

RECEIVED

Aug 28 2023

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. II 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@belsarpa.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

INDEX (VOLUMES I-IV OF IV)

VOLUME I of IV

Orders, Decrees, and Decisions*

September 11, 2020 Form 4 order denying Town motions to dismiss,1 for priority and for Ten Million (\$10,000,000.00) Dollar bond.	
October 21, 2020 order continuing October 30 hearing of.....5 summary judgment and other motions.	
January 8, 2021 Judge Nettles Form 4 order preliminarily granting8 Landowner summary judgment.	
January 20, 2021 Judge Nettles 24-page order granting.....12 Landowner summary judgment.	
January 27, 2021 Judge Price order granting38 Landowner motion to compel.	
February 2, 2021 Judge Price amended order granting42 Landowner motion to compel.	
February 8, 2021 Form 4 order noting withdrawal of46 Town motion to disqualify.	
April 1, 2021 Form 4 order partially granting50 Town motion for protection from discovery.	
April 5, 2021 Form 4 order denying Town motion to54 reconsider except noting addition of footnote to order granting summary judgment.	
April 5, 2021 Judge Nettles final formal order granting.....59 Landowner summary judgment.	
April 5, 2021 Judge Nettles protective order re production of86 selected billing materials.	
June 30, 2021 Judge Nettles order redacting designated materials93 to be produced to Town.	
October 15 Form 4 order of consolidation.....97	
November 23, 2021 Judge Nettles order granting101 Landowner award of fees.	
January 28, 2022 Judge Nettles order denying115	

Landowner motion to reconsider.

Pleadings*

June 9, 2020 Town condemnation notice to Sunset.....119
[included here once, but not again as Exhibit A to
Landowner December 6, 2020 affidavit of papers first served, below].

June 9, 2020 Town condemnation notice to Beattie131
[included here once, but not again as Exhibit B to
Landowner December 6, 2020 affidavit of papers first served, below].

June 9, 2020 Town condemnation notice to Stanton143
[included here once, but not again as Exhibit C to
Landowner December 6, 2020 affidavit of papers first served, below].

July 21, 2020 Landowner Summons and.....157
Complaint to stop attempted condemnation.

July 31, 2020 Landowner Amended Complaint.215

September 18, 2020 Town answer to Amended Complaint.277

Transcripts*

October 6, 2021 hearing transcript.....283

Exhibits and Other Materials or Documents*

Electronic docket sheet with notations of.....351
roster notices, other electronic notices, and filings.

March 2, 2021 to July 13, 2021 series of e-mails of.....357
the parties with the Court, including dates 3/23/21, 3/23, 4/1,
4/1, 4/22, 4/23, 4/23, 3/2, 3/2, 3/2, 3/2, 3/2, 3/5, 3/8, 3/11, 3/17,
3/17, 3/19, 3/19, 3/19, 3/19, 3/19, 3/21, 3/22, 3/22, 3/22, 3/23,
4/1, 4/1, 4/22, 4/23, 4/23, 4/23, 4/26, 4/26, 5/21, 5/27, 5/27, 6/3,
6/4, 6/4, 6/21, 6/21, 6/21, 6/25, and 7/13. (This string in this order
has been e-mailed to Respondent's counsel.)

July 13, 2021 to October 13, 2021 series of e-mails of396
the parties with the Court, including dates 6/21/21, 6/25,
7/13, 8/20, 8/20, 8/20, 8/20, 8/20, 8/20, 8/27, 8/30, 8/30,
8/30, 8/30, 8/30, 10/1, 10/1, 10/4, 10/4, 10/12, 10/13, and
10/13. (This string in this order has been e-mailed to Respondent's counsel.)

May 18, 2020 formal resolution of Town Council408
[not included here, but included once as attachment to
Town November 24, 2020 brief in opposition to motion for summary judgment].

July 27, 2020 Landowner first request for production.....	409
[not included here, but included once as exhibit to August 27, 2020 motion to compel].	
August 3, 2020 Town Rule 12(b)(6), SCRCF motion to dismiss.....	410
August 10, 2020 Town motion for priority and to require	413
Ten Million (\$10,000,000.00) Dollar bond.	
August 11, 2020 Landowner return to motion for priority and bond.	416
August 13, 2020 Landowner first interrogatories to Town.....	423
[not included here, but included once as attachment to November 5, 2020 L motion to compel].	
August 17, 2020 e-mail roster notice of.....	424
September 11, 2020 hearing of Town motion to dismiss.	
August 17, 2020 e-mail roster notice of September 11, 2020 hearing of.....	426
Town motion for priority and Ten Million (\$10,000,000.00) Dollar bond.	
August 21, 2020 Landowner motion for.....	428
summary judgment and supporting affidavit.	
August 25, 2020 Town motion to halt discovery against Town.	458
August 27, 2020 Landowner return and affidavit opposing motion to halt.....	461
August 27, 2020 Landowner motion to	475
compel response to first request for production with exhibits including subject discovery papers.	

VOLUME II of IV

August 28, 2020 Town brief, affidavit of.....	486
then Town Administrator Fabbri, and partial copy of condemnation papers served, in support of Town 12(b)(6) motion.	
September 1, 2020 Town additional	515
exhibit (access easement) supporting motion to dismiss.	
September 7, 2020 Landowner brief in opposition to motion to dismiss.	517
September 28, 2020 e-mail notice for.....	579
October 30, 2020 hearing of Landowner motion for summary judgment.	
September 28, 2020 e-mail notice for.....	581
October 30, 2020 hearing of Town motion to halt discovery.	

September 28, 2020 e-mail notice for.....	583
October 30, 2020 hearing of Landowner motion to compel.	
October 12, 2020 Court e-mail reminder notice for	585
October 30, 2020 hearing of Landowner motion for summary judgment.	
October 12, 2020 Court e-mail reminder notice for	587
October 30, 2020 hearing of Town motion to halt discovery.	
October 12, 2020 Court e-mail reminder notice for	589
October 30, 2020 hearing of Landowner motion to compel.	
October 14, 2020 Town motion to continue hearing of.....	591
summary judgment and other motions.	
October 14, 2020 Landowner brief and affidavit in response to	594
Town request for continuance.	
October 30, 2020 Town affidavit of Fabbri, with	605
November 20 certificate of service.	
November 5, 2020 e-mail notice for December 4, 2020 hearing of	616
Landowner motion for summary judgment.	
November 5, 2020 e-mail notice for December 4, 2020 hearing of	618
Town motion to halt discovery.	
November 5, 2020 e-mail notice for December 4, 2020 hearing of	620
Landowner motion to compel.	
November 5, 2020 Landowner motion to	622
compel re answers to August 13, 2020 first interrogatories, including discovery requests and responses as exhibits.	
November 20, 2020 Landowner motion for	655
refused enlargement of time for discovery response.	
November 24, 2020 Town brief opposing Landowner motion for	657
summary judgment, with four exhibits –Fabbri 10-30-20 aff., 5-18-20 and 10-12-20 resolutions, 60-page appraisal, and partial copy of condemnation papers served.	
December 3, 2020 Landowner brief in support of.....	777
motion for summary judgment.	
December 6, 2020 Landowner Stanton aff., including	828
as Exhibits A, B, and C, first condemnation papers that were served on Sunset, Beattie, and Stanton to start condemnations. [To avoid duplication,	

Exhibits A, B, and C are included in “Pleadings,” above, but not again here.]

