Throughout my practice, I

kept time records and a timekeeping system. We in fact developed a very sophisticated timekeeping system of our own which piggybacked on a packaged system. I kept time regardless of whether I was working by the hour or on a contingent fee or flat fee basis. My work involved a broad range of subject matter, including trial work on negligence and other cases, real estate work, corporate collections, probate work and worker's compensation litigation. Toward the end of my most active practice, sometimes I spent around a third of my time on worker's compensation cases. In recent years, I practiced less and moved from Aiken to Georgetown County, where I own and operate Hopsewee Plantation and attend to many business and property affairs there and elsewhere.

4. I am loath to soften this affidavit for it is just the truth, the whole truth, and nothing but the truth.

5. Contending with a dishonest party, whose attorney ignores his dishonesty, and instead, supports it, has required extraordinary effort by my counsel.

6. This case began to come about for me in the spring of 2019 with the forgery or unauthorized substitution of my easement and the destruction of my recorded plat by the plaintiff's administrator. When I discovered this, I was incredulous, and demanded his explanation. He ignored me and sought refuge behind the Town Attorney who phoned me "to settle" my accusations.

7. When I told him what his client had done, he professed "no knowledge" so I sent him a copy of my letter demanding an explanation, a witnessed copy of my executed easement (the one I had authorized), and a stamped copy of the recorded plat that I had delivered in person to the Administrator to enable the Town Attorney to fulfill his ethical duty to advise his client, The Town of Pawley's Island, of it's administrator's criminal conduct.

8. The Town attorney did not reply. The Town did nothing. After the elapse of a reasonable time & no reply or action was forthcoming from the Town Attorney, I cancelled the forged easement upon the public records with an instrument explaining my reason for doing so. From June of 2019 to the time of suing me, no effort was made by any member of the Town's governing body to inquire into these events, or explore the possibility of a compromise or resolution of the grossly inappropriate easement the Town has tried to condemn, ignoring the

fact that for more than a 100 years, my family has owned a home on the island. Instead, the Town began an action to seize 1/3 of my property, for spurious reasons in early summer of 2020.

9. Concurrently, I had already scheduled spine surgery & I knew time for recuperation would be needed so promptly getting this case over, if possible, was a major consideration I reviewed feedback of multiple attorneys, including difficulties with confronting the Town and strategic recommendations & fees & costs & another's assessment significantly exceeded my share of the fees & costs, for which approval is now sought. My attorney's proposed strategy made the most sense to me and was the only strategy that offered at least the possibility of a prompt conclusion.

10. I then frankly advised him I considered the Town's agents & it's counsel untrustworthy & uncommunicative & he would have to be vigilant, & alert, especially in matters of discovery, deadlines, scheduling, & representations & that both were capable of covert action.

11. I offered to employ him as my counsel. Much to my surprise, instead of immediately accepting, he counselled consulting further & advised I should be aware the strategy and positions he proposed were right and just, but not without significant risk because of several apprehensions, including the absence of a successful local precedent on such a peculiar set of facts. Although first chagrined by this disclosure, upon reflection I realized it was evidence he had high ethical standards & I employed him. His work has been insightful and he has always counselled restraint in seeking fees if possible until and unless we got the Town's action thrown out, which has occurred. I am well satisfied with his performance as well as his efforts & the expenses of this case are a reflection upon the demonstrated character of the original adverse parties.

Pursuant to S.C. Sup. Ct. Order 2021-07-30-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Franklin D. Beattie Jr.

Franklin D. Beattie, Jr.

Date: 10-2-21

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.	)	AFFIDAVIT
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
	)	

REPLY AFFIDAVIT OF CHARLES E. HOWARD TO AFFIDAVITS OF PAGLIARINI, DURANT AND DILLARD

Personally appeared before me, after being duly sworn, the undersigned stated as follows:

He was issued a law license on May 11, 1971 and he has been practicing for over 50 years, all in good standing. His uncle, Ernest J. Howard, was his partner and mentor for over 30 years before his death. He is presently the senior partner in Howard, Howard, Francis & Reid, LLP, a firm formed in 1965.

Most of his practice had been in litigation primarily on plaintiff's side, and involving personal injury, as well as property and business related litigation. He has also defended suits, but tended to be more on the plaintiff side and is a member of what was formerly the Trial Lawyer's Association, now known as the American Association for Justice and South Carolina Association for Justice.

In the last fifteen years he has focused more on real estate matters, both residential and commercial, but that also includes disputes over real estate and some fairly complicated disputes regarding construction and real estate development.

Since 1977 he has been a licensed title insurance agent. He binds and writes title insurance which involves understanding and analysis of title matters and related risks.

He has sent his share of bills over his career, including not only those after successful completion of contingent fee cases, but also those in flat fee cases, and those in more complicated matters in which he billed by the hour. As counsel to real estate and development clients as well as in connection with his investments and endeavors, he has also reviewed numerous bills directed to him or to clients or partners or to entities in which was involved and have paid a number on his own account as well. In concerns he has been involved with, he has hired counsel and he has observed many excellent lawyers from the client side and observed how they have worked.

He and his wife are 32.5% stockholders and members in Sunset Lodge, LLC, which owns the house and land that is in litigation. He has paid his share of the bills in that case. He has followed this litigation from the beginning.

He has been kept informed scrupulously by his attorney, Barry Stanton, throughout the litigation, and has followed the strategy, pleadings, proceedings, rulings and other aspects of the case as and when they occurred. He has received and reviewed the bills in the matter, when presented by Mr. Stanton. He had a clear and reasonable fee and engagement agreement with Mr. Stanton, who counseled him well and thoroughly.

In his estimation, the legal work throughout has been superb and all reasonably and smartly approached.

He believes all the bills in the case to be reasonable and if he did not, he would have questioned them and would not have paid them before being satisfied. He has had virtually no

questions about the bills or the time spent on the case. He knows Mr. Stanton has spent the time and more.

He has have reviewed Mr. Stanton's fee affidavit and it is right on the mark. The award requested is reasonable and in fact conservative, and in that respect, generous to the opposing party, especially in light of what was at stake in the case and the results obtained under the circumstances.

He disagrees with the affidavit testimony of Mssrs. Dillard, DuRant and Pagliarini.

Deponent further sayeth not.

Charles E. Howard

Sworn to before me this the

4th day of Oct., 2021.

Notary Public for SC

My Commission Expires: 8/22/23

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.	)	
	)	

REPLY AFFIDAVIT OF BARRY STANTON TO
AFFIDAVIT OF WILL DILLARD

1. Mr. Dillard only testifies from first-hand personal familiarity with respect to one thing – the production of billing statements. Another matter, he inserts into his brief but has very little sworn testimony to offer, unless it is somewhere in a chart relying on an affidavit relying on another chart relying on an affidavit. That other matter is the deposition of the Town Administrator that never got taken in this or the second challenge actions. I will address those further below.

2. There is first a broader and more serious problem and that is Mr. Dillard's arbitrary selection of items for the plaintiff's counsel to be paid for, and then arbitrary assignment of reduced allowed time and charges for something he knows very little about. This operation is based primarily – at least according to him – on the affidavit of Mr. Pagliarini, which has its own, graver problems.

3. For such opinion as Mr. Dillard offers, he states that one of his material sources is the opinion of Mr. Pagliarini.

4. However, Mr. Pagliarini states that he formed his opinion by relying on materials

prepared by Mr. Dillard. These materials are shown in the reply affidavits to be subjectively compiled, and replete with error. See the Stanton Reply Affidavit to Pagliarini Affidavit. Mr. Dillard had no familiarity with this case before summary judgment was granted against the Town, and Mr. Pagliarini has no first-hand familiarity with the case at all.

5. Their testimony is expressly inextricably intertwined. The plaintiff objects to both. Neither is competent as a fact witness to much, and neither is competent or credible as an opinion witness at all. Therefore, Mr. Dillard's affidavit should be stricken, and otherwise be accorded no credibility. It provides no assistance to the Court as factfinder, and consists of largely slickly disparaging innuendo presented as hearsay opinion of Mr. Pagliarini, which is based on hearsay unqualified opinion of Mr. Dillard.

6. About half of Mr. Dillard's affidavit is devoted to a putative timeline on the one phase of the case which did involve him, the "fee discovery" phase. As is also apparent from the other papers in the case, that timeline is incomplete and inaccurate.

7. This relates to the haggling of the Town's counsel with the plaintiff's counsel over the terms of production of representative samples of the plaintiff's confidential billing statements while there was still other litigation pending between the Town and these landowners in this small community and still more litigation was promised by the Town.

8. Mr. Dillard states therein that his timeline is admittedly cumbersome. It is, and is incorrect in a few particulars, omits important interactions and attempts at cooperation between counsel, and is very incorrect in its overall implication.

9. A detailed and accurate timeline is provided in the plaintiff's 3/1/21 brief along with briefing of cases or other authorities on the law of attorney's fees, as implicated by the

Town's arguments two months into the instant "fee case" phase of this case.[1]

[1] That more accurate account is set forth again here for convenient reference.

The Town began after summary judgment with requests to let additional counsel get up to speed and for delay and elaborate discovery and full-blown second trial. Whether this requested delay was for purposes other than contesting the fee is not completely clear.

Other communications with the Court had referenced other reasons for delay, i.e., the Town's election, only at the end of the case, to get new or additional counsel, and his need to come up to speed while Plaintiff waited and had to go over old things all over again with new counsel or in response to him. Plaintiff objected to this reason for delay on February 2, 2021.

The stated purpose for the delay was to engage in discovery and other matters pertaining to the fee petition for over four more months and then commence a full-blown trial over Plaintiff's request for fees, while ignoring the additional fees Plaintiff would incur as a result and additionally tax to the Town.

However, the request was made in conjunction with the Town's bare-bones motion for reconsideration, in which the Town stated an intent to file other supporting materials and reasons only later.

Plaintiff objected to the motion for "reconsideration" as lacking any real notice of the factual grounds or specific legal arguments to support it. Plaintiff objected to the Town using the time following the filing of the motion for reconsideration to develop or think of grounds to support it.

On February 2, 2021, February 16, 2021 was proposed as the date for hearing on the 1/25/21 fee petition submitted pursuant to the fee-shifting statute.

On February 2, 2021, the Town's initial counsel wrote the Court, stating that additional counsel was expected to appear and substitute within about two days, that continuance was requested, and that it was likely the Town would follow up with a requested timeline.

On February 2, 2021, to expedite matters, Plaintiff's counsel informed the Court, among other things, that Plaintiff's counsel did not object to Mr. Durant, who has been in the case from the beginning and had continued to be since moving to disqualify Plaintiff's counsel nineteen days earlier on the inapplicable grounds Mr. Durant now asserted were the reason for his own substitution, remaining in, briefing any objection the Town had to Plaintiff's fee petition, or arguing it. Plaintiff's counsel added that there was nothing wrong with that.

On February 2, 2021, new additional counsel for the Town (Mr. Dillard) informed the Court that the Town wished to seek some written discovery, giving as only an example of such discovery, requests for copies of itemized attorney time.

On or about February 2, 2021, in order to expedite matters, it was the plaintiff's counsel who in consultation between counsel, first suggested producing sample bills in redacted form.

On February 3, 2021, Plaintiff filed a brief responding to the requests for delay in the Town's previously filed "motion to reconsider" summary judgment.

On February 3, 2021, the Court offered counsel in the case weeks from which to pick for a hearing on the fee petition, the earliest of which was now no longer the previously offered week of February 16, but was the week of February 22, 2021 and numerous weeks well into the spring were offered as well.

On February 4, 2021, Plaintiff separately responded to the attorney's-fee-related arguments and requests by the Town which the Town had inserted into the Town's January 29, 2021 motion to reconsider the order granting summary judgment.

On February 5, 2021 the Town filed an "Initial Reply Brief" of the Town to the 1/25/21 fee petition. However, rather than actually briefing or stating anything wrong with the fee petition or the requested award, the Town, without making a motion setting forth grounds, requested more time and a "scheduling order" requiring discovery never propounded, never responded to formally and never moved for.

On February 8, 2021, in response, Plaintiff stated in its brief that in order to try to expedite the matter, Plaintiff's counsel had already redacted the available billing statements and was prepared to produce them virtually immediately pursuant to a protective order the terms of which were specifically set forth.

In that exchange, on February 8, 2021, in order to expedite a resolution, Plaintiff suggested and offered additionally to provide Defendant's counsel, without need of formal discovery request and with waiver of response time, redacted copies of billing statements and the fee agreement, subject to a protective order specifically described by Plaintiff in the 2/8/21 brief at pages 4-6.

On February 17, 2021, in conference with the Court, the Town's additional new counsel (Mr. Dillard), still without agreeing to the protective order proposed by Plaintiff, and, therefore, still not in possession of the redacted billing statements which were offered February 8, estimated he may need 45-60 days to review the billing statements, after receiving them.

On February 25, pursuant to the Court's prior invitation, counsel for the Town wrote the Court to request assistance in agreeing on the terms of a protective order.

Counsel agreed to have a March 3 hearing with the Court to hear pending issues on terms of a potential protective order.

On March 1, 2021, the Town filed for the first time ever, an actual motion, requesting a protective order for Plaintiff, and asking the Court to order production of billing statements and

10. In essence, the parties disagreed over the scope and details of "fee discovery," by the Town from the plaintiff and both ended up getting a little of what they argued for and ended up not getting a little of what they argued for.

11. The gist of the parties' eventual disagreement was on serious matters of whether confidential statements were necessary and should be produced at all, and if so, on what basis they should be redacted, and whether unredacted client-confidential statements should be reviewed at all by the Court and find their way inextricably into the record.

12. The gist of the disagreement over the scope of redaction was that the plaintiff contended, in light of the lack of legal necessity for the statements in assessing a fee, Rule 26 should be applied to disallow discovery of a broader potential range of materials which were confidential under Rule 1.6, SCRPC than only those which were strictly attorney-client privileged in the narrow view of the privilege.

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the fee agreement, for neither of which had there been prior Rule 34 discovery request or Rule 34 response.

In the 3/1/21 motion, the Town requested a different order purporting to "protect" Plaintiff in the discovery. Therein, without prior formal discovery request (or the typical opportunity for formal response thereto), the Town also requested that Plaintiff simply be ordered to produce private billing statements and private fee agreements under certain conditions, including breaching Rule 1.6 and showing all these private matters to the Court at the onset under a protective order requested by and dictated by the Town.

Thereafter, various other described exchanges and proceedings ensued, ultimately resulting in the plaintiff producing certain sample bills to the Town, redacted without coding of each specific redaction with the particular reasons for the redaction. The plaintiff also produced the same redacted materials to the Judge, along with the same materials in unredacted form for in camera review. The Court then unredacted some of the redactions and left some redactions intact, and instructed that the result be produced. Both parties registered their followup objections or requests, the Judge changed nothing about his decision, and the matter went forward.

13. This the plaintiff expressed particular concern with, noting that after getting into the matter, it had become apparent that the Town wanted to maneuver the exercise into strictly a privilege review, potentially revealing a large number of nonprivileged matters which were nevertheless client-and-attorney confidences that neither the Town nor the Court needed to see.

14. In short, the plaintiff set forth about thirteen different reasons why a given passage might be redacted, and the Town vied for there to be only one which might be acceptable.

15. Omitted by Mr. Dillard from the beginning of his timeline was that the matter essentially started with a 2/2/21 note from the Town's initial lead counsel to the Court, stating that Mr. Dillard was now hired, and would need time to come up to speed, and requesting a delay of the then-scheduled 2/16/21 hearing of the plaintiff's fee petition. The Town proceeded around this same time with "requests" embedded in the Town's motion to reconsider summary judgment in general, not in a separate motion to delay the taxing of litigation costs.

16. There, without proposing any protective order at all, the Town asked for an overall delay of more than four months, the partial purpose of which was to conduct fee discovery and have a fee trial. Impliedly, this discovery was not limited to production of documents and this trial was not limited to affidavits. E.g., it was considerably more nuclear, and was proposed by the Town to include "presentation of detailed billing records, time sheets, witnesses, affidavits, invoices, and receipts."

17. The plaintiff responded at length to these proposals of the Town in a 2/5/21 brief, noting that the goal of an attorneys' fees award "is to do rough justice, not to achieve auditing perfection," Fox v. Vice, 523 U.S. 826, ___, 131 S.Ct. 2205, 2216 (2011), and therefore "[a] request for attorneys' fees should not result in a second major litigation," Hensley v. Eckerhart, 461 U.S. 424, 437 (1983).

18. Omitted by Mr. Dillard from his timeline and contrary to what Mr. Dillard states or implies, it was the plaintiff's counsel who in consultation between counsel, first suggested expediting the matter and producing sample bills in redacted form. Mr. Dillard then mentioned it in a 2/5/21 brief to the Court, not a motion.

19. It was plaintiff's counsel who first suggested the terms of a protective order. The plaintiff's counsel even drafted the proposed terms and proposed them, if not first to Mr. Dillard, then to the Court in a 2/9/21 brief. Mr. Dillard adopted the plaintiff's work as his working model, but of course began proposing substantial proposed alterations.

20. If it was not the plaintiff's counsel who first suggested the role of in camera review in consultations between counsel, the two both discussed the possibility. I proposed this measure on a conservative basis if the Town had particular concerns that were not satisfied with the authenticity of the bills or other aspects and if the parties could not work it out between themselves. However, the Town quickly took a broad and indefinite approach to the possibility and the plaintiff took a more cautious and defined approach, detailing the same in a 3/1/21 brief.

21. Contrary to what Mr. Dillard states, I initially and always proposed providing the reasons – either initially or on request -- for any proposed redactions, although what the Judge ultimately ordered did not require a statement of reason to accompany each redaction.

22. On the subject of this additional error by Mr. Dillard, he incorrectly states that, a ways into the exchanges on the subject, "Importantly the proposed order [in the plaintiff's 3/1/21 brief] would have allowed the plaintiff to make redactions, without specifying the basis for the redactions, based on any of the broad purported bases for redaction cited in the memorandum." (Emphasis Mr. Dillard's.) This is not true.

23. In the evolving presentations of both parties in the matter, the plaintiff proposed

in a 3/1/21 brief, the following:

> 12. Specifically, Plaintiff may by redaction assert a claim that certain information contained in the billing statements should be protected from disclosure for one of the reasons set forth in Plaintiff's briefs of February 8, 2021 and March 1, 2021.
> ***
> 16. Upon request of the Town made within ten days of receipt of the redacted bills, Plaintiff, will, within ten days of the request, provide to the Town, footnoted copies of any redacted entries identified by the Town as the subject of the request. The footnoted copies provided to the Town will, for each redaction which was the subject of the request, expressly state the reason for the redaction in a manner that, without revealing the information itself, will enable counsel for the Town to assess the probable merits of the asserted basis for redaction without destroying the reason for redacting the item in the first place.

24. Plaintiff has also provided further comprehensive briefing in the plaintiff's 3/17/21 brief, which includes the reasons for plaintiff's objections to the manner of production of the plaintiff's confidential billing records. And the backdrop of those reasons is that the law of South Carolina does not require them to be produced at all, in any form.

25. On the matter of production of billing statements, Mr. Dillard can barely identify a motion he made instead of requests springing from briefs with no formal statement of grounds. When he did make an actual motion for production of billing statements, I had already volunteered to produce them.

26. The main objection to the motion was not to "production of billing statements," as he states or implies. The main issue was a change in the terms I reasonably believed were necessary to protect my client's confidential information under the Rules of Professional Conduct.

27. The Town was not successful on the part its motion that I contested. Nor was the plaintiff's objection to the contested part of the Town's motion wholly successful. The sample of billing records was produced as originally volunteered by me, but the Court allowed fewer redactions than I argued for and more than the Town's counsel argued for. Significantly, the Court redacted many private and confidential matters that were not strictly attorney-client

privileged in the sense that Mr. Dillard would have argued for application.

28. The production was additionally subject to a protective order the original prototype of which I drafted early on in order to try to move the matter forward. It was changed over the course of various exchanges and had things I did not want, and I believe did not have some things that Mr. Dillard wanted.

29. One of my biggest regrets about the final process we went through was that the samples were produced unredacted in toto to the Court for in camera review, instead of, if submitted to the Court in unredacted form, submitted only in such parts as could not be resolved in an intermediate phase between lawyers. But I believe the Judge's greater concern was getting on with the matter and apprehension over where we would end up time-wise if there were intermediate steps.

30. Of course I did not know in advance what the Judge was going to do, because, while both parties argued over how they viewed the scope and grounds for redaction, no specific standards were agreed or ordained in advance. In the end, I think the Judge got it about right. Both parties had some disagreement about the process and what he marked or didn't, but it proceeded forward.

31. The plaintiff definitely was not wholly unsuccessful. The defendant was no more successful than the plaintiff. The actions taken were reasonable under the Rules of Professional Conduct and the results were beneficial in that the confidential information of the plaintiff received some degree of protection from disclosure and was not subject to wholesale exposure as originally sought by the defendant.

32. There is no basis for reducing fees of the prevailing party based on isolated, eight-months-delayed, sub-evaluations of motions in the course of the case. The motion handling

involved reasonable action which would have been reasonable for any responsible lawyer in the course of handling a case, but I had numerous special apprehensions in this case. My actions significantly tempered the process Mr. Dillard advocated and it did produce a beneficial result.

33. Moving to the deposition of the Town Adminstrator, it was noticed 1/15/21, before, not after, summary judgment was granted.

34. Mr. Dillard's memory is off in stating what he does in his brief, and he has clearly taken no time to refresh it by looking at the case files in both sets of lawsuits and records of communications on the matters.

35. Efforts of the plaintiff to get depositions and prepare for a merits trial if necessary started with noticing the deposition of the appraiser when Mr. Dillard was not involved in the case. The deposition was noticed 8/12/20 to be taken 8/27/21 and was accompanied by communications to consult on convenient dates. However, the appraiser's deposition was finally taken October 16 and 21, 2020.

36. The Town Administrator's deposition was noticed 1/15/21, before, not after, summary judgment was formally granted.

37. The deposition was noticed in <u>both</u> the instant case and in the second case the plaintiff had to file in November after being sued a second time by the Town in October. The deposition was scheduled for 2/19/21.

38. The notice came with a note stating, "Attached and served are notices of deposition in each of the three new challenge cases, the "900 series," for the new condemnation notices. I have also included notices in the 600 series in case there is anything left to do in those."

39. The Town moved for reconsideration of summary judgment and the final summary judgment order wasn't entered until April 5.

40. In the meantime, the deposition date approached and Mr. Dillard, new counsel to the case -- whom I had to spend additional time accommodating while he took time to come up to speed -- had a scheduling conflict. We had an additional issue of whether he would object to the deposition entirely, but he also had a scheduling conflict, or said that he did.

41. So we worked together civilly and did the most efficient thing. We agreed to move the date, with the footnote that in moving it, he was not losing his right to object to it. I thought this reasonable of both lawyers, not knowing it would later, now, serve as the basis of an inaccurate reconstruction of history.

42. I don't remember whether we moved it again on the same basis, but eventually we came up on the date and as a precaution Mr. Dillard filed a motion to quash -- still before the Town's motion to reconsider was denied. If this is the deposition I am thinking about, he didn't show for the deposition (as we both acknowledged he wouldn't) and I made it clear we wouldn't be moving for sanctions in any event even though he had no order in hand, as we both knew where we were on the matter.

43. We eventually had a hearing on the motion to reconsider and sometime after that, in conjunction with hearings in the other challenge actions on April 1, his motion to quash got granted in part by another judge. I cannot find a single brief in this case where I filed an opposition to his motion to quash, instead discussing it very briefly at a hearing of larger concerns.

44. Time in due course was consumed discussing discovery matters with the defendant's counsel before he ever filed a motion – which I preserved his ability to file -- when the discovery was now straddling two cases.

45. I did not split hairs along the way as to which case the deposition was for, as the intent was to let it serve in both cases to the extent applicable. Other than normal review and reflection before going to the hearing and then going to the hearing, little or no time was spent opposing the motion in the instant case per se once summary judgment was finalized. However, the deposition was also for the still then pending second set of challenge actions. I don't believe Mr. Dillard emphasizes this fact in his account.

46. I did object to dismissing the second challenge cases, and accordingly objected to curtailing discovery in those cases if the cases were not going to be dismissed.

47. So there was some argument or discussion, and reasonably so, in the other cases, rather than so much in this one. There, to paraphrase, the judge said, "I think what I'll do is if I don't dismiss the case, I will not grant the motion for protective order; if I do dismiss the case, I will grant the protective order."

48. There is nothing wrong with the way this was handled by me except that in hindsight, I regret that I was as accommodating as I was to Mr. Dillard. I thought we were both doing a good job of cooperating in straddling the existence of two cases at two different procedural stages, particularly when it was the Town that started the multiple litigation by commencing a second set of condemnation cases.

49. In the other cases, we definitely contended that they should continue and that we should get the discovery we did not get in the instant case, because in those other cases, the Town was virtually promising to sue us again.

50. This was all as a result of the Town suing us not once but twice and my doing my best to protect my clients appropriately and reasonably. Mr. Dillard's "implied" account of the matter in the Town's brief is way off. I also do not think much time at all was devoted to the matter except having e-mails or calls with Mr Dillard to cooperate on continuance of the deposition.

51. In the Town's brief, it argues over "NO CHARGE" entries on our billing statements. The billing software I use will not render the entries any other way if I want to show contemporaneously that time was spent on an item or items or the case in general, but that the charges are being deferred (but not excused) as a courtesy.

52. Not only was the time reflected by these entries necessarily spent, but the time was eventually actually charged and billed.

53. As is obvious from the fact that we went to the trouble to add manually the description, "(Noted, not billed.)," which is included in each of the subject entries on the bills themselves, as well as to add an explicit explanation footnoted to the bills, these are entries of deferred time, are not free, and are subject to being charged on a later bill. The clients perfectly understood this and had no contrary agreement or understanding. That is, the entries are expressly not actually "no charge" items, but my old dependable billing software (which runs on a virtual computer created by Oracle Virtual Box, allowing me to run a Windows 7 operating system on a computer "inside" a Windows 10 equipped computer) will not render the entries any other way using any other automatically generated wording, and still have the items show on a present bill but with no present charge. In short, one has to use the "no charge" function and then explain that the entries are not free.

54. As confirmed in the fee petition, these time items were indeed later billed. I doubt the alleged math error Mr. Dillard mentions about the correct count of how many items initially were deferred, and I have not checked it yet. It should not matter, because the charges were billed. However, I will be happy to look.

Pursuant to S.C. Sup. Ct. Order 2021-07-30-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify that the foregoing statements made by me are true. 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: 10-4-21

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.)	
)	

REPLY AFFIDAVIT OF BARRY STANTON TO AFFIDAVIT OF DAVID DURANT

1. Mr. DuRant's affidavit is incorrect.

2. He denies the plaintiff's counsel's characterization of the Town as an adversary which will (i) "say anything" and (ii) "stop at nothing."

3. Plaintiff has actually given specific examples instead of empty adjectives or denials with no specifics. The vacillation of Mr. Henry, the mayor, on his e-mail to the Corps of Engineers inquiring about the availability of a "nuclear option," is but one example. The case(s) and the events also speak for themselves to a large extent.

4. Mr. DuRant himself is very persistent and describes himself on his website as "The Bulldog." Mr. DuRant now denies that he was a bulldog. Tenacity is a good thing. However, it is good to admit you have it, even when you think it may play better to say don't have it.

