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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Unpublished Opinion No. 2026-UP-274 (S.C. Ct. App. Filed June 3, 2026)
Court of Appeals Case No. 2022-000291

Sunset Lodge, LLC, and Franklin D. Beattie, as trustee of The Franklin D. Beattie
Preservation Trust, and M. Baron Stanton, Plaintiffs,

v.

Town of Pawleys Island, Defendant,

Of which Sunset Lodge, LLC and Franklin D. Beattie, as trustee of the Franklin D.
Beattie Preservation Trust are the Respondents,

and

Town of Pawleys Island is the..... Petitioner.

TOWN OF PAWLEYS ISLAND'S PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Petitioner Town of Pawleys Island (“Town”) certifies that the Court of Appeals filed its opinion in this matter on June 3, 2026 (the “Opinion”) and denied Town’s timely petition for rehearing by order filed August 3, 2026.¹

QUESTIONS PRESENTED

- I. Did the Court of Appeals err in making statements regarding the Town’s easement acquisition efforts that are unsupported by the record and outside its scope of review?**
 - A. Did the Court of Appeals err in, *sua sponte*, making statements regarding Army Corps of Engineers easement requirements?**
 - B. Did the Court of Appeals err in making statements regarding an “overly broad” scope of easements?**
 - C. Did the Court of Appeals err in making statements regarding rejection of easements signed by Landowners?**
 - D. Did the Court of Appeals err in making statements regarding “municipal overreach”?**
- II. Did the Court of Appeals err in modifying the fee award?**
 - A. Did the Court of Appeals err in finding that there was any error of law or abuse of discretion in the circuit court fee award?**
 - B. Did the Court of Appeals err in modifying the fee award by simply doubling the circuit court’s determination of reasonable attorney time from 125 hours to 250 hours?**
 - C. Did the Court of Appeals err in modifying the fee award by jointly awarding the full calculated “lodestar” fee to two Landowners who incurred only 2/3 of the fees?**

¹ This appeal arises from three related, consolidated condemnation challenge action cases referred to by the parties as the “**Challenge 1**” cases (*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; and *M. Baron Stanton v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0602). The Town is also filing a petition for writ of certiorari in the separate “**Challenge 2**” cases (Court of Appeals Appellate Case No. 2023-001272) arising out of a second set of cases involving the same parties (*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; and *M. Baron Stanton v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0602).

INTRODUCTION

This appeal concerns the dissatisfaction of Sunset Lodge, LLC and Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust (“Landowners”) with an award of attorney fees they received following condemnation challenge actions filed pursuant to § 28-2-470 of the South Carolina Eminent Domain Procedure Act. S.C. Code Ann. § 28-2-10, et seq. The Town requests a writ of certiorari not only to correct the errors of the Court of Appeals in partially modifying the fee award, but also to address unsupported, unnecessary statements in the opinion of the Court of Appeals that were outside its scope of review of the fees. The Landowners will inevitably attempt to use these statements in anticipated future litigation to object to easements required for long-term, multi-million dollar federal support of the Town’s shore protection program.

The underlying dispute involves the Town’s efforts to secure “Perpetual Beach Storm Damage Reduction” easements required by the U.S. Army Corps of Engineers in order to secure long-term funding for beach renourishment and similar shore protection. The Town has obtained the necessary easements from 110 of the 113 property owners within the federal project area, with the three owners involved in this litigation being the only holdouts (R. p.608, ¶ 8, 10). After the Town attempted to initiate condemnation proceedings, the circuit court granted summary judgment to the property owners on the grounds that (1) appraisals were not delivered prior to service of the Condemnation Notices and (2) the Town’s appraisals and authorizing resolutions did not reference the specific easement language included in the Condemnation Notices (including provisions for, among other things, public access). The summary judgment order specifically stated that it was without prejudice to future condemnation attempts, (R. p.73, 84).

The circuit court subsequently made an award of attorney fees and costs to Landowners but found that approximately 87% of their claimed attorney time was excessive. The Landowners

appealed that determination. In partially modifying the fee award, the Court of Appeals not only disregarded any deference to the circuit court as the finder of fact; it also included in its opinion a number of statements, unsupported by the record and outside its scope of review, regarding the Town's efforts to implement a long-term beach renourishment program.

Like the circuit court, the Court of Appeals was faced with the challenging task of sorting through the unnecessarily, excessively lengthy briefing presented by the Landowners.² The Court of Appeals did increase the fee award, finding that Landowners' reasonable attorney hours were overstated by only approximately 74% instead of by 87% as the circuit court found. However, in discussing the case, the Court of Appeals fell into the error of, *sua sponte*, making sweeping statements regarding the necessity of the underlying easements. Among other things, the Court of Appeals stated, in effect, that the United States Army Corps of Engineers did not require the easements. **This was plain error, and potentially an error with alarming consequences, for several clear reasons:**

- 1.) There is absolutely nothing in the record to support the assertion that the Corps did not require the easements. The opinion cites no factual basis for the statement. The Landowners themselves did not even make that claim. The idea simply appeared in the opinion issued by the Court of Appeals.
- 2.) In reality, the Corps most certainly does require that these particular easements be obtained, by the Town of Pawleys Island and other beach front communities, as a mandatory prerequisite to the availability of long-term, substantial federal funding for beach

² For example, the *Appellants' Brief* filed by Landowners was 50 pages long and included approximately 13 pages worth of single-spaced footnotes. In addition to identifying 18 supposed issues on appeal, footnote 20 of the brief, beginning on p.41, lists 43 purported additional "errors and sub-errors" of the circuit court.