December 10, 2020 Landowner response to.....	831
Town first interrogatories [not included here, but included once as attachment to Town January 14, 2021 motion to disqualify].	
January 7, 2021 e-mail notice of January 20, 2021 hearing of	832
Landowner motion to compel.	
January 7, 2021 e-mail notice of January 20, 2021 hearing of	834
Landowner motion to enlarge time.	
January 14, 2021 Town motion to disqualify	836
Landowners’ counsel, with attached exhibits.	
January 14, 2021 Landowner motion to strike.....	905
Town motion to disqualify	
January 15, 2021 Town attorney certification.	914
January 15, 2021 Landowner notice of deposition of.....	916
then Town Administrator (Fabbri) [included only once as attachment to Town 3/3/21 motion for protection].	
January 21, 2021 e-mail notices of February 4, 2021 hearing of	917
Town motion to disqualify and Landowner motion to strike.	
January 25, 2021 Landowner fee petition.....	920
(including motion, affidavit, proposed order and proposed Form 4A).	
January 26, 2021 Landowner amendment to fee petition.	946
January 26, 2021 Landowner brief opposing.....	948
Town January 14, 2020 Town motion to disqualify.	
January 29, 2021 Town notice of withdrawal of	955
Town motion to disqualify.	
January 29, 2021 Town motion to reconsider summary judgment.....	957
February 3, 2021 Landowner brief opposing.....	964
Town January 29 motion to reconsider and partially replying to Town included arguments opposing fee request.	
February 3, 2021 Town notice of Dillard appearance.	972

VOLUME III of IV

February 4, 2021 Landowner further separate reply to.....	978
Town January 29 arguments opposing fee request.	
February 4, 2021 Landowner supplemented fee petition.....	988
February 5, 2021 e-mail notification of February 25, 2021 hearing of	992
Landowner fee petition.	
February 5, 2021 e-mail notification of February 25, 2021 hearing of	994
Town motion for reconsideration.	
February 5, 2021 Town brief opposing fee petition.	996
February 9, 2021 Landowner reply to.....	1000
Town February 5 brief opposing fee petition.	
March 1, 2021 Landowner brief re matters for	1007
scheduled March 3 discussion with Court.	
March 1, 2021 Town motion re fee proceedings.	1022
March 2, 2021 Landowner brief and objection re Town March 1 motion.	1033
March 3, 2021 Town motion for protection from	1038
discovery, with 1/15/21 notice of depo. of Fabbri as exhibit.	
March 5, 2021 Challenge II case Town motion to dismiss, referenced in.....	1043
Dillard 3/5/21 e-mail to the Court.	
March 17, 2021 Landowner brief re fee-related proceedings,.....	1047
with attached potential protective order.	
March 17, 2021 Town brief in support of.....	1095
motion to reconsider summary judgment.	
March 18, 2021 Landowner brief opposing Town motion to reconsider.	1108
March 25, 2021 e-mail notice of April 1, 2021 hearing of	1118
Town 3-1-21 motion to require Landowner production of billing materials under protective order.	
March 25, 2021 e-mail notice of April 1, 2021 hearing of	1120
Town 3-3-21 motion for protection from discovery.	

VOLUME IV of IV

April 22, 2021 Landowner updated fee petition.	1125
May 19, 2021 Landowner erratum re fee petition (erroneously designated by Landowners as May 5).	1148
[Not on C-Track: Redacted bills and engagement agreements.....See separate Supplement 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 <u>in-camera</u> review: Unredacted bills and.....See separate package engagement agreements first sent to Circuit Judge, with transmittal notes. (See package delivered separately from the Record on Appeal for <u>in-camera</u> 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.....See separate Supplement 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.	1153
September 13, 2021 Landowner erratum re fee petition.....	1186
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.	1188
September 24, 2021 Town pre-hearing motions.....	1259
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.	1264
October 5, 2021 Town aff. of Dillard of preparation of exhibit, with exhibit.	1400
October 5, 2021 Landowner erratum re 10/4/21 reply brief, with..... amended reply brief and exhibit.	1406

October 22, 2021 filed 10/18/21 letter of Judge Nettles’s office filing	1458
billing materials with Clerk of Court on 10/22/21.	
December 2, 2021 Landowner motion to reconsider.....	1460
Stipulation to sufficiency of one representative copy of each designated paper	1476
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	
Certificate of Counsel	1477

*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.

August 28, 2020 Town brief, affidavit of then Town Administrator Fabbri, and partial copy of condemnation papers served, in support of Town 12(b)(6) motion.

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,	)	DEFENDANT'S MEMORANDUM
v.	)	IN SUPPORT OF MOTION TO DISMISS
	)	PURSUANT TO RULE 12(b)(6), SCRCP
TOWN OF PAWLEYS ISLAND,	)	
	)	
Defendant.	)	
_____	)	

The Defendant, TOWN OF PAYLEYS ISLAND, hereby submits the following Memorandum in Support of Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) of the SCRCP.

FACTUAL ALLEGATIONS

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

Defendant Town of Pawleys Island (the "Town") is a municipal corporation organized and existing pursuant to the laws of South Carolina. To combat the erosion of and damage to the Town's sandy beaches caused by coastal storms and hurricanes, the Town began working with the United States Army Corps of Engineers (the "USACE") in 2000 to develop the Town's Hurricane and Storm Damage Reduction Project. Although it was supposed to be federally funded, the project never received Congressional approval as the years went by. In late 2015, the Town decided to move ahead with its own beach renourishment plan (the "Town Project") to rebuild the Town's shoreline that had been severely washed away in the course of time. Then,

just a matter of weeks before signing the contract with the lowest bidder, Marinex Construction, the Town was notified that USACE has obligated funds through a supplemental appropriation allocated for the Town's Coastal Storm Damage Reduction Project. This was excellent news, but the Town Project was ready to go with a Fall 2018 scheduled start date. Forgoing the Town Project and moving forward with the USACE opportunity would certainly delay the Town's beach renourishment plan for at least a year. After careful consideration, the Town believed the cost share benefit of the federal government was too attractive to pass up and the decision was made to abandon the Town Project to take advantage of the USACE opportunity, *i.e.*, a 50-year project with periodic renourishments taking place every 9 years following the initial undertaking. Thus, the beach renourishment plan evolved into a hybrid of the USACE design and the Town Project design, resulting into 2 separate project areas, to wit: Federal Project area; and, Betterment area. Easements were required by the federal government from 113 oceanfront properties (including the Plaintiff's), located in the federal portion of the beach renourishment plan.

Mailing of the easement packages to the affected property owners (including the Plaintiff) began in late February 2019. The contents of the proposed easement grant documents were in accordance with what the USACE required. Although the Town was able to obtain easements from a majority of the oceanfront properties, some difficulties were encountered with a few property owners who had concerns about the easement agreements as originally drafted. Recognizing the importance of a renourished beach as the first line of defense against coastal storms and beach erosion, the Town negotiated in good faith with the owners and began discussions about accommodating certain language revisions, additions, deletions, and other modifications to the agreements.