5. That this case suddenly became easy and was overworked is incorrect. Undeniably, Mr. DuRant made considerable work for the plaintiff's counsel. In general, this is no crime, but the statutes require that the Town now pay for that work, instead of denying that

the work occurred or denying that the work caused by the Town was necessary, or denying that the plaintiff won the case.

6. Mr. Durant incorrectly states that the summary judgment ruling included rulings that "certain issues lacked merit." Once again, saying this does not make it so.

7. There is not a single instance of such a ruling.

8. There is not one single merits ruling by the Court in favor of the Town. "Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee." Hensley v. Eckerhart, 461 U.S. 424 at 435–36 (1983).

9. There were issues in favor of the plaintiff which the Court did not see a need to fully reach in order to dismiss the condemnation on summary judgment. But there was not a single ruling against the plaintiff, and for that matter, there was not a single finding that the facts the plaintiff presented as undisputed were anything other than undisputed. Not one.

10. On the other hand, even in the summary judgment proceedings, the Town contended that a proposed easement granting "public use and access" did not grant public use and access. Instead, the Town said that it was a mere construction easement for the deposit of sand. Saying this did not make it so. The Court expressly ruled on the fallacy of this contention as well in its order at 6.

11. In the related challenge cases the landowner-plaintiffs were forced to bring by being sued twice, Mr. Dillard also contradicts these unsubstantiated remarks by Mr. DuRant in which Mr. DuRant incorrectly implies that there were merits determinations adverse to the plaintiff.

12. Mr. Dillard's statements in the other cases – that the plaintiff won everything that

could be won -- also contradict his own arguments in this case, in which he now adopts Mr. DuRant's casual statements and argues that although summary judgment was granted in favor of the plaintiff and the condemnation was quashed, the plaintiff did not really prevail at all.[1]

13. Mr. DuRant, on a course of logic no more valid or fact specific than making ad hominem arguments, joins in Mr. Dillard's and Mr. Pagliarini's page-counting arguments. He states that the Amended Complaint was "excessively lengthy at 57 pages." Impliedly, prevailing counsel should therefore be hated for this or judged incompetent, and his clients should recover only an eighth to a tenth of the fees they have actually incurred.

14. Yet, those were the same 57 pages containing much of the material that resulted in a grant of summary judgment. Under the Rules of Civil Procedure, it is not an excuse for

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[1] Mr. Dillard specifically argued that the plaintiff had obtained all the relief that was possible under both sets of challenge actions.

In the Town's 6/2/21 memorandum opposing reconsideration of dismissal in Case 2020CP2200932, Mr. Dillard argued throughout that generally no permanent injunction was attainable. He asserted that virtually all relief ever granted in a successful challenge action -- and all relief abandoned when the condemnor abandons -- is essentially without prejudice to attempting condemnation again another way.

These arguments are substantially at odds with his brand new argument, in the instant case – after eight months of engaging in for "fee discovery" -- that the plaintiff did not prevail in the instant challenge case. Mr. DuRant's attempt to support this about-face with an inaccurate account of the contents of the order should be disregarded.

This brand new argument also makes flies in the face of the legislature's intention to award fees regardless of whether the landowner wins the challenge action or whether, under threat of such victory, the condemnor abandons the underlying condemnation attempt. Mr. Dillard elsewhere acknowledges that the legislature intended to award attorney's fees to the landowner and make the landowner completely whole at the end of each action in either event.

By his new reasoning, confronted with ten reasons why condemnation cannot go forward, the condemnor can temporarily abandon the condemnation and then argue that the landowner's attorney's fees should be reduced because maybe the landowner would have lost on a few of them if there had ever been a merits trial. The statute does not read this way.

denying the truth of all 57 pages, that the defendant's counsel considered them long.

15. In another extraordinary example of curative fiction, Mr. DuRant also incorrectly states that he found it extremely difficult to engage in productive communications with the plaintiff's counsel, and never cites a single example.

16. This is his excuse for not trying to communicate, as required by the rules, or else certifying futility, which he did not do either.

17. I actually almost never found this the case in communicating with him. This is with the exception that once the communications were over, sometimes the "product" was long in coming or never coming, such as getting back to me on mediation or similar things discussed. When we did speak, it was usually professional or almost cordial, or at least I perceived it that way. This was even the case when he essentially threatened me with personal suit (by unidentified masses of people) shortly before the hearing of the Town's unsuccessful motion to dismiss. We had no problem kicking things around or talking civilly even after butting heads elsewhere. When he or I broached the subject of trying to resolve the matter, we both were attentive and made suggestions.

18. Afterwards, we would sometimes receive little or no follow-though or the communications would cease. Whether this was his approach or one he was constrained to live with answering to a council of five is not my concern. Either way, it took my time, which I devoted in a civil manner. But if I complain of fraud or dishonesty in a pleading, I have to mention it in the pleading and discuss it in other papers and elsewhere.

19. In a related vein, he states almost stereotypically that "it is true that there were disagreements between counsel over discovery responses and production, which is not an uncommon occurrence in litigation." Perhaps his memory has faded in the eight months since

the fee petition was filed. This is a strange piece of fiction relative to this case. Strangely, he then goes on to analyze "the driving factor in these disagreements," attempting to attribute it to me.

20. Unlike in some cases, in this one, there were actually very few discovery disagreements and I did not complain of discovery disagreements with Mr. DuRant in my affidavit, so I am not sure what he is trying to rebut. We had some disagreements with Mr. Dillard, Mr. DuRant's successor, later, but even those benefitted from consultation first.

21. As I said, when Mr. DuRant and I did consult, we often came to an agreement or a different result than if there had been none. For example, when he asked for an extension, I seldom denied it. I don't think he ever had to compel us on any discovery. The complaint now appears to be that we were too thorough and compliant with the Town's discovery.

22. On the other hand, when I contacted Mr. DuRant to attempt to consult on his tardy or soon to be tardy discovery responses, instead of consulting, he filed a motion to block discovery without responding. Once I tried to contact him for a simple extension, but he would not respond, causing me to file a motion for first extension on mere paper discovery responses.

23. As another example, in October 2020, we both discussed the subject of lawyers who may also be witnesses. Neither party was taking a position or moving for anything, and there was no disagreement or unpleasantness at all. We were both just identifying later potential questions. I gave him chapter and verse on my understanding of the subject, and offered to discuss it further if he wanted to kick it around, and I assured him that it was largely a matter of self-housekeeping and otherwise something somebody had to raise, and that I would consult with him and give him ample notice if I saw any need to raise any problem with respect to him on that subject.

24. When he later filed a frivolous motion, in January, to try to disqualify me as counsel for purely tactical reasons, he did not consult first at all. We responded in full, providing a full briefing on the matter. The Town did not respond to the briefing. The Town withdrew the motion before it was heard. He now states that he filed the motion "because I listed myself as a witness."

25. This is beside the point, but it is also not an accurate description of the manner in which I was forthrightly listed among people, like Mr. Durant, who knew facts pertaining to the case.

26. The defensiveness of Mr. Durant's entire affidavit is mostly beside the point. My purpose in describing the events of the case, some of which don't look too good in the daylight, is not primarily to blame, but to explain. I am explaining what took time in the case and why it took time.

27. My time was consumed with Mr. DuRant, not in the fictional discovery disagreements he imagines, but mainly in following up on discovery when Mr. DuRant did not comply in whole or in part, and dealing with his failure to consult on discovery motions, and responding to things he filed, and trying to keep the plaintiff's side of the case going forward.

28. Later on, we had a very fundamental disagreement with Mr. Dillard on "fee discovery" and months of delay of our fee petition, but even then, the disagreement was over whatever was not resolved by consulting first. All these things take time.

29. The public disinformation campaign I described did occur, and was largely responsible for at least some of the Town Council and agents either beginning to believe their own wishful thinking -- e.g., in authorizing condemnation, but only "to put sand on the beach" --

or being emboldened by what they thought they were getting away with – and feeling they had a greenlight for the Town's "any means necessary" actions throughout the case.

Pursuant to S.C. Sup. Ct. Order 2021-07-30-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify that the foregoing statements made by me are true. 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: 10-4-21

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

REPLY AFFIDAVIT OF BARRY STANTON TO AFFIDAVIT OF BRIAN HENRY

1. Mr. Henry's affidavit testimony is not true, according to his earlier statements, and based on the plain meaning of the face of the matter he testifies about.

2. Mr. Henry testifies regarding what he meant in his August 2020 e-mail to the Corps of Engineers (attached to the plaintiff's counsel's 9/10/21 updated fee affidavit), in which Mr. Henry asked if there was a "nuclear option" available to use against the landowner-plaintiffs. He now testifies that he was not referring to a devastating measure or any sort of scorched-earth approach. On its face, this in untrue, because that is what it means to go nuclear.

3. He now falsely explains that by "nuclear option" he meant something else. He testifies that what he meant was an approach in which the subject properties could be omitted from the proposed project. Essentially, he explains that he was concerned with finding a benign and ameliorative approach. Incidentally, there have been no documents I am aware of produced by the Town dated in the time around August 2020 in which omitting the properties is mentioned by anyone. This includes council minutes, Town internal e-mails or memos, and Town e-mail communications with the Corps.

4. There is no way this is what Mr. Henry meant by "nuclear option." Just weeks ago, with equal lack of credibility, Mr. Henry reportedly said he did not know what he meant by the term "nuclear option" at all.

5. That is, the "nuclear option" e-mail was obtained by me from the Town.

6. I followed up to see if any related items were not produced. The Town Administrator stated that there were no related documents and that additionally, Mr. Henry stated that he did not know what he meant by "nuclear option." The Town Administrator's e-mail is attached as "Exhibit A" to the plaintiff's 10/4/21 reply brief in this matter.

7. The mayor's present testimony explaining what he meant by "nuclear option" is clearly lacking in credibility. He stopped at nothing, including looking for nuclear options, in trying to push through the illegitimate condemnation attempt and illegitimate proposed easement. About two months later, all three landowner-plaintiffs were sued by the Town a second time, around the time that the hearing of plaintiff's summary judgment motion in the instant case was being continued into December. The explanation given provides a simple demonstration that the Town will say anything.

Pursuant to S.C. Sup. Ct. Order 2021-07-30-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify that the foregoing statements made by me are true. 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: 10-4-21

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REPLY AFFIDAVIT OF BARRY STANTON TO AFFIDAVIT OF DAVID G. PAGLIARINI

1. Mr. Pagliarini is a "witness" not disclosed by the Town in the previous eight months. He is a lawyer with no first-hand familiarity with the case. As his affidavit makes clear, he has not read first-hand, many of the things he offers an obviously hasty retrospective opinion about. He is not only an incompetent fact witness, however. He also lacks the necessary education and experience to assess the subject of his testimony or to be of any assistance to the factfinder. He relies on error-prone summaries of others, makes gross errors of plain fact, makes material mistakes in counting, makes large mistakes in math, and makes dark assumptions about the law, in which he shows he is not expert. What is equally concerning is that another affiant, Mr. Dillard, states that he bases his opinion on the affidavit of Mr. Pagliarini.

2. As set forth in more detail in the Appendix to this affidavit – to all of which I also hereby attest -- while he makes various pointless observations, and presents self-contradictory themes, he invalidly insinuates that this was a "simple" case. He absurdly implies that the plaintiff was overly prompt and diligent and won the case too soon – and that the plaintiff should have known this would occur, and therefore the plaintiff should not have spent any time

preparing for summary judgment other than on one ground (or maybe even one event or act), should not have spent any time preparing for trial, and should not have spent any time protecting the case for appeal in a case the plaintiff was going to win anyway.

3. He expressly relies, materially, on erroneous and inadmissible information selected and supplied by the second lead counsel hired by the Town, who was hired by the Town after summary judgment was granted. The second lead counsel hired by the Town, Mr. Dillard, in turn, has no first-hand familiarity with the case prior to summary judgment being granted against the Town and prior to the plaintiff requesting an award of fees. Mr. Dillard's approach, too, is error-prone, full of speculation, and contrary to law, as I will address further.

4. There are indications, which I will address further in the Appendix, that Mr. Pagliarini, shockingly, has not read for himself – or else, according to him, is not even able to understand -- the Amended Complaint. The statements he makes in this regard are either radically dishonest, or probative of radical indifference to the task he has undertaken. It also appears to be true that he has not read other important documents in the case. These include the Judge's procedurally detailed 25-page order[1] granting summary judgment, which Mr. Pagliarini, if consistent, would characterize as excessive in length and impliedly not worth reading.

5. Mr. Pagliarini, in a self-contradictory affidavit fraught with factual and other hasty mistakes, also presents his flawed "factual" opinions in the context of various misapprehensions and misapplications of the law, including the law of attorney's fees. These and other features render his entire opinion not only worthless in assisting the Court, but inadmissible as "expert" testimony. The testimony of those who rely upon it should also be rejected.

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[1] Order entered Jan. 20, 2021, re-entered after reconsideration denied, Apr. 5, 2021.

The Correct Law of Attorney's Fees in South Carolina and the Actual Task Before the Court

6. The task before the Court is not nearly as complicated as the Town makes it in its most recent one hundred and four (104) pages of filings after September 19, 2021, and its earlier machinations in the eight (8) months between the filing of the plaintiff's fee petition January 25, 2021 and September 19, 2021.

7. The plaintiff has requested an award of $60,198.33 in attorney's fees in the case through October 6, 2021.

8. Together with $913.69 in other out-of-pocket expenses, the total requested award of litigation expenses is $61,112.02[2] through October 6, 2021.

9. This request includes work in the case in order to prosecute the fee request itself to conclusion. This is legally proper,[3] but largely ignored by the Town. The Court should not ignore it.

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[2] This figure includes an estimate of $5700 made on September 10, 2021, before receiving Mr. Pagliarini's affidavit, of the work required between September 9 and October 6, 2021. Responding to Mr. Pagliarini's affidavit will require the plaintiff to exceed this estimate.

[3] A statute requiring that the court award the prevailing party attorney's fees "reasonably incurred in litigating the proceedings" contemplates all the proceedings, including the portion of the proceedings devoted to pursuing attorney's fees incurred in obtaining the primary relief sought in the case. Ex parte Gregory, 378 S.C. 430, 663 S.E.2d 46 (2008)(holding that attorney's fees for seeking attorney's fees under Frivolous Proceedings Act were included in the fees required to be awarded); see Austin v. Stokes-Craven Holding Corp., 406 S.C.187, 750 S.E .2d 78 (2013)(holding that a statute mandating an award of attorney's fees mandated an award of trial-level fees, subsequent appellate fees, and subsequent post-appellate fees in the trial court, in which post-appellate trial-court proceedings, fees incurred in earlier stages were sought).

The policies supporting this rule are obvious, and are already applicable in the instant case. In Commissioner, Immigration and Naturalization Service v. Jean, 496 U.S. 154 (1990), the U.S. Supreme Court held that fees for obtaining fees are allowed under the fee shifting provisions of the Equal Access to Justice Act.

The Court held that, under the EAJA, a prevailing party may recover attorneys' fees for services rendered in seeking a fee award without regard to whether the position of the United

10. Under the procedure described in Layman v. State,[4] the fees of the one plaintiff in this one case may be reasonably calculated as follows: 1000.5 hours x $250 per hour = $250,125.00.[5]

States was substantially justified. Namely, if the prevailing party is entitled to fees in the main action, then he is automatically entitled to fees for the time spent seeking fees. To hold otherwise could "spawn a 'Kafkaesque judicial nightmare' of infinite litigation for the last round of litigation over fees." Id. at 163. See also, e.g., Tri-County Metro. Transp. Dist. of Or. v. Aizawa, 362 Or. 1,___, 403 P.3d 753, 754 (2017) ("Ordinarily, a party entitled to recover attorney fees incurred in litigating the merits of a fee-generating claim also may receive attorney fees incurred in determining the amount of the resulting fee award."); and see Crandon Capital Partners v. Shelk, 219 Or. App. 16, 42, 181 P3d 773, __ (2008) (describing that rule as reflecting "longstanding precedent in Oregon").

[4] 376 S.C. 434, 658 S.E.2d 320 (2008).

[5] As succinctly stated by Judge Miller in Maybank v. BB&T (Greenville County Court of Common Pleas, Order, Case 2011-CP-23-8578, Nov. 10, 2014):

> The specific award of attorneys' fees and costs is left to the discretion of this Court, and must be determined using a lodestar analysis. *Layman v. State*, 376 S.C. 434, 444, 457-58, 658 S.E.2d 320, 325, 332-33 (2008). This analysis requires determining a reasonable hourly rate and hours worked and then considering any exceptional circumstances justifying an enhancement of the lodestar figure. *Id.* at 458-61, 658 S.E.2d at 33-35. This requires considering the following: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Id.* at 458, 658 S.E.2d at 333(citing *Jackson*, 326 S.C. at 308, 486 S.E.2d at 760).

Maybank v. BB&T (Greenville County Court of Common Pleas, Order, Case 2011-CP-23-8578, Nov. 10, 2014)(16 pages, single spaced), aff'd in pertinent part 416 S.C. 541,787 S.E.2d 498 (2016), reh. den.

In Maybank v. BB&T (Common Pleas, Case 2011-CP-23-8578), Judge Miller made his determination of "hours worked" as follows: "I have reviewed the fee affidavit of Plaintiff's counsel detailing the hours worked by each attorney and submitting their current hourly market rates."

In Maybank v. BB&T, 416 S.C. 541, 787 S.E.2d 498 (2016)(42 pages, single spaced), reh. den., the South Carolina Supreme Court affirmed Judge Miller's determination of "hours worked" from prevailing counsel's affidavit setting forth "hours worked."

11. In this calculation pursuant to Layman and related cases, the 1000.5 hours are the sworn hours actually reasonably devoted to the case after July 1, 2021, as set forth in my restated fee affidavit of September 10, 2021. I did not work these hours only over an even spread of daylight hours on weekdays, as the fictional calculations of Mr. Dillard would imply. I work nights and weekends.

The South Carolina Supreme Court rejected the appellant's argument that "the affidavit of attorneys' fees and costs submitted by Maybank's counsel was inadequate and lacked the necessary detail that would enable Appellants to respond." 416 S.C. at 5801, 787 S.E.2d at 518. The South Carolina Supreme Court rejected the appellant's argument that "Maybank failed to provide detailed billing statements to identify how the billed hours correlated to the claims alleged, especially since Maybank prevailed on only five of his eleven claims, and the Trust lost on all its claims." 416 S.C. at 5801, 787 S.E.2d at 518.

The Court also rejected the appellant's argument that "the insufficiency in the billing statements make it difficult to ascertain and delineate the work completed in furtherance of the UTPA claim -- which is the only claim upon which attorneys' fees and costs may be awarded." 416 S.C. at 5801, 787 S.E.2d at 518. Instead, the Court ruled: "We find all of Maybank's claims shared the same common facts and required combined efforts throughout the litigation process." The Court found to be a reasonable estimation, the trial court's reduction of fees by twenty percent to account for a distinction in the claims and the time allotted to defend claims unrelated to the UTPA claim, which was the only claim in the group of claims for which attorney's fees were allowed to be recovered. 416 S.C. at 5801, 787 S.E.2d at 518.

Thus, South Carolina case law does not require that a fee application be supported with the lawyer's and client's actual confidential bills.

Neither does the applicable fee recovery statute in this case. Nor is the production of actual confidential bills required in states in which the detailed procedure for applying for fees is actually set forth in the state's rules of civil procedure. See, e.g., O.R.C.P. 68, Pleading, Allowance, and Taxation of Attorney Fees and Costs and Disbursements (nowhere specifying production of bills). There are reasons for this and they are amply set forth in the plaintiff's briefs to this Court.

Nevertheless, the Town moved, over the plaintiff's objection, for production of a healthy sampling of the plaintiff's representative bills, and was granted production of them, with many of the more sensitive or privileged matters fairly redacted, while the Court reviewed the bills in camera and determined fewer redactions to be made. No error whatsoever in the number of hours recounted in the plaintiff's counsel's fee affidavit has been alleged since then.

12. The $250 per hour rate is the reasonable rate for a lawyer to charge, without an additional lodestar enhancement in the discretion of the Court for extraordinary demands or conditions on prevailing counsel, the beneficial result obtained, or other factors. The $250 per hour rate also is the same rate charged by both Mr. DuRant, the first lead counsel hired by the Town, and Mr. Dillard, the second lead counsel hired by the Town, as verified by publications online by the Town and Town responses to FOIA requests.

13. However, the plaintiff has conservatively requested a fee award based on only 950.5 hours, and based on only $190 per hour.

14. Further, the request is conservatively based on the resulting fee then being divided by three. This request results straightforwardly in a requested fee award of $60,198.33 for the plaintiff.

15. Further, the plaintiff has requested that the court take notice that of the two similarly situated plaintiffs in the two related cases, one asks for only the same $60,198.33, and the other does not request a fee award. This is collectively a discount of another one-third.

16. All of these conservative steps result in a total fee award of only $120,396.64 for all three related cases, rather than a conceivable and defensible total fee award of $750,375.00, had the three landowner-plaintiffs not combined and shared one lawyer, who represented himself in one of the cases.

17. Strikingly, Mr. Pagliarini opines what the fee award should be "for all three cases," but does not opine what it should be for the plaintiff in the plaintiff's one case. For "all three cases," he accepts the lower-than-normal hourly rate of $190, but opines that the fee award should be based on approximately twelve and a half (12.5%) percent of the 1000.5 hours actually devoted by the plaintiff's counsel.

18. This, Mr. Pagliarini calculates would produce a fee of $24,000 "for all three cases."

19. For a frame of reference, this figure Mr. Pagliarini professionally opines would be appropriate is substantially less than the amount charged to the Town by Mr. Dillard alone following the grant of summary judgment.

20. The amount professionally opined to by Mr. Pagliarini is also substantially less than the amount charged to the Town by Mr. DuRant alone, substantially before the grant of summary judgment.

21. The figure professionally opined to by Mr. Pagliarini is substantially less than a third of what the Town, the nonprevailing party, has spent in total on the Town's three counsel of record, not including Mr. Pagliarini as an effectual fourth.

22. The plaintiff would hope, if not expect, that the foregoing alone would suffice for the Court to reject Mr. Pagliarini's opinion and his affidavit summarily.

23. Mr. Pagliarini is wrong in numerous ways in reaching his obviously hasty opinion.

24. The affidavit of Mr. Pagliarini represents an opinion and an approach which does not follow from applicable case law and statute law.

25. Some, but not all, of the reasons why Mr. Pagliarini's affidavit should be disallowed,[6] disregarded, or given no weight, are as follows.

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[6] In Dawkins v. Fields, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003), the South Carolina Supreme Court found an affidavit by Professor Freeman, a law professor with actual extensive law practice background, inadmissible. 354 S.C. at 66-67, 580 S.E.2d at 437. In Dawkins, the Supreme Court found most of the document was legal argument regarding why the trial court should deny summary judgment. Id. The Court stated: "Professor Freeman's affidavit inappropriately attempted to usurp the trial court's role in determining whether petitioners were entitled to summary judgment." Id. at 65, 580 S.E.2d at 437. However, the Court noted an

Mr. Pagliarini's Lack of Qualification or Credibility as an Affiant

26. As detailed further in the Appendix, Mr. Pagliarini does not follow the law, making his hasty opinion irrelevant and a source of distraction and confusion.

27. He is not qualified by personal knowledge, education or experience, to give either fact or opinion testimony which will in any way assist the factfinder.

28. Having no first-hand knowledge of the matter, he relies on unreliable information. He relies on information supplied by Mr. Dillard, who confuses the matter further by offering opinion based in part on the opinion Mr. Pagliarini has, in turn, based on the unreliable information provided to him by Mr. Dillard. It is like an Irish stew with several bad pieces of meat in it – one does not attempt to pick out the bad pieces of meat and see how much of the remainder can be consumed; one throws out the whole stew and eats none of it.

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opinion is not objectionable simply because it embraces an ultimate issue to be decided by the trier of fact. Id. The Court also found the affidavit contained "some helpful, factual information," such as, Professor Freeman's opinion on the value of stock and that selling it for significantly less than that value was improper. Id. at 66, 580 S.E.2d at 437.

In Vortex Sports Entertainment Inc v. Ware, 378 S.C. 197, 662 S.E.2d 444 (Ct. App. 2008), the admissibility of Professor Freeman's opinion on breach of fiduciary duty was challenged. The existence of a fiduciary duty is a question of law for the court. However, the trial court had ruled on the legal issue of whether Ware owed Vortex a fiduciary duty, determining the duty was owed. Professor Freeman's testimony consisted of specific acts Ware committed and how those acts constituted a breach of his fiduciary duty. Specifically, Professor Freeman testified Ware participated in self-dealing by sacrificing Vortex's interests for Ware's own interest. Additionally, Professor Freeman testified Ware was deceptive to Vortex. Professor Freeman noted the lack of documents detailing Vortex's agreements and policies and testified Ware, as Vortex's general counsel, would have been responsible for preparing such agreements and his failure to do so should not entitle him to a "free pass." This testimony was allowed.

Mr. Pagliarini, not a law professor on this subject matter or any other, when basing his testimony on incorrect legal procedure and standards, grossly incorrect factual and "legal" observations, and unsworn estimates given second hand by a successor lead counsel almost equally unfamiliar with the facts, does not warrant such an exception.

29. Mr. Pagliarini was not involved in any aspect of this case, and does not claim to have been. He had no apparent first-hand familiarity with any of it when it was actually going on. His retrospective familiarity is limited to what he has briefly looked at, if he looked at all, or what he has been told in retrospect in connection with his being hired for an opinion. As I address further in the Appendix, he shockingly opines to this Court under oath that he is largely unable to understand what the Amended Complaint says and that no one else can either.

30. There is indeed a lot to read. His affidavit makes it doubtful he has actually read it. As I address in the Appendix at considerable time-cost, he offers sworn opinion about a deposition that he has not ever laid eyes on. It appears that much of what he has reviewed is secondary material prepared by Mr. Dillard, summaries infused with the opinions, arguments, and hasty mistakes of others.

31. Mr. Pagliarini does not recount or demonstrate any expertise in the field of assessing attorney's fees beyond the abilities already possessed by this Court as the factfinder.

32. Many incorrect matters of law, on attorney's fees, the substantive law of the case, and civil procedure, are expressed by Mr. Pagliarini and inextricably taint his "opinion." When examined in daylight, his legal assumptions are materially incorrect. They all are, in any event, the province of the Court to determine, and his opinion on these matters is not allowed, especially when mixed with incorrect factual "observations" and outright aspersions.

33. He certainly is not a law professor.

34. In addition to demonstrating no particular expertise in the law of attorney's fees, his expertise and experience in the eminent domain field is also lacking. Particularly lacking is even a single instance of a challenge case handled by him in the trial court for a landowner in which he prevailed and was awarded fees.

35. He is a paid witness. But in hastily opining on the fees of others, he does not say how much time he has spent, how much he himself is being paid, or even what his own normal rate is.

36. He appears to lack comprehensive experience. Instead, he admits to having settled into a limited practice primarily doing real estate closings, road work condemnations "on Behalf of Condemning Authorities," and defending claims against appraisers.

37. Specifically, within his limited practice area, he appears to be limited further to representing primarily small government entities pertaining to road work. This case is, rather, about condemnation of oceanfront land for public use under the guise of a construction easement for the deposit of sand. It is not about road work.