protection efforts.³

- 3.) The question of what the Army Corps required was not before the circuit court on summary judgment and the record was not developed on that issue. Landowners' fee petition was before the circuit court because Landowners prevailed in the challenge actions by obtaining summary judgment on *other grounds* (characterized by the circuit court as "essentially temporary procedural relief" (R. p108)). The summary judgment order, and any further consideration of the merits of Landowners' underlying objections, was not on appeal. This issue of what the Army Corps did or did not require was far outside the scope of review of the Court of Appeals in considering the fee award.
- 4.) Landowners will inevitably attempt to use the mistaken language in the opinion of the Court of Appeals to further object to the Town's future efforts to take necessary steps to secure this federal funding to protect the Pawleys Island shoreline for the public. The Town does still need and intend to acquire the outstanding easements as required by the Army Corps. The best information available in the record indicates that, if these three easements are acquired, the portion of future construction costs that would be the responsibility of the Army Corps, to the benefit of the Town and the public it serves, would be nearly **sixty-five million (\$65,000,000) dollars**. (R. p.672).

For that reason, although the opinion in this appeal was unpublished, in the context of this ongoing dispute it is of significant public importance that this Court correct the inaccurate, unsupported language in the Court of Appeals opinion. The Town and Landowners continue to be in disagreement about the proposed easements and, unfortunately, it is highly probable that there

³ The only evidence in the record on this issue appears to be the affidavits of former Town Administrator Ryan Fabbri, which explain that the easements were in fact required by the Corps. (R. p.508, 608).

will be additional litigation. If the issues the Court of Appeals ventured into outside its scope of review (for example, questions of necessity and federal requirements) need to be resolved, that should occur through proper legal proceedings beginning in the circuit court. **This issue is of critical importance to the Town, the beachgoing public it serves, and the 110 other beachfront owners who already signed Army Corps easements and are entitled to the significant benefit of federal partnership in Pawleys Island shore protection efforts.**

Additionally, the Town requests that this Court correct the error of the Court of Appeals in setting aside the deference due to the circuit court as the finder of fact in a fee award. If the detailed factual review and analysis performed by Judge Nettles in this case was insufficient, it is difficult to know what would ever be adequate or to articulate what discretion the circuit court really has. Although, again, this was an unpublished opinion, the Town respectfully contends that this case provides the Court an important opportunity to confirm and clarify the broad discretion of the circuit court in fee proceedings and to address the novel issue of properly determining partial awards of “shared” fees (e.g., where, as here, three co-parties divide fees in equal thirds but only two petition for a fee award).⁴

STATEMENT OF THE CASE

This appeal arises from attorney fee awards in two related condemnation challenge actions involving properties owned separately by the two Landowners. A third related case, which is not part of this appeal, involves property owned by counsel for the Landowners, M. Baron Stanton. Stanton represented both Landowners and himself at the trial court level. On October 15, 2021, the three cases were consolidated by consent of the parties. (R. pp. 98).

⁴ The Town’s Petition for Writ of Certiorari in the separate “Challenge 2” appeal (Court of Appeals Appellate Case No. 2023-001272) involves closely related questions. If the writ is granted in both appeals, the Town understands that the Court may choose to consolidate the matters for review.

In or around June 2020, the Town served on both Landowners and Stanton a Condemnation Notice through which it sought to acquire beach renourishment easements. (R. p. 269, Amended Complaint, ¶ 150, et seq.). On July 21, 2020, Landowners and Stanton each filed separate challenge actions objecting to the condemnations on various procedural and substantive grounds. On July 31, 2020, Landowners and Stanton filed Amended Complaints. (R. p. 216). After the Town's motion to dismiss was denied, it filed its Answer to the Amended Complaint in each case on September 18, 2020. (R. pp. 277).

In the meantime, approximately 31 days after filing the initial Complaints, Landowners and Stanton filed motions for summary judgment on August 21, 2020. (R. p.429). The summary judgment motions were argued before the Honorable Michael G. Nettles at a virtual hearing on December 4, 2020. On January 20, 2021, Judge Nettles entered orders granting summary judgment on certain of the grounds raised by Landowners and Stanton. (R. pp.13). On April 5, 2021, Judge Nettles entered amended summary judgment orders making certain modifications to the language used. (R. pp. 60).

Previously, shortly after the original summary judgment orders were entered, the Landowners had on January 25, 2021, filed motions for attorney fees and supporting attorney affidavits. (R. pp. 921). Initially, each Landowner requested an award of \$43,875.05 in attorney fees, or \$87,750.09 total for both Landowners, plus costs. Landowners asserted that this represented 2/3 of total fees of \$131,625.14, with Stanton not requesting an award of his 1/3 share. Landowners' submission did not include any itemized fee statements documenting the claimed attorney time. On February 3, 2021, undersigned counsel for the Town entered an appearance in the cases. The next day, February 4, 2021, Landowners filed amended fee affidavits requesting attorney fees of \$49,533.00 each, or \$99,066.00 total. (R. pp. 989). Two days later, on February 5,

2021, the Town filed its *Initial Reply in Opposition to Plaintiff's Motion for Expenses*. (R. pp. 997), in which it requested copies of Landowners' itemized attorney fee statements and a scheduling order providing an opportunity to review and respond to Landowners' fee claims.