In late July 2019, the Town felt that the USACE did not appreciate the urgency of and was not moving fast enough with the beach renourishment plan. The Town decided to have Marinex Construction move forward with the original Town Project, which would be funded through a \$4.9M grant from the State of South Carolina, \$6.1M from the Town's beach fund and \$1.2M loan. The initial plan was for at least 850,000 cubic yards of sand, but a subsequent revision gave rise to a larger undertaking, *i.e.*, 1,100,000 cubic yards of sand. The total project cost was fourteen million eight hundred eighty-three thousand two hundred thirty-seven (\$14,883,237.00) dollars.

Shortly after the Town Project was started, however, the USACE proposed a memorandum of understanding that would let the USACE finish the project through planting sea oats and installing sand fences, and allow the Town's beach renourishment project to become a federal project (the "Partnership Project") once it is completed. Under the Partnership Project, the USACE would replace any sand that is washed away as a result of coastal storms and be responsible for 100% of the costs thereof. Furthermore, the USACE would share half of the cost of future beach renourishment to take place every 9 years for the next 45 years following initial construction, with a projected total cost of one hundred twenty-nine million five hundred twenty-two thousand five hundred thirty-three (129,522,533.00) dollars. The USACE would also give the Town credit for the initial work performed when it calculates its cost-sharing match for the next renourishment. As a condition precedent for the Partnership Project, the USACE requires easements from the previously identified 113 oceanfront properties in the project area to allow for construction, repair and maintenance of the beach.

The Town resumed its efforts to obtain easement agreements and was successful in acquiring easements for 110 out of 113 oceanfront properties. Any further efforts to negotiate

with the 3 holdouts (including the Plaintiff) failed, and the Town was unable to reach an agreement with them. In the meantime, the shorelines of the island continue to erode rapidly thereby posing a danger to the people, their homes, and businesses beyond the beach. It is in this light that the Town recognizes that the delay in providing the USACE with the necessary easements would not only increase the cost of or potentially frustrate or shelve the Partnership Project, but also result in substantial harm to the public health, safety and welfare.

The Town is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.* Under and by virtue of such power conferred, the Town served a Notice of Condemnation and Tender of Payment to the Plaintiff, for an easement upon a portion of the Property (“easement”) for the Partnership Project. Thereafter, the Plaintiff commenced this action to challenge the Town’s authority to condemn¹.

PLAINTIFF’S CLAIMS

Plaintiff’s Amended Complaint is a voluminous pleading consisting of 59 pages of allegations that read more like a novel than your typical Summons and Complaint. It is alleged that the Town Council (mayor and council members), Town Administrator, Town Attorney, and other Town employees all combined to carry out a condemnation action tainted by fraud, bad faith and/or abuse of discretion.

The Amended Complaint alleges 6 causes of action, with the gravamen of the allegations surrounding the: 1) alleged fraud, bad faith or abuse of discretion on the part of the Town in attempting to condemn the Plaintiff’s property interest despite lack of necessity therefor; and, 2)

¹ The Plaintiff also commenced two other actions, on behalf of two other Plaintiffs, to wit: Sunset Lodge, LLC v. Town of Pawleys Island; and, Franklin D. Beattie, as Trustee of the Franklin D. Beattie Preservation Trust v. Town of Pawleys Island. This action and the two other actions all involved the same basic issue, as follows: the right of the Defendant to condemn the property interests of the respective Plaintiffs for the Partnership Project.

alleged bad faith or abuse of discretion on the part of the Town in concealing or misrepresenting the nature and extent of the easement sought.

“When a landowner brings a challenge action to enjoin a condemnation proceeding, the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor.” Sease v. City of Spartanburg, 242 S.C. 250, 131 S.E.2d 683 (1963); Cameron v. City of Chester, 253 S.C. 574, 172 S.E.2d. 306 (1970).

The Town disagrees with the Plaintiff as to both the issue of necessity and the pertinent facts surrounding the Town’s efforts to obtain the easement. The Town moves to dismiss the Plaintiff’s Amended Complaint for failure to set forth a claim for relief under South Carolina law, as the Plaintiff’s factual allegations, even if assumed as true, are insufficient to establish a valid cause of action.

STANDARD OF REVIEW

Rule 12(b)(6) of the SCRCF provides for the dismissal of a complaint for failure to state facts sufficient to constitute a cause of action. See: Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537 (2011). “In considering a motion under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth on the face of the complaint.” Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007). “Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case.” Brown v. Theos, 338 S.C. 305, 526 S.E.2d 232 (Ct. App. 1999).

ARGUMENT

The matter of determining the necessity of the Partnership Project and the easement sought herein lies within the Town’s sound judgment and reasonable discretion.

The Town is vested with the power of condemnation and authorized to commence an action to acquire an interest in any real property necessary for a public use. See: S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.* The Supreme Court has defined the concept of public use broadly, and offered an expansive, contextual definition thereof. See: Riley v. Charleston Union Station Co., 71 S.C. 457, 51 S.E. 485 (1905) (the term public use is flexible and cannot be confined to public use known at the time of framing the Constitution); Timmons v. South Carolina Tricentennial Comm’n., 254 S.C. 378, 175 S.E.2d 805 (1970) (the term public use is an elastic one and must keep abreast of changing social conditions, and the question is one of fact in each particular case).

One cannot deny that beach erosion is responsible for coastal property loss and, over time, produces public safety issues. The extent and severity of the problem is worsening with increased coastal flooding and global sea level rise. Beach renourishment is an accepted management strategy to rebuild shorelines after severe erosion and create a safer environment for the public. A widened shoreline provides an improved defense against beach erosion as well as extended protections for oceanfront residential and business properties. Wider beaches also benefit tourism and wildlife.

The easement sought to be acquired herein is intended for the public purpose of beach renourishment that would benefit both residents and visitors. The Town aims to keep the community safe and maintain the beach as the keystone to the Town’s lifestyle and economic viability by undertaking a long-term continuous effort to improve, repair and/or reconstruct rapidly-eroding shorelines.

Re: Plaintiff’s First and Second Causes of Action

The Plaintiff contends there is no “actual project” to speak of because the Town already completed beach renourishment after rejecting the USACE opportunity for which the proposed

acquisition was originally planned in July 2019. Corollarily, the Plaintiff alleges the Town acted in bad faith and abused its discretion in that there is a lack of necessity for the easement sought.

It is important to note that the Town's beach renourishment project is not finished (specifically, the sand fence and vegetation with a cost of \$300,000 have yet to be established)². A beach renourishment project is not a one-time event but, rather, a long-term undertaking. The Plaintiff fails to see the bigger picture that puts the "actual project" in this case in context.

There is one single issue that the Town's beach renourishment plans endeavor to fix, namely: coastal erosion. The strategies changed as events developed and, accordingly, the plans evolved as the designs, qualifications, timetables, and costs and benefits were studied and analyzed³. The objective, however, remains the same, *i.e.*, beach renourishment.