38. Specifically, seventeen (17) out of nineteen (19) of the examples on his curriculum vitae are limited to the subject of road work. The remaining two involve a town hall and something related to an airport.

39. He does not appear to understand that the instant case was unique in subject matter and procedural context, and was not one that could be prosecuted successfully by, as he astoundingly suggests, recycling previous pleadings and briefs from a "form bank" of old challenge cases pertaining to road work.

40. Mr. Pagliarini states that in his "handling" of such projects for such government entities, "numerous" ones of these projects have resulted in "direct condemnation cases," and "many" have "resulted" in "statutory challenge actions." Of this unspecified number of challenge actions apparently brought, none appear to have been brought by him. Of these challenge actions brought, rather, by counsel for a landowner, Mr. Pagliarini states only that he

has tried "a number." Of those in this "number," the results of the trials are not stated. Nor does he state in which, if any, he was awarded any attorney's fees.

41. As I will address further in the Appendix, he also acutely exhibits only a rudimentary and partial understanding of the Rules of Civil Procedure as applied to pleading stage of litigation and the later summary judgment phase of litigation. His opinion of what is reasonable in composing pleadings or affidavits, if not disregarded entirely, must be tempered with this profound limitation on his understanding, and, accordingly, of his perception.

42. He exhibits little to no experience in complex litigation, fraud cases, coastal zone law, renourishment issues, matters local to Pawleys Island, marine science, professional responsibility, civil procedure, the law of attorney's fees, issue preservation for appellate purposes and presentation of multiple sustaining grounds for appellate purposes.

APPENDIX
Further Refutation of Mr. Pagliarini's Many Opinions and Elucidation on His Lack of Qualification to Give Them

CONTENTS

A. <u>Specific Responses to Various and General Statements of Mr. Pagilarini Further Demonstrating His Lack of Fitness as an Affiant.</u>

1A. Mr. Pagliarini possesses neither the knowledge nor the expertise to assess my experience and standing, stating he does not know me and has never had a case with me, not even this one.

2A. In this regard, he "notes" that "Mr. Stanton does not claim any recent or material experience in eminent domain matters." His "note" is unfounded.

3A. I do claim "material experience" in eminent domain matters – however, unlike Mr. Pagliarini, my experience and my practice is not so limited. I also have extensive litigation experience, including experience with litigation of fraud, municipal/government matters, land use matters, title matters, and coastal matters, and also have an extensive background in property law.

4A. Litigation involving government entities can be difficult as they often have peculiarly evasive characteristics and one is often unable to get a decision from them while they are spending public funds or impinging on the rights of a citizen. The cases at hand had an extra dimension of the on-again-off-again potential federal administrative agency involvement and finger pointing as a way to hide from responsibility.

5A. For example, the easement sought by the Town was represented to be a "standard" easement required by the federal agency, but only we found that another version had a clause allowing exceptions to be written in. Additionally, it turns out that for years, there were references to including some version of the easement in the Code of Federal Regulations,[7] with existing regulations on other so-called "standard" easements for other purposes, but it never happened. What did happen was that the agency withdrew all of its previous regulations on the subject, essentially so that the agency could do whatever it wanted, without the inconvenience of scrutiny by Congress or others.

6A. To my recollection, the last eminent domain "matter" I was involved in – other than numerous more recent instances of advising and drafting with regard to eminent domain provisions in purchase and sale agreements or commercial leases – was one in which I

[7] Those familiar with the Administrative Procedures Act will recognize that this would require publication in the Federal Register, with time for comment or even hearing and other Congressional action.

represented the landowner a few years ago. There was fairly extensive preliminary negotiation with the condemnor's first expert condemnation lawyer. It went to litigation. We determined a challenge action in that case was not appropriate or at least not feasible. As I recall, after a change of counsel for the condemnor to another expert condemnation lawyer, we eventually settled for approximately ten (10) times the condemnor's initial offer, which initial offer was also the proposed offer and value stated in the notice commencing the proceeding.

7A. Further, in my experience, lawyers with limited practice areas and lawyers who are specialists operating alone, when operating in multifaceted cases, may miss things or be otherwise inadequately equipped outside their area of primary familiarity. In the law of attorney's fees, a lodestar enhancement of the rate may be warranted by counsel's specialized knowledge or by the nature of the case being in a specialized area, but there is no requirement that a specialist be hired to defend or prosecute a matter in a specialized area, and no penalty for electing not to do so.

8A. To be clear, condemnation or eminent domain is not a recognized specialty by The Supreme Court of South Carolina Commission on Continuing Legal Education and Specialization, and in that sense, neither Mr. Pagliarini, nor I, nor Mr. Dillard, nor Mr. DuRant, is a certified specialist in the field.

9A. No time spent researching, drafting or doing other work was a result of lack of experience and no work was billed that was not relevant to the challenge actions. Mr. Pagliarini does not identify a single thing "not relevant to the challenge actions" in support of his unhelpful speculation that irrelevant time might have been billed.

10A. Mr. Pagliarini, even within his limited sphere, does not appear to have extensive experience in successfully representing landowners in challenge actions such as this one.

11A. The one example he provides of a challenge action, he characterizes as a "published case." It is the Georgia Department of Transportation case brought, for the landowner, not by Mr. Pagliarini, but by Rick Bybee.

12A. It did not appear to involve Mr. Pagliarini at the trial level. It was lost at the trial level. However, it was successfully appealed. The appeal involved three attorneys from three firms for the appellant, of which Mr. Pagliarini was one of three.

13A. Significantly, it was likely a hard case and it was a big win on appeal, but the grounds for the challenge were the easiest, or at least the most frequently successful, grounds for a challenge action – "lack of public purpose" – just as in the notable Charleston hotel and convention center case. Lack of public purpose is not among the grounds for the challenges in the subject cases.

14A. Relying on unsworn[8] summaries hastily and erroneously provided by biased others, Mr. Pagliarini appears to have not spent a sufficient amount of time to understand the case he is opining on.

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[8] It is hard to keep this straight. To authenticate or determine any pedigree in the exhibit to Mr. Pagliarini's affidavit, upon which he materially relies, one has to look instead to Mr. Dillard's affidavit, where Mr. Dillard describes preparing the exhibit. Yet, to understand the material basis for Mr. Dillard's affidavit testimony and the exhibit to Mr. Dillard's affidavit, one has to read the affidavit of Mr. Pagliarini, upon which Mr. Dillard states he relies for both his testimony and the exhibit attached to his own affidavit. Yet, Mr. Pagliarini bases his affidavit, upon which Mr. Dillard relies, on things Mr. Dillard has picked out to put in the exhibit to Mr. Pagliarini's affidavit. Neither one of these gentlemen was in the case until after summary judgment was granted against the Town.

As for any attestation by anybody to the completeness and accuracy of the exhibit to Mr. Pagliarini's affidavit, it is nonexistent. The affidavit and the exhibit, as well as the affidavit and exhibit of Mr. Dillard, should be stricken.

What Mr. Dillard affirms is correct is only "the timing and nature" of the individual items he subjectively elected to include in the exhibit to Mr. Pagliarin's affidavit, not to the conformity

of the exhibit to any particular method of determining what to put in the exhibit. It has in it, only what Mr. Dillard wants in it.

Mr. Dillard explains by way of description, but does not attest, that he included only "documents" and "events" "appearing on the record," that the "events" are the ones he determined were "significant," and that he decided to include items only up until April 22, 2021. Both the affidavit of Mr. Pagliarini and the affidavit of Mr. Dillard should be thrown out entirely at this point.

To be clear, an examination of the chart (prepared by Mr. Dillard, but attached to Mr. Pagliarini's affidavit) reveals that even the vague description Mr. Dillard gives is incorrect, as the chart does include things not in the "record" in the sense of not being on the court's docket sheet or not being a matter presented directly to the court. For example, the chart includes the dates of the deposition of the appraiser. The deposition is not on file with the Court. The dates, rather, are pulled from billing records mentioning the deposition. Other documents and events are mentioned in the billing records, or otherwise existing, but not included. In this sense alone, the chart is highly selective in not including many other things which occurred and which would not appear on or be divined from a docket sheet.

As just one of hundreds of examples, on October 12, 2021, for instance, there was an "event." The Town Council held another spurious live-streamed meeting at which Town's then lead counsel participated heavily in shepherding through, an additional but incomplete resolution pertaining to the easements, their scope, the procedure for condemning them, and the litigation. It was quite extraordinary and seethed with misstatements and spin. It is described in excruciating detail in the complaint and amended complaint of the second set of challenge cases. The Town attached a copy of the putative resolution to its memorandum opposing summary judgment in the instant case. Neither the meeting nor the video of it appears on the chart. Whether he billed for all of it or not, the plaintiff's counsel watched the whole thing, more than once. The video itself of course has no page count.

Aside from hearings, most of what Mr. Dillard elects to include in the incomplete subjective chart does not include anything occurring in a lawyer's office or any other lawyer work or lawyer time than that reflected by filed documents the pages of which he can count. An exception is some paper discovery, but even that appears to be limited to that portion of the discovery which was attached when someone filed a motion.

On October 16, 2021, the date for the appraiser's deposition, another "event" occurred. The Town served the landowner-plaintiffs with an additional set of condemnation actions, of which they had been given no notice, not even in the Town Council meeting. This "event," occurring the morning of the deposition, is not included.

When instead of filing a motion to compel, a lawyer takes substantial time to write to the other lawyer, a long letter setting forth in detail, discovery discrepancies to be resolved, it is usually not filed with the court. When a lawyer sends hundreds of pages of documents in response to a request for production, and actually takes substantial time to review them before

15A. He states, for example, the wrong number of legal theories involved in the Amended Complaint,[9] the wrong number of motions that were made in the case,[10] and the wrong

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sending, this is not reflected in a docket sheet. When a lawyer receives hundreds of pages of documents under the same procedure, and actually takes substantial time to review what he receives, this is not reflected in a docket sheet. It is also not reflected in Mr. Dillard's chart. Whether the omission is because Mr. Dillard never got a complete file, or because it would do violence to his page-counting approach, or because it tends to show more work than he wishes to admit, is unknown. But the chart is illegitimate.

Even Mr. Dillard's page counting is selective. Mr. Dillard, in describing the exhibit he prepared for Mr. Pagliarini to rely upon, states only that the table states the number of pages of the documents he elected to include. Yet the table does not state the number of pages of listed bills the plaintiff's counsel had to review, redact and produce. The table also does not state the number of pages for the listed discovery papers served by the Town.

Moving to the things which did actually get filed with the court and hearings that the Court held, the chart is not even accurate as to them. With only a cursory glance, I see motions and hearings missing. There is likely more than that. As noted in more detail elsewhere herein, Mr. Pagliarini states in his testimony less than half the correct number of motions and hearings. This is a serious, concerning, and material mistake, especially in light of the erroneous approach Mr. Pagliarini takes to assessing attorney's fees by page-counting of documents and spitballing how long events ought to take.

The chart is selective and exclusive, rather than comprehensive or complete, and it is full of error. Thus, the only thing to which Mr. Dillard attests regarding the chart is that when an item he decided to put on it is described as a two-page motion for continuance dated or filed 10/14/20, "the timing and nature" of the item is correct, i.e., it was for continuance and it was 10/14/20. So the chart is useless and is not even as good as giving Mr. Pagliarini a complete docket sheet with page counts pointlessly written in.

[9] He erroneously states two (2) (stating the plaintiff "essentially pled two causes of action"), whereas the Town itself stated in its 8/28/20 brief supporting its motion to dismiss, "The Amended Complaint alleges 6 causes of action." The Court in its order granting summary judgment described the case as involving "about nine sometimes factually overlapping reasons for granting summary judgment."

[10] He states only that there were "various" motions, but implies there were only about six (6), identifying them as "for dismissal," "for summary judgment," "various discovery motions," "for reconsideration," and "for attorney's fees and costs."

To the contrary, not including a request the Town made in a responsive brief instead of in a motion, but which led to hearings or court conferences, and not including followup requests by the Town to tweak language in an order, there were at least fourteen (14) motions in the case, and I may have left out a motion to compel. These were to dismiss, to expedite the case, to

number of hearings[11] or other court appearances in the case. And yet these matters are material, at least to his own legally erroneous approach. That approach is to assess attorney's fees by counting up pleadings, counting up events, counting up pages, etc. in accordance with a summary chart not prepared by him. His mistakes are big ones.

B. Mr. Pagliarini's Errors as to the Deposition, For Example.

16A. For further example, he also relies on the approximately 100% erroneous estimate by new opposing counsel of the length of a deposition, which new opposing counsel, Mr. Dillard, in turn, did not attend and has never read. The deposition took eight (8) hours, not seventeen and three-tenths (17.3) hours. I will address this further below.

C. Mr. Pagliarini's Math and Reading Errors, For Example.

17A. In his apparent haste, Mr. Paglarini is also prone to some reading or math error in that he has the incorrect final figure for out-of-pocket expenses for Stanton. Mr. Pagliarini also

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prevent discovery from the Town, to require a $10,000,000 bond, to compel, to continue, for extension, to compel, for summary judgment, for fees, to reconsider, for delay in order to conduct fee discovery and fee trial, to disqualify counsel, to require production and in camera review, and to quash.

After Mr. Pagliarini's affidavit, we have received a motion of the Town to hear matters before hearing our still pending January 25, 2021 fee request, as amended.

Mr. Pagliarini later opines that the total hours which should be allowed for the drafting, proofing and filing of motions and supporting affidavits, and the researching, drafting, proofing and filing of briefs (initial, replies, surreplies, etc.) and reply affidavits is "20 hours." In a word, this is ridiculous.

[11] He erroneously states two (2). However, there were five (5) if not counting two (2) other incidents involving preparation and presentation, if not also additional filings. Dates are set out in para. 92 of my most recently restated affidavit.

One of those I omit was a day set for hearing, which was converted to a scheduling conference because after the date was set, but two days before the date, the Town filed a motion and asserted it was the matter to be heard. Another was a conference call with the court, which the Town twice subsequently characterized as a hearing. Of the five (5) actual hearings, two (2) were in person in Georgetown, and three (3) were by Webex teleconference.

incorrectly states that "over 900" is "more than half" of 2000 hours a year, and that July 2, 2020 to September 9, 2021 is "one year" rather than one year, two months and a week. This is a material mistake for someone making a point about how many hours a year some lawyers might work. I will address this further below.

D. Mr. Pagliarini's False Assertion that the Amended Complaint, is "Unintelligible," For Example.

18A. Perhaps most strikingly, Mr. Pagliarini states that he was unable to read and understand the Amended Complaint. He states that in large part, it was "unintelligible."

19A. This pointedly disparaging and demonstrably false "opinion" is distressing in indicating something gravely wrong, far beyond the bias or tractability of a paid witness.

20A. Whether it is also an attempt to excuse the Town's denial, in its Answer, of 176 out of 179 allegations of the Amended Complaint by pretending they could not be understood, or some other backhanded attempt to distract from true and germane facts which are embarrassing to the Town, the statement is false. What is undeniable in the context of Mr. Pagliarini's spurious pay-by-the-document approach to attorney's fees is that the statement is a casually presented utter falsity. It is an attempt to dock the pay of the lawyer of an opposing party by "sliding in" false statements.

21A. What was "unintelligible" to an educated English-speaking person is not identified by Mr. Pagliarini. He makes this very serious and highly disparaging assertion, but does not provide one single specific example.

22A. I set forth here, verbatim, two, completely true, succinct, and perfectly intelligible, paragraphs of the Amended Complaint. This Court can determine whether they are intelligible without the aid of false and distracting testimony by Mr. Pagliarini that they are "unintelligible":

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, SCRCP 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.

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.

23A. It should also be noted that these paragraphs were not only intelligible, but 100% true, and that they were improperly denied in toto by the Town.

24A. A simple review of the 176 paragraphs of the Amended Complaint that were all denied by the Town will reveal that they are all just as intelligible as the foregoing. This demonstrates that none of Mr. Pagliarini's opinions or "assumptions" can be trusted.

25A. For thoroughness of rebuttal, a sample of just 68 of these paragraphs is reproduced verbatim for convenient reference and is attached hereto as "Exhibit A," if the Court would like to flip through it. Mr. Pagliarini's assessment of intelligibility is thus demonstrably and materially false, and his entire opinion should be disregarded.

E. Mr. Pagliarini's Lack of Understanding of the Case and the Rules of Civil Procedure, For Example.

26A. Mr. Pagliarini casually makes this unfounded assessment of "unintelligibility" in conjunction with his one journeyman citation of a Rule of Civil Procedure in his affidavit. He asserts that in addition to not being intelligible to him, the Amended Complaint is not short enough. He is wrong again.

27A. Here he cites Rule 8, "General Rules of Pleading" (emphasis added), which, as a general rule of pleading, requires "a short and plain statement of the facts showing the pleader is entitled to relief." What is a "short" statement is a measure depending on how many facts are required in order to show the pleader is entitled to all the relief sought.

28A. As this Court is aware, the Town contended in a 12(b)(6) motion, rather, that the pleader was not entitled to any relief at all. This delayed the time for the Town to answer the Amended Complaint, and gave the Town even more time to read it.

29A. Were Mr. Pagliarini to have considered further pleading rules, he also would have had to address the fact that the Town's remedy for an unintelligible pleading was to file a motion for more definite statement under Rule 12(e). This the Town did not do, because the pleading was not unintelligible.

30A. The Town certainly understood the Amended Complaint well enough after both parties briefed the Town's motion to dismiss, which was addressed directly to the contents of the pleading and whether it stated a cause of action. At the lengthy hearing in Georgetown in the midst of the pandemic, the case was explained at length to the Town and another Circuit Judge.

31A. After denial of the motion, instead of answering in accordance with the rules, the Town elected to simply deny all of the 179 intelligible paragraphs except three or parts of three.

32A. Mr. Pagliarini completely fails to appreciate and therefore fails to address the consequences of the Town spending relatively little time to render an answer which violates Rule

8, in terms of the extra work it causes for the plaintiff. It is one example of many such instances.[12]

33A. As this Court knows, Rule 8 requires the defendant answering a complaint to specifically admit or deny each averment of a pleading: "Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder." Rule 8(b). The Town's responsive pleading was a textbook example of a violation of this highly intelligible rule, and led to more work by the plaintiff.

34A. As to the 179 paragraphs of length of the Amended Complaint: the amended Complaint properly covers generally the background of the matter and specifically the events of about a year and five months. These months of acts included three or more phases of fraudulent behaviors of the Town. These included fraudulent behavior in soliciting easements, fraudulent behavior in negotiating for them, fraudulent behavior in authorizing condemnation, and fraudulent behavior in pursuing the condemnation after authorization. That is a lot to cover.

35A. As an example of length being dictated by the allegations necessary to show entitlement to the relief sought, the recent civil case complaint in the news for the alleged missing insurance money from the death of the Murdaugh housekeeper is 86 paragraphs, and

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[12] One of many other instances of work it took the Town very little time to cause the plaintiff to incur is interrogatories sent to the plaintiff by the Town. These consisted largely of the plaintiff's previous interrogatories to the Town, with the parties reversed. There is nothing per se wrong with such an approach, but neither is there anything wrong with the plaintiff then answering the interrogatories the plaintiff was sent.

The Town's attorneys, in their page-counting indictment of the work performed in the case by the plaintiff's counsel, complain that the response was long. I have had much experience with parties complaining of interrogatory responses which are insufficient, but a complaint that discovery provided to the opposing party was too sufficient and informative may be a first.

alleges for context, additional facts concerning what the normal probate court procedures would have been. However, the instant case, in addition to multiple phases of fraudulent behavior, involved land titles, federal government influences, relevant condemnation procedures, and extensive public records.

36A. As this Court also knows, as an exception to general Rule 8 cited by Mr. Pagliarini, Rule 9(b) requires, in all averments of fraud or mistake, that the circumstances constituting fraud or mistake shall be stated with particularity. This Court recognizes the applicability of Rule 9(b) in its summary judgment order at 12, and also notes no difficulty with intelligibility.

37A. Further, Rule 9(f) requires "For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter."

38A. Those familiar with judicial glosses of the particularity requirement of Rule 9(b) know that 9(b) in no way limits the particularity with which a matter may be set forth, but generally at least requires the "time, place and circumstances" of the matter be set forth. This, the Amended Complaint does, so far as matters were known without further discovery.

39.A Fraud and bad faith requires Rule 9(b) detail and extra specificity is also generally necessary as a practical matter against an adversary alleged to be evasive and dishonest and prone to generalization and mischaracterization and wishful re-definition. There was nothing wrong with the Amended Complaint. Mr. Pagliarini cannot be believed.

F. Mr. Pagliarini's Failure to Understand the Interrelatedness of the Facts and the Theories of Recovery, For Example.

40A. While the terms are convenient placekeepers for purposes of shorthand reference, the relief sought in the case was not based discretely on either "procedural" matters on one hand,

or "fraud," on the other hand. With the limited time he took to review the case legally, Mr. Pagliarini clearly did not understand the issues in the case, the applicable rules for pleading, and the basis for summary judgment. The Town's so-called "procedural" actions (including the Town lying as part of that "procedural action") are part of the time, place and circumstances of the fraud, bad faith and abuse of discretion of the Town, of which the plaintiff complained. And the fraudulent and bad faith activities are part of the "procedural" misdeeds of the Town.

41A. In the Judge's order granting summary judgment, one of the cases he cites, Summerour,[13] considered lesser so-called "procedural" misteps than those found here. The Georgia Court of Appeals had held that the condemnor city's procedural noncompliance was in bad faith, and for that reason, precluded condemnation. The Georgia Supreme Court held that the failure, alone, to comply with procedural requirements was fatal to the condemnation attempt, without a need to show bad faith.

42A. However, the Georgia Supreme Court never ruled that the condemnor's disregard of required procedures was not bad faith. Similarly, in the instant case, the Town's so-called "procedural noncompliance" includes bad faith, including but not limited to not being honest in the proceedings "authorizing" the condemnation, not being honest in obtaining the appraisal, and not being honest in the statements and certifications in the condemnation notice.

43A. These facts were established as undisputed in the summary judgment proceedings, are detailed in the unappealed order, and are the law of the case. The Town will have to think twice before ever again attempting condemnation without being honest and open in the decision of whether to condemn and of what elements to condemn, without being honest in obtaining the

[13] Order at page 17.

appraisal on which to base the condemnation, or without being honest in the statements and certifications in the condemnation notice.

44A. In the summary judgment order at 13, the Judge recognized that the plaintiff had presented "about nine sometimes factually overlapping reasons for granting summary judgment," of which deliberation over authorization of condemnation, and "procedural" noncompliances were listed as two of them. He discussed and distinctly ruled upon the failure to conduct an open and honest deliberation in authorizing condemnation and procedural noncompliances in thereafter pursuing condemnation as more than sufficient to justify summary judgment. The Judge did not proceed to analyze all of the other "seven," but never rejected any of them, including fraud.

45A. One likely reason the Town did not appeal the Judge's order is that the plaintiff's counsel's work enabled the judge to expressly memorialize numerous additional supporting grounds for his decision, all with support in the summary judgment record.

46A. These matters include within them, the related and overlapping issues of the lack of necessity of the elements of the land interests sought, the lack of necessity for an easement for a project already completed, the Town publicly abandoning the previously professed need for an easement and then completing the project without the easement, and the remote and speculative nature of the hypothetical future projects for which the Town argues the easements might be necessary someday.

47A. Mr. Pagliarini, retained for the purposes of his hasty affidavit, of course never once acknowledges that what the Town did was dishonest and improper. So it is no surprise that in his adversarial position, neither he nor his "mentor in the matter" recognizes the multiple and

intertwined manifestations of these attributes in what was pled and what was established. His own lack of uptake is of no assistance in assessing attorney's fees.

G. Mr. Pagliarini's Failure to Understand the Mechanics of Summary Judgment Under Rule 56, For Example.

48A. In clearly keeping his time down in offering an opinion on the work of others, Mr. Pagliarini could not have spent adequate time understanding the case or researching the one rule of civil procedure he cites in his affidavit.

49A. In this same regard, an example of insufficient understanding or insufficient experience is Mr. Pagliarini's statement, "Specifically, for example, a 26-page affidavit executed by an attorney in support of a summary judgment motion, which largely tracks the facts presented in the pleadings, is unnecessary. In fact, the affidavit was prepared prior to case discovery."

50A. Respectfully, I don't think Mr. Pagliarini knows what he is talking about. It was necessary because in its answer the Town denied every one of "the facts presented in the pleadings."

51A. That is, the plaintiff's summary judgment affidavit was both long and necessary because the Town's Answer did not respond to the Amended Complaint in accordance with the Rules of Civil Procedure.

52A. Here, Mr. Pagliarini demonstrates again that he is completely unfamiliar with the salient facts of the case, and unknowledgeable about the mechanics of the Rules of Civil Procedure. The reason the affidavit "tracks the facts presented in the pleadings" is that the Town denied in its answer, virtually all the facts presented in the pleading. Once any repeated denial had to be under oath as required by Rule 56, governing summary judgment, the Town specifically denied virtually none of those facts, and summary judgment was granted.

53A. Thus, virtually all the facts in the affidavit were established on summary judgment. All were germane to the motion. And many were employed verbatim by the Judge in rulings in the written order, which, while establishing facts, did not primarily address some of the additional available theories of recovery.

H. Mr. Pagliarini's Misconception of Litigation as a Series of Clumped Events With No Connective Tissue, Each to be Evaluated only by Counting Pages, and His Erroneous Reliance on Unsworn Incompetent Selection of Events by an Unfamiliar Successor Lawyer in the Case, For Example.

54A. In embarking on a wholly inappropriate approach not supported by South Carolina case law or the letter of statute law, Mr. Pagliarini also exhibits a lack of understanding: (1) that lawyers have a duty to do more than perform minimal research, draft pleadings and papers and appear in court; (2) that good lawyers certainly do more than that; and (3) that all lawyers typically bill for and get paid for more than that.

55A. He states that in forming his opinion, not that he relied on my affidavit, which is sworn and accurate, but more vaguely that he relied in part on "attorney fee affidavits." These are assumed to include those of Town attorneys, who themselves are adversaries, are biased, and have been less than complete and less than accurate in their affidavits.

56A. He additionally states that he relied on an unsworn putative "timeline" prepared, not by him, but by new opposing counsel, Mr. Dillard, who states that it contains things considered by him to be "significant" and "relevant." Mr. Dillard is almost equally unfamiliar with the case.[14] In the unsworn "timeline," Mr. Dillard expresses an irrelevant and literally

[14] For example, Mr. Dillard stated to a different judge in the second set of challenge cases, that he was unfamiliar with the contention that there was a disparity of treatment of South End property owners, whose titles the Town sought to ruin in order to be in line for the possibility of someday getting this particular species of federal money or federally funded help, and the treatment of mid-island owners, such as some on Town Council, whose property titles would never be subjected to ruin, and on whose property the same type of work would simply be paid

unprecedented concern with merely counting pages, thus denigrating thoroughness, preparation and independent judgment in performing legal work.

I. Mr. Pagliarini's Failure to Asssess the Cost of Prevailing in Light of Expenditures by the Nonprevailing Party and Failure to Consider Multiplicitous Litigation by the Town, For Example.

57A. Mr. Pagliarini does not review what the Town has paid on these matters in order make work for the plaintiff and to advance a defense which was ultimately unsuccessful.