Counsel for the parties subsequently fell into disagreement over whether, and in what manner, the Landowners would produce copies of redacted fee statements.⁵ On April 5, 2021, Judge Nettles entered an order directing counsel for Landowners to produce redacted fee statements to counsel for the Town and unredacted copies to the court for in camera review. (R. pp.86). On April 22, 2021, Landowners filed additional amended fee affidavits requesting attorney fees of \$56,417.33 each, or \$112,834.66 total. (R. pp.1126). On June 30, 2021, after reviewing and amending Landowners' proposed redactions, Judge Nettles entered an order requiring Landowners to produce revised redacted fee statements to counsel for the Town. (R. pp.94). Subsequently, Landowners filed final amended fee affidavits on September 10, 2021, requesting fees of \$60,198.33 each, or \$120,396.66 total (2/3 of a total of \$180,595.00 for the three consolidated cases). (R. pp.1154).

The fee petitions were argued before Judge Nettles on October 6, 2021. On November 23, 2021, Judge Nettles entered orders awarding each Landowner attorney fees in the amount of \$8,000.00 (\$16,000.00 total for both Landowners), plus costs. (R. pp. 102). Landowners' final amended fee petition had requested fees based on a claimed 950.5 attorney hours, which the circuit court characterized as a "massive amount of attorney time" under the circumstances of the case (R. pp.106-07). In determining the fee award, the circuit court agreed with the affidavit of David Pagliarni, the attorney hired by the Town to analyze the fees, that 125 hours was the reasonable

⁵ The Town's recounting of the course and resolution of the fee statement production dispute is provided in detail in the September 20, 2021, Affidavit of William C. Dillard, Jr. (R.p.1240, ¶8-13).

amount of time for plaintiffs’ counsel to spend working in tandem on all three cases at Stanton’s hourly rate of \$190 (R. p.110). Because the plaintiffs’ fee agreement had provided that each plaintiff was responsible for one-third of the fees, the circuit court award to both Landowners reflected one-third of the total fees associated with 125 hours (i.e., two-thirds total). Landowners’ motions to reconsider were denied on January 28, 2022, (R. pp. 116), and on the same day Landowners’ counsel filed satisfactions of judgment acknowledging that the Town had paid the fees as awarded by the circuit court.

The Landowners filed their Notice of Appeal on February 28, 2022. Oral arguments were held on March 4, 2025, and the Court of Appeals issued an unpublished opinion on June 3, 2026, affirming as modified the circuit court’s fee award. Specifically, the Court of Appeals increased the overall award of attorney fees from \$16,000 to \$47,500 by (1) doubling the number of “reasonable” attorney hours from 125 to 250 and (2) awarding the entire undivided fee instead of the 2/3 claimed to have been incurred by Landowners Sunset and Beattie. With regard to allocation, the Court of Appeals noted that “the awards are to be shared among the appellant Landowners pursuant to their fee sharing agreement.” Landowners and the Town both filed Petitions for Rehearing and, on August 3, 2026, the Court of Appeals issued an order denying the petitions. Petitioner seeks a writ of certiorari to review the decision of the Court of Appeals.

ARGUMENT

I. The Court of Appeals erred in making statements regarding the Town’s easement acquisition efforts that are unsupported by the record and outside its scope of review.

In modifying the attorney fee award, the Court of Appeals made a number of highly critical statements about the Town and its prior easement condemnation efforts. These statements were mistaken and are not supported by the record. The Town requests that, even if the Court declines to change the Court of Appeals’ holding on the amount of the fee award, the opinion be modified

to remove these statements. The Town still needs to acquire the subject easements in order to secure long-term federal funding for beach renourishment and other shore protection (as discussed below, the easement language sought to be condemned is in fact specifically required by the Army Corps). The former Town Administrator estimated that, if these three easements are acquired, the portion of future construction costs that would be the responsibility of the Army Corps, to the benefit of the Town and the public it serves, would be nearly **\$65,000,000** (R. p.672). Federal funding would also cover post-hurricane restoration to protect the nearly \$15,000,000 investment that the Town already made to renourish the beach (R. p.672-673).

Landowners will inevitably attempt to use the mistaken language in the Court of Appeals' opinion to further object to the Town's future efforts to take necessary steps to secure this federal funding to protect the Pawleys Island shoreline for the public. The Town urges the Court to grant certiorari to avoid this unintended consequence of the Court of Appeals' fee review. At a fundamental level, that court determined that, in order to review the reasonableness of Landowners' attorney time, further consideration should be given to how Landowners' allegations about the Town's conduct influenced the time spent on the litigation. The circuit court never determined the issues discussed below on the merits, and the litigation never proceeded past early summary judgment; the merits of these additional matters were simply outside the scope of review of the Court of Appeals. However, all that was needed to address the Court Appeals' concern about factoring these issues into the fee review was to note that Landowners asserted at least some of these theories and allegations, survived a Rule 12(b)(6) motion to dismiss, and had the right to devote the reasonably necessary time to litigate the full scope of their claims.

A. The Court of Appeals erred in, *sua sponte*, making statements regarding Army Corps of Engineers easement requirements.

The opinion of the Court of Appeals included several statements to the effect that the

relevant easement language is not required by the Army Corps and was not necessary. Specifically, the opinion states:

- i. (p.3) “In May 2020, the Town adopted a resolution authorizing condemnation of the remaining easements, ***erroneously claiming*** the Town’s project with the Army Corps of Engineers could not proceed without them.”
- ii. (p.7) “At the outset, the Town engaged in troubling conduct by seeking unreasonable easements exceeding the scope of those authorized by Town Council (***or required by the Army Corps of Engineers***).
- iii. (p.8, fn.2) “. . . ***[A]s recognized in the summary judgment order, apparently unnecessary*** – intrusions on their private property rights.”