The determination that an acquisition is necessary to accomplish a project for a public purpose lies within the sound judgment and discretion of the entity exercising the power of eminent domain. In the case of Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 212 S.E.2d 743 (1961), the Supreme Court held as follows:

"The legislature may delegate the power of determining the necessity of exercising the power of eminent domain to public officers or boards or to private corporations vested with the power of eminent domain, and in the absence of any

² The Plaintiff does actually acknowledge in his Amended Complaint that the USACE [pursuant to the Partnership Project] was going to "erect sand fence and plant 'beach grass' on the already completed spoil berm", although he underestimates the cost to be in the range of \$40,000 to \$80,000 and mischaracterizes the proposal as a "contrivance to let the USACE be 'deemed' to have done the project on which it had done nothing." See: Paragraphs 109-110 of the Amended Complaint.

³ The Plaintiff, in his Amended Complaint, does actually recognize the history of the Town's beach renourishment project as it developed over time and provides a description of what he called the "Early Corps Plans", the "Town plans", and the "Re-emergence of Corps Plans" (referred to as the "Partnership Project" in this Memorandum in Support of Motion to Dismiss). See: Paragraphs 35-42 of the Amended Complaint.

statutory provision submitting the matter to a court or jury the decision of the question of necessity lies with the body of individuals to whom the state has delegated the authority to take. Generally, a determination by the grantee of the power is conclusive and is not subject to judicial review, in the absence of fraud, bad faith, or clear abuse of discretion.”

In this case, the Town has reasonably determined that the Partnership Project is necessary to achieve a continuous strategy that would address, prevent and/or mitigate shore erosion. The Partnership Project is a 50-year project with periodic nourishments taking place every 9 years following the initial construction. It is the Town’s long-term commitment to fight coastal erosion and provide protections to homes and businesses along the coast. As previously stated, the Partnership Project would keep the Town’s beach renourishment plan in the federal project system. The USACE would replace any sand that has been washed away as a result of coastal storms and hurricanes, and would share half of the cost of future beach renourishment to take place every 9 years for the next 45 years, as well as give the Town credit for the initial work performed when it calculates its cost-sharing match for the next renourishment. To be clear, all of this information was duly disclosed and reflected in the project updates which were publicly circulated⁴.

The appreciable benefits that the Town would derive from the Partnership Project are more clearly set forth in the Affidavit of the Town Administrator, Ryan Fabbri (see: Exhibit “A”), in which it is stated that “[t]he Town would be eligible for PL 84-99 post storm rehabilitation and future periodic renourishments.” Thus:

⁴ The Plaintiff’s allegations regarding the history of the Town’s beach renourishment plans, for the most part, appear to have been obtained from the project updates themselves.

- a. The total construction costs for future periodic renourishments are projected to be one hundred twenty-nine million five hundred twenty-two thousand five hundred thirty-three (129,522,533.00) dollars. The costs will be distributed based on a 50-50 split, so the USACE's share of such costs is projected to be sixty-four million seven hundred sixty-one thousand two hundred sixty-seven (\$64,761,267) dollars and the Town's share of such costs is projected to be the same, that is, sixty-four million seven hundred sixty-one thousand two hundred sixty-seven (\$64,761,267) dollars.
- b. The USACE is responsible for 100% of the costs to repair beach damage resulting from a significant storm, irrespective of a federal declaration. Furthermore, the USACE will share half of the cost of future periodic renourishments to take place over the course of the 50-year Partnership Project, and give the Town credit for the initial work performed when it calculates its cost-sharing match for the next renourishment⁵.

The Plaintiff's allegation that the Town would let USACE "do as much as \$40,000 to \$80,000 worth of erecting sand fence and plant 'beach grass' on the already completed spoil berm and be 'deemed' to have done the project", *albeit* not necessarily accurate, indicates the existence of an "actual project" and contradicts his claim that the Town Project had already been completed. The Plaintiff's attempt to deny the existence of an "actual project" by referring to it as a "contrivance" or an "after-the-fact scheme" or a "re-labeling of the Town Project", or a "future project" is a mischaracterization, but still an admission, that there is an "actual project".

The Town's determination that the Partnership Project is a necessary public purpose undertaking is a legitimate exercise of the Town's discretion. The Town recognizes that, like any other major infrastructure, restored beaches must be maintained to stay healthy. Even after the initial construction has been completed, tidal movements can and will cause sand to erode back into the sea over time. Storms accompanied by tidal surges create damaging conditions to the protective buffer, and sand can be displaced faster after a hurricane. To ensure that the Town's nourished beach continues to provide a strong buffer against coastal storms and

⁵ The benefits under the Partnership Project are also disclosed in the project updates which were publicly circulated.

hurricanes, periodic renourishments are needed. Hence, beach maintenance is a necessary part of the Town's renourishment plans.

The Town also recognizes that beach renourishment is a costly undertaking. As set forth in Mr. Ryan's Affidavit (see: Exhibit "A"), the plan was projected to cost fourteen million eight hundred eighty-three thousand two hundred thirty-seven (\$14,883,237.00) dollars⁶, and it was anticipated that periodic renourishments would be required to maintain the widened shoreline.

The Town has determined that the Partnership Project is a cost-effective strategy that serves the best interests of the Town. In addition to replenishing the beach every 9 nine years for the next 45 years, the USACE will replace any lost sand if, heaven forbid, the Town is hit by a category 4 hurricane and the beach is destroyed. Under the Partnership Project, the Town is assured that its beach-building efforts are federally protected.

Verily, the Town's purpose is a public one, and its exercise of eminent domain to obtain the easement at issue for beach renourishment is for a public purpose. As previously stated, the easement is necessary because it is a condition precedent for the performance by the USACE of its obligations and responsibilities under the Partnership Project. This information is similarly disclosed in the project updates which were publicly circulated.

The Partnership Project is a long-term beach management program. The easement is required because access to the project area is necessary for construction and maintenance activities. If the Town intends to facilitate and remove obstacles to project implementation, the USACE needs safe and suitable access to the site. Without the easement, the USACE will not be able to rebuild and maintain the shoreline, as needed. A non-replenished beach, quite obviously, will be damaging.

⁶ The Plaintiff's Amended Complaints states a forecasted price of \$14,800,000 for the project.

Re: Plaintiff's Third Cause of Action

It is the Plaintiff's contention that the Town acted in bad faith and abused its discretion when "it misrepresented that the easement sought is only for placement of sand, when all the sand has already been placed (underscoring supplied)." This claim is readily contradicted by Plaintiff's own allegation, in his Amended Complaint, that the Town made the following representation: "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 (underscoring supplied)." See: Paragraph 44 of the Amended Complaint⁷. Thus, it is quite obvious that no misrepresentation occurred.

As previously stated, the Partnership Project is a 50-year construction and maintenance undertaking. It is important to understand that beach renourishment process is not limited to placement of sand and, in fact, includes sand fencing and planting of beach grass. As previously stated, also, the USACE is responsible for and has yet to do sand fencing and planting of beach grass⁸.

The Plaintiff's suggestion that the Town committed fraudulent acts and/or abused its discretion and/or acted in bad faith by failing to mention what he perceived to be material terms contained in the proposed easement grant documents is misplaced. The "representation" that the Plaintiff quoted from a project update describes the general purpose of the easement, *i.e.*, activities related to construction and maintenance. The nature and scope of the easement, on the other hand, was expressed in the proposed easement grant documents sent to the landowners

⁷ This "representation" is contained in a project update that was not only publicly circulated, but also used as a quoted material in the Plaintiff's Amended Complaint.