58A. According to information I obtained in Freedom of Information Act requests and online publications by the Town, the Town has spent well over three times what Mr. Pagliarini erroneously estimates the "major case events and tasks" are worth reimbursing the plaintiffs for.

59A. The Town has spent more than Mr. Pagliarini's "estimate" on Mr. DuRant, alone, and more than that on Mr. Dillard, alone.

60A. The Town's eight or more months and hundreds of pages of court filings on the matter of attorney's fees is thus nothing more than a case of running up a bill and then looking for reasons not to pay it, then running it up further in efforts not to pay it.

61A. That is, without any regard for what it may cost the plaintiffs, the Town, using public funds, caused the plaintiff to incur litigation expenses, but now itself wants a discount. Mr. Pagliarini's opinion that the Town should receive that discount is misplaced and is contrary to the law of attorney's fees in South Carolina, not properly grounded in the realities of the case, and contrary to the justice of the case.

62A. In fact, Mr. Dillard has actually argued to another Circuit Judge in duplicative litigation caused by the Town, that an award of attorney's fees should be sufficient to deter the

for with Town funds. Yet, these distinctions appear in the pleadings and appear in the summary judgment order.

Town from multiplicitous litigation.[15] This, and the duplicative litigation brought by the Town, are things Mr. Pagliarini has apparently not "reviewed" and wholly fails to address.

63A. That is, in October 2020, while the Town's first condemnation suits against the landowner-plaintiffs were statutorily stayed so that the instant challenge cases could be determined, the Town sued the landowner-plaintiffs for condemnation again. The Town did so at the expense of the landowner-plaintiffs in the instant cases, and the additional condemnation suits were on the same subject matter as in the instant cases. However, the Town did not correct a single one of the so-called "procedural" missteps carried out in the instant cases.[16]

64A. For example: the Town still failed to conduct an open and honest deliberation over the excessiveness of the easements sought and over their overall necessity in light of alternatives and the harm to the titles of the landowners; the Town still used the same tainted appraisals which were now acutely known by Town Council to be tainted; and the Town again made false certifications in the condemnation notice.

65A. Additionally, the Town engaged in additional dishonest activities, such as misstating in its live-streamed October council meeting and in the minutes thereof, what the resolutions it was considering contained and what it intended to add, nonpublicly changing other features of the resolution afterwards, executing a written resolution known to contain statements

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[15] To wit, at page 5 of the Town's 6/2/21 memorandum opposing reconsideration of dismissal in Case 2020CP2200932, Mr. Dillard argued:

> The General Assembly deemed it appropriate to protect landowners from the expense of condemnation disputes by, among other things, providing statutory rights to recover attorney fees and costs in the event of a condemnation abandonment or a successful challenge action. These statutory protections satisfy considerations of equity and due process, and clearly disincentive any condemnor from attempting to use "multiplicity of litigation" to gain leverage over a landowner.

[16] Mr. Dillard has informed a different judge of this court that the second three condemnation suits were brought by the Town to correct "procedural" deficiencies in the first three condemnation suits.

which were impossible and untrue, [17] and falsely dating the October second set of condemnation notices "June 9."

66A. The plaintiff-landowners, at their own expense, once again responded fully with another set of challenge actions, setting forth the above delicts and derelictions in the duplicative attempts by the Town, and stated much more.

67A. Only after summary judgment was granted in the instant cases and the Town hired Mr. Dillard, the Town withdrew the duplicative actions it brought.

68A. However, the Town did so without consent, unilaterally, and also unilaterally treated its withdrawal as without prejudice. The Town simultaneously acknowledged an intent to sue a third time, and the Town made public threat of its intent to do so, recounted in the record of these other cases.

69A. We objected to dismissing the still pending second set of challenge actions we were forced to bring. We stated, among other things, that we were still pursuing discovery we were delayed in getting in the first actions and had not yet been able to get in the second actions, and that we were entitled, among other things, to seek a permanent end to additional lawsuits against us and an end to the continuing cloud on the titles to our property.

70A. The Town, by Mr. Dillard, specifically argued that we had obtained all the relief that was possible under both sets of challenge actions.[18]

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[17] The Town later attached the false October resolution to its brief opposing summary judgment in the instant cases, without any correction or discussion. The plaintiff then provided discussion.

[18] That is, in the Town's 6/2/21 memorandum opposing reconsideration of dismissal in Case 2020CP2200932, Mr. Dillard argued throughout that generally no permanent injunction was attainable, that all relief granted in a successful challenge action, and all relief abandoned when the condemnor abandons, is essentially without prejudice to attempting condemnation again another way. These arguments are substantially at odds with his brand new argument in the instant case, that the plaintiff did not prevail in the instant challenge case. This new

71A. He further argued that "statutory rights to recover attorney fees and costs in the event of a condemnation abandonment or a successful challenge action ... clearly disincentive any condemnor from attempting to use 'multiplicity of litigation' to gain leverage over a landowner."

72A. Upon motion of the Town, over our objection, another Circuit Judge dismissed the challenges to the Town's second set of condemnation attempts suits as moot. The Town received what it asked for as a result of Mr. Dillard's assurance to the Court that an award of attorney's fees against the Town is a sufficient deterrent to further litigation by the Town.

73A. Now, here we are, eight months into trying to receive fees in only the first round of litigation started by the Town, as Mr. Dillard files additional motions for "issue preservation" for his appeal of the determination of attorney's fees.

J. Mr. Pagliarini's Failure to Understand that the Applicable Law Requires Award of All Fees Reasonably Incurred in the Whole Case from Beginning to End, Rather Than Award Only Through the Date of Summary Judgment, Based on the Sum of Incompetent Appraisals of Items Conjured by the Town's Successor Counsel from the Docket Sheet as if it Were a "Chinese Menu."

74A. Relevant statute law and case law pertaining to award of attorney's fees describe the time factor as "the time necessarily devoted to the case," not as "estimated time per page of documents filed with the court." Nor does relevant statute and case law recognize a calculation based only on time necessarily devoted to an almost equally unfamiliar new opposing counsel's "case timeline" designation of something he calls "significant or relevant case events." Nor does relevant statute and case law limit the compensable time to "major case elements and tasks," as Mr. Pagliarini parses it. No lawyer signs up to be paid only for "major case tasks." This Court

argument also makes a mockery of the legislature's intention to award fees regardless of whether the landowner wins the challenge action or whether, under threat of such victory, the condemnor abandons the underlying condemnation attempt.

should, as the law requires, award fees based on the number of hours spent and be done with it. As I have attested, all the time presented was earnestly spent and necessarily incurred.

75A. South Carolina Code section 28-2-510(A) provides: "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." (Emphasis added.)

76A. In the condemnation action commenced by the Town, the Town sought to take, in that proceeding, the plaintiff's subject land. In the instant action challenging that asserted right take, the Court ruled that the Town could not take.

77A. The land has not been taken, and the Town also unilaterally withdrew a largely duplicative additional condemnation action commenced by the Town. There is a summary judgment order on file providing defenses against future shenanigans.

78A. Time necessarily devoted to a case includes reading, research, analysis, communication – including consultation -- with clients, drafting discovery (which by rule is not initially filed with the court and often is never seen by the court or others), corresponding with opposing counsel, picking up the phone when it rings, corresponding with others, preparing for court, arguing in court, following up on matters covered in court, etc. The unsworn "timeline" of selected "case events" prepared by the Town's new counsel for Mr. Pagliarini to look at is therefore worthless.

79A. It has no bearing on the applicable legal standard in South Carolina and is largely irrelevant, before its accuracy is even examined.

80A. Mr. Pagliarini also does not take into account that it takes more time to represent three parties than one. This involves more than extra drafting; it includes extra consultations,

extra status communications, extra case file infrastructure, extra research, extra thinking and analyzing, extra comparisons, triple handling, more double checking, periodic review of extra professional responsibility considerations, etc. The regular billing alone is different and adds substantial time which is not billed.

81A. There are differences among clients and differences among their interests and this requires reading and re-reading papers to assure that they apply to all in a suitable way. It then requires production of papers in triplicate, but with different captions, case numbers and footers, and assuring that all are properly filed, stored and managed.

82A. Mr. Pagliarini's statement of "opinion" is also self-contradictory flak. On the one hand, he appears to foment doubt as to whether the time to which I have attested was actually spent, although he never actually states his own "opinion" that he truly personally has such a doubt.

83A. In doing this, he refers to my sworn, earnest and careful affidavit testimony most often as merely a "claim" or "representation," and provides various recitations of large numbers of hours I attested to spending, calculations of averages, and comparisons, all to insinuate that the time was not, indeed, spent.

84A. On the other hand, his opinion goes to great length to prove that numerous pages more than those written by the Town were indeed written, and that substantial time more than that spent by the Town was indeed spent. The contradictory implication is that the plaintiffs' counsel could have "handled" the case in less time, but did not. Mr. Pagliarini never states, however, that plaintiffs' counsel could have done so and won, particularly with an adversary which had a demonstrated propensity to say anything and stop at nothing.

85A. In reply, I attest to the fact that the time I have previously attested to was spent, and that I would not have spent it if I did not think it was necessary to prevail, including prevailing on appeal.

86A. There were nights well after midnight when I was still working and still wearing what I was wearing when I got out of bed early the previous morning. There were family trips I missed, missed medical appointments, missed gatherings with friends and family now dead, and deferred maintenance on my vehicle and other property. And many missed meals, or meals of milk and cereal taken at the desk.

87A. Further, in my considered professional judgment as the only lawyer actually present throughout the whole case, it was all efficiently done during a worldwide pandemic, and anything that wasn't, I did not bill.[19]

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[19] Mr. Pagliarini further "notes," without drawing any conclusion, that I did not "utilize the services of a paralegal or legal assistant." To the extent the inconclusive observation warrants response, I will clarify and confirm that when I use a secretary, I do not bill for his or her time at all and therefore, one will see none of that on a bill. I do not use paralegals as a way to charge clients extra and I did not bill for use of a paralegal in this case because not appropriate for any of the tasks that were billed.

If the work did include any true inefficiencies which were not par for the course, I simply absorbed them and have not included them in the fee request or in my client's bills. I.e., any large or small tasks which could have been adequately handled by a paralegal in the same net personnel time but with lower net charges, and which could have feasibly been broken out of my activities but which I nevertheless handled myself, I generally did not bill at all or include in any estimate of attorney time in the case. Otherwise, the recorded time was a reduced amount.

However, I was dealing with a Town which had demonstrated that neither its competency nor its integrity could be trusted and which had put pressures on its personnel and counsel, and its every move needed to be followed and evaluated. In my experience, there are many times that turning over work to a paralegal is the worst mistake a litigator can make. It is the lawyer who has to put a case together and try it and the lawyer is going to see things a paralegal wouldn't.

Mr. Pagliarini states without any example that "many of the items billed are ministerial in nature." He does not identify a single one. I do generally answer my own phone, return my own

88A. Mr. Pagliarini states that the challenge actions were "largely litigated" between July 2020, when the complaints were filed, and January 2021, when orders granting summary judgment in favor of the three plaintiffs were filed.

89A. Attempting to buy the Town a giant discount and legitimize Mr. Dillard's selective charts, Mr. Pagliarini then largely ignores the last eight months as he proceeds selectively to describe something he terms "major case events," which is not a legal term or term of art in any applicable legal standard.

90A. As the Court can see, the plaintiff is still having to litigate the case now – against a fourth lawyer. The summary judgment order was finalized only in early April after motions of the Town, and the Town has engaged in various proceedings regarding the fee application for the eight months since it was first made. Up until a point in April, there was still discovery sought by us, which we deferred at the request of the Town (and shouldn't have) while other matters

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calls, handle my own calendar, and schedule depositions directly with opposing counsel, often by e-mail.

No ministerial items were billed unless they were incidental to work already being done and could be handled more quickly and efficiently and accurately than they could be by stopping to delegate them. These opinions of Mr. Pagliarini with no backup are so gross and stereotypical that they seem like "canned" "observations" from some "form bank" of another lawyer's previous work product. They are inappropriate for an affidavit.

He also states that these completely unidentified "ministerial" tasks are charged at the rate of $190 hour as opposed to "a more reasonable rate of $65-$75 per hour." Any substantial such tasks that I performed were billed at zero in that they were not included. Further, there is no testimony other than mine as to reasonable rates of property litigation paralegals. One of the attorneys in the Georgia Department of Transportation case referenced by Mr. Pagliarini on his resume has paralegals charging about nine-tenths of my suggested rate for this whole case. If I had one of those, I would still think twice before using him or her in this case.

In presenting the time for the case, I have already discounted the time actually necessarily spent in order to win this one case for this one plaintiff. I have done so by not recording all time, and I have then reduced it by two-thirds. Mr. Pagliarini's baseless claim, without a single example, that "many of the items billed are ministerial," is incorrect.

were in flux. During much of that time, we were under the mistaken understanding that we were supposed to be waiting to hear about a way to mediate, which did not materialize, and which in retrospect we realize the Town knew much earlier would not occur. We did also during this time, put in time on trying to determine other ways to solve any remaining dispute, including making proposals directly to the Corps of Engineers requesting help. These went unanswered.

91A. From July 2, 2020 to September 9, 2021 (one year, two months and one week), I spent over 1000.5 nonministerial hours on the case, of which I billed or will bill 950.5 hours. I estimate many more in light of responding to Mr. Pagliarini's affidavit and attending to other matters in the case.

92A. Mr. Pagliarini impertinently states that he considers a "2,000 hour billed year for a lawyer very difficult to achieve." Yet, I did not bill, nor claim to bill 2000 hours to this case in one year. Of the 950.5 hours, approximately[20] 434.4 hours in this case were billed in the year 2020 and approximately 516.1 hours were billed or will be billed in the year 2021.

93A. Off on the wrong track, he additionally states incorrectly, or misleadingly, that the "time from May 1,2021 provides no explanation or reference to the work performed." None of the date-and-time listings set out in the Layman statement which appears in my Affidavit sets forth particularized activities and confidential information next to it for any date and time listing.

94A. The case file, the result, my Affidavit, and this affidavit generally indicate and show the work performed, but not to the point of confidential daily and hourly activities. The

[20] I made this division of the 950.5 hours based in part on the date of a statement instead of the dates of entries within the statement, and so, slightly more may have occurred in 2020 and that same amount less would have occurred in 2021, but this gives the general amounts and proportions, and shows pointlessness and confusion in Mr. Pagliarini's observations.

billing records which the Town moved to have produced are not my fee affidavit.[21] My affidavit is my affidavit. It contains the statement required by Layman v. State.

95A. The affidavit appropriately sets forth a statement of the time spent. Mr. Pagliarini is referring only to the limited bills the Town moved be produced. The billing records do provide a good narrative description of the work done each day, but the billing records from May 1, 2021 were not moved for and were not reviewed by Mr. Pagliarini.

96A. In one place he states that "it is difficult to determine how much time is spent on each task," and then in the rest of the affidavit he proceeds to nevertheless make gross speculations and make up for himself what was spent or should be spent on certain tasks, which he presumes to define and judge as the ones that are "major," and does so based on supposition and a review of an unsworn "case history" provided to him by new opposing counsel, Mr. Dillard. Mr. Pagliarini has no qualifications to do this, and takes an approach contrary to law, and his affidavit should be disallowed.

K. Mr. Pagliarini's Failure to Understand that the Town Made Work for Plaintiff's Counsel.

97A. I would like to give this Court some examples of the absurdity and complete lack of utility of the unsworn chart of "significant or relevant case events" prepared by Mr. Dillard for Mr. Pagliarini to erroneously rely upon.

98A. The chart, as a sort of not-so-subtle "chart of comparative pages filed," lists the Amended Complaint filed by the plaintiff as "61 pages," and, as if by comparison, lists the Answer to Amended Complaint filed by the Town as "5 pages."

[21] In fact, as detailed as my bills are, compared to those of some other attorneys, they still do not purport to list every single thing I do during the time stated for an entry. If they did, they would be like Stephen Wright's "map of the United States … Actual size." As he observed, it takes too long to fold up.

99A. As already discussed above, what the chart given to Mr. Pagliarini to rely upon does nothing to explain is the work caused by the Town's "easy" five-page answer. In it, the Town, in violation of the Rules of Civil Procedure, denied 176 out of 179 paragraphs of the Amended Complaint, most of which were undisputed facts.

100A. The Town, before then and afterwards, resisted discovery to establish those and other facts, and many of the facts had to be established by affidavit and other means on summary judgment. Even in its briefs opposing summary judgment, the Town would not admit facts as plain as the nose on one's face, and continued to argue the false premise that a proposed easement granting "public use and access" did not grant public use and access. This fact is addressed in the Court's summary judgment order at 6.

101A. As one other mere example of the inapplicability and lack of utility of the unsworn chart prepared by new counsel, Mr. Dillard, for Mr. Pagliarini to rely upon, the unsworn chart lists the Town's "easy" memorandum in opposition to summary judgment as "13 pages and exhibits filed," and the plaintiff's memorandum in support of summary judgment as "50 pages."

102A. However, the unsworn chart Mr. Pagliarini adopts at face value does not note that the exhibits filed by the Town are 106 pages in length.

103A. Mr. Dillard's unsworn chart of things he deems "significant" does not tell the story of the work caused by the Town's "easily" simply attaching papers to a brief, unsupported by affidavit. The lack of affidavit became more interesting with respect to the papers which made recitations known by the Town to be false. It required more analysis by the plaintiff's counsel and extra pages, including the following at pages 17 and 18 of the plaintiff's brief:

> As for the other materials not allowed under Rule 56 and simply attached to the Town's brief, and the Town Attorney's unsworn "testimony" in the brief itself on such matters as the time of service of various things which are unaccompanied by certificates of service, Plaintiff objects to all of them except one and moves to strike.

The unsworn testimony in the brief includes an inaccurate account of when the Town allegedly attempted to provide the appraisal, which was stated to have been sent to an address at which the 4-mile-long Town has known for 35 years neither Plaintiff nor anyone else lives and which does not have a mail receptacle and which is not served by the Post Office. In truth, it took a separate request from all three condemnees, upon actually receiving the condemnation notice without the appraisal, to get the appraisal, and at least two required further followup. Under the circumstances, all such matters not attested to under oath should be stricken.

The unpermitted material attached to the brief includes an October 12, 2020 Resolution of the Town, done after the condemnation action was commenced and after this challenge action was filed, while all further condemnation proceedings were stayed. It also contains falsehoods which will distract time from the present summary judgment motion. (See challenge actions 2020CP2200930, 931, and 932 filed in November 2020 for descriptions of these falsehoods.) The putative resolution contains proposed easement descriptions which are not the ones which are the subject of the instant challenge action, and which have been altered during a statutory stay, under a procedure not providing for amendment after service of the condemnation papers, and without leave of court.

The simply attached papers, i.e., the papers which are not Rule 56 affidavits or other Rule 56 materials, also include a purported condemnation notice which is not authenticated by any testimony as being complete, and which in fact is not complete. It does not contain the referenced map, nor the accompanying proposed granting document, both of which the Town keeps changing in the Stanton matter.

The Court may consider the Appraisal, Exhibit C to the Town's brief, which is damning to the Town.

104A. Mr. Dillard's "chart" doesn't show the Town changing descriptions in proposed easements to be condemned after the time of initial service of the condemnation notices, changing easement descriptions in resolutions between the time of the October 2020 public Town Council meeting and later nonpublic, private execution, and attaching to a brief with no discussion, an October 2020 resolution including recitations known before the filing of the November 24, 2020 brief to be false.

L. Mr. Pagliarini's Incorrect Implication That This Was a Simple Case.

105A. Contrary to Mr. Pagliarini's insinuations, one actually does not find much neatly indexed or organized case law on challenge cases, especially successful ones, and when one does find such case law, one often has to take the time to analyze it in light of prior equity practice and nonuniform condemnation acts and procedural schemes in other states. The strange facts of

the instant case require many "rocks to be turned over" in conducting research. For example, to the extent there are "straight-up challenge cases" that can be researched, few of them, including Summerour, involve additional fraudulent behavior preceding and accompanying the willful procedural noncompliance.

106A. As another example, few involve repetitive suit against the landowner by the condemnor while the condemnor's condemnation attempts are supposed to be statutorily stayed. One is challenged to find cases turning on such bizarre facts. Few reported cases involve condemnation after the project for which the subject land is contended by the condemnor to be "necessary" has been completed by the condemnor under a declaration that the land is not necessary. Few reported cases deal with condemnation under a claim that the land sought may someday in the distant future be needed for a project which is not assured to occur. There is no South Carolina case law neatly summarizing the result on all the peculiar overlapping facts in the instant case. If Mr. Pagliarini has it, he does not cite it. The legal approach had to be constructed from the wholecloth.

107A. It also took many hours to gather information from Town videos and publications and reconcile or attempt to reconcile them. Mr. Pagliarini allocates no "chart space" or "major case event" status to fact gathering, fact analysis, and more fact gathering. He incorrectly implies that a case comes with a "case history" to "review" before proceeding. A case does not come to a practicing lawyer in a basket like a law school exercise, complete with all necessary facts. Mr. Pagliarini's opinion and analysis merits no consideration.

108A. It is not unusual for me to go through several drafts before settling on structure, word choice, and backing details of briefs, pleadings or other papers. This also often requires

additional lookups of dates, sources, case facts, case holdings, statute subsections, quotes, etc. while in the course of drafting.

109A. It often requires extra work to make things seem simpler than they are, or at least to actually condense and simplify what is extensive, diffuse, and complex; it is possible that small successes in that goal, and the fact that Mr. Pagliarini has only come along later, are what has thrown Mr. Pagliarini so far off course in his superficial assessment and hasty opinion. Law practice is not a mechanical process and is supposed to be a profession, earnestly pursued, not a fungible street trade. Paying attention is important when the opponent consistently cites the wrong section of statutes, the wrong holding of cases, definitions contrary to controlling statutory definitions, and easement terms contrary to stated easement terms.

110A. For the most part, Mr. Pagliarini makes unsupported gross generalizations about things that he actually knows nothing about. He grossly underestimates having to read and re-read each item to make sure it applies to all three cases, or if it doesn't, to clarify its context. This is not work for a paralegal or a secretary. For example, in each case is mentioned the Town Administrator's fraudulent filing of an easement not approved by Mr. Beattie, who himself was licensed to practice law from 1961 to 2014. We are still trying to get information on it and it is the subject of conflicting information given by the Town in discovery responses, given by Mr. Fabbri in affidavits to the court, and given in response to subsequent FOIA requests. This matter was certainly relevant in all three cases to the pressure the Town put on Mr. Fabbri to obtain easements by any means, to the timeline of events, and to the overall fraud and propensity for fraud in all three cases, but this had to be expressed in the proper context.

111A. Mr. Pagliarini also fails to understand – or at least to acknowledge -- that the plaintiff's counsel had to prepare for the possibility that the court for some reason might not

grant summary relief on the fraud-infused "procedural" issues in the case, e.g., (i) staging a public display of a deliberation of falsely presented issues, (ii) authorizing one thing but proceeding to try to condemn another, (iii) keeping information from the appraiser while misinforming him of other things, (iv) falsely certifying things in the papers used to commence the action, (v) etc. The plaintiff's counsel had to get prepared for trial on these issues as well as the other phases of fraud and bad faith permeating the unnecessary condemnation attempt.

112A. Further, the plaintiff's counsel had to prepare the case in a manner that would support the plaintiff in an appeal, whether that be an appeal by the Town or by the plaintiff. All of this is particularly so in light of the Town's having early on asserted that the challenge action was in bad faith and that the Town should recover attorney's fees from the plaintiff, and the Town's counsel having informed the plaintiff's counsel on the phone that his clients and he personally would be sued by unidentified people.

M. Mr. Pagliarini's Grossly Incorrect Assessment of the Appraiser's Deposition, as Another Example of Error Produced by Relying on an Unsworn Chart.

113A. Mr. Pagliarini is wrong and completely remiss in his consideration of the appraiser's deposition. First, Mr. Pagligliari errs in relying on Mr. Dillard's unsworn doubled "estimation" of the length of the deposition of the appraiser as seventeen and three tenths (17.3) hours. In truth, the deposition took eight (8) hours.

114A. To present, with no basis, this colossal error to the Court as part of Mr. Pagiarini's suggested retrospective budget of major events should not be tolerated. Mr. Pagliarini is also fundamentally wrong about the appropriate scope of the deposition of the appraiser.

115A. As for time and length, Mr. Pagliarini does not state that he had ever actually read the three (3) 60-page appraisal reports of the appraiser.

116A. Neither Mr. Pagliarini nor Mr. Dillard has read the deposition. Neither attended and neither was in the case when the deposition was repetitively[22] pursued and finally taken.

117A. Mr. Pagliarini is assumed to be relying on a yarn spun by Mr. DuRant to Mr. Dillard, which was in turn spun to Mr. Pagliarini. This is evident from the exhibit to Mr. Pagliarini's affidavit stating only that the deposition occurred on two days, but Mr. Pagliarini stating in his affidavit that "Mr. Stanton deposed an appraiser over a period of many hours."

118A. One must then look, not to the unsworn exhibit to Mr. Pagliarini's affidavit, but to the unsworn exhibit to Mr. Dillard's affidavit. There, one sees a document composed by Mr. Dillard for purposes of offering sworn "opinions," but not itself sworn.

119A. This unsworn document states, completely incorrectly, that the deposition took seventeen and three-tenths (17.3) hours.

120A. And then the unsworn document states that the entire deposition, including all related communications, and including only "local travel," should have been accomplished in less than four (4) hours. For the reasons stated herein, this is ridiculous. Further, because the deposition, and only the deposition (actually three depositions), rightly took a mere eight (8) hours, the remainder of the 17.3 hours is other attorney time Mr. Dillard additionally seeks to cut as a consequence of his blunderous mistake in characterizing it as deposition time. At $190 per hour, these "mistakes" by Mr. Dillard are a $2,527 reckless mistake, among many.

121A. It will certainly take substantial time of the plaintiff's counsel, and several paragraphs if not pages, to fully expose how worthless this putative information in Mr. Dillard's chart is.

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[22] The October 16, 2020 deposition, which was concluded on October 21, 2021, was first noticed on August 12, 2020 for August 27, 2021.

122A. Even with the obviously limited time spent in review of a matter neither Mr. Pagliarini nor Mr. Dillard had any previous familiarity with, Mr. Pagilarini does not indicate how he got the impression that the deposition was over "many" hours "over two separate days."

123A. The Town's first lead counsel, who was actually present at the October deposition, inaccurately reported on January 11, 2021 in a live-streamed, publicly broadcast video that Mr. Stanton "took it upon himself to depose the appraiser for 17 hours," and was promptly called down on it by the plaintiff's counsel, who also furnished the correct information.[23]

124A. To be accurate, this was not one deposition for one case. It was three (3) appraiser depositions in one, with three (3) 60-page reports (constituting of about 180 pages of total exhibit material), each on a separate property. We discovered upon arrival that the deposition involved an appraiser who had a disability.

125A. The substantive interrogation took only 8 hours. As I recall from first-hand knowledge, we had originally agreed to start at 9:30 in the morning but the Town's counsel did not want to go past 4:30 in the afternoon. The Town's attorney later changed this to a 10:00 start. I did not leave these communications to a paralegal or secretary.