First, the Landowners themselves never even asserted that the Army Corps did not require these easements in order to move forward with the federal project. The Landowners’ motion for summary judgment, the closest thing to a short, plain statement of claims that they ever presented to the circuit court, does not even mention the Army Corps or necessity (R. p.429). Likewise, the claim that the Corps did not require the easements is not found in the Landowners’ Amended Complaint (R. 215-276), summary judgment affidavit (R. p.432-457), summary judgment memorandum (R. p.778-827), fee petition affidavit (R. p.1154-1185), reply brief regarding attorney fees (R. p.1264-1293), motion to reconsider the fee award (R. p.1461-1476), *Appellants’ Brief*, or *Appellants’ Reply Brief*. While the Amended Complaint (R. p.250-251) and summary judgment memorandum (R. p.792, fn.15) include generalized allegations questioning the administrative mechanisms used by the Corps to formally adopt the easement language, there was never any allegation that the Corps was not requiring it of the Town. To the contrary, the Amended Complaint references the Corps’ “Standard Estate 26” language used for these easements (R. p.250, ¶ 80), and the summary judgment memorandum acknowledges that “Federal assistance from the Corps – if it were needed and if it did indeed materialize – would be limited to only the part [of] the project subjected to the easements[.]” (R. p.787, fn.8).

Second, these statements are incorrect and not supported by the record. In fact, the Army Corps does require these easements and the full scope of the specific easement language included in the condemnation notices. The central factual premise underlying all of this litigation is that the Army Corps requires this easement language in order to move forward with a long-term shore protection project with the Town, and that the Landowners do not want to sign off on easements with the language required by the Corps. In plain terms, the Town would have absolutely no reason to go to all this trouble if the Corps did not specifically require it.

Among other things, the Army Corps specifically requires this language regarding “the right of public use and access.” Federal law provides that funds for beach renourishment activities may not be used on private portions of the shoreline. Specifically, the Water Resources Development Act of 1986 requires that “[c]osts of constructing projects or measures for beach erosion control . . . shall be assigned to appropriate project purposes . . . except that all costs assigned to benefits to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private lands shall be borne by non-Federal interests[.]” 33 U.S.C.S. § 2213(d)(1). See also § 2213(d)(2)(B) (regarding periodic renourishment funding).

Under these statutes, “the Army Corps has interpreted its responsibility to include requiring public access and use of Project areas funded by federal monies.” State v. N. Beach 1003, Ltd. Liab. Co., 166 A.3d 239, 256 (N.J. App. 2017). While the question of the specific requirements of the Army Corps was not addressed in the circuit court fee proceedings or raised as an issue on appeal, and the record was therefore not developed on this issue, reported opinions from other states recite essentially identical language in easements required for Army Corps renourishment projects. See, e.g., N. Beach 1003 at 256; Freudenberger v. Cty. of Suffolk, 2021 N.Y. Misc. LEXIS 77464, at *6 (N.Y. Sup. Ct. Apr. 5, 2021). This is standard *Perpetual Beach Storm Damage*

Reduction Easement “estate” language that the Corps requires for all renourishment projects.

These federal requirements give rise to a determination of necessity under South Carolina law. “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.” S.C. Code Ann. § 28-2-50. A determination of necessity is a legislative question and presumed valid. Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 396, 175 S.E.2d 805, 814 (1970).

The circuit court’s summary judgment order did not include any finding that the Corps did not require the easements for participation in a long-term federal project. In fact, footnote 2 of the order specifically notes the Town’s position that it is pursuing a partnership with the Army Corps to be eligible for federal renourishment assistance over a period of decades. (R.p.69). The circuit court simply did not address the merits of this issue on summary judgment,⁶ and the Court of Appeals erred in making statements indicating otherwise. While the order noted that the Town performed the initial work without federal funds (or these three easements) (R.p.68-69), the purpose of pursuing the easements was and is to become eligible for long-term federal assistance.

The affidavit of former Town Administrator Ryan Fabbri states that “the easement sought and the proposed easement grant document are a requirement by the Corps The scope of the easement, pursuant to the requirements that were established by the Corps, is what has been determined to be necessary to achieve the public purpose of a 50-year beach renourishment undertaking.” (R. p.613). As also detailed in the affidavit, the Town began moving forward with the initial renourishment work without federal participation in July 2019, and only moved forward

⁶ As Judge Nettles later stated at the hearing on the Landowner’s fee petition, “It is important to note that the relief that plaintiff’s counsel has obtained through summary judgment is procedural and without prejudice.” (R. p.347-348).

with attempting to condemn the Corps-required easements after the Corps subsequently proposed an agreement for moving forward with a partnership project. (R. p.672-673, ¶6-10). While the summary judgment order found “[t]he Town rejected the easements [proposed by Landowners] after publicly determining easements were ‘not necessary,’” the context of this as explained in the same section of the order was that the necessity determination related to the Town’s decision to move forward on its own with the initial work (R. p.69, fn.2). It was only later that the Town moved forward with condemnation after the Corps partnership came back into the picture. (R. p.70).

The parties did not develop the record on the Corps’ specific requirements because that issue was not addressed by the circuit court or raised as an issue on appeal.⁷ The record certainly does not provide support for the Court of Appeals’ statements about the Corps’ requirements or the general necessity of the easements as drafted. Instead, the record demonstrates that, like other coastal communities facing the need for immensely costly shoreline protection, the Town pursued these easements and the easement language because the Army Corps required it. If there was evidence to the contrary and it was relevant to the fee award, the burden of proof was on the Landowners as the parties requesting fees to present it in the record.⁸

⁷ The summary judgment order does include, under the header “CLAIMS FOR RELIEF AND REASONS ADVANCED FOR SUMMARY JUDGMENT,” a summary list of the *arguments* that Landowners made regarding necessity and other issues, (R. p.72-73), but the circuit court did not rule on each of these items. As the circuit court stated more than once in its fee award, it did not grant summary judgment on the issue of necessity (R. p.108, 110).