⁸ The Plaintiff, in fact, repeatedly acknowledges in his Amended Complaint that the USACE will plant beach grass and put up sand fencing, although he insists that such activities are a scheme to relabel the Town Project as a USACE project.

(including the Plaintiff herein). While the project update did not meet the Plaintiff's expectations, in that certain things were not mentioned therein, the proposed easement grant documents definitely included said items⁹. The fact that the proposed grant was reduced into writing clearly shows the Town did not conceal any material information from the Plaintiff. It is quite a stretch to conclude that the Town committed fraudulent acts and/or abused its discretion and/or acted in bad faith just because the project update was not as exhaustive as the Plaintiff wanted it to be.

The Plaintiff alleges it prepared a revised easement agreement "that was as close as possible to the document requested by the Town, but one which corrected, among others, the above defects." See: Paragraph 53 of the Amended Complaint. The Plaintiff does not state whether the revised agreement was submitted to the Town or the USACE, and what happened thereafter, if any.

In a futile attempt to show bad faith on the part of the Town, the Plaintiff devotes multiple pages of its Amended Complaint detailing the back-and-forth communications between the Town (either through the Town Administrator or the Town Mayor) and another landowner, M. Barry Stanton (counsel for record is the Plaintiff herein, and the Plaintiff in a similar action) regarding the proposed easement grant document. Good faith on the part of the Town might be inferred from the allegations in the Amended Complaint indicating that both the Town and the said other landowner made several attempts to negotiate a mutually acceptable document. The difficulties encountered were, quite obviously, due to the fact that the USACE was the actual requestor of the easement. Ultimately, it was the USACE that had the final say regarding whether or not an easement grant is sufficient, and the Town could only approve minor changes

⁹ The Plaintiff, in fact, challenges the nature and scope of the easement sought herein (as written in the proposed grant documents) and argues that it is "far more than is necessary to accomplish the Town's purpose" as his Fifth Cause of Action. See: page 3 of Amended Complaint.

to the proposed easement grant documents. The circumstance that said other Plaintiff was unsuccessful in making the Town (or the USACE, for that matter) agree to his proposed language modifications is not necessarily equivalent to bad faith on anybody's part.

The Plaintiff also harps on the failed negotiations between the Town and a third landowner, Frank Beattie (the Plaintiff in a similar action whose counsel for record is the same counsel of record for the Plaintiff herein). The Plaintiff alleges that Mr. Beattie had signed a revised easement grant document but the Town tricked him into signing another signature page and subsequently filed a document he did not authorize in the title records for Georgetown County¹⁰. See: Paragraph 66 of the Amended Complaint. The Plaintiff's description of what transpired is, of course, his own conclusion not necessarily reflective of what actually happened. In any event, the Plaintiff acknowledges that the document was eventually cancelled¹¹. See: Paragraph 66 of the Amended Complaint. Had the Town acted in bad faith, the Town would have insisted on the enforceability of the easement grant.

The Plaintiff's allegations of fraud, bad faith, and abuse of discretion on the part of the Town are not affirmatively established in the Amended Complaint. At best, the events that transpired during the course of the Town's attempts to obtain easements, as laid out in the Amended Complaint, are suggestive of misunderstandings in negotiation and misinterpretations of underlying interests. There is no real evidence to support the Plaintiff's conclusory allegations. It is apparent that all parties did their best to accommodate requested clarifications of and adjustments to the proposed easement grant documents but, regrettably, failed to reach an agreement.

¹⁰ The incident was a result of an unfortunate misunderstanding. Furthermore, it was an isolated occurrence.

¹¹ The Town executed a Release of Beach Renourishment Easement in favor of Mr. Beattie.

Re: Plaintiff's Fourth Cause of Action

The Plaintiff contends that the Town's attempted condemnation is void and *ultra vires* because the Town failed to comply with mandatory procedures set forth under the South Carolina Eminent Domain Procedure Act. Specifically, the Plaintiff takes issue with the Town's service of the condemnation notice that did not include a copy of the appraisal¹². The Plaintiff, however, fittingly states in his Amended Complaint that he contacted the Town thereafter to obtain the appraisal report (see: Paragraph 152 of the Amended Complaint). Quite obviously, the deficiency was subsequently cured¹³.

The Plaintiff further contends that "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." See: Paragraph 150-a of the Amended Complaint. Nothing could be further from the truth.

It appears that the Plaintiff misquoted and, thereby misunderstood, the statutory procedure for condemnation. Contrary to the Plaintiff's claim, the statute does not require that the appraisal report be made available to the Plaintiff prior to serving the condemnation notice; rather, the statute requires that the appraisal report be made available to the Plaintiff prior to initiating a condemnation action. See: S.C. Code Ann § 28-2-70. In this case, the Town has not initiated a condemnation action; the Town merely served a condemnation notice as a prerequisite

¹² The initial attempt to serve the condemnation notice included a copy of the appraisal. A second attempt was made after the initial attempt failed; the second attempt was successful but, due to honest oversight and inadvertence, the appraisal was omitted from the packet at that time.

¹³ It is not amiss to state as soon as the inadvertence was discovered, the Town re-served the Condemnation Notice together with all the exhibits and referenced documents such as the easement agreement and the appraisal report on July 3, 2020.

to commencement of lawsuit which is done by filing of the condemnation notice with the clerk of court pursuant to S.C. Code Ann § 28-2-230 upon the expiration of the 30-day period within which the Plaintiff is required to accept or reject the Town's tender. See also: S.C. Code Ann § 28-2-220 (prescribing the specific form of condemnation notice to be used "prior to commencing a condemnation action"). Service of condemnation notice is not equivalent to initiation of condemnation action. The statutory procedure clearly allows the Town to produce the appraisal report simultaneously with the service of the condemnation notice, as long as the condemnation action is not started until after thirty (30) days from that date have elapsed. Quite obviously, the Plaintiff's contention that the Town made a false statement is negated by the statutorily-prescribed form of procedure for condemnation actions.

The Plaintiff also states that a Public Access Easement was included in the envelope with the mailed Condemnation Notice and that said "additional document was not part of the Condemnation Notice, nor referred to in it, nor referenced in any transmittal letter." See: Paragraph 151 of the Amended Complaint. However, a cursory inspection of the Town's condemnation notice, specifically, Paragraph 14 thereof, would readily show that the document was a part of and referred to therein. The condemnation notice (a copy of which, *sans* exhibits/enclosures, is hereto attached and made an integral part hereof as Exhibit "B") reads in relevant part: "In the event the Landowner accepts the tender hereof, the attached Agreement should be signed and returned to the Condemnor within thirty (30) days of service of this Condemnation Notice (underscoring provided)." (see: Exhibit "B").

Indeed, it appears that the Plaintiff is overly concerned with procedural requirements that can be corrected and/or had already been corrected. There are no *ultra vires* acts to speak of in this case.

Re: Plaintiff's Fifth Cause of Action

The Plaintiff contends that the easement sought to be acquired by the Town is unnecessary, in that “it includes far more than is necessary to accomplish its stated purpose, fails to balance any injury to Plaintiff, seeks things the Town already admitted in writing were not necessary, and, upon information and belief, seeks some things not sought from other owners.”