126A. And the Town's counsel also preferred a Friday instead of the Monday preferred by me. The commencement of the deposition was delayed until at least 10:25 on the appointed day, while the court reporter waited, because the Town's counsel held other discussions in a separate room before the deposition could start, on subjects primarily other than the deposition. The parties also discussed in advance how, in the course of the deposition, to accommodate the

[23] Mr. DuRant's suggested course of action was not to state a retraction, but to change the minutes, which I found wholly inappropriate. I do not know what the minutes now say.

appraiser's disability by taking time to do things a little differently, and neither these measures nor the disability are reflected in the record.

127A. We took probably a half hour break at the deposition table to eat sandwiches for lunch right there. The deposition was not completed the first day because of the later start time requested by the Town's counsel, then the delayed start caused by the Town's counsel, and the Town's counsel requiring that he would need to leave at 4:30. We did not complain about any of this. People have their lives. I cannot remember whether we actually broke off the deposition before 4:30 to have other discussions, but I do remember having other unrelated discussions with Mr. Durant and we may have actually ended up staying a little beyond 4:30 after all for those.

128A. This was an out-of-town deposition for me. It was held at Mr. DuRant's office about three hours from where I reside and work. Mr. Durant was not available to finish the deposition on the following day, Saturday, I don't believe, and so the earliest time that suited him was the following Wednesday, and I stayed in town until then, I believe. There are no charges for staying.

129A. The followup segment the following Wednesday took about two and a half hours, and some of that was warming the witness back up from the previous Friday. The parties also held other consultations at the end of the day while the court reporter waited. The court reporter recorded her total appearance time for both days at 9 hours, which apparently included waiting time.

130A. The actual deposition for the three (3) reports for the three (3) properties in the three (3) cases took eight (8), not seventeen and three-tenths (17.3) hours. We did determine in the course of the deposition that there were work papers of the appraiser that had not been produced to us and which he did not have with him. We got those later, after spending some

more time. Mr. Pagliarini's estimates and deductions are incompetent and should be rejected in toto.

131A. Contrary to Mr. Pagliarini's opinion, the deposition of the appraiser absolutely did require examination of the valuation method.

132A. The valuation method was tainted by Town's withholding the terms of the easement it was the appraiser's chief task to appraise. The Town also tainted the valuation by affirmatively providing inaccurate verbal information. These acts by the Town -- not accurately describing the easement sought -- figured prominently in the basis on which the Judge granted summary judgment.

133A. The effect of these acts on value cannot be explained or determined without examining the valuation methodology. It does not take much guessing to correctly guess in which direction – up or down – the value was pushed as a result of the Town's violation of the Eminent Domain Procedure Act.

134A. In this case, there were indications by the appraiser that, if sticking by his methodology, but giving effect to the actual, true, terms of the easements the Town was seeking to condemn, the appropriate award would be more like $270,000 to $400,000 per lot than the zero dollars which was the erroneous opinion in the appraiser's report used by the Town for purposes of its attempted condemnation.

135A. One aspect of fraud is materiality. This is a material. I deemed the whole deposition necessary and important in adequately representing my client in challenging the condemnation action of the Town.

136A. Had we not examined the methodology, we would have run the risk that the Town, in a merits trial, or in a "fee trial" such as the instant one, would hire a witness such as

Mr. Pagliarini to opine, without reading the deposition, that the Town's acts relative to the appraisal (whether dishonest or not) really made no difference. What we did was necessary, reasonable, responsible and professional. Having to explain the foregoing at length as a result of nitpicking which is both inimical and incompetent underscores for me why the South Carolina Supreme Court does not require the approach the Town suggests should be used in assessing attorney's fees.

N. Mr. Pagliarini's Failure to Appreciate, or Even Address, the Significance of Twelve Pending Lawsuits at Once.

137A. Mr. Pagliarini does not address at all, the bizarre second set of actions commenced[24] by the Town, and how simultaneously handling and considering the effects of two sets of three cases on the same subject matter but at different procedural stages might affect the time it takes to do each thing in the first set of cases. He also never addresses whether he has ever commenced additional condemnations on the same subject while the challenges to the first attempts are pending, and on what meritorious basis it could conceivably be done.

O. Mr. Pagliarini's Failure to Articulate Why a Lawyer Should Not Earnestly Seek to Protect the Confidential Information of His Client.

138A. At the end of his affidavit, Mr. Pagliarini adds that he does not believe resistance to producing billing materials is reasonable. However, he does not state why resistance to producing billing materials is unreasonable. The plaintiff has provided reasons. The plaintiff

[24] The three additional condemnations were commenced by serving the respective three notices on the plaintiff's counsel when he appeared at Mr. DuRant's office on the morning of October 16, 2020 at around 10:00 to take the deposition of the appraiser.

has done so in numerous briefs, citing proper authority. The plaintiff resisted producing private bills out of concern for professional responsibility to protect client confidences and privileged information – particularly when the information is actually potentially tactically usable in presently pending or presently threatened litigation.

139A. Mr. Pagliarini's only submitted basis for stating that this precaution in unreasonable is that it is not what he is accustomed to seeing. What Mr. Pagliarini is accustomed to within the limitations of his experience, whether accurately stated or not, is not the standard or the law, and is of no assistance to the factfinder.

Conclusion

140A. In my professional opinion, Mr. Pagliarini, from lack of any first-hand knowledge, and from either inexperience or inattentiveness or lack of devoting sufficient time to the task, has nothing salient whatsoever to add to the process of assessing fees, and his affidavit should not only be disregarded, but disallowed. My 9/10/21 Affidavit and this reply affidavit give the Court more than ample basis for a fair award of the fees incurred in this action.

Pursuant to S.C. Sup. Ct. Order 2021-07-30-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify that the foregoing statements made by me are true. 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: 10-4-21

Exhibit A

A Sample of 68 of the 176 Allegedly "Unintelligible" Paragraphs of

the Amended Complaint Denied

by TOP in Its Answer (Admits only all or parts of paras. 3, 8, and 9)

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 easterrn 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.)

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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.

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!"

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.

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.

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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.)

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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.

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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,

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.

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."

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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.

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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.

***

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, SCRCP 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.

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.

October 5, 2021 Town aff. of Dillard of preparation of exhibit, with exhibit.

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN Sunset Lodge, LLC, Plaintiff, v. Town of Pawleys Island, Defendant.	)	IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2020-CP-22-00600 **AFFIDAVIT OF WILLIAM C. DILLARD, JR.**

PERSONALLY APPEARED BEFORE ME, WILLIAM C. DILLARD, JR, ESQUIRE, WHO BEING DULY SWORN AND UNDER PENALTY OF PERJURY DEPOSES AND STATES AS FOLLOWS:

1. My name is William C. Dillard, Jr. I am over the age of 18 and make this affidavit of my own personal knowledge.

2. As set forth in paragraph 5 of my affidavit dated and filed on January 20, 2021, based on my review of the case history, I prepared a 4-page "Case Events" table (attached as "Exhibit C" to the *Affidavit of David Pagliarini*) providing a chronological timeline of the case filings, hearing, orders, and other significant events appearing on the record from the initiation of the case through the plaintiff's April 22, 2021, amended fee affidavit. The table also specifies the page lengths of the parties' various filings. To the best of my knowledge, the table accurately sets forth the timing and nature of the relevant case events.

3. In filings dated October 4, 2021, plaintiff's counsel repeatedly takes issue with the fact that the table was not attached to my own affidavit and asserts that it is therefore "unsworn." To avoid the need for further discussion of the purported issue, I have attached an identical copy of the "Case Events" table as "Exhibit A" to this affidavit and hereby verify that I prepared it.

William C. Dillard, Jr.

Sworn to and subscribed before me this 5th day of October 2021, by the affiant, who is personally known to me.

Patricia R. Dreyfuss
Notary Public, State of South Carolina
Name: Patricia R. Dreyfuss
My Commission Expires: 6-18-2023

Challenge Action #1 Case Events
(Sunset Lodge, LLC and Beattie)

Date	Plaintiff Events	Defendant Events	Hearings/Orders
6/9/20		Date of Condemnation Notice	
7/21/20	Summons/Complaint filed (57 pages, 169 paragraphs)		
7/27/20	Pl. First Requests for Production served (attached to 8/27/20 Motion to Compel)		
7/31/20	Amended Summons/Complaint filed (61 pages, 179 paragraphs)		
8/3/20		Def. Motion to Dismiss filed (2 pages)	
8/10/20		Def. Motion for Priority and Posting Bond filed (2 pages)	
8/11/20	Pl. Return to Motion for Priority/Bond filed (6 pages)		
8/13/20	Pl. First Set of Interrogatories served (attached to 11/5/20 Motion to Compel)		
8/21/20	Pl. Motion for Summary Judgment (3 pages) and Affidavit of Baron Stanton (26 pages) filed		
8/25/20		Def. Motion for Protection from Discovery filed (2 pages)	
8/27/20	Pl. Return to Motion for Protection from Discovery (7 pages), Affidavit of Baron Stanton (6 pages), and Motion to Compel (req. for production) and for Expenses (2 pages) filed		
8/28/20		Def. Memo. in Supp. of Motion to Dismiss (20 pages) and Affidavit of Ryan Fabbri (2 pages) filed	
9/7/20	Pl. Memo. in Opp. to Motion to Dismiss filed (61 pages)		
9/11/20			Hearing (in person) before Judge Culbertson on Def. Motion to Dismiss and Motion for Priority/Bond; Form 4 Order (Judge Culbertson) entered denying Def. Motion to Dismiss and Motion for Priority/Bond
9/18/20		Answer to Amended Complaint filed (5 pages)	
10/6/20		Def. First Set of Interrogatories and Requests for Production served (see 10/14/20 Motion for Continuance)	

Exhibit A

1402

Challenge Action #1 Case Events
(Sunset Lodge, LLC and Beattie)

10/14/20	Pl. Memo. in Opp. to Motion for Continuance (5 pages) and Affidavit of Baron Stanton (5 pages) filed	Def. Motion for Continuance of hearing on pending motions (2 pages)	
10/16/20	Deposition of Appraiser Donovan, Day 1 (see Pl. fee statements)		
10/21/20	Deposition of Appraiser Donovan, Day 2 (see Pl. fee statements)		Order entered granting Def. motion for continuance of hearing (Judge Culbertson)
10/26/20		Def. Answers to Interrogatories served (attached to 11/5/20 Motion to Compel)	
11/5/20	Pl. Motion to Compel (interrogatories) and for Expenses filed (14 pages)		
11/20/20		Aff. of Ryan Fabbri in opposition to Motion for Summary Judgment filed (8 pages)	
11/20/20	Pl. Motion for Extension to Respond to Discovery filed (1 page)		
11/24/20		Def. Memo. in Opp. to Motion for Summary Judgment (13 pages) and exhibits filed	
12/3/20	Pl. Memo. in Support of Motion for Summary Judgment filed (50 pages)		
12/4/20			Hearing (virtual) before Judge Nettles on Def. Motion for Summary Judgment
12/6/20	Pl. "Stanton Affidavit of Condemnation Notice and Associated Papers First Served" (2 pages) and exhibits filed		
12/10/20	Pl. Answers to Interrogatories served (64 pages) (attached to 1/14/21 Motion to Disqualify)		
1/8/21			Form 4 (Judge Nettles) granting summary judgment and disposing of pending discovery motions entered
1/14/21		Def. Motion to Disqualify Pl. Counsel filed (2 pages)	
1/14/21	Pl. Motion to Strike (Motion to Disqualify) filed (8 pages)		
1/15/21		Def. Rule 11 Certification (Motion to Disqualify) filed (1 page)	
1/20/21			Order Granting Summary Judgment (Judge Nettles) entered

1403

Challenge Action #1 Case Events
(Sunset Lodge, LLC and Beattie)

1/25/21	Pl. Fee Petition (1 page) and Stanton Attorney Fee Affidavit (18 pages) filed		
1/26/21	Pl. Amended Fee Affidavit filed (1 page); Pl. Memo. in Opp. to Motion to Disqualify filed (6 pages)		
1/27/21			Form 4 (Judge Price) entered granting Pl. Motion to Compel and for Expenses (Sunset Lodge case only)
1/29/21		Def. Motion to Alter/Amend Summary Judgment Order filed (3 pages); Def. Notice of Withdrawal of Motion to Disqualify Plaintiff's Counsel filed (1 page)	
2/2/21			Order Granting Motion to Compel (Amending Form 4) (Judge Price) entered
2/3/21	Pl. Memo. in Opp. to Motion to Alter/Amend Summary Judgment filed (7 pages)		
2/4/21	Pl. Second Amended Fee Affidavit (3 pages) and Pl. supplemental Reply in support of fee petition (9 pages) filed		
2/5/21		Def. Reply in Opp. to Fee Petition (including a request for scheduling order) filed (3 pages)	
2/8/21			Form 4 (Judge John) noting withdrawal of Pl. Motion to Strike (Motion to Disqualify) entered
2/9/21	Pl. Memo. in Response regarding fee petition matters filed (6 pages)		
3/1/21	Pl. Memo. regarding fee petition matters filed (14 pages)	Def. Motion for production of billing records and establishment of confidentiality and in camera review procedures filed (10 pages)	
3/2/21	Pl. Objection to Hearing filed (4 pages)		
3/3/21		Def. Motion for Protection from Discovery (regarding Notice of Deposition of Town Administrator) filed (2 pages)	Hearing (virtual) before Judge Nettles regarding production of billing materials (see Pl. fee statements)
3/17/21	Pl. Memo. in Opp. Def. Motion for production of billing records filed (43 pages)	Def. Memo. in Supp. of Motion to Alter/Amend Summary Judgment filed (12 pages)	

Challenge Action #1 Case Events
(Sunset Lodge, LLC and Beattie)

3/18/21	Pl. Memo. in Objection/Opposition to Def. Memo. in Supp. of Motion to Alter/Amend filed (9 pages)		
3/19/21			Hearing (virtual) before Judge Nettles on Def. Motion to Alter/Amend Summary Judgment Order
4/1/21			Hearing (in person) before Judge Culbertson on Def. Motion for Protection from Discovery (along with Motions to Dismiss second set of challenge action cases); Form 4 entered (Judge Culbertson) partially granting Def. Motion for Protection from Discovery
4/5/21			Amended Summary Judgment Order (Judge Nettles) entered; Order granting Def. motion for production of billing records and establishment of confidentiality and in camera review procedures entered (Judge Nettles)
4/19/21	Pl. redacted billing records served on Def.		
4/22/21	Pl. Third Amended Fee Affidavit filed (22 pages)		

October 5, 2021 Landowner erratum re 10/4/21 reply brief, with amended reply brief and exhibit.

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.	)	
	)	

10/5/21

ERRATUM RE 10/4/21 REPLY BRIEF OF PLAINTIFF

There are two errors in the 10/4/21 Reply Brief of Plaintiff which might create confusion. The plaintiff will file an amended brief with these corrected.

The changes will be on pages 2 and 7, as shown in the attached pages. One is an omitted clause in the "Overview," and the other is "2021" which should have been "2020."

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
Attorney for Sunset Lodge, LLC

10/5/21

The fee-related proceedings included, among other things, briefs of the parties relative to requests by the Town (e.g., plaintiff's briefs 2/5/21, 3/1/21 and 3/17/21), entry of a protective order, production of selected billing materials in redacted form to the Town and in redacted and unredacted form to the Court for in camera review, and periodic updates by the plaintiff of the time spent litigating this case to conclusion, including the fee request.

On April 5, 2021, the Court entered the final formal summary judgment order against the Town.

On September 10, 2021 the plaintiff filed the last of the updates to the fee petition. It is comprehensive of earlier affidavits.

In the last update, the plaintiff requests an award of litigation expenses of $61,112.02.

On September 20, 2021, the Town filed approximately one hundred and four (104) pages of additional materials, including a Memorandum in Opposition to the January 25, 2021 Motion for fees and expenses, an Opposing Affidavit of Pagliarini, an Opposing Affidavit of DuRant, an Opposing Affidavit of Henry, and an Opposing Affidavit of Dillard.

Subsequently, the Town also filed "Pre-hearing motions."

Overview

The sum total of the Town's response is that for prevailing in the case, the plaintiff should recover litigation expenses ~~of~~based on approximately one-tenth (1/10) of the actual hours spent and well under one-third (1/3) of what the Town itself has spent using three lawyers and a fourth outside lawyer hired to give an opinion on fees. The plaintiff hereby replies.

In this calculation pursuant to Layman and related cases, the 1000.5 hours are the hours sworn in the fee petition to have been actually reasonably devoted to the case after July 1, ~~2021~~2020. (See restated fee affidavit of September 10, 2021.) Layman does not require or recommend that private billing statements be presented.[6] As detailed in the fee petition, the plaintiff's counsel did not work these hours only over an even spread of daylight hours on weekdays, as the fictional calculations of Mr. Dillard would imply. The details provided clearly show that the plaintiff's counsel works nights and weekends.

The $250 per hour rate in the above calculation is the reasonable rate for a lawyer in the vicinity with comparable experience to charge, without an additional lodestar enhancement in the discretion of the Court for extraordinary demands or conditions on prevailing counsel, the difficulty of the case, the beneficial result obtained, or other factors.[7] The $250 per hour rate is

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Thus, South Carolina case law does not require that a fee application be supported with the lawyer's and client's actual confidential bills.

Neither does the applicable fee recovery statute in this case. Nor is the production of actual confidential bills required in states in which the detailed procedure for applying for fees is actually set forth in the state's rules of civil procedure. See, e.g., O.R.C.P. 68, Pleading, Allowance, and Taxation of Attorney Fees and Costs and Disbursements (nowhere specifying production of bills). There are reasons for this and they are amply set forth in the plaintiff's briefs to this Court.

Nevertheless, the Town moved, over the plaintiff's objection, for production of a healthy sampling of the plaintiff's representative bills, and was granted production of them, with many of the more sensitive or privileged matters fairly redacted, while the Court reviewed the bills in camera and determined fewer redactions to be made. No error whatsoever in the number of hours recounted in the plaintiff's counsel's fee affidavit has been alleged since then.

6 See the discussion in the preceding footnote.

7 Alternatively, the Court could use a lower hourly rate such as $190, and then increase the

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.)	
)	

10/4/21
REPLY BRIEF OF PLAINTIFF TO
9/20/21 MEMORANDUM OF TOWN IN OPPOSITION TO
1/25/21 MOTION OF PLAINTIFF FOR
AWARD OF ATTORNEY'S FEES AND
OTHER LITIGATION EXPENSES (AMENDED 10/5/21)

On January 21, the Court entered an initial formal summary judgment order against the Town, quashing and dismissing the subject condemnation action.

On January 25, 2021, the plaintiff filed a motion for award of attorney's fees and other expenses, an affidavit of fees and costs, a proposed order, and a proposed Form 4A. (Collectively, the motion and the periodically updated affidavit may be referred to as the "fee petition.")

Subsequently, between the filing of the plaintiff's fee petition January 25, 2021 and September 19, 2021, there were various proceedings initiated by the Town relative to opposing the fee petition, as well as other activities in the case, such as the Town's motion for reconsideration.

The fee-related proceedings included, among other things, briefs of the parties relative to requests by the Town (e.g., plaintiff's briefs 2/5/21, 3/1/21 and 3/17/21), entry of a protective order, production of selected billing materials in redacted form to the Town and in redacted and unredacted form to the Court for in camera review, and periodic updates by the plaintiff of the time spent litigating this case to conclusion, including the fee request.

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The sum total of the Town's response is that for prevailing in the case, the plaintiff should recover litigation expenses based on approximately one-tenth (1/10) of the actual hours spent and well under one-third (1/3) of what the Town itself has spent using three lawyers and a fourth outside lawyer hired to give an opinion on fees. The plaintiff hereby replies.

Brief Response

The task before the Court is not nearly as complicated as the Town makes it. The plaintiff's fee petition alone provides a sufficient basis for this Court to make a fair award, as follows.

The plaintiff has requested an award of $60,198.33 in attorney's fees in the case through October 6, 2021.

Together with $913.69 in other out-of-pocket expenses, the total requested award of litigation expenses is $61,112.02[1] through October 6, 2021.

This request includes the work in the case in order to prosecute the fee request itself to conclusion. This is legally proper,[2] but the legal side is largely ignored by the Town. It makes

1 This figure includes an estimate of $5700 made on September 10, 2021, before receiving Mr. Pagliarini's affidavit, of the work required between September 9 and October 6, 2021. Responding to Mr. Pagliarini's affidavit will require the plaintiff to exceed this estimate.

2 A statute requiring that the court award the prevailing party attorney's fees "reasonably incurred in litigating the proceedings" contemplates all the proceedings, including the portion of the proceedings devoted to pursuing attorney's fees incurred in obtaining the primary relief sought in the case. Ex parte Gregory, 378 S.C. 430, 663 S.E.2d 46 (2008)(holding that attorney's fees for seeking attorney's fees under Frivolous Proceedings Act were included in the fees required to be awarded); see Austin v. Stokes-Craven Holding Corp., 406 S.C.187, 750 S.E .2d 78 (2013)(holding that a statute mandating an award of attorney's fees mandated an award of trial-level fees, subsequent appellate fees, and subsequent post-appellate fees in the trial court, in which post-appellate trial-court proceedings, fees incurred in earlier stages were sought).

The policies supporting this rule are obvious, and are already applicable in the instant case. In Commissioner, Immigration and Naturalization Service v. Jean, 496 U.S. 154 (1990), the U.S. Supreme Court held that fees for obtaining fees are allowed under the fee shifting provisions of the Equal Access to Justice Act.

The Court held that, under the EAJA, a prevailing party may recover attorneys' fees for services rendered in seeking a fee award without regard to whether the position of the United States was substantially justified. Namely, if the prevailing party is entitled to fees in the main

no sense, for example, to award a prevailing party $200,000 in fees incurred in one part of a case, if in order to obtain the award, the party then has to incur another $200,000 in noncompensable fees in another part of the case. This would only incentivize increased litigation by the nonprevailing party and establish a regime in which the prevailing party is discouraged and never made whole.

Mr. Dillard has indicated agreement with this principle. However, he indicated this to a different judge in a case with the same parties, subject matter. In the instant case, he argues the opposite. The same landowner-plaintiffs brought a second of set of challenge cases (2020CP2200930, 931, and 932) when they were sued by the Town condemnation a second time while the instant action was still pending.

The Town wanted those challenge cases dismissed after losing the instant challenge cases, and particularly did not want the Town Administrator deposed or for the landowner-plaintiffs to pursue any further discovery.

There, Mr. Dillard assured a different judge of this Court that the plaintiffs' concerns with being sued yet a third time by the Town, still without discovery being sought, were misplaced, stating that "statutory rights to recover attorney fees and costs in the event of a

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action, then he is automatically entitled to fees for the time spent seeking fees. To hold otherwise could "spawn a 'Kafkaesque judicial nightmare' of infinite litigation for the last round of litigation over fees." *Id.* at 163. See also, e.g., Tri-County Metro. Transp. Dist. of Or. v. Aizawa, 362 Or. 1,___, 403 P.3d 753, 754 (2017) ("Ordinarily, a party entitled to recover attorney fees incurred in litigating the merits of a fee-generating claim also may receive attorney fees incurred in determining the amount of the resulting fee award."); and see Crandon Capital Partners v. Shelk, 219 Or. App. 16, 42, 181 P3d 773, __ (2008) (describing that rule as reflecting "longstanding precedent in Oregon").

condemnation abandonment or a successful challenge action ... clearly disincentive any condemnor from attempting to use 'multiplicity of litigation' to gain leverage over a landowner."[3]

Under the procedure described in Layman v. State,[4] the fees of the one plaintiff in this one case may be reasonably calculated as follows: 1000.5 hours x $250 per hour = $250,125.00.[5]

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3 He so stated at page 5 of the Town's 6/2/21 memorandum opposing reconsideration of dismissal in Case 2020CP2200932. There, Mr. Dillard argued:

> The General Assembly deemed it appropriate to protect landowners from the expense of condemnation disputes by, among other things, providing statutory rights to recover attorney fees and costs in the event of a condemnation abandonment or a successful challenge action. These statutory protections satisfy considerations of equity and due process, and clearly disincentive any condemnor from attempting to use "multiplicity of litigation" to gain leverage over a landowner.

4 376 S.C. 434, 658 S.E.2d 320 (2008).

5 As succinctly stated by Judge Miller in Maybank v. BB&T (Greenville County Court of Common Pleas, Order, Case 2011-CP-23-8578, Nov. 10, 2014):

> The specific award of attorneys' fees and costs is left to the discretion of this Court, and must be determined using a lodestar analysis. *Layman v. State*, 376 S.C. 434, 444, 457-58, 658 S.E.2d 320, 325, 332-33 (2008). This analysis requires determining a reasonable hourly rate and hours worked and then considering any exceptional circumstances justifying an enhancement of the lodestar figure. *Id.* at 458-61, 658 S.E.2d at 33-35. This requires considering the following: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Id.* at 458, 658 S.E.2d at 333(citing *Jackson*, 326 S.C. at 308, 486 S.E.2d at 760).

Maybank v. BB&T (Greenville County Court of Common Pleas, Order, Case 2011-CP-23-8578, Nov. 10, 2014)(16 pages, single spaced), aff'd in pertinent part 416 S.C. 541,787 S.E.2d 498 (2016), reh. den.

In Maybank v. BB&T (Common Pleas, Case 2011-CP-23-8578), Judge Miller made his determination of "hours worked" as follows: "I have reviewed the fee affidavit of Plaintiff's counsel detailing the hours worked by each attorney and submitting their current hourly market rates."

In Maybank v. BB&T, 416 S.C. 541, 787 S.E.2d 498 (2016)(42 pages, single spaced), reh. den., the South Carolina Supreme Court affirmed Judge Miller's determination of "hours worked" from prevailing counsel's affidavit setting forth "hours worked."

The South Carolina Supreme Court rejected the appellant's argument that "the affidavit of attorneys' fees and costs submitted by Maybank's counsel was inadequate and lacked the necessary detail that would enable Appellants to respond." 416 S.C. at 5801, 787 S.E.2d at 518. The South Carolina Supreme Court rejected the appellant's argument that "Maybank failed to provide detailed billing statements to identify how the billed hours correlated to the claims alleged, especially since Maybank prevailed on only five of his eleven claims, and the Trust lost on all its claims." 416 S.C. at 5801, 787 S.E.2d at 518.

The Court also rejected the appellant's argument that "the insufficiency in the billing statements make it difficult to ascertain and delineate the work completed in furtherance of the UTPA claim -- which is the only claim upon which attorneys' fees and costs may be awarded." 416 S.C. at 5801, 787 S.E.2d at 518. Instead, the Court ruled: "We find all of Maybank's claims shared the same common facts and required combined efforts throughout the litigation process." The Court found to be a reasonable estimation, the trial court's reduction of fees by twenty percent to account for a distinction in the claims and the time allotted to defend claims unrelated to the UTPA claim, which was the only claim in the group of claims for which attorney's fees were allowed to be recovered. 416 S.C. at 5801, 787 S.E.2d at 518.

In this calculation pursuant to Layman and related cases, the 1000.5 hours are the hours sworn in the fee petition to have been actually reasonably devoted to the case after July 1, 2020. (See restated fee affidavit of September 10, 2021.) Layman does not require or recommend that private billing statements be presented.[6] As detailed in the fee petition, the plaintiff's counsel did not work these hours only over an even spread of daylight hours on weekdays, as the fictional calculations of Mr. Dillard would imply. The details provided clearly show that the plaintiff's counsel works nights and weekends.