⁸ At oral argument, appellate counsel for the Town confirmed to the Court of Appeals that the “public use” language was an Army Corps requirement, but was not able to confirm in the moment whether the full scope of the exact language used in this first set of condemnation notices was all required by the Corps. This hesitation was based on a desire to stick to what counsel knew with certainty or knew was in the record, as well as counsel’s general recollection that at least one attempt had been made to modify the language (as it turns out from review of the record, this was in connection with the second condemnation attempt (See “Challenge 2” R. p.269, fn.1)). From review of the Corps’ real estate requirements, counsel can now confirm that, yes, the easement

B. The Court of Appeals erred in making statements regarding an “overly broad” scope of easements.

The opinion also includes several statements to the effect that the easement language included in the condemnation notices is overly broad. Specifically, the opinion states:

- i. (p.2) “Initial easement proposals sought to subject an affected lot to **overly broad** public access and to grant the Town an apparently unfettered ability to remove undefined ‘obstructions’ from the proposed easements.”
- ii. (p.3) “The proposed easements again subject the private lands affected to **wildly broad** ‘public use and access.’”
- iii. (p.7) “[T]he Town engaged in troubling conduct by seeking **unreasonable easements . . .**”
- iv. (p.7) “Indeed, a second set of faulty **and similarly overbroad** condemnation notices was swiftly withdrawn after Landowners (again) challenged them.”

Questions about whether, on the merits, the easements were overly broad or unreasonable were not addressed by the summary judgment order or raised as issues on appeal, and the record and briefing were not developed on this issue. However, as discussed above, the language in the easements was required by the Army Corps as a condition for federal funding. See S.C. Code Ann. § 28-2-50. More generally, some element of public use is always part of a proper exercise of eminent domain. Karesh v. City Council of Charleston, 271 S.C. 339, 342, 247 S.E.2d 342, 344 (1978). While the right of individual members of the public to literally, physically use property is not always part of a condemnation (as, for example, in the case of a sewer line easement), it very often is (as in the case of a road right-of-way, a public park, or a multi-use path). Inclusion of a public right to use and access does not render a condemnation overly broad, and condemning

language in the first set of condemnation notices precisely matches the Corps’ required “standard estate” language. Neither party to the appeal included that specific documentation on this unexpected issue in the record. However, it appears that the only applicable evidence in the record is the sworn statements of the former Town Administrator that the Town was only seeking the scope of the easement that was required by the Corps. (R. p.508, 613).

authorities instead have significant discretion to determine the scope and nature of property interests condemned. Eldridge v. City of Greenwood, 331 S.C. 398, 425, 503 S.E.2d 191, 205 (Ct. App. 1998). While the scope of a given easement can certainly increase the impact on the market value of the property, that is an entirely separate issue that must be determined not as the basis for a challenge, but instead in the just compensation phase of the condemnation proceedings, and compensation paid accordingly.

Again, this “overly broad” issue was not determined in the summary judgment order and, through no fault of the Town, the parties did not complete the litigation of this issue on the merits. It would have been one thing for the Court of Appeals to state that the Landowners’ *concerns* about the scope of the easements justified increased attorney time in the challenge litigation. It is a very different thing to state that the scope of the easements was overly broad and unreasonable when that question was not reached by the circuit court and was not an issue on appeal.

C. The Court of Appeals erred in making statements regarding rejection of easements signed by Landowners.

The opinion also includes several statements that the Town had no reason to reject alternate easements signed by the Landowners. Specifically, the opinion states:

- i. (p.3) “The circuit court noted Landowners had executed easement deeds and provided them to the Town with terms allowing for renourishment activities, ***but the Town inexplicably rejected them.***”
- ii. (p.7) “The Town’s rejection of the easements Landowners prepared and proposed – ***for reasons the Town cannot or will not explain*** – undoubtedly increased the difficulty (and costs) of the litigation.”

The summary judgment order notes that the Town rejected the alternate easements signed by Landowners, but it does not reach the issues of why the Town did so. The Town rejected the alternate easements because those documents did not satisfy the requirements of the Army Corps. See, e.g., Affidavit of Ryan Fabbri (R. p.613 (“Although the Town engaged in good faith

negotiations with landowners (including the Plaintiff herein) regarding certain changes or adjustments to the documents, the Corps is the ultimate decision maker on the issue of the sufficiency thereof.”). The Town respectfully contends that the record does not support the Court of Appeals’ statements on this issue which, again, was outside its scope of review.

D. The Court of Appeals erred in making statements regarding “municipal overreach.”

Finally, the opinion included several statements to the effect that the Town engaged in overreach or poor behavior. Specifically, the opinion states:

- i. (p.3) “Detailing the *Town’s inconsistent representations and providing other examples of its municipal overreach*, the circuit court granted Landowner’s motions for summary judgment[.]”
- ii. (p.7) “Yet, based upon the circumstances of these cases – *specifically the Town’s problematic behavior . . .*”
- iii. (p.7, fn.2) “But it is difficult to discern the ‘chicken and the egg’ here in light of *the Town’s ongoing heavy-handed approach* to these three proposed easements.”
- iv. (p.8, fn.2) “This contention is accompanied by *the Town’s steadfast refusal to accept responsibility for its own problematic conduct*[.]”
- v. (p.8, fn.2) “Pagliarini’s affidavit understandably declines to reference *his client’s poor behavior*[.]”