At the risk of being repetitive, the easement sought and the proposed easement grant documents are required by the USACE. Although the Town engaged in good faith negotiations with landowners regarding minor changes or adjustments to the documents, the USACE is the ultimate decision maker on the issue of sufficiency thereof. The scope of the easement, pursuant to the requirements that were established by the USACE, is what has been determined to be necessary to achieve the public purpose of a 50-year beach renourishment undertaking.

The Town is not unmindful of the fact that condemnation of property interests may cause injury to landowners. In this case, however, the fact that the landowners (including the Plaintiff herein) stand to benefit from the Town's undertaking is readily discernable. As has been discussed extensively, beach renourishment is a shoreline erosion-control measure that protects and restores the beach and serves as a defense against coastal storms and tidal surges. Wider beaches are needed for safety as they decrease damage to nearby property when hurricanes hit. Additional beach areas are also expected to increase the value of coastal properties (including the Plaintiff's).

There is no question that beach renourishment requires continuous maintenance and is a never-ending commitment. Furthermore, beaches are facing off against a changing climate and coastal tidal movements are getting stronger. It is not difficult to imagine that sand can wash out to sea and waste all of the Town's sand placement efforts to the tune of over \$14M in this

season's hurricane.

It is imperative that the Town maintain a sandy shoreline to prevent damage to coastal structures for the benefit of the people and the welfare of the municipality. The Partnership Project is an economically expedient undertaking and, therefore, justified and necessary.

Furthermore, it is submitted herein that the Town has the right to determine what public improvements it will undertake and to take property interests required for such improvements by eminent domain. The Town, in conjunction with the USACE, has made a reasoned determination of what property interests are necessary for the Partnership Project. Such decision is entitled to deference. The case of S. Dev. Land Golf Co. v. S.C. Pub. Serv. Auth., 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991) is instructive and provides a useful guide for determining the factors that must be considered by a condemnor, thus:

“By utilizing the factors of safety, reliability, aesthetics, and cost, [the condemnor] Santee Cooper has established legitimate criteria for a rational decision-making process and a valid exercise of discretion. This court does not imply such a list of factors is exhaustive. Other condemning authorities may have other legitimate criteria they consider.” However, under the facts of this case, the failure to legitimately consider land acquisition costs indicates Santee Cooper's choice of a route lacks a factual basis. The master found Santee Cooper's chosen route would cost almost four times the amount of the two alternates proposed by [the challenger] Southern Development. Santee Cooper merely contends it considered all land values equal. Land acquisition cost is a basic component of cost and should be considered by a condemning authority. This does not mean that Santee Cooper or any other condemning authority in the exercise of

discretion may not choose a route which costs more than another route. Under the circumstances it is conceivable a more costly route may be chosen in a valid exercise of discretion based upon factors other than cost.”

The Partnership Project will unquestionably serve the interests of the Town and benefit the residents (including the Plaintiff herein), not to mention tourists. The easement sought is necessary to achieve the purpose of the Partnership Project which, as already stated, involves not just the initial construction but also the periodic renourishments to maintain the beach. The Partnership Project is expected not only to accomplish the Town’s end goals, but also to provide the Town with necessary federal matching funds. In this instance, it is clear the Town needs the easement sought and is entitled to condemn the property interest sought to be condemned herein.

It must be stressed, further, that an easement acquisition causes a lesser private injury as opposed to taking the land outright. The Town does not seek to acquire more property interest than is required by the USACE for the purpose of facilitating the beach renourishment process. There is no evidence that an equally practicable or less injurious measure exists, other than what the Town seeks to undertake.

Re: Plaintiff’s Sixth Cause of Action

The Plaintiff’s sixth cause of action is a reservation of his right to respond to unanticipated arguments of the Town and to jury trial if appropriate. The Town does not feel the need to argue this speculative cause of action at this time.

CONCLUSION

There is nothing to support the Plaintiff’s claim of fraud, bad faith, or abuse of discretion on the part of the Town in the attempt to obtain easements for its beach renourishment plans.

Even viewing all the allegations and inferences in the light most favorable to the Plaintiff, it is readily seen that his conclusory allegations are not established by the facts of the case. On the contrary, it appears that the Plaintiff filed this instant action simply to delay the Town's condemnation attempt to gain negotiation leverage with respect to the proposed easement grant documents. The Plaintiff is a highly-educated individual and member of the South Carolina Bar who, obviously, recognized from the beginning the necessity of beach renourishment, as evidenced by his own efforts to negotiate the proposed easement grant documents instead of rejecting the Town's proposal outright. This challenge action is clearly not brought in good faith.

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendant Town of Pawleys Island moves to dismiss all causes of action brought by the Plaintiff in his Amended Complaint, and award Defendant its attorney's fees and costs. See: S.C. Code Ann § 28-2-510.

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

s/N. David DuRant, Sr.

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

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: ddurant@lawofficesofdurant.com

Attorney for Defendant

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

s/Norwood D. DuRant, Jr.

Norwood D. DuRant, Jr. (SCB #101723)

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: norwooddurant@lawofficesofdurant.com

Attorney for Defendant

August 28, 2020

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,	)	AFFIDAVIT
v.	)	OF RYAN FABBRI
	)	
TOWN OF PAWLEYS ISLAND,	)	
	)	
Defendant.	)	
	)	

I, RYAN FABBRI, BEING DULY SWORN, DEPOSE AND STATE AS FOLLOWS:

1. I am the Town Administrator for the Town of Pawleys Island, the sole party Defendant in the above-captioned case.
2. I execute this Affidavit in my capacity as Town Administrator, in support of Defendant's Motion to Dismiss the Plaintiff's Amended Complaint.
3. The Town started a beach renourishment project sometime in late July 2019, for the public purpose of addressing, preventing and/or mitigating shore erosion and associated hazards caused by coastal storms and hurricanes. The project consisted of placement of one million one hundred thousand (1,100,000) cubic yards of beach-quality sand along approximately 2.7 miles of shoreline, and the total project cost was fourteen million eight hundred eighty-three thousand two hundred thirty-seven (\$14,883,237.00) dollars. It was anticipated, further, that periodic renourishments would be required to maintain the widened shoreline that would buffer high tides and violent storms from damaging or destroying properties and businesses along the coast.
4. Shortly after the Town started the initial construction activities for beach renourishment, the U.S. Army Corps of Engineers (the "USACE") proposed a memorandum of understanding that would let the USACE finish the project through planting sea oats and installing sand fences, and allow the Town's beach renourishment project to become a federal project (the "Partnership Project") once it is completed. In such instance, the Town would be eligible for PL 84-99 post storm rehabilitation and future periodic renourishments as follows:
 - a. The total construction costs for future periodic renourishments are projected to be one hundred twenty-nine million five hundred twenty-two thousand five hundred thirty-three (129,522,533.00) dollars. The costs will distributed based on a 50-50 split, so the USACE's share of such costs is projected to be sixty-four million seven hundred sixty-one thousand two hundred sixty-seven (\$64,761,267) dollars and the Town's share of such costs is projected to be the same, that is, sixty-four million seven hundred sixty-one thousand two hundred sixty-seven (\$64,761,267) dollars.
 - b. The USACE is responsible for 100% of the costs to repair beach damage resulting from a significant storm, irrespective of a federal declaration. Furthermore, the USACE will share half of the cost of future periodic renourishments to take place over the course of the 50-year Partnership Project, and give the Town credit for the

initial work performed when it calculates its cost-sharing match for the next renourishment.