The $250 per hour rate in the above calculation is the reasonable rate for a lawyer in the vicinity with comparable experience to charge, without an additional lodestar enhancement in the discretion of the Court for extraordinary demands or conditions on prevailing counsel, the difficulty of the case, the beneficial result obtained, or other factors.[7] The $250 per hour rate is

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Thus, South Carolina case law does not require that a fee application be supported with the lawyer's and client's actual confidential bills.

Neither does the applicable fee recovery statute in this case. Nor is the production of actual confidential bills required in states in which the detailed procedure for applying for fees is actually set forth in the state's rules of civil procedure. See, e.g., O.R.C.P. 68, Pleading, Allowance, and Taxation of Attorney Fees and Costs and Disbursements (nowhere specifying production of bills). There are reasons for this and they are amply set forth in the plaintiff's briefs to this Court.

Nevertheless, the Town moved, over the plaintiff's objection, for production of a healthy sampling of the plaintiff's representative bills, and was granted production of them, with many of the more sensitive or privileged matters fairly redacted, while the Court reviewed the bills in camera and determined fewer redactions to be made. No error whatsoever in the number of hours recounted in the plaintiff's counsel's fee affidavit has been alleged since then.

6 See the discussion in the preceding footnote.

7 Alternatively, the Court could use a lower hourly rate such as $190, and then increase the

the same rate charged by both Mr. DuRant, the first lead counsel hired by the Town, and Mr. Dillard, the second lead counsel hired by the Town, as verified by publications online by the Town and Town responses to FOIA requests.

However, the plaintiff has conservatively requested a fee award based on only 950.5 hours, and based on only $190 per hour.

Further, the request is conservatively based on the resulting fee then being divided by three. This request results straightforwardly in aforestated requested fee award of $60,198.33 for the plaintiff.

Further, the plaintiff has requested that the court take notice that, of the two similarly situated plaintiffs in the two related separately filed cases handled by the same attorney, one asks for only the same $60,198.33, and the other does not request a fee award. This is collectively a discount of another one-third. This effectual thirty-three and one third (33 1/3%) reduction for all three cases more than accounts for any possible quibbles or attempts of the Town to re-litigate every detail of the plaintiff's successful case in dim hindsight now.

All of these conservative steps result in a total fee award of only $120,396.64 for all three related cases, rather than a conceivable and defensible total fee award of $750,375.00, had the three landowner-plaintiffs not combined and shared one lawyer, who represented himself in one of the cases.

The fee award requested is reasonable, and should be awarded.

Further Discussion of the Town's Contentions

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total fee by a multiplier of 1.31, taking into account the lowness of the rate. The result is the same.

The Town's 9/20/21 Opposition Memorandum is based on four (4) affidavits on seemingly every conceivable aspect of the case, so the plaintiff will address them before further reply to any argument in the Opposition Memorandum. First, however, this memorandum must address, as well, the Town's "pre-hearing motions," on three subjects.

The Town's "Pre-hearing Motions"

As to the three things the Town requests, as the plaintiff previously advised the Town, the plaintiff consents to the first, and the other two are unnecessary. None should take up extra court time.

That is, the plaintiff consents to consolidation of the three related cases under the case number for the Sunset Lodge case.[8]

The remaining two requests by the Town are already covered by the protective order and rulings of this Court and are unnecessary to be requested again, argued again, submitted again, or reconsidered.

This is with one exception, as the plaintiff has previously advised the Town. The Town wishes for both the redacted and unredacted billing statements submitted by the plaintiff to the Court for in camera review to be filed by the Court under seal in this case. The Court's 4/5/21 Order "protective order," compelling production of billing statements under protective order under stated conditions, allows that.

The plaintiff does not consent to this per se, because the plaintiff did not agree with all

8 This is just as the plaintiff moved for in the other three challenge actions which the landowner-plaintiffs filed when the Town sued each of them for condemnation a second time. Although we may be close to the end of the proceedings in this Court, if either party argues further or takes an appeal, it will likely cut down on the number of papers, filings, and filing fees.

aspects of the order itself. But the Order allows the Town to request that the Court file the materials in this manner. Assuming the Court agrees to do that, the plaintiff's objection in this regard can be noted and the matter can move forward. There is no need to hear further from the Town on the matter at the hearing of the plaintiff's motion for litigation expenses pursuant to statute.

The Opposing Affidavit of Mr. Pagliarini

As will be detailed further in reply affidavits, there are serious problems with the affidavit of Mr. Pagliarini.

His affidavit should be disallowed and the testimony of Mr. Dillard relying on it should be disallowed. Among other things, (i) Mr. Pagliarini is incompetent as a fact fitness, having no personal familiarity with the matter, (ii), he is incompetent as an opinion, or "expert," witness, because he lacks education or experience of any degree that will be of assistance to the Court as a factfinder, (iii) his testimony makes clear that he has not actually read or examined many of the things on which he bases his opinions, or otherwise grossly misunderstands what he has read, (iv) he relies on information selectively supplied by others, which in turn was not the product of personal familiarity or expertise, and which will be shown to be grossly erroneous and untrustworthy, and (v) his own observations, conclusions or opinions will be shown to be an inseparable mixture of insufficient or incorrect factual information and incorrect legal conclusions, the latter being the province of the court in any event.

Among other things, Mr. Pagliarini's opinion is materially based on unsworn materials subjectively, and erroneously, prepared by Mr. Dillard. Mr. Pagliarini expressly states that he relies on the materials supplied by Mr. Dillard. These materials are grossly incomplete and

grossly incorrect, and Mr. Dillard, new counsel in the case, has no personal familiarity with the case either, until after the time summary judgment was granted to the plaintiff.

Even if allowed, Mr. Pagliarini's testimony is materially incorrect and incomplete and, for reasons which will be further detailed, cannot be given any credibility.

The Opposing Affidavit of Mr. DuRant

As will be detailed further in reply affidavits, Mr. DuRant's affidavit is incorrect.

He denies the plaintiff's counsel's characterization of the Town as an adversary which will (i) "say anything" and (ii) "stop at nothing."

Reply affidavits for the plaintiff actually give specific examples instead of empty adjectives or denials with no specifics. The vacillation of Mr. Henry, the mayor, on his e-mail to the Corps of Engineers inquiring about the availability of a "nuclear option," is but one example. The case(s) and the events also speak for themselves to a large extent.

A self-described "Bulldog" on his website, Mr. DuRant now denies that he was a bulldog. Undeniably he made considerable work for the plaintiff's counsel. In general, this is no crime, but the statutes require that the Town now pay for that work, instead of denying that the work occurred or denying that the work caused by the Town was necessary, or denying that the plaintiff won the case.

Mr. Durant incorrectly states that the summary judgment ruling included rulings that "certain issues lacked merit." Once again, saying this does not make it so. As a corollary, nor does the Town saying it repetitively make it so.

There is not a single instance of such a ruling. There is not one single merits ruling by the Court in favor of the Town. "Litigants in good faith may raise alternative legal grounds for a

desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee." Hensley v. Eckerhart, 461 U.S. 424 at 435–36 (1983).

There were issues in favor of the plaintiff which the Court did not see a need to fully reach in order to dismiss the condemnation on summary judgment. But there was not a single ruling against the plaintiff, and for that matter, there was not a single finding that the facts the plaintiff presented as undisputed were anything other than undisputed. Not one.

On the other hand, even in the summary judgment proceedings, the Town contended that a proposed easement granting "public use and access" did not grant public use and access. Instead, the Town said that it was a mere construction easement for the deposit of sand. Saying this did not make it so. The Court expressly ruled on the fallacy of this contention as well in its order at 6.

In the related challenge cases the landowner-plaintiffs were forced to bring by being sued twice, Mr. Dillard also contradicts these unsubstantiated remarks by Mr. DuRant in which Mr. DuRant incorrectly implies that there were merits determinations adverse to the plaintiff.

Mr. Dillard's statements in the other cases – that the plaintiff won everything that could be won -- also contradict his own arguments in this case, in which he now adopts Mr. DuRant's casual statements and argues that although summary judgment was granted in favor of the plaintiff and the condemnation was quashed, the plaintiff did not really prevail at all.[9]

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9 Mr. Dillard specifically argued that the plaintiff had obtained all the relief that was possible under both sets of challenge actions.

In the Town's 6/2/21 memorandum opposing reconsideration of dismissal in Case 2020CP2200932, Mr. Dillard argued throughout that generally no permanent injunction was attainable. He asserted that virtually all relief ever granted in a successful challenge action -- and

Mr. DuRant, on a course of logic no more valid or fact specific than making ad hominem arguments, joins in Mr. Dillard's and Mr. Pagliarini's page-counting arguments. He states that the Amended Complaint was "excessively lengthy at 57 pages." Impliedly, prevailing counsel should therefore be hated for this or judged incompetent, and his clients should recover only an eighth to a tenth of the fees they have actually incurred.

Yet, those were the same 57 pages containing much of the material that resulted in a grant of summary judgment. Under the Rules of Civil Procedure, it is not an excuse for denying the truth of all 57 pages, that the defendant's counsel considered them long.

In another extraordinary example of curative fiction, Mr. DuRant also incorrectly states that he found it extremely difficult to engage in productive communications with the plaintiff's counsel, and never cites a single example.

This is his excuse for not trying to communicate, as required by the rules, or else

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all relief abandoned when the condemnor abandons -- is essentially without prejudice to attempting condemnation again another way.

These arguments are substantially at odds with his brand new argument, in the instant case – after eight months of engaging in for "fee discovery" -- that the plaintiff did not prevail in the instant challenge case.

This brand new argument also makes flies in the face of the legislature's intention to award fees regardless of whether the landowner wins the challenge action or whether, under threat of such victory, the condemnor abandons the underlying condemnation attempt. Mr. Dillard elsewhere acknowledges that the legislature intended to award attorney's fees to the landowner and make the landowner completely whole at the end of each action in either event.

By his new reasoning, confronted with ten reasons why condemnation cannot go forward, the condemnor can temporarily abandon the condemnation and then argue that the landowner's attorney's fees should be reduced because maybe the landowner would have lost on a few of them if there had ever been a merits trial. The statute does not read this way.

certifying futility, which he did not do either. As shown in reply affidavits, when there were consultations, they were actually cordial, if not productive, and the main problem and the thing that cost the plaintiff and the Court time, was Mr. DuRant not communicating at all, and filing the things he filed. Again, this is not an indictment of Mr. Durant's strategy, but an explanation of what the Plaintiff had to contend with in the case and the time and expenses which were accordingly incurred.

The Opposing Affidavit of Mr. Henry

As will be detailed further in reply affidavits, Mr. Henry's testimony now purporting to state what he meant by "nuclear option" when asking the Corps if it was available is completely false. His actions show that he will say anything expedient.

Attached as "Exhibit A" is the 8/23/21 e-mail of the Town Administrator, Mr. Fabbri, who, just weeks ago, relayed that Mr. Henry stated that he did not remember what he meant by "nuclear option" when he asked if such an option were available to deploy against his constituents, the landowner-plaintiffs.

Specifically, Mr. Fabbri advised: "I'm not sure what the 'nuclear option' was and I've asked Mayor Henry to explain what was meant by that comment, and he could not recall. There were no emails, notes, memos, or any other kind of documentation regarding a 'nuclear option'."

Opposing Affidavit of Dillard

For such opinion as Mr. Dillard offers, he states that one of his material sources is the opinion of Mr. Pagliarini.

However, Mr. Pagliarini states that he formed his opinion by relying on materials prepared by Mr. Dillard. These materials are shown in the reply affidavits to be subjectively

compiled, and replete with error. See the Stanton Reply Affidavit to Pagliarini Affidavit. Mr. Dillard had no familiarity with this case before summary judgment was granted against the Town, and Mr. Pagliarini has no first-hand familiarity with the case at all.

Their testimony is expressly inextricably intertwined. The plaintiff objects to both. Neither is competent as a fact witness to much, and neither is competent or credible as an opinion witness at all. Therefore, Mr. Dillard's affidavit should be stricken, and otherwise be accorded no credibility. It provides no assistance to the Court as factfinder, and consists of largely slickly disparaging innuendo.

About half of Mr. Dillard's affidavit is devoted to a putative timeline on the one phase of the case which did involve him, the "fee discovery" phase. As outlined in the Stanton Reply Affidavit to Dillard Affidavit and as is apparent from the other papers in the case, that timeline is incomplete and inaccurate.

The Town's Arguments and Other Matter in its Opposition Brief

A. Averaging of Hours

The Town makes pointless calculations of what the average hours worked by the plaintiff's counsel would be if they had been worked other than at the time worked. As shown in the fee petition, the plaintiff's counsel worked nights and weekends, often on a compressed schedule, not solely on business hours over a five day week, not with an even distribution of burden.

This is reiterated in the Stanton Reply Affidavit to Pagliarini Affidavit. What the purpose or point of these calculations is other than pseudo-science or pseudo-analysis is still never made. There is no apparent point to these observations of the Town, unless they are for innuendo that

the hours were not worked. This cannot be backed up by the Town, who in other places appears to set about proving that the plaintiff's attorney did a great volume of work. No matter how hours might be averaged, their total remains. The total is 1000.5.

B. After Eight Months of Waiting, A New Argument, I.E., That Plaintiff Did Not Prevail or Otherwise that the Result Was Not Beneficial Enough to Allow an Enhancement of the Lodestar Calculation of Rate Multiplied by Actual Hours

The Town argues that the plaintiff did not obtain permanent relief, and therefore actually failed when the plaintiff got the Town's condemnation action quashed and dismissed on summary judgment. At another point in its brief, the Town describes this relief as "essentially temporary procedural relief."

This ill-founded argument, which could have been made eight months ago when the matter was fresh in the memory of those who were actually there, is refuted in this brief above at footnotes 3 and 7 and accompanying text. There, the arguments of Mr. Dillard himself regarding the purpose and application of the EDPA attorney's fees provisions are discussed, as well as his contention elsewhere that the plaintiff obtained all the relief that is usually possible in a challenge case.

It should also be noted that the plaintiff has not even requested a Layman multiplier to enhance the result of multiplying the rate by the number of actual hours. The attack on benefits obtained is therefore irrelevant in addition to be factually and legally incorrect. The Town argues that a negative "multiplier" should be used to penalize the plaintiff on the basis that winning summary judgment on undisputed facts and sparing the parties and the Court a trial was not good enough. This argument speaks for itself.

In the Stanton Reply Affidavit to Pagliarini Affidavit is additional discussion of the

lasting effects of the result in the case, e.g., the inability of the Town to proceed again with a false appraisal, as it has now done not once, but twice.

The plaintiff still owns the subject one-third of the plaintiff's land, free any right of the public to traverse it or camp out on it, free of any right of Town agents to go four-wheeling on it with the vehicles currently being used for that purpose, free of any right of the Town to put giant trash cans on it, free of any right of the Town "or its assignees" to destroy the plaintiff's deck, steps or other improvements, and free of many other burdens.

This is a significant and highly beneficial result. It should be noted, however, that the fee request calculated by the plaintiff is without any enhancement of the lodestar calculation for the beneficial result obtained and this is still within the Court's discretion to add.

C. The Recurring Fallacious Characterization of the Town's Fatally Unacceptable Acts as Mere "Procedural Deficiencies" Not Involving Falsity, Dishonesty or Purposefully Prejudicial Omissions, Nondisclosures or Concealment

Much like the proposed easements themselves, the main of the Town's overall brief and argument is dependent on willingness to accept curative fiction stated by the Town, and analysis employing the facts not as they truly are.

In further press of its argument that summary judgment dismissal of the Town's action is not enough success or any success at all, the Town makes much argument under the false premise that the acts and omissions of the Town forming the basis of the Amended Complaint were "either/or" facts which were either exclusively "procedural" or exclusively "fraud."

The Town similarly stakes its arguments on the false premise that the acts and omissions of the Town forming the basis for summary judgment were exclusively "deficiencies in procedures."

As explained in detail in the Stanton Reply Affidavit to Pagliarini Affidavit, the "deficiencies" in behavior by the Town were fundamentally infused with dishonest practices and material effects on the proposed condemnation.

Even if, hypothetically, one believed that lying is not dishonest, or that engaging in activities which repetitively and successively result in false acts is not fraudulent, the facts which the plaintiff alleged to constitute dishonest behavior were the same facts on the basis of which summary judgment was granted.

For example, the plaintiff alleged that keeping the easement terms from the appraiser was dishonest and resulted in an appraisal of something different from what was being condemned. If, hypothetically, one thought the appraisal was the result of honest behavior -- in spite of the consistency of the misrepresentation of the easement with multiple prior Town misrepresentations of the nature and scope of the proposed easement -- the lack of an appraisal by an appraiser who was given the terms of what he was appraising was still fatal to the condemnation, requiring it to be dismissed. The "fraud" facts and alleged "fraud" acts, and the "procedural" facts and alleged "procedural" acts, were not mutually exclusive and were largely the same.

The facts were further inextricably intertwined, as were the numerous theories of recovery arising from them.

For an example of how just a few were woven together, (i) the fact that the Town had already declared the whole easement was unnecessary, just as it was for mid-island, and (ii) the fact that the plaintiff contended the easement was unnecessary in light of the burdens imposed, and (iii) the fact that the Town had already acknowledged that certain discrete features were not

necessary and could be feasibly changed, and (iv) the fact that the project was already finished and any later project was not certain to occur at all, all were matters for Town Council to consider in weighing the question of whether to condemn, and, if so, what to condemn.

On summary judgment, the Court ruled that the failure of Town Council to fairly deliberate, taking into consideration relevant factors, was fatal to the condemnation. These facts therefore all folded into, among others, the "failure to truthfully deliberate" theory of recovery successfully advanced by the plaintiff and affirmatively ruled on by the Court.

Softball descriptions of the several instances of the Town's behaviors as "procedural" do not make any of the underlying interrelated facts go away.

In authorizing condemnation, the Town Council publicly described the easement to be condemned fundamentally differently from the one the Town tried to condemn.

In thereafter preparing for condemnation, the Town did not give the appraiser the terms of the easement which defined the very thing he was supposed to put a value on, and which were the very things that defined its value and the burdens it imposed.

In thereafter pursuing condemnation, the Town knowingly used the false appraisal, and incorporated the materially incorrect value in the offer made in the condemnation notice, which, under the EDPA, was the same amount the Town would thereafter have to post with the court for the landowner's security before the Town could go forward if the condemnation had gone forward. The Town was supposed to make the appraisal available to the landowner before suing the landowner, i.e., before serving the landowner with a condemnation notice, but did not. But the Town falsely certified in the condemnation notice that the Town did so.

To address the impropriety of the above described several acts and omissions, the

landowner-plaintiff was required to bring a challenge action. That is, the landowner was not legally allowed to bring these things up as a defense in the "direct condemnation action" brought by Town and could only do so by bringing the landowner's own separate challenge action. The plaintiff did so, and won, and the condemnation action of the Town was quashed and dismissed.

The acts described above were the things that formed the so-called "procedural deficiencies" which were described in granting summary judgment. That the same acts were both dishonest and a per se violation of the EDPA does not make them different or unrelated acts.

D. The Heart of the Challenge: to Successfully Challenge the Condemnation Attempt

In order to inaccurately set the stage for its arguments that the result for the plaintiff was not beneficial enough or beneficial at all, the Town indulges in more curative fiction in its brief at 6, where the Town selectively lists, not the eight or nine theories of recovery listed by the Court in the summary judgment order or the eight examples of dishonest acts in a brief of the plaintiff quoted by the Town at 6-7, but a nonexclusive enumeration of four items the Town here calls the claims "at the heart of the plaintiff's challenge action."

In doing so, the Town does not even cite the same source for the four selected heart pieces. The effect of this selectivity and artificial truncation is to avoid items tending to highlight the intertwinedness of the facts and legal theories.

In this and the rest of its brief, the Town does not once recite accurately and comprehensively the theories of recovery implicated in the Amended Complaint or the large mass of overlapping facts which support numerous bases for the same relief – quashing the condemnation and dismissing it. The relief was not to require an amendment to correct a mere

procedural or typographical deficiency. The deficiencies were, among other things, time-sensitive, and dependent on underlying acts and content, and could not be corrected by amendment like a scrivenor's error as the Town repetitively implies in its pat descriptions. The relief was to quash and dismiss the action for material acts that could not be changed by amendment.

E. Calling Facts and Acts "Claims"

Our courts do not segregate attorney's fees for efforts spent on proving, or preparing to prove, intertwined facts. The Town calls facts "claims," so that the Town can argue that even though a fact was part of the basis for summary judgment, the decision of the Court to grant summary judgment based on the fact without reaching the question of all the qualitative features and implications of the fact means a "claim" "failed." The facts were all intertwined and the plaintiff was successful in having the condemnation case dismissed.

The fraud facts were not just "broad," as the Town states in its brief at 6, although calling them "claims." There, the Town recounts an eight-point enumeration by the plaintiff of fraudulent acts by the Town. The facts were also – as not acknowledged by the Town – specific and detailed.[10] The Town argues that none of these "claims" challenging the Town's "fundamental right to ever condemn the easements" were "addressed" in the Order. What the Town avoids in choosing these words is that every single one of the enumerated facts – all eight

10 These and other interrelated facts resulted in a multi-paragraph Amended Complaint the length of which the Town repeatedly complains of as a substitute for actual analysis. That papers are long or hours are long is no more logical a form of argument or analysis of content than name-calling.

of them – were facts that supported the Court's order and were largely employed by the Court in deciding to dismiss the condemnation.

For example, item "(vi)" in the list, "attempting, dishonestly, to condemn interests in real estate which were different or greater in scope than the interests in real estate which were the subjects of the appraisals," is exactly what the Judge based summary judgment on. This is with the exception that he did not state that the huge discrepancy between what the appraiser appraised and what the Town attempted to condemn was "dishonest" or the result of dishonesty.

He instead concluded that this fundamental disconnect was per se a violation of the EDPA, and invalidated the condemnation papers and the condemnation attempt without need of proof of fraud or bad faith. He therefore stated he did not feel it "appropriate" to go into analysis of fraud, but never at any time stated there was no fraud or dishonesty shown by the facts.

This was a summary proceeding and a summary disposition and not a merits trial after more discovery by the plaintiff. The plaintiff had not even yet gotten to the point of presenting, in a trial setting, other potential evidence bearing on the existence, or depth or breadth of fraud and bad faith. For example, as discussed in the Stanton Reply Affidavit to Pagliarini Affidavit, the withholding of the information from the appraiser while also supplying him with incorrect information resulted in potentially a $270,000 to $400,000 difference in the appraisal of each property.

The plaintiff may not have even presented the fact that the Town Administrator told the appraiser that the Town Administrator "did not have" the language of the easements. These appraisals were done in May to June of 2020, a year after the Town Administrator had begun collecting signed easements to file and had engaged in exchanges with property owners like

Stanton about specific landowner objections to the language and scope of the proposed easements.

There was no merits determination against the plaintiff on any claim. It is also obvious the Town never moved for summary judgment that no fraud, bad faith or abuse of discretion could be proved. The Town would have lost such a motion.

The Town filed a notice of condemnation stating that it had done what was required to take the property and stating that it had the right to take. The Court dismissed the action commenced by that notice, not allowing the Town to take. This is success in a challenge.

The EDPA provides attorney's fees to a successful challenge action plaintiff and also, in a sibling subsection of the same section of the statute, provides that attorney's fees are recoverable any time the condemnor abandons a condemnation. The clear legislative intent is to compensate the landowner for fees incurred any time the attempt is discontinued, whether involuntarily by court order, or voluntarily, by abandonment. Thus, conceptually, any time a condemnation is curtailed after a challenge, it is treated as a success of the challenger.

F. Misplaced Concept of "Non-Prevailing Theories" and Incorrect Facts Presented in Support

The Town's argument of no compensation for "non-prevailing theories" is, first, incorrectly applied even to the Town's fictional characterization and segregation of intertwined facts, as there was not a single merits determination against the plaintiff. Secondly, the Town's argument is based on the Court first accepting the pure fiction that the facts were not intertwined and none of the "procedural deficiencies" (e.g., lying in the course of authorizing condemnation, preparing for condemnation and pursuing condemnation) were relied on as part of the claims of dishonesty and none of the lying or falsity was involved in any of the "procedural deficiencies."

The notion of docking fees for not prevailing on a significantly distinct claim (e.g., one with a generally separate core of facts or a legal theory of recovery with few if any overlapping required elements, if not also a different remedy) requires the otherwise prevailing party to have the claim affirmatively determined against him on the merits, usually in a merits trial.

No issue or claim was determined against the plaintiff on the merits. The notion of excising compensation for so-called non-prevailing claims, to the extent recognized in South Carolina, generally does not apply to additional sustaining theories not reached by the Court on summary judgment for the prevailing party or not presented by the prevailing party because not in a posture for summary disposition or because of other factors.

The case cited by the Town, Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995), involved seven truly distinct claims (commission based on being the effective cause of procurement of seven different contracts, on which the plaintiff won on four and lost on three). In Rice, there was a full merits jury trial. There was an actual determination against the otherwise prevailing party on certain claims in a multi-claim case in which each commission claim turned on a different set of facts. "Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee." Hensley v. Eckerhart, 461 U.S. 424 at 435–36 (1983)(reducing fees after merits determination, in three week trial, against prevailing party on distinct claim relating to staffing, as opposed to other successful claims for which the staffing claim did not provide grounds).

G. Alleged "Unnecessary Unsuccessful Objection" "Associated With" Production of Fee Statements

The Town cites one case for the proposition that fees should be excised for unsuccessful opposition associated with motions. The Town contends that fees "associated with" objection to "production of fee statements" should somehow be identified and excised.

Among the problems with the Town's argument are that the precedent requires wholly unsuccessful opposition to a motion, that was unnecessary and not beneficial. The example is bringing a sanctions motion and losing it flatly and completely.

As more fully addressed in the Stanton Reply Affidavit to Dillard Affidavit, the Town can barely identify a motion it made instead of emerging requests embedded in briefs with no formal statement of grounds. When the Town made a motion for production of billing statements, the plaintiff had already volunteered to produce them. The main objection to the motion was not to "production of billing statements," but to a change in the terms the plaintiff's counsel reasonably believed were necessary to protect his client's confidential information under the Rules of Professional Conduct.

The contested part of the defendant's motion was not successful. Nor was the plaintiff's objection to the contested part of the defendant's motion wholly successful. The sample of billing records was produced as originally volunteered by the plaintiff's counsel, but the Court allowed fewer redactions than the plaintiff preferred and more than the defendant preferred. And the production was additionally subject to a protective order the original prototype of which was drafted by the plaintiff and changed over the course of various exchanges.

The plaintiff definitely was not wholly unsuccessful. The defendant was no more successful than the plaintiff. The actions taken were reasonable under the Rules of Professional Conduct and the results were beneficial in that the confidential information of the plaintiff

received some degree of protection from disclosure and was not subject to wholesale exposure as originally sought by the defendant.

This matter is addressed at length in the Stanton Reply Affidavit to Dillard Affidavit. There is no basis for reducing fees of the prevailing party based on isolated, eight-months-delayed, sub-evaluations of motions in the course of the case. The motion handling involved reasonable action by any responsible lawyer in the course of handling a case, and that action was not unsuccessful and it did produce a beneficial result.