The Town respectfully contends that this language unfairly castigated the Town and its officials for their efforts to move forward with a critical public project in the face of an incredibly difficult adversary. As discussed above, virtually all of the conduct of which the Court of Appeals was critical – pursuit of easements with “public use and access” language and other language that the Court of Appeals viewed as broad, and rejection of the Landowners’ alternate easements – was based entirely on the Town’s need to satisfy the requirements of the Army Corps. It is true that the easements did include rights of “public use and access,” that the appraisal report did not include the specific language of the easement, and that the appraisal report was inadvertently not provided

prior to service of the condemnation notices (See R. p.664, fn.3 for Town Attorney’s explanation regarding delivery of the appraisal). However, the Town asks the Court to grant certiorari in order to assess whether the course of this matter as reflected in the record truly justified the Court of Appeals in labelling the Town’s efforts as “problematic,” “poor” and “heavy-handed.” The long-term federal partnership the Town is seeking is not some questionable municipal “vanity project” or an improvement intended for the benefit of a well-connected individual, but is instead an effort to protect the critically significant Pawleys Island shoreline and to prevent high tides from once again going under people’s homes.

The Town also respectfully submits that it has attempted to take appropriate responsibility for the outfall of the events surrounding its unsuccessful condemnation efforts. After summary judgment was finalized, the Town did not draw matters out by appealing the order, and it promptly withdrew the second set of condemnation notices in the “Challenge 2” (App. Case No. 2023-001272) cases to avoid burdening the parties with unnecessary additional time and expense. The Town vigorously contested the Landowners’ unreasonable fee claims, but then promptly paid the awards in both sets of cases. The Town’s final brief to the Court of Appeals in this matter also “acknowledges that the Appellants did not set out to have easements acquired on their properties, and also of course recognizes that the circuit court found deficiencies in the procedure used to initiate the condemnations.” (p.5). The Town has made efforts to move forward from the initial attempts in an appropriate, thoughtful manner.

II. The Court of Appeals erred in modifying the fee award.

A. The Court of Appeals erred in finding that there was any error of law or abuse of discretion in the circuit court fee award.

The circuit court committed no error of law or abuse of discretion justifying modification of the fee award by the Court of Appeals. “The decision to award or deny attorneys' fees under a

state statute will not be disturbed on appeal absent an abuse of discretion.” S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 8, 766 S.E.2d 700, 703 (2014). “An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.” Id. “Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” Id. “Decisions as to the amount of attorneys' fees should ordinarily be made by trial courts. When a trial court's decision is made on a sound evidentiary basis and is adequately explained with specific findings—as the law requires—we defer to the trial court's discretion.” Horton v. Jasper Cnty. Sch. Dist., 423 S.C. 325, 331, 815 S.E.2d 442, 445 (2018). Where analysis of the six factors identified under Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997), is applied, “an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor.” Id. at 308, 486 S.E.2d at 760. The award should be upheld on appeal “if the findings of fact are supported by *any* competent evidence.” Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989).

On the question of whether some conduct on the part of the Town increased the difficulty of the litigation, the circuit court undeniably received conflicting evidence and had discretion to weigh it. The circuit court received Landowners’ affidavit materials on this issue, but also received the Town’s opposing materials including the affidavits of the Mayor and Town Attorney (R. p. 1235-1239). The circuit court considered all this evidence and agreed with the Town. Even if the Court of Appeals disagreed with the circuit court’s factual conclusion on the amount of the award, there was no deficiency in the fee order that justified setting aside the required deference to the finder of fact or undertaking broad de novo factual review of what was reasonable.

Both the Pagliarini affidavit and the circuit court order acknowledged that Landowners

litigated a full scope of issues, not just the issues on which summary judgment was granted, and accounted for reasonable attorney time in that context. (R. p.110; R. p.1217, ¶ 31). While the circuit court ultimately agreed with Pagliarini, it did not rely solely on or “simply [accept]” his affidavit as stated by the Court of Appeal (Opinion pp.7-8). Instead, the trial court reviewed the case records, all of the affidavits filed by all parties, and the Landowners’ fee statements (including detailed review of those fee statements as part of the redaction process). While the circuit court considered the factor of “beneficial results obtained” and cited relevant case law, it did not deduct any time for work on theories for which summary judgment was not granted (R. p.110).

Furthermore, the Court of Appeals erred in finding that there are “irreconcilable inconsistencies between the summary judgment order and findings in the fee affidavit” (Opinion, p.7). As mentioned above, the circuit court noted that Landowners obtained summary judgment on less than the full scope of issues pleaded, but did not deduct attorney time on this basis. It is reasonable to conclude that a disproportionate amount of the excessive attorney time claimed by Landowners was spent on the sprawling “bad faith” and “fraud” claims rather than on the more factually discrete theories for which summary judgment was granted. Regardless, the circuit court awarded fees for the full scope of claims.

The opinion states that the Court of Appeals was “perplexed as to how some of the fee order’s findings could be reached in light of the discovery blocked by the Town before all of Landowners claims could properly be considered on the merits.” (Opinion, p.7). While it is true that there was ultimately no determination on the merits of all of the claims, this was not the Town’s fault and did not create any error in the circuit court’s fee analysis. Landowners filed for summary judgment on all of their claims as early in the litigation as they were allowed to do so, and the summary judgment order ended the merits portion of the case (subject to the fee petition)

without addressing the merits of all of the claims. (R. p.56, 84). Landowners did not request reconsideration or file an appeal of that result, and can only be said to have abandoned these remaining claims for purposes of this Challenge 1 litigation.