5. The Town recognizes that beach renourishment is a costly endeavor and has reasonably determined that the Partnership Project is an economically expedient and practicable undertaking that will serve the best interests of the Town. Under the Partnership Project, the Town is assured that its beach-building efforts to the tune of fourteen million eight hundred eighty-three thousand two hundred thirty-seven (\$14,883,237.00) dollars are federally protected, because the USACE will replace any lost sand if the Town is hit by a major hurricane and the beach is destroyed. The Partnership Project is necessary to achieve a continuous strategy that would address, prevent and/or mitigate shore erosion.

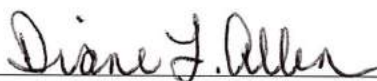
6. Since the Town is partnering with the Federal Government, the government requires written easements for the areas needed to renourish the beach. Currently, 110 property owners have complied and 3 property owners (including the Plaintiff herein) have refused to sign an easement grant. With hurricane season upon us, the Town is at risk in the future without the agreement consummated with the Federal Government.

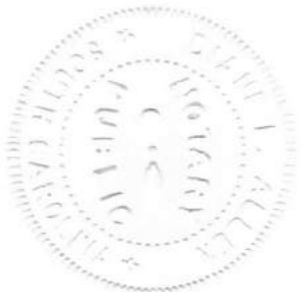
I FURTHER SAYETH NOT.



Ryan Fabbri

SWORN TO BEFORE ME this 28th
day of August, 2020


Notary Public of South Carolina
My Commission Expires: 7/15/2025



STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Town of Pawleys Island,

Condemnor,

v.

Sunset Lodge, LLC,

Landowner.

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

**CONDEMNATION NOTICE
AND
TENDER OF PAYMENT**

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

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

1. The Town of Pawleys Island is the condemnor herein and seeks to acquire an easement on the real property described herein ("the Property") for public purpose.
2. Sunset Lodge, LLC is named as Landowner by virtue of their claim of title or interest in the Property as shown by that certain Deed dated September 18, 2015 and recorded on September 21, 2015 in Book 2655, at Page 15 in the Register of Deeds for Georgetown County.
3. The following is a description of the Property subject of this Condemnation Notice and a description and map of the property interest sought to be acquired in and to the Property by the Condemnor:

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

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

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

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

4. The Town of Pawleys Island is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.*
5. The property interest sought to be acquired herein is intended for public purpose, more particularly for the Condemnor's beach renourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.
6. This Condemnation Notice is served on the Landowner pursuant to S.C. Code Ann. § 28-2-240 (Condemnation by Trial).
7. The Condemnor has complied with the requirements set forth in S.C. Code Ann. § 28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the service of this Condemnation Notice and commencement of condemnation action.
8. Project plans may be inspected at the Office of the Town Administrator located at 321 Myrtle Avenue, Pawleys Island, SC 29585.
9. THE CONDEMNOR HAS DETERMINED THAT JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL

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

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

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

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

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

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

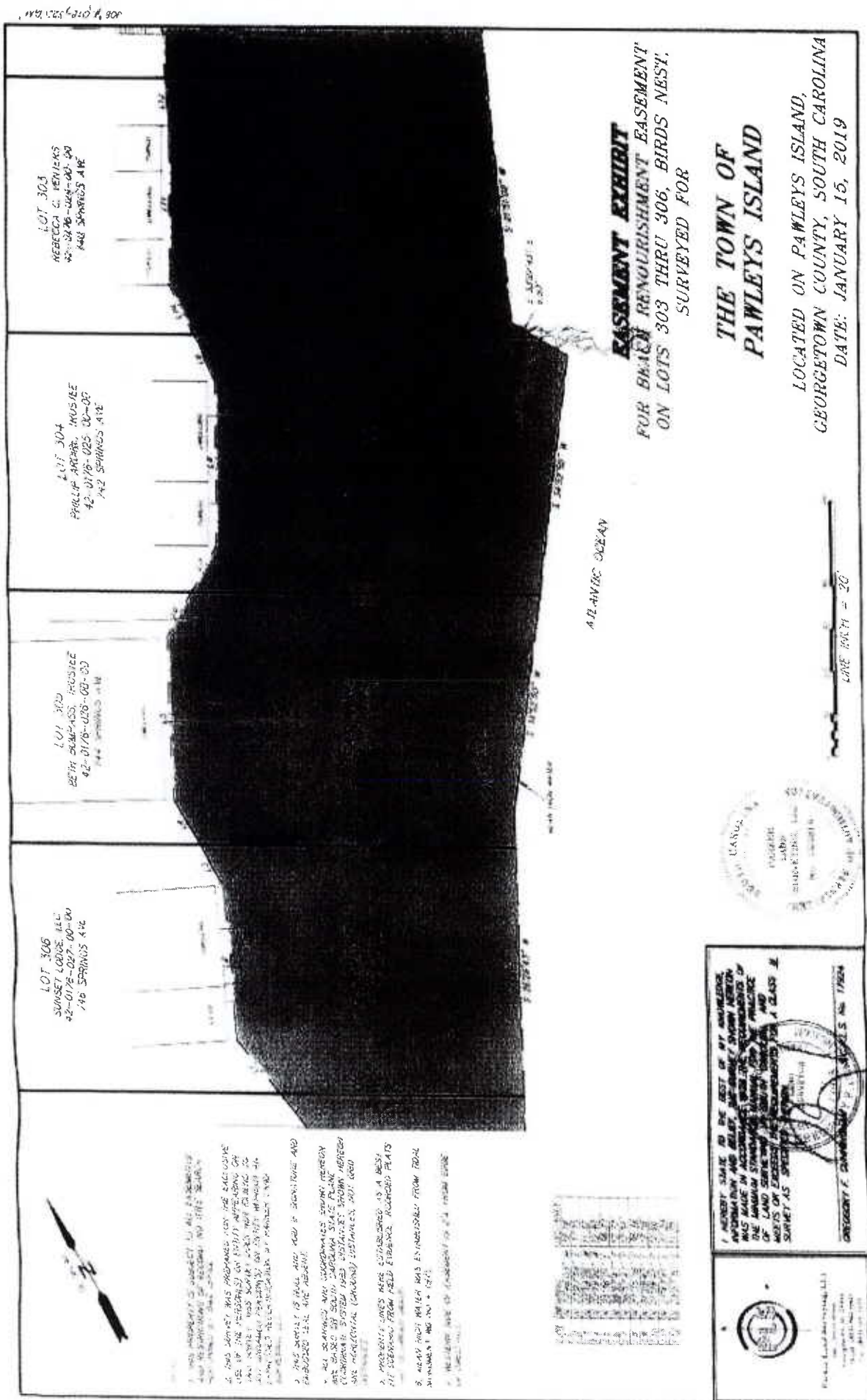
15. In the event the Landowner accepts the tender hereof, the attached Beach Renourishment Easement agreement should be signed and returned to the Condemnor within thirty (30) days of service of this Condemnation Notice.

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

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

June 9, 2020

**Exhibit “A”
(Easement Areas)**



September 1, 2020 Town additional exhibit (access easement) supporting motion to dismiss.