H. Alleged "Unnecessary Unsuccessful Opposition" "Associated With" the Town's Motion to Motion to Quash Town Administrator's Deposition

This argument is fully refuted by the facts set forth in the Stanton Reply Affidavit to Dillard Affidavit.

The deposition was noticed 1/15/21, before, not after, summary judgment was granted.

It was noticed in both the instant case and in the still pending second challenge case. The notice came with a note stating, "Attached and served are notices of deposition in each of the three new challenge cases, the "900 series," for the new condemnation notices. I have also included notices in the 600 series in case there is anything left to do in those."

The Town had moved for reconsideration of the summary judgment order entered on January 21, 2021, and the final summary judgment order was not entered until April 5, 2021.

Cooperating with opposing counsel, the plaintiff's counsel even agreed to reschedule the date on convenience grounds, conditioned on preservation of the Town's counsel's ability to object to the deposition on other grounds. He eventually did so, and there is no record in the instant case of objection filed by the plaintiff's counsel, who handled the motion with brief

colloquy at a hearing of other matters, including matters in the other challenge cases.

Time in due course was consumed discussing discovery matters with the defendant's counsel when the discovery was now straddling two cases. The plaintiff's counsel did not split hairs along the way as to which case the deposition was for, as the intent was to let it serve in both cases to the extent applicable. Other than normal review and reflection and going to the hearing, little or no time was spent opposing the motion in the instant case per se once summary judgment was finalized, but the plaintiff's counsel did object to dismissing the second challenge cases, and accordingly objected to curtailing discovery in those cases if the cases were not going to be dismissed.

So there was some argument or discussion, and reasonably so, in the other cases. There, to paraphrase, the judge said, "I think what I'll do is if I don't dismiss the case, I will not grant the motion for protective order; if I do dismiss the case, I will grant the protective order."

There is nothing wrong with the way this was handled by the plaintiff's counsel, particularly when it was the Town that started the multiple litigation by commencing a second set of condemnation cases.

I. "NO CHARGE" Entries on Plaintiff's Counsel's Billing Statements Which Plaintiff's Counsel's Billing Software Will Not Render Any Other Way

The Town argues that "NO CHARGE" entries appearing on plaintiff's counsel's billing statements were not charges and should not be recovered. As recapped in the Stanton Reply Affidavit to Affidavit of Dillard (for lack of a better place), and as is covered in the fee petition, these entries were, to the contrary, charged and billed.

As is obvious from the manually added description, "(Noted, not billed.)," included in

each of the subject entries on the bills themselves, as well as in an explicit explanation footnoted to the bills, these are entries of deferred time, are not free, and are subject to being charged on a later bill. The clients perfectly understood this and had no contrary agreement or understanding. That is, the entries are expressly not actually "no charge" items, but the plaintiff's counsel's billing software will not render the entries any other way using any other automatically generated wording, and still have the items show on a present bill but with no present charge.

As confirmed in the fee petition, and the referenced Reply Affidavit, these time items were indeed later billed. Plaintiff doubts that there is a math error in how many items initially were deferred, and has not checked it yet, as it does not matter, because the charges were billed. The plaintiff's counsel will be happy to look.

J. Case Not Difficult

It was, and is.

K. Appraiser's Deposition Not Necessary

It was necessary. This is fully addressed in the Stanton Reply Affidavit to Pagliarini Affidavit. Mr. Pagliarini and the Town could not be more wrong.

L. With All the Pseudo-Precise Quibbling, the Town's Failure to Ever Address or Account For the Effectual 1/3 Deduction Already Built Into the Plaintiff's Reasonable Fee Request

The Town so fails.

M. Argument that the Plaintiff's Counsel Does Not "Appear" to Have Special Knowledge (Impliedly in Eminent Domain Matters)

This is wrong. He does. See Stanton Reply Affidavit to Affidavit of Pagliarini.

N. Repeated Reference to "Proposed Reduction Table"

The reduction table is a homemade monstrosity of impropriety, error and inadmissibility,

as described in factual detail in the Stanton Reply Affidavit to Pagliarini Affidavit. It should be ignored entirely.

O. False Statement by Town that the Plaintiff's Counsel Worked Nearly a 1000 hours over "A Few Months"

As set forth in the fee petition, the Plaintiff's counsel worked, rather, 1000.5 hours over, rather, one (1) year, two (2) months, and (1) week.

P. Further Correct Legal Authorities

The footnotes in the previous sections of this reply brief set forth adequate law on the law of attorney's fees, but the referenced 2/5/21, 3/1/21 and 3/17/21 briefs of the plaintiff, which the Court may wish to consult again, set forth additional cases commenting on the lead cases, and many historical cases leading to the present state of the law, and the plaintiff respectfully incorporates them herein and is at the disposal of the court to supply research on any principle in doubt.

The fee petition should be granted, with leave given to the plaintiff to submit supplemental post-9/9/21 actual fees and expenses (net of prior estimate) to be added to the award.

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
Attorney for Sunset Lodge, LLC

10/4/21

From: Barry Stanton <bstanton@stantonlaw.com>
Date: Monday, August 23, 2021 at 5:51 PM
To: Ryan Fabbri <rfabbri@townofpi.com>
Cc: Preston Janco <pjanco@townofpi.com>
Subject: FOIA Request 7-19-2021

Thanks.

1. And also no emails, notes, memos, or any other kind of documentation -- to or from anybody, whether to or from USACE or not -- regarding a "three-part easement"?

2. Understood on the reimbursements or not. Understood on the appraisals. $700 each for the three inquired about.

3. Roger.

4. Roger.

Best,

Barry

Barry

803 530 2642

-------- Original message --------

From: Ryan Fabbri <rfabbri@townofpi.com>

Date: 8/23/21 4:04 PM (GMT-05:00)

To: Barry Stanton <bstanton@stantonlaw.com>

Cc: Preston Janco <pjanco@townofpi.com>

Subject: Re: FOIA Request 7-19-2021

Barry,

Please see below.

Ryan Fabbri

Town Administrator

Town of Pawleys Island

T: (843) 237-1698

C: (843) 424-5065

F: (843) 237-7083

E: rfabbri@townofpi.com

W: www.townofpawleysisland.com

From: Barry Stanton <bstanton@stantonlaw.com>
Date: Monday, August 23, 2021 at 1:25 PM
To: Ryan Fabbri <rfabbri@townofpi.com>
Cc: Preston Janco <pjanco@townofpi.com>
Subject: FOIA Request 7-19-2021

Thanks, Ryan.

1. So there are also no documents reflecting communications, NOT with USACE, but with others, concerning a "nuclear option" or a "three-part easement"? ***I'm not sure what the "nuclear option" was and I've asked Mayor Henry to explain what was meant by that comment, and he could not recall. There were no emails, notes, memos, or any other kind of documentation regarding a "nuclear option".***

2. Just so you understand the followup on the out-of-pocket reimbursements of Mr. DuRant, if you look at Mr. Dillard's bills, they add reimbursement requests for such things. What you produced from Mr. Durant does not. I could not tell whether what you got and first produced is simply a time recap generated later, omitting reimbursements that may have appeared on actual bills, or whether Mr. Durant simply didn't charge those things back, or, less likely, charged them separately. ***Durant's office does not bill us separately for out-of-pocket reimbursements, they invoice us monthly for whatever work they do on behalf of the Town and payment is approved by council. Clearly Mr. Durant and Mr. Dillard differ in how they invoice their clients.***

So you did pay Jayroe $3000 for the four condemnation appraisals at $750 each? I.e., the costs inquired about in Item 13 on attempts to condemn oceanfront easements on three properties on the south end of Pawleys Island would be $2,250? Again, you produced the contracts, but not the invoices or checks showing actual bill or actual payment. ***While reviewing all the information I've provided I'm sure you noticed there were initially 4 properties listed on the original Town Council resolution to condemn. Our agreement with Jayroe included appraisals on all 4 properties listed but 718 Springs Ave. decided to provide the signed easement prior to the Town needing it. Another property at 542 Myrtle Ave. was added to the list when the Town did not receive their signed easement as promised. It was added to the appraisal list as a contingency in case the property owner failed to follow through on their promise to provide the easement, but ultimately it was provided. Jayroe knocked the price down to $700 per appraisal since it took almost twice as much time to produce the appraisal reports than what was initially agreed to. Invoice and check for $3,500 attached. Invoice for $8,500 attached and I've requested a copy of the canceled check from the bank. I will forward it to you as soon as I have it. Invoice and check for deposition attached.***

3. So you did not include with the Beattie easement to be recorded, the small plat he left with you and asked you to include with the easement when recorded? This is still unclear. What did you do with it? ***I attached the plat to the easement signed by Frank and Durant's office picked it up. I've asked Durant's office the whereabouts of the plat on numerous occasions, no one has ever been able to locate it.***

4. So there are also no documents reflecting communications, NOT with USACE, but with others, concerning alternatives such as omitting the three properties "from the footprint of the federal project" and Ms. Robbins of USACE arranging meetings "with the larger group"? ***That is correct.***

Best,

Barry

Barry

803 530 2642

-------- Original message --------

From: Ryan Fabbri <rfabbri@townofpi.com>

Date: 8/23/21 11:11 AM (GMT-05:00)

To: Barry Stanton <bstanton@stantonlaw.com>

Cc: Preston Janco <pjanco@townofpi.com>

Subject: Re: FOIA Request 7-19-2021

Barry, please see responses below.

Ryan Fabbri

Town Administrator

Town of Pawleys Island

T: (843) 237-1698

C: (843) 424-5065

F: (843) 237-7083

E: rfabbri@townofpi.com

W: www.townofpawleysisland.com

From: Barry Stanton <bstanton@stantonlaw.com>
Date: Monday, August 23, 2021 at 9:41 AM
To: Ryan Fabbri <rfabbri@townofpi.com>
Cc: Preston Janco <pjanco@townofpi.com>
Subject: FOIA Request 7-19-2021

Ryan, I am not asking for a debate. In response to your foregoing e-mail, the list of specific information requested is literally in the FOIA request. It is directed to the Town, and not confined to you and Mr. Durant.

My recent e-mail gives some examples of items definitely missed and others possibly missed, and that should help you.

Those include, but are not limited to the following, whether Mr. Durant has them or someone else acting for the Town does:

1. Whatever further responsive records (whether notes, memoranda, minutes or e-mails) there are about "the nuclear option," "the three part easements" referred to by Mr. Henry, and similar such matters, no matter who has them. ***I've provided you with all documented communications with USACE and I couldn't tell you what the mayor meant by "the nuclear option". I've provided you with all communications provided to me by Mayor Henry, and he's stated that he had no further communications with the Army Corps.***

2. September 2020 Invoice of Law Offices of N. David Durant & Associates for $4,537.50; any other records of legal or other expenses for condemnation, including but not limited to Mr. Durant's charges, if any, for May-June 2020 and January 2021 on; any out-of-pocket reimbursement for things like filing fees for motions, travel, gas, consultants, certified mail, couriers, etc; and the money actually spent on the appraiser and anyone else. ***I've attached a copy of the September 2020 invoice from Durant's office. I can't explain why September 2020 was omitted from the summary of charges they provided. I will forward your request to Durant's office for information regarding "any out-of-pocket reimbursement for things like filing fees for motions, travel, gas, consultants, certified mail, couriers, etc;". I've already provided supporting documentation for the three payments written to Jayroe Appraisal.***

3. Materials pertaining to the recording of the Beattie plat which you have sworn in a previous affidavit filed with the court that you recorded. ***I don't know how many times I have to tell you that I did not record the easement. I collected the signed easements and they were picked up by Durant's paralegal. I will forward your request to Durant's office for a response.***

4. What else there is in the way of e-mails or other documents pertaining to alternatives such as omitting the three properties "from the footprint of the federal project" and Ms. Robbins of USACE arranging meetings "with the larger group" to discuss such alternatives and future courses of action, including but not limited to scheduling communications or any other communications in the six months ensuing after your February 2021 inquiry, and all notes and memoranda of the telephone communications on this important topic and notes and memoranda of any reports to anyone on Town Council. ***Again, I've already provided copies of all documented communications with the Army Corps. There are no notes or memos.***

Best,

Barry

Barry

803 530 2642

-------- Original message --------

From: Ryan Fabbri <rfabbri@townofpi.com>

Date: 8/23/21 8:16 AM (GMT-05:00)

To: Barry Stanton <bstanton@stantonlaw.com>

Cc: Preston Janco <pjanco@townofpi.com>

Subject: Re: FOIA Request 7-19-2021

Barry,

There's no misunderstanding and I'm not the least bit interested in wasting time debating you about any misgivings you may have about the information I've provided. I've supplied all the information that you've requested, but I do recognize that Durant's office might have information that I don't have access to. Please send me a list of specific information you want from Durant's office, and I will forward it to them for a response.

Best,

Ryan Fabbri

Town Administrator

Town of Pawleys Island

T: (843) 237-1698

C: (843) 424-5065

F: (843) 237-7083

E: rfabbri@townofpi.com

W: www.townofpawleysisland.com

From: Barry Stanton <bstanton@stantonlaw.com>
Date: Sunday, August 22, 2021 at 2:57 PM
To: Ryan Fabbri <rfabbri@townofpi.com>
Cc: Preston Janco <pjanco@townofpi.com>
Subject: FOIA Request 7-19-2021

Thank you, Ryan. I think some of your responses are incorrect.

Since I am asking for things I largely don't have and am trying to find out about, this naturally leads to apprehension over what else is incorrect or incomplete and not properly researched. I am additionally concerned that you and the Town may misunderstand the scope of the request. Since the general subject with which the 15 requests are concerned involves matters on which we have asserted problems with previous purposeful misinterpretation and dishonest dealing by the Town, this is a real apprehension.

Taking the scope first, the scope of the request is not limited to records generated by or in the possession of, as you describe them, "administrative employees" involved with acquiring easements and coordinating with the Army Corps. In short, the request is for what is requested, and is not confined to documents and townofpi.com e-mail in the possession of Ryan Fabbri.

That is, the request is for any and all records of the conduct of Town business on the stated items, regardless of by whom conducted, or by what e-mail account or other means the person used to conduct that business. Therefore it is not germane that, as you state, the Town only had two administrative employees at the time, except that I am sure you assume the BULK of the things requested in Item 1 of the 15 requested items would be found in your own Town e-mail.

The Town has a council of five, including the mayor. The Town also has an official Town Attorney. For that matter, the Town has its own police force, and, as I understand it, also contracts out some official functions, including, perhaps,

building department matters and some law enforcement. The Town Council also uses committees of unelected, nonemployed people, and also has "boards" which also consist of unelected, nonemployed people.

In the materials produced after I followed up on some that were missing were an e-mail from the mayor, Brian Henry, sent, as mayor, using his own private "pimentocheese.com" e-mail account.

There, he asks the Corps in August 2020 whether there is a "nuclear option" available for dealing with me and the other two landowners the Town has now sued twice and threatens to sue a third time.

Such an e-mail of an elected official, officially expressing interest in taking devastating destructive actions against a citizen who has previously asked for assistance and cooperation from the mayor is the sort of thing the Freedom of Information Act is designed to provide access to.

So you may understand my concern and desire to get the full story and all the documents, whether they relate to the "nuclear option" Mr. Henry sought, or some other matter we have inquired about.

In the materials received after I followed up, there is also an e-mail in which you forward from your personal e-mail, ryfab77@gmail.com, to your Town e-mail, rfabbri@townofpi.com, the mayor's aforedescribed "nuclear option" e-mail, which he copied you on with your personal, rather than Town, e-mail address, along with council member Guerry Green at screentight.com and Town Attorney, David Durant at lawofficesofdurant.com. What else is there?

I must emphasize the importance of producing, and not deleting or allowing the loss of, responsive information, no matter who generated it, no matter who has it, and no matter where it is found.

Here are other items I have questions about:

1. What further records (whether notes, memoranda, minutes or e-mails) are there about "the nuclear option," "the three part easements" referred to by Mr. Henry, and similar such matters, no matter who has them?

2. Moving to the discrete item of records of legal expenses, in response to my observation that September 2020 charges of Mr. Durant and perhaps other charges are missing, you have advised that what you produced are the only bills the Town received from Mr. Durant's office that were specifically labeled for working on attempted condemnation.

I don't believe this is correct.

One of the two items you produced pertaining to Mr. Durant's charges specifically states that it is for the Town's information, is not a bill, and that it should not be paid. Rather than a bill, it appears to be a recap of several months' charges, in which someone apparently overlooked including September 2020.

Attached is an agenda for the Town Council's October 12, 2020 meeting, in which Item 4 (IV) on the agenda is "IV. Approve Payment to Law Offices of N. David Durant & Associates for $4,537.50 (September 2020 Invoice)."

I think you are wrong and that you got a September bill. I remain less than confident that other charges inquired about have been adequately researched, such as May-June 2020 and January 2021 on, and any out-of-pocket reimbursement for things like filing fees for motions, travel, gas, consultants, certified mail, couriers, etc. (I do know that under the peculiar condemnation procedure, the first six suits commenced against me and the other two by Mr. Durant for the Town were without filing fees, because the Town was sued in challenge actions before the Town got to the point of filing the papers which were used to commence the suits.)

Regarding the money spent on the appraiser, you advise that there were two separate agreements between the Town and Jayroe Appraisal Company for appraisal reports (2-7-2019 & 5-19-2020), and that copies of both signed agreements were included in the Dropbox.

The agreements were included in the Dropbox under an item other than Item 13 pertaining to money spent.

They speak prospectively. Are there no actual bills showing the amount later actually paid? The first agreement was to appraise 113 properties in 2019 for $8500. As I recall, the appraisal report later presented was for 109 properties. The second agreement was to appraise 4 properties in 2020 at $750 each for a total of $3000. The Town commenced condemnation suits on three. Are there records of what the Town actually spent?

3. The response to Items 10 and 11 is still lacking in that no materials pertaining to the recording of the Beattie plat were produced, and the response notes that the recording functions inquired about were performed by the Town Attorney. Town Attorney is an official position with the Town. No records of his pertaining to the recording were provided.

In response to my followup, you have stated that you were the only administrative staff person dealing with the Corps and coordinating easements. This does not answer the matter and is contradictory to the earlier response that the

recording was done, not by you, but by the Town Attorney. Ryan, you have sworn in a previous affidavit filed with the court that you recorded the Beattie plat. Where are the records of you -- or anybody -- doing so?

4. I have followed up on e-mails in early February 2021 (6 months ago) referencing your wanting to know more about alternatives such as omitting the three properties "from the footprint of the federal project" and Ms. Robbins of USACE arranging meetings "with the larger group" to discuss such alternatives and future courses of action.

Specifically, I have asked what else there is in the way of e-mails or other documents pertaining to these anticipated activities or communications, and whether there were any other pertinent communications in the ensuing six months.

In response, you have advised that no written documentation of these conversations WOULD exist. You reason that since all communications to discuss "alternatives" took place over the phone, no written documentation of the communications exists.

In direct contradiction, however, you state that "e-mail was only used to schedule and coordinate those discussions." First, I did not only ask for e-mails. Please produce all notes and memoranda of the telephone communications on this important topic on which you made specific inquiry and on which a larger group including USACE people was rounded up and consulted.

One would think that surely, you took some notes, and reported to at least someone on Town Council, on this important topic that was worth inquiring about. Secondly, please produce all the "e-mail used only to schedule and coordinate those discussions." Those fit the description of Item 1, which reads: "1. All communications with the Corps of Engineers or any people associated therewith."

Best,

Barry

Barry

803 530 2642

-------- Original message --------

From: Ryan Fabbri <rfabbri@townofpi.com>

Date: 8/19/21 4:37 PM (GMT-04:00)

To: Barry Stanton <bstanton@stantonlaw.com>

Cc: Preston Janco <pjanco@townofpi.com>

Subject: Re: FOIA Request 7-19-2021

Barry,

Please see my responses below. Don't hesitate to contact me with any additional questions.

Best,

Ryan Fabbri

Town Administrator

Town of Pawleys Island

T: (843) 237-1698

C: (843) 424-5065

F: (843) 237-7083

E: rfabbri@townofpi.com

W: www.townofpawleysisland.com

---------- Forwarded message ---------
From: **Barry Stanton** <bstanton@stantonlaw.com>
Date: Thu, Aug 19, 2021 at 10:41 AM
Subject: RE: FOIA Request 7-19-2021
To: Preston Janco <pjanco@townofpi.com>

Preston, as a further update to the below:

(a) The response to Item 13, the total legal expenses for attempted condemnation, including consulting/appraisal expense, seems lacking. I have attached what was included.

None of Mr. Durant's September 2020 charges are included.

You might also want to check before June 9, 2020 and after January 29, 2021.

There is also nothing before June 9, 2020, although the Town Council met May 18, 2020 and authorized condemnation of easements "to put sand on the beach" and obtained three 60-page appraisal reports dated June 3, 2020. There is also nothing after January 29, 2021.

Additionally, there are no records of money paid to the appraiser for three appraisals and the reports dated June 3, 2020 or paid to him for anything else, nor are there records showing filing fees, postage, consulting or other expenses incurred, by Mr. Durant's firm in 2020 or any other time if he did charge those to the Town. Mr. Dillard's bills do include filing fees and other out of pocket expenses charged back, but he did not get involved until 2021, and certainly may do his billing differently.

These are the only bills we received from Mr. Durant's office that were specifically labeled for working on attempted condemnation.

There were two separate agreements between the Town and Jayroe Appraisal Company for appraisal reports (2-7-2019 & 5-19-2020). Copies of both signed agreements were included in the Dropbox.

I'm now reminded that Mr. Donovan had been deposed and the Town was invoiced for his time. I've attached a copy of the invoice to this email, in addition to placing a copy in the Dropbox folder.

(b) The response to Items 10 and 11 is lacking in that no materials pertaining to the recording of the Beattie plat were produced, and the response notes that the recording functions inquired about were performed by the Town Attorney. Town Attorney is an official position with the Town.

Were no responsive documents sought from the Town Attorney for this or other items? Do the responses include any records gathered from – or by -- anyone else other than Mr. Fabbri? The request was not limited to records created, stored or searched for by Mr. Fabbri.

The Town administrative staff is comprised of 2 individuals. Other than the Town clerk acting as a notary on various signed documents, I was the only administrative employee involved with acquiring easements and coordination with the Army Corps.

(c) With respect to Item 1, as referenced earlier in this thread with an attachment of Mr. Fabbri's August 21, 2021 e-mail to Ms. Steinbeiser:

- Where is the e-mail dated in the week of August 9-August 15, 2020 from Ryan Fabbri to Dorothy Steinbeiser, "regarding the email from our Mayor," as referred to by Mr. Fabbri in his e-mail of August 21, 2020 to Ms. Steinbeiser? (He asks, "Did you get my email last week regarding the email from our Mayor?") I do not find it in the 34 files produced for Item 1.

- Where is the "the email from our Mayor," as referred to by Mr. Fabbri in his e-mail of August 21, 2020 to Ms. Steinbeiser?

I did not have a copy of this email and I asked Mayor Henry to forward it to me if it did indeed exist. I've attached a copy of that email to this email, in addition to placing a copy in the Dropbox folder. I asked the mayor to confirm that this email and the emails sent in APR/MAY 2020 were his only direct communications with USACE and that no others existed, to which he confirmed.

The response to Item 1 also includes e-mails in early February 2021 (6 months ago) referencing Mr. Fabbri wanting to know more about alternatives such as omitting the three properties "from the footprint of the federal project" and Ms. Robbins arranging meetings "with the larger group" to discuss such alternatives and future courses of action, but lacks much in the way of e-mails or other documents pertaining to these anticipated activities or communications. Were there no other pertinent communications in the ensuing six months?

No written documentation of these conversations would exist since all communications to discuss "alternatives" took place over the phone. Email was only used to schedule and coordinate those discussions. The only email

communications in the ensuing six-month period covered sand fence installation and turtle nests. These emails were included in the Dropbox folder.

The materials you produced are numerous. Thank you. I will continue to look through them but wanted to go ahead and get you the above questions for now.

Best,

Barry

-------- Original message --------

From: Barry Stanton <bstanton@stantonlaw.com>

Date: 8/19/21 8:03 AM (GMT-05:00)

To: Preston Janco <pjanco@townofpi.com>

Subject: RE: FOIA Request 7-19-2021

Preston, further to the below, I opened the link to Dropbox again and now it displays a 2, 3, 4, etc. I will take a look. Something tells me I will still want to know about "our mayor's e-mail" and Mr. Fabbri's transmittal, as referenced in the below.

Best,

Barry

Barry

803 530 2642

-------- Original message --------

From: Barry Stanton <bstanton@stantonlaw.com>

Date: 8/18/21 9:03 PM (GMT-05:00)

To: Preston Janco <pjanco@townofpi.com>

Subject: RE: FOIA Request 7-19-2021

Preston, I did receive your e-mail. Thank you.

The e-mail had a link to Dropbox. There, I found 34 files, under a heading, "**1. STANTON FOIA REQUEST from Ryan Fabbri (Pawleys Island).**"

I have a few questions.

1. Did I find the complete response? I clicked around and Dropbox did not display anything else, but I want to make sure there was not some tab I was failing to click.

2. Is there a "2."? Or any records gathered from – or by -- anyone else other than Mr. Fabbri? The request was not limited to records created, stored or searched for by Mr. Fabbri.

I believe I saw a few e-mails that involved Mr. Henry, but they may have been in threads or "chains" Mr. Fabbri had. No documents were identified as withheld, and therefore there was also no reason stated for the withholding of anything that was responsive but which was withheld. I am serious about this FOIA request and assume the Town is and intends to fully comply with the law, but as further explained below, I am left scratching my head about whether I have gotten what was intended.

3. My other question at this point arises from the attached document which was provided in the 34 files, which also has my questions annotated to it:

a. Where is the e-mail dated in the week of August 9-August 15, 2020 from Ryan Fabbri to Dorothy Steinbeiser, "regarding the email from our Mayor," as referred to by Mr. Fabbri in his e-mail of August 21, 2020 to Ms. Steinbeiser? (He asks, "Did you get my email last week regarding the email from our Mayor?") I do not find it in the 34 files.

b. Where is the "the email from our Mayor," as referred to by Mr. Fabbri in his e-mail of August 21, 2020 to Ms. Steinbeiser?

For your convenience, I am setting forth below, the text of my July 19, 2021 FOIA request, and would ask you to confirm that, if it is the case, the 34 files provided on Dropbox August 18, 2021 (today) constitute the full and only response.

You can see, for example (and only as one example), that I would wonder why the response does not contain the prototype Mr. Fabbri retained on his laptop computer for the "Beattie easement" that Mr. Fabbri initially filed or any of the other things in requests 9, 10, and 11; additionally, and as only an example, none of the materials described in requests 13, 14, and 15 are present and many of these materials must in fact exist; for that matter, are there no appraisals or materials referring to appraisals during the period for the last year, August 15, 2020 to August 15, 2021 as requested in requests 5 and 6? Here is the July 19, 2021 request:

Unless stated otherwise in a particular request, the time covered by this request is for documents or information from August 15, 2020 to three days before actual production of information requested.

The locations or sources covered by this request are all central files, individual desk files, computers, laptops, phones or other devices of the Town, regardless of the phone, device, account, application, e-mail address, phone number, or medium of creation, transmittal, or storage of the information, and also includes the files, computers, laptops, phones or other devices of individuals such as the administrator, mayor, other council members, attorney, etc., if used for Town business or Town endeavors.