Given that the remaining portion of the litigation was limited to attorney fees, the Town appropriately moved for a protective order against a deposition of the Town Administrator – this deposition was not necessary given the nearly completed posture of the action and would have undeniably led only to an increase in excessive attorney time. (R. p.1039). The circuit court partially granted the motion, merely requiring that discovery be limited to the pending claim for attorney fees. (R. p.51). The Town did not block discovery; the circuit court appropriately exercised its discretion to limit discovery to relevant, pending matters.

Even if, hypothetically, the Landowners had been denied some discovery, that would not have had any bearing on their attorney's ability to explain why he spent the time he did in the litigation, based on what the Landowners knew or alleged at the time that legal work was performed. The Landowners asserted a number of theories, survived a motion to dismiss, and accordingly had the right to proceed with their claims. The circuit court took this into account and did not deduct any time for the theories not reached on summary judgment. Landowners were given every possible opportunity to explain how and why attorney time had been spent, and had the burden to do so in a manner that persuaded the finder of fact. Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp., 295 S.C. 208, 211, 367 S.E.2d 696, 698 (1988).

B. The Court of Appeals erred in modifying the fee award by simply doubling the circuit court's determination of reasonable attorney time from 125 hours to 250 hours.

Even if the circuit court had committed some abuse of discretion, the Court of Appeals' interpretation of the record does not support an increase in the fee award. As discussed above, the Town did not thwart the Landowners' ability to obtain reasonable discovery. As also discussed,

while the Court of Appeals describes the scope of the easements as being “unreasonable”, the Town only ever sought what was required by the Army Corps. As it relates here, it is not clear how the scope of the proposed easements made the litigation more difficult, time-intensive, or costly – for consideration of the fee award, it is a given that the Landowners found the easement objectionable, and the question is whether their claimed attorney time seeking to prove their case was reasonable.

Similarly, it is not clear how the Town’s rejection of the alternative easements offered by Landowners prior to the litigation “undoubtedly increased the difficulty (and costs) of the litigation.” (Opinion, p.7). If the Town had been authorized by the Army Corps to accept those alternate easements, then presumably there would not have been any litigation at all. The mere fact that the parties could not agree on easement language, and therefore had a dispute, does not lead to the conclusion that one of the parties had made the dispute more difficult and costly.

It is also true that the Town served a second set of condemnation notices in an attempt to address the procedural objections raised by Landowners, but that did not make the litigation in these Challenge 1 actions more costly. All parties have been clear from the outset that the Challenge 2 fees are being considered in that separate appeal. Similarly, positions taken by the Town regarding mootness and related matters in the Challenge 2 cases – in proceedings that occurred after the Challenge 1 grant of summary judgment – did not and could not have had any effect on the difficulty or cost of this Challenge 1 litigation. In any event, the Town’s relevant position in the Challenge 2 cases – that the Landowners’ challenge to the second set of condemnation notices was moot after the notices were abandoned, even though the Town still retains the governmental power to make a subsequent attempt – is at the very minimum a

reasonable legal position, and not indicative of heavy-handedness or overreaching.⁹ The Town abandoned those second notices to avoid wasting the parties' time and money on re-litigating the same issues as in Challenge 1, and has not acted in bad faith by being candid about the fact that it still needs easements required by the Army Corps in order to pursue eligibility for millions in federal funds for a critical public project.

Finally, even if de novo review were appropriate, and even if the litigation (or prior dealings) had proceeded as characterized by the Court of Appeals, this would not factually justify or support a fee award based on simply doubling the number of attorney hours from 125 to 250. Horton, 423 S.C. at 331, 815 S.E.2d at 445 (fee award must be "adequately explained" by the factual findings). Simply put, nothing in the Court of Appeals' opinion provides factual support for a determination that 250 hours, as opposed to 125 hours, was the reasonable attorney time.

C. The Court of Appeals erred in modifying the fee award by jointly awarding the full calculated "lodestar" fee to two Landowners who incurred only 2/3 of the fees.

Finally, the Town requests that certiorari be granted for review of how the modified fee award was calculated after the Court of Appeals determined 250 hours was reasonable attorney time. The Landowners' fee agreement provided for the fees to be split in equal thirds between the three plaintiffs, and Stanton has represented that this is how the fees were actually handled. (R. p.109-110). In the circuit court proceedings Stanton unequivocally waived any claim to a fee award for 1/3 of the time worked. (R. p.287-289). Even if Stanton had not waived his fee claim, a pro se litigant is not entitled to recover fees for his own legal work. Calhoun v. Calhoun, 339 S.C. 96,

⁹ In rejecting Landowners' separate appeal of an order of dismissal in the Challenge 2 cases, the Court of Appeals ruled that (1) the Town properly abandoned the notices, (2) the challenge actions to those notices were therefore moot (capable of repetition, but not evading review), and (3) Landowners' claims for prospective relief regarding future attempts were not ripe for judicial review. See Appellate Case No. 2021-000757, Unpublished Op. No. 2023-UP-055 (filed February 8, 2023).

100, 529 S.E.2d 14, 17 (2000).