AUTHORIZATION FOR ENTRY FOR CONSTRUCTION

I, _____, _____ for the _____
(Name of accountable official) (Title)
(Sponsor Name), do hereby certify that the (Sponsor Name) has acquired the real property interest required by the Department of the Army, and otherwise is vested with sufficient title and interest in lands to support construction for (Project Name, Specifically identified project features, etc.). Further, I hereby authorize the Department of the Army, its agents, employees and contractors, to enter upon _____ to construct

(identify tracts)
(Project Name, Specifically identified project features, etc.) as set forth in the plans and specifications held in the U. S. Army Corps of Engineers' (district, city, state)

WITNESS my signature as _____ for the _____
(Title)
(Sponsor Name) this _____ day of _____, 20____.

BY:

(Name)

(Title)

ATTORNEY'S CERTIFICATE OF AUTHORITY

I, _____, _____ for the _____
(Name) (Title of legal officer)
(Sponsor Name), certify that _____ has
(Name of accountable official)
 authority to grant Authorization for Entry; that said Authorization for Entry is executed by the proper duly authorized officer; and that the Authorization for Entry is in sufficient form to grant the authorization therein stated.

WITNESS my signature as _____ for the _____
(Title)
(Sponsor Name), this _____ day of _____, 20____.

BY:

(Name)

(Title)

September 7, 2020 Landowner brief in opposition to motion to dismiss.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00600
	)	
Sunset Lodge, LLC,	)	PLAINTIFF’S MEMORANDUM IN
	)	OPPOSITION TO TOWN’S MOTION
Plaintiff,	)	PURSUANT TO RULE 12(b)(6) TO
	)	DISMISS
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
	)	
	)	

CONTENTS

I.	<u>Nature of the Action</u>	2
II.	<u>General Nature of the Allegations of the Amended Complaint</u>	3
III.	<u>Procedural Status of the Case, Motions and Discovery</u>	6
IV.	<u>Nature and Scope of the Town’s Motion and Memorandum</u>	6
V.	<u>Pertinent Facts From the Pleading to Which the Inquiry is Confined</u>	8
VI.	<u>Standard of Decision</u>	11
VII.	<u>Substantive Law</u>	13
	A. <u>Failure to Comply with Statutes Conferring the Power to Condemn</u>	14
	B. <u>Necessity and Fraud, Bad Faith or Abuse of Discretion</u>	23
	1. <u>An Easement as Requiring Identification of a Group of Attributes</u>	23
	2. <u>Necessity of the Targeted Easement to the Purpose of</u>	25
	<u>the Project as Opposed to Necessity of the Project</u>	
	3. <u>Necessity of the Easement, Necessity of the Project, Decision to</u>	30
	<u>Condemn, and Fraud, Bad Faith or Abuse of Discretion in General</u>	
VIII.	<u>The “Allegations” of the Town</u>	34
IX.	<u>Conclusion</u>	39
	<u>Addendum 1: The Allegations of the Amended Complaint</u>	39

I. Nature of the Action

This is an action pursuant to S.C. Code Ann. §28-2-470 to invalidate the Defendant Town of Pawley's Island's "condemnation action."¹ Therein, the Town attempts to condemn an

¹ The Town was the first to invoke legal action. The Town sued Plaintiff, who is a titleholder in the Town, and one of its constituents. The Town commenced its condemnation action against Plaintiff by serving a condemnation notice.

In the exclusive statutory procedure for the Town's condemnation action, the Town is referred to as the "condemnor." Within that statutory procedure, the instant action is a separate action specifically authorized and outlined as an early response to the Town's condemnation action. S.C. Code Ann. §28-2-470 and see id. §28-280(C)(7)(stating the that the condemnation notice must contain conspicuous notice of availability of challenge action).

The separate action allows the landowner to take up matters which the statutes do not allow to be litigated in the Town's condemnation action.

S.C. Code Ann. §28-2-30(5) defines a "condemnation action" to include "all acts incident to the process of condemning property after service of a Condemnation Notice." (Emphasis supplied). The Town has served, but not yet filed, the Condemnation Notice, nevertheless initiating the action. Those papers, however, are not on file with a file number as such. S.C. Code Ann. §28-2-510(A) contemplates a challenge action as a challenge of the condemnor's right to take "all or part" of the interest in property the condemnor seeks to condemn in the condemnation action.

Under the statutory framework, as opposed to the procedure in some other states and procedures of long ago, this issue cannot be litigated in the "condemnation action." This prohibition gives Plaintiff no choice but to file this action. Such a challenge therefore necessarily stays the "condemnation action" until the challenge is resolved and the statute so provides. S.C. Code Ann. §28-2-470.

As referenced in Plaintiff's August 11, 2020 Return on file, the Town has filed a motion "to require a \$1,000,000 bond," presumably as a condition of something, but the Town does not state what it is that is sought by Plaintiff that the Town contends can be conditioned on the posting of a bond. The Town's motion is unaccompanied by citation of authority or supporting affidavits, and was accompanied by a request for expedited consideration of the motion and of the whole case in general.

The exclusive statutory procedure makes no allowance for a bond. Rather, Plaintiff has a statutory right to challenge the legitimacy of what the Town has attempted, and has a statutory right to file and pursue this action. By statute, the action stays the condemnation action, which as a practical matter, it must. Otherwise, the challenge would be meaningless. By statute, there is only one exception to the stay, explicitly stated as consent by the landowner. If the Town seeks to condition maintenance of the action or the statutory stay upon the posting of a bond, there is no authority for doing so and to do so violates Plaintiff's statutory rights, constitutional rights, and the required procedure in this Court.

easement on Plaintiff's land. The easement the Town presently seeks² is described publicly by the Town as being simply for "beach renourishment," but its actual written terms subject the entire affected part of the owner's land to "public access," "operation of a public beach," restriction of the owner's own access to the owner's land, destruction of owner improvements, and other features. The part of the owner's land subjected to these features, under one reading, is the entire lot and all improvements, and under another, is the part running from the eastern property boundary (the mean high water mark on the ocean) west all the way to two feet from the main supports of the main house.

II. General Nature of the Allegations of the Amended Complaint

Plaintiff has filed an Amended Complaint detailing events of over a year. Therein, Plaintiff alleges, among other things, that despite the Town's misrepresentation of the scope of the requested easement in 2019, Plaintiff attempted to cooperate in defining a less harmful easement, only to have the Town publicly misrepresent Plaintiff's cooperation as lacking, and continue publicly to misrepresent the nature of the easement. It is alleged that thereafter, the

² As is alleged with particularity in the Amended Complaint, the history of this general matter is characterized by the Town, for over a year, variously ignoring, mischaracterizing, obscuring, withholding, misrepresenting and changing the description of the interest in property the Town seeks. The Town's description of the interest has depended upon the audience, the context, and the Town's purposes. This fact alone requires intervention of this Court in a separate action. A landowner cannot be expected to proceed with litigation of the value of an interest in property in a condemnation action when the interest in property is a fuzzy or moving target. What is being valued, what payment is being offered for, what is being paid for, and what is being condemned all need to be the same thing.

Phrases used herein such as "the interest described by Fabbri," "the interest described in the proposed granting document," "the interest the Town Council approved to be condemned," "the