Requested documents or information:

1. All communications with the Corps of Engineers or any people associated therewith.

2. All communications other than with the Corps or any people associated therewith, about or regarding communications with the Corps.

3. All agreements, understandings, or arrangements with the Corps or people associated with the Corps. This includes but is not limited to extensions, clarifications, modifications, reaffirmations, or alterations of prior or existing understandings, agreements or arrangements.

4. All documents confirming, acknowledging, or requesting an agreement, understanding or arrangement with the Corps.

5. All agreements, understandings, or arrangements with, or requests or inquiries to, an appraiser or any other person for appraisal of, or an appraisal report on, or valuation opinion of, any property on

Pawleys Island. This includes but is not limited to extensions, clarifications, modifications, reaffirmations, or alterations of prior or existing understandings, agreements, arrangements or reports.

6. All appraisal reports for any property on Pawleys Island.

7. All communications or other documents pertaining to the scope and meaning of easements requested, required, obtained, appraised, or condemned by other towns, other jurisdictions, or any agencies.

8. All communications or other documents pertaining to the scope and meaning of easements requested, required, obtained, appraised, condemned or attempted to be condemned on Pawleys Island. This request does not include communications with Beattie, Stanton, or Sunset Lodge or nonpublic communications of Mssrs. Fabbri, Henry, Holliday, Green or Carter or Ms. Zimmerman with attorneys for the Town with no one other than any of those present. This request does include communications by Town actors including attorneys, with any other person including owners, visitors, renters, residents, other politicians/office holders, government agency employees, appraisers, newspaper or other media reporters, title insurance companies, prospective purchasers, third parties' lawyers, realty companies, rental companies, property managers, banks, assessors, or anyone else.

9. The actual file in its original format (e.g., Word or PDF) of the Beattie easement Mr. Fabbri stated he printed off Mr. Fabbri's laptop on April 25, 2019 and had Mr. Beattie sign.

10. Any cover letter or other evidence or memorandum of transmittal by Mr. Fabbri or the Town to the Georgetown County Register of Deeds, of the plat Mr. Fabbri stated Mr. Beattie brought in and left with Mr. Fabbri on April 25, 2019 and that Mr. Fabbri stated he thereafter filed.

11. Any receipt, confirmation copy or returned original, receipt for filing fee, or other acknowledgement of the filing of that Beattie plat by Mr. Fabbri or the Town.

12. All communications with the Corps or any other person regarding the appraisal of 109 properties the Town obtained for the Corps in 2019, including but not limited to communications or documents pertaining to the failure of the appraisal report to include the language of the easement as required by Corps regulations or the inclusion in the report of assumptions appearing on their face to result in inaccurate valuation and inaccurate land acquisition cost as a result of misinformation given by Mr. Fabbri to the appraiser regarding the scope and terms of the subject easements.

13. Such documents as will show the actual legal, appraisal, consulting and other expense incurred by the Town from May 10, 2020 to three days before actual production of information requested, on attempts to condemn oceanfront easements on three properties on the south end of Pawleys Island. This includes but is not limited to all twelve legal actions and the expenses incurred with Mr. Durant, Mr. Dillard, and their firms.

14. Any records of any discussion or consideration of fixing so-called procedural defects in the first round of condemnation attempts on three properties on the south end of Pawleys Island (commenced in June 2020), including but not limited to records pertaining to what the so-called procedural defects were and what would be done to fix them. The period covered by this request is from September 1, 2020 to three days before actual production of information requested.

15. Any record of authorization by Town Council of the commencement of three additional condemnation actions in October 2020 on the same subject matter as the three previous and then still pending condemnation actions which were the subject of court actions challenging them.

If any of the above are published on the Town's website as of July 19, 2021, but in the form of video, please advise if the video can be captured and sent for a reasonable cost and what that approximate cost is, as well as whether there are plans or policies in place for when the videos will be taken down off the site. If any of the above can be provided electronically, as, for instance, a PDF or an eml file, that may be acceptable.

If there are any fees for searching or copying these records, please inform me if the cost will exceed $100. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the process actually followed by the Town in dealing with the Corps and in obtaining easements from some of its oldest standing owners and properties. This information is not being sought for commercial purposes.

Best regards,

Barry Stanton

From: Preston Janco <pjanco@townofpi.com>
Sent: Wednesday, August 18, 2021 1:11 PM
To: Barry Stanton <bstanton@stantonlaw.com>
Subject: FOIA Request 7-19-2021

Barry Stanton,

Here is the FOIA information for the request that you sent on 7-19-2021. If you have any questions please let me know. Please confirm that you have received this email.

https://www.dropbox.com/sh/o78oluirxir20oq/AABrpYBp6LlBv2zagjZrhzk7a?dl=0

Have a great day!

--

Preston Janco

Town Clerk

Town of Pawleys Island

(843) 237-1698

--

Preston Janco

Town Clerk

Town of Pawleys Island

(843) 237-1698

October 22, 2021 filed 10/18/21 letter of Judge Nettles's office filing billing materials with Clerk of Court on 10/22/21.

State of South Carolina
The Circuit Court of the Twelfth Judicial Circuit

Michael G. Nettles
Judge

Florence City-County Complex
181 North Irby Street, Suite 3610
Florence, SC 29501
Phone: (843) 292-7433
Fax: (843) 292-7436
mnettlesj@sccourts.org

October 18, 2021

The Honorable Alma Y. White
Clerk of Court, Georgetown
P.O. Box 479
Georgetown, South Carolina 29442-0479

RE: January 25, 2021 bills of costs including attorney's fees, production of billing materials, redactions: Sunset Beattie, and Stanton; Case(s): 2020-CP-22-00600, 2020-CP-22-00601, and 2020-CP-22-00602; Sunset v TOP Redacted and Un-redacted copies

Dear Ms. White:

Enclosed please find a redacted copy and an un-redacted copy to be filed with the Georgetown Clerk of Courts Office per Judge Nettles' instructions. Please have your clerk's office file the redacted copy, as per usual filing. The **UN-REDACTED COPY IS TO BE FILED, UNDER SEAL.**

If you or your staff of any questions, please do not hesitate to contact our office via phone at 843-292-7433 or email at mnettlessc@sccourts.org.

With kind regards, I am

Sincerely,

Sherrie E. Byrd

Enclosures

FILED
GEORGETOWN COUNTY
2021 OCT 22 PM 4:01
ALMA Y. WHITE
CLERK OF COURT

December 2, 2021 Landowner motion to reconsider.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)	
Sunset Lodge, LLC, Plaintiff, v. Town of Pawleys Island, Defendant.	CIVIL ACTION NO. 2020-CP-22-00600
Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust, Plaintiff, v. Town of Pawleys Island, Defendant.	CIVIL ACTION NO. 2020-CP-22-00601
M. Baron Stanton, Plaintiff, v. Town of Pawleys Island, Defendant.	CIVIL ACTION NO. 2020-CP-22-00602

12/2/21
MOTION OF SUNSET AND BEATTIE TO RECONSIDER
ORDER RE
1/25/21 MOTION OF PLAINTIFFS FOR
AWARD OF ATTORNEY'S FEES AND
OTHER LITIGATION EXPENSES

Stanton Law Offices, P.A., 1230 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

Plaintiffs Sunset and Beattie ask the Court to reconsider its Order of 11-23-21, disregard and strike the affidavits of Mssrs. Dillard and Pagliarini, and award a revised reasonable amount of attorney's fees to these plaintiffs for their successful challenge to the condemnation attempts by the Town of Pawleys Island. The movants would appreciate being heard on the motion. The grounds for this motion are that the Court did not rule on numerous material issues presented by movants and significantly misapprehended the facts and numerous legal issues. Respectfully, these oversights include, without limitation, the following:

1. The Court erroneously adopted the wholly incorrect approach urged by Defendant Town, of counting up time erroneously estimated by successor opposing counsel for tasks arbitrarily selected by successor opposing counsel, rather than looking at total time actually expended in actually representing the clients on the overall matter and multiplying by a very reasonable rate.

2. Even then, the Court, in adopting the errors and omissions of the Town's successor counsel and hired nonexpert opinion witness (who has no first-hand knowledge and limited reviewing time), wholly left out relevant and necessary tasks and events, and clearly made estimates which were incorrect and contrary to the sole competent evidence, thus grossly shortchanging the plaintiffs on recovery of the expenses they were required to incur.

3. The Court effectually did not include, at all, the time spent on many necessary aspects of the case, including the fee petition and attendant communications on three cases, file management, discovery, research, briefing, hearings, and other submissions and correspondence.

4. For example, in coming to a determination of 125 total hours for three plaintiffs in a matter on which the Town itself had spent well over $80,000 (the equivalent of 320 hours if billed at $250, but 421 hours if billed at $190), the Court adopts in artificially truncated fashion, the Town's contention that the case essentially involved only success on an early-filed summary

judgment motion.

In turn, the Court erroneously adopts the untenable conclusion that the summary judgment motion was simple and uncomplicated because it was based primarily on a review of what Town Council stated in a meeting, made no use of an expert witness, and, while the plaintiffs' counsel deposed the Town's appraiser, did not "reference" the deposition testimony.

Yet, even this grossly understated summary of the work required in the case overlooks the fact that the early-filed August 2020 summary judgment motion on multiple factually overlapping grounds was not heard until over three months later, was not the subject of a formal order until a month and half afterwards, and was not the subject of a final written order until April 5, 2021, over seven months after filing. The motion was based on facts, all of which were totally evaded in the Town's answer, which was deserving of sanctions, which the plaintiffs did not pursue.

During the time from filing the action to final summary judgment order, the plaintiffs' counsel was required to deal with, exclusive of many other aspects of responsible representation, preparation of a complex and long complaint and amended complaint, opposing a motion to dismiss, opposing a motion to expedite, pursuing a motion to compel, opposing a motion to block discovery, opposing motions to require three ten million dollar bonds under unsubstantiated threat of additional suit and liability for that amount, repetitively seeking the deposition of the appraiser on three appraisal reports, following up on work papers of the appraiser the Town had not produced before the deposition, first trying to accommodate and then opposing a motion of the Town for continuance of the summary judgment hearing, engaging in actual exchanges of discovery such as comprehensive interrogatories and production of hundreds of pages of documents (including those involving a federal agency) never filed with the Court

nor reviewed by Mr. Pagliarini nor mentioned by Mr. Dillard, monitoring Town Council activities on the subject matter, receiving, analyzing and corresponding about a second set of three condemnations commenced by the Town by surprise (without negotiation or new appraisal in violation of the EDPA), preparing and filing a second set of three challenge actions (which are separately accounted for) and thereafter tracking and coordinating among six pending challenge cases, opposing a motion of the Town for reconsideration, submitting the fee petition and periodic updates as the case was delayed, opposing a request of the Town for delay for fee discovery, making court appearances and submissions on same, responding fully to a motion of the Town to disqualify plaintiffs' counsel, composing and making repeated settlement overtures by plaintiffs (not filed with the Court, of course) with no meaningful response or apparent reciprocal effort by the Town, and engaging in exchanges with the Court and counsel regarding the Town's additional requests for tweaks of the final summary judgment order.

The case continued thereafter, requiring further substantial time, but the foregoing was up to the time of the April 5, 2021 final summary judgment order.

The Court itself observed that the plaintiffs' counsel expended at least 600.7 hours up to the time of the initial formal order granting summary judgment January 20, 2021. Multiplying 600.7 hours by $190 per hour yields $114,133.00, rather than $24,000.00.

4. The Court incorrectly ruled that the plaintiffs were "unsuccessful" on the Town's shifting requests for fee discovery, most of which were not even promulgated in formal discovery or even in a proper motion.

5. The Court failed to acknowledge that facts in the case supporting numerous bases for challenge were intertwined and ruled incorrectly that they were unrelated, not intertwined and an unconnected separate "claim."

6. The Court erred in concluding the plaintiffs were unsuccessful overall, or that the result stopping and dismissing the condemnation attempt was not a significant and favorable result for plaintiffs seeking to stop a condemnation attempt and have it dismissed. This conclusion is particularly erroneous inasmuch as the ruling and the Town's aversion to plaintiffs' continued discovery efforts led to the Town attempting to abandon the Town's successive additional surprise condemnation attempts and inasmuch as from the commencement of the instant actions against three landowners in July 2020 to December 1, 2021, there has been no successful condemnation attempt by the Town against any landowner and no new attempt has been made after the second attempt the Town has attempted to withdraw.

7. The Court made an award based on a number of hours (125) in which it would have been physically impossible for any reputable lawyer other than an omniscient one assured in advance of the actions of the adversary and the disposition of the judge to have successfully challenged the Town's attempts and resisted its motions and other overtures. It is highly doubtful that even such an omniscient lawyer could have responsibly done so.

8. The Court made an award based on a number of hours which was not a mere three percent reduction of the hours actually incurred and spent. The erroneously estimated number of hours was a mere fraction of the hours undeniably actually incurred and spent. The number is accordingly erroneous and grossly inadequate and constitutes an abuse of discretion as that term is defined in the law.

9. The Court made an award based on a number of hours which was no more than a fraction of the hours incurred up to and including the January 20, 2021 initial granting of summary judgment (which was succeeded by the unsuccessful motion of the Town for reconsideration and a final order April 5, 2021, the right of appeal of which expired May 5,

2021), and is accordingly erroneous and grossly inadequate and an abuse of discretion.

10. The Court made an award so grossly inadequate as to be erroneous as a matter of law, being a fraction of the over $80,000 the unsuccessful party itself spent on the litigation.

11. Despite the nonprevailing party's clarification on the record at the hearing that the hours stated by the plaintiffs' counsel were not disputed, the Court did not rule that the hours meticulously recorded were spent, and instead treated the number of hours incurred as a dubious matter, undercutting the fee award without ruling clearly on the issue.

12. The Court erroneously considered, relied upon, and failed to strike the affidavit of Mr. Pagliarini, a paid witness of no demonstrated special scholarship whatsoever, who was theretofore a stranger to the case. The Court erred for the reasons clearly stated in the plaintiffs' submissions to the Court. These include but are not limited to: his lack of personal involvement in the matter and complete lack of personal knowledge of the matter; his lack of expertise on fees; his lack of time spent in review (including Mr. Pagliarini's casual if not baffling finding that the clear English of the Amended Complaint is "unintelligible" and his cursory failure to appreciate that the length of the summary judgment affidavit was dictated by the Town obstructing progress of the matter and increasing the time and expense in the matter by denying virtually every one of the same facts alleged in the Amended Complaint); his lack of expertise on any except condemnor-side road condemnation matters; his reliance on matters not customarily relied on by experts in the field of fees, e.g., a select listing of isolated tasks chosen arbitrarily by another lawyer, Mr. Dillard, who also had no personal knowledge of the matter, for which the other lawyer stated no selection criteria and which the other lawyer accompanied with demonstrably significant errors in "guesstimates" of time and errors in counting or being aware of the number of motions and appearances in the case; Mr. Pagliarini's statement of bases that

were rife with obvious erroneous understanding of procedural and substantive law; and his giving an opinion on an ultimate conclusion which was, instead, the province of the Court, not the "expert" witness.

13. The Court erroneously considered, relied upon, and failed to strike the affidavit of Mr. Dillard. The Court erred for the reasons clearly stated in the plaintiffs' submissions to the Court. These include but are not limited to: his reliance on the aforedescribed inadmissible and grossly erroneous opinion of Mr. Pagliarini; Mr. Dillard's lack of personal involvement in the matter until after summary judgment was granted and complete lack of personal knowledge of the early part of the case; his lack of expertise on fees; his lack of expertise on any except condemnor-side condemnation matters not involving coastal zone litigation; his reliance on matters not customarily relied on by experts in the field of fees, e.g., a grossly erroneous and inadmissible affidavit of another nonexpert lawyer with no first-hand knowledge of the case; his select listing of isolated tasks without any first-hand knowledge of many matters he was selecting – including a deposition he never attended nor even read -- for which he stated no selection criteria and which he accompanied with demonstrably significant errors in estimates of time and even the number of motions in the case; and his giving an opinion on an ultimate conclusion which was, instead, the province of the Court, not the "expert" witness.

14. The Court erred in adopting and incorporating exactly the figure proposed by Mr. Pagliarini, despite his incorporation of the wrong number of motions and papers and events, and his incorporation of indisputably incorrect time for a deposition and other matters, and consequently subtracting that time from other tasks he had not even "assessed."

15. The Court failed to consider the extra time involved in representing three parties instead of one, and assumed incorrectly and without basis that the time is the same.

16. The Court failed to rule on recoverability for time and fees spent trying to obtain the fees, and yet simply substantially omitted any time for same.

17. The Court erroneously determined that not submitting deposition testimony in support of a summary judgment motion makes the deposition unnecessary. The Court also erred in holding that not submitting the deposition testimony in support of an already supported summary judgment motion makes the summary judgment motion itself relatively simple and uncomplicated.

Regardless of whether referenced in the motion, the deposition is not unnecessary to preparing for summary judgment, is not unnecessary for heading off prevarication by the opposing party in resisting summary judgment, and is not unnecessary in preparing for trial of the challenge case if the motion is unsuccessful.

It is also not unnecessary to preparing for trial of the condemnation action if the challenge action is unnecessary, and the statute cited by the Court specifically includes in "litigation expenses" recoverable by a successful challenge plaintiff, fees necessary "for preparation or participation in condemnation actions." The Court's limitation of recoverable fees to those only for preparing for a summary judgment motion in the challenge action is erroneous as contrary to statute.

For example, the plaintiffs did not get an appraisal from a witness retained to testify at a condemnation trial, but if they had done so, the statute expressly provides that if the plaintiffs are earlier successful in a challenge action (obviating any need for a condemnation trial), their litigation expenses, including the cost of the appraisal, are recoverable. This would be the result dictated by the statute regardless of whether such an appraisal was used, mentioned or referenced in a summary judgment motion challenging the right to take. Respectfully, it is fundamentally

unfair to penalize the plaintiffs by denying recovery of fees they were required to expend by, on the one hand, characterizing their frugal and efficient efforts as making the case so simple as to be undeserving of reimbursement even at a lower than market rate for the number of hours actually spent, and, on the other hand, characterizing the time and expense incurred as excessive, when, in their counsel's experienced professional judgment, they take measures necessary to prosecute their challenge, ward off threats of liability for protecting their property, prepare for potential trial, and protect their property and their legal position on any appeal.

18. The Court erred in proceeding, without so ruling, as though the only relevant evidence of time spent is private fee statements. Time spent is often obvious. South Carolina trial and appellate courts have employed estimates of time by attorneys who kept little, or no, time records. It is bad precedent to cherry pick, nitpick, or selectively and retrospectively criticize such private records in such a manner as to discourage attorneys from attempting to keep such records and inform their clients.

19. To the extent the Court based its grossly inadequate determination of fees on the premise that requiring production of private fee statements and disclosure of private and confidential matters in them is categorically required for a fee application, the Court erred in so doing and was therefore improperly influenced in its determination of fees.

20. To the extent that the Court's manifestly unreasonably low award was based on the premise that the results obtained were not very beneficial to the plaintiffs relative to the object of challenging an attempted condemnation, or that the result was not a very good one even in light of the rarity of successful challenge actions (and in light of the even rarer instance of such success on summary judgment, as a matter of law, on well-marshalled, evaded, but undisputed facts), it was erroneous to so conclude.

21. The plaintiffs request that the Court clarify and revise its statement at 1 that the three cases "were once three separate condemnation challenge actions," in that they still are separate actions with their own identities and have been consolidated under Rule 42, SCRCP, not merged.

22. The Court overlooked in its Order at 1, that plaintiffs' counsel did not base the consideration of the fee award on 950.5 hours, but rather, averred to at least 1000.5 hours, and simply suggested 950.5 hours as a way to be conservative and flexible.

23. The Court erred in not taking into consideration at all, the effectual further one-third reduction of the total fees to be assessed against the Town as a result of Stanton – one of the three plaintiffs -- not seeking fees in the case.

24. The Court erred in correctly stating that the fee agreement does not control in awarding attorney's fees, but then chopping down the hours worked by the plaintiffs' counsel while at the same time using only the $190 hourly rate actually contracted by plaintiffs' counsel rather than the $250 per hour rate paid by the unsuccessful Town to its first lead counsel and its successor lead counsel, and indulging the Town's insistence on examining the actual, private and confidential, billing agreements and billing statements between the plaintiffs and their counsel.

25. The Court erred in adopting the legally erroneous and grossly oversimplified characterization by the legally incompetent witness, Mr. Pagliarini, of the fees which were required to be awarded, viz., citing Mr. Pagliarini, the Court erroneously sought to award fees based only on an arbitrary 125 hours assumed in its Order at 5 to be all that were necessary in foresight in order to successfully present the "procedural claims on which the plaintiff prevailed and obtained relief."

As carefully explained in the plaintiffs' earlier submissions, the so-called "procedural claims" were not form over substance. They were not merely timing missteps, scrivener's errors,

or technical matters which could be cured by a revision or a re-filing. They were instances of substantial dishonesty and fundamental omissions of substantive steps required for a fair and compliant condemnation. They included not deliberating on the considerations of necessity, cost, hardship and fairness pertinent to trying to condemn the actual interest in land which was sought, failing to provide information about the nature of the interest in land to the appraiser, providing incorrect information to the appraiser, failing to provide the grossly flawed appraisal report to the landowner and negotiate at a meaningful time before suing the landowner, and making false statements and false certifications in the condemnation pleadings themselves.

These so-called "procedural claims" overlapped with and included many of the things alleged to be dishonest, in bad faith, and fraudulent. The fact that these substantive delicts were not merely procedural and the fact that their being ruled impermissible had lasting effect is clearly demonstrated by what happened when the Town filed three more suits with approximately two months' acute knowledge aforethought of these "defects."

In the successive litigation commenced by the Town, the Town corrected none of these allegedly only "procedural" deficiencies. That is, legally, the Town was unable to pursue condemnation again without another Town Council meeting which actually discussed what the Town was foisting only upon oceanfront property owners on the South End for the benefit of oceanfront owners mid-island and those off-ocean. The Town Council had a meeting, but did not authorize another condemnation, carried on an illusory and false commentary about limitations on public access nowhere found in the proposed easement language, illegally delegated to two people the authority to pass a resolution of Council, and authorized a resolution which again falsely recited that things were provided to the landowner which in clear truth were not.

Legally, the Town was also unable to pursue condemnation again without getting another appraisal which actually dealt with the property interest the Town was going to try to take, rather than with the property interest the Town had publicly misrepresented at every turn. The Town needed a new appraisal which took into account the effect of the easement on structures on the property, which took into account that the easement was to be in use 24/7/365 rather than only an average of one month per year, which took into account that the easement explicitly permanently subjected the private property to general public use and recreation and regulation as a public beach, rather than only to temporary occupation by earthwork equipment and deposit of sand, which took into account the ability to perpetually limit the owner's access to his own land and the ocean, and which took into account restriction on what the owner could build or place on his own land.

The Town did not get another appraisal.

These and other failures and inabilities of the Town to make correction led to the Town attempting to withdraw its second set of suits against the plaintiffs. Mr. Pagliarini knew nothing of such matters and offered no opinions concerning them in his superficial review of materials submitted to him by the Town's counsel.

The further flaw in the approach adopted by the Court following the affidavit of Mr. Pagliarini is the legal error in (i) confining the award to "claims on which the plaintiff prevailed," (ii) in defining such claims, and (iii) in defining what it is to prevail. The EDPA requires award of all litigation expenses necessary for preparation or participation in condemnation proceedings.

The EDPA does not confine the award to artificially or arbitrarily segregated segments of motions and so-called "claims," whether successful or not. The plaintiffs have not brought an

unsuccessful Unfair Trade Practices claim against the Town in this case. There is no car wreck claim or breach of contract action joined in the Amended Complaint. It all relates to the attempted condemnation. Everything the plaintiffs' counsel did was necessary for "preparation or participation in condemnation proceedings" and it was the Town choosing to sue the plaintiffs which required them to prepare for such proceedings and participate in them.

The expense to which the plaintiffs were put is what is supposed to be awarded under the EDPA. The Court failed to square its rulings with Mr. Dillard's contentions on behalf of the Town in the second set of suits that the attorney's fees provisions in the EDPA were a sufficient deterrent against multiplicitous litigation by the government or other abuse of citizens by the government. The fee award is a fraction of what the Town itself has spent on three lawyers of record putting its own citizens through the ringer only for the Town to be unsuccessful in six cases occupying this Court. Emboldened by what the plaintiffs have had to endure without timely or complete reimbursement, the Town has announced intention to make a third try.

26. The Court erred in ignoring that the facts relating to fraud, bad faith and lack of necessity were intertwined with and were actually often the same as the facts supporting the so-called "procedural deficiencies," e.g., the demonstrated and undisputed lying by the Town Adminstrator and others at the Town Council meeting about the nature of the easement sought or the positions taken by the plaintiffs, the withholding of information from the appraiser, the public, and the plaintiffs, and the false statements in the condemnation papers themselves all figured prominently in (i) failure to conduct truthful and proper deliberations, (ii) failing to appraise what was proposed to be taken, (iii) failure to give the landowners a proper appraisal of what was proposed to be taken before taking them to court, and (iv) false recitals in condemnation papers about performance of conditions precedent to condemnation. Yet,

incorrectly treating these facts as something far removed from what was found wrong with the Town's condemnation attempt, the Court acknowledged that "a significant amount of time was devoted" to these facts, and then jettisoned large blocks of time from the basis for the fee award. This was error.

27. The Court erred in determining that it was reasonable for the fee award to emulate the manner of actual billing in dividing the total time by three, but in not also therefore emulating the manner of actual billing by using the actual amount of time spent and billed.

28. If the Court was misled by suggestions of the Town that plaintiffs' counsel did nothing more than "state in conclusory fashion that the fees sought were reasonable," the caselaw was cited by the Town and the Court out of context.

Rather, the plaintiffs' fee petition stated the actual hours expended, stated a reasonable rate, stated the complexity of the matter and the nature of the case, law, claims and defenses and proceedings involved, stated correctly the result obtained, supplied evidence of counsel's experience, and explained the circumstances under which the work had to be performed (e.g., essentially under ambush, with information withheld by the Town, with false assertions by the Town, representing three clients in three cases with separate properties (including pro se counsel as a "client"), and enduring professional insult in an "ethics" motion which itself was deserving of sanctions, all while under a worldwide pandemic with labor shortages, deaths and sickness, delays, technology outages and changing temporary court rules). There was nothing conclusory about the plaintiffs' plenary fee application and it was error to treat it as such.

29. The Court errs in adopting the Town's assertion that the time spent on the case involving millions of dollars' worth of oceanfront coastal real estate was "unreasonable in light of the needs of the case," in that the Court never states what the needs of the case were. The

plaintiffs' challenge was not unopposed. It was opposed to the end. If the needs of the case did not include working to be successful in opposing the Town's motions and persisting in preparing and advancing the plaintiffs' multiple oppositions to the Town's attempts to take the property, the needs of the case would not include the need to prevail, rather than lose. This is an incorrect proposition and the Court should reconsider its conclusion and any basis for it.

For the foregoing reasons, and those set forth in the plantiffs' previous submissions, the plaintiffs request that the Court revisit the fee award and award a more appropriate fee.

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
Attorney for Sunset Lodge, LLC and Franklin D. Beattie, as trustee

12/2/21

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

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.

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 . 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