These were three separate challenge actions (the two Landowners' and Stanton's), and each Landowner had its own separate fee claim. The only fee claims at issue are in the Sunset Lodge and Beattie cases (by contrast, all three plaintiff-landowners requested costs). Awarding 100% of fees based on the calculated reasonable hours (whether 125 or 250) when only two of the three plaintiff-landowners have a fee claim means that the Town is being required to pay more than the reasonable fees actually incurred by those two parties. The fact that Stanton elected to represent himself in spite of the fact that he is unable to claim fees should not constitute a benefit to the other two plaintiff-landowners¹⁰ or impose a requirement on the Town to pay them more than their reasonably incurred share of fees. The Landowners were not jointly *obligated* to pay the full hourly fees to Stanton, and so it cannot be said that the full fee was jointly "incurred" as required for an award pursuant to S.C. Code Ann. § 28-2-510(A).

The Town is not aware of any legal authority requiring or even permitting a joint award to the two Appellants of 100% of the divided fee in these circumstances. The Court of Appeals implicitly acknowledged that it was awarding more than just "the reasonable costs and litigations expenses incurred" by these two Landowners, § 28-2-510(A), stating in its opinion that it finds the dollar amount of the modified fee award "to be reasonable for these three now-consolidated

¹⁰ The Town takes no pleasure in the fact that Landowners Sunset Lodge and Beattie may have paid (or be obligated to pay) for an excessive amount of legal time. However, the ownership of both Landowners includes experienced attorneys who filed affidavits stating that they followed the litigation, approved of how it was handled, and found the fee request to be appropriate. (R. p.1313, 1316). By contrast, even after increasing the fee award, the Court of Appeals still determined that approximately 74% of the requested attorney hours were in fact excessive. To the extent that these sophisticated Landowners went along with this and then may have been charged and paid for more than a reasonable amount of attorney time, this should not create an obligation on the Town to reimburse them for more than a 1/3 share of what they actually, reasonably incurred.

matters.” (Opinion, p.9) (emphasis added). An award of 1/3 to both of the Landowners is consistent with the reality of their agreement and the handling of “customary legal fees for similar services.” See Jackson at 308, 486 S.E.2d at 760. It is not clear how the circuit court’s 2/3 calculation was in any way an error of law or abuse of discretion, and there is therefore no basis to set aside deference to the finder of fact.¹¹ Instead, the Court of Appeals’ decision to effectively award 1/2 of the combined fee to each appellant Landowner constitutes an error of law because it clearly exceeds the amount of *reasonable* fees that each of them incurred. Accordingly, the reasonable overall time and associated fee for the litigation should be divided into equal thirds, and the fee award should be limited to 1/3 each to Beattie and Sunset Lodge as determined by the circuit court.

CONCLUSION

For the reasons set forth above, Petitioner Town of Pawleys Island respectfully asks that the Court grant its petition for a writ of certiorari.

Respectfully submitted,

s/ William C. Dillard, Jr.
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ATTORNEYS FOR PETITIONER
TOWN OF PAWLEYS ISLAND

September 2, 2026

¹¹ At oral arguments, the Court of Appeals panel specifically referenced that it was giving consideration to whether awarding the two Landowners 2/3 of the total combined fee, instead of the entire combined fee, constituted an error of law. In its opinion, however, the Court of Appeals did not identify this as an error of law. Instead the court simply made a joint award of the full fees and left it to the two Landowners to allocate it “pursuant to their fee sharing agreement.” (Opinion, p.9).

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Sep 02 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Unpublished Opinion No. 2026-UP-274 (S.C. Ct. App. Filed June 3, 2026)
Appellate Case No. 2022-000291

Sunset Lodge, LLC, and Franklin D. Beattie, as trustee of The Franklin D. Beattie
Preservation Trust, and M. Baron Stanton, Plaintiffs,

v.

Town of Pawleys Island, Defendant,

Of which Sunset Lodge, LLC and Franklin D. Beattie, as trustee of the Franklin D.
Beattie Preservation Trust are the Respondents,

and

Town of Pawleys Island is the..... Petitioner.

PROOF OF SERVICE

I certify that I have served the *Town of Pawleys Island's Petition for a Writ of Certiorari*
by causing a copy to be e-mailed on **September 2, 2026**, to counsel of record as listed below:

M. Baron Stanton (bstanton@stantonlaw.com)
N. David Durant, Sr. (ddurant@lawofficesofdurant.com)
Norwood David Durant, Jr. (norwooddurant@lawofficesofdurant.com)

s/ William C. Dillard, Jr.
William C. Dillard, Jr. (S.C. Bar No.78986)

September 2, 2026

Via email (supctfilings@sccourts.org)
Patricia A. Howard, Clerk of Court
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

RECEIVED
Sep 02 2026
SC Court of Appeals

**Re: Petition for a Writ of Certiorari
Sunset Lodge, LLC v. Town of Pawleys Island
(Appellate Case No. 2022-000291)**

Dear Ms. Howard:

Please find enclosed for filing the Town of Pawley Island's *Petition for a Writ of Certiorari* and *Proof of Service* in the above-referenced matter. Our firm's check in the amount of \$250.00 for the filing fee is being delivered by courier. By email copy of this letter, the petition is also being filed with the Clerk of Court for the S.C. Court of Appeals.

Thank you, and please let me know if I can provide any additional information at this time.

Sincerely,



William C. Dillard, Jr.

WCD/kse
Enclosures

cc: Clerk of Court, S.C. Court of Appeals (ctappfilings@sccourts.org)
M. Baron Stanton (bstanton@stantonlaw.com)
N. David Durant, Sr. (ddurant@lawofficesofdurant.com)
Norwood David Durant, Jr. (norwooddurant@lawofficesofdurant.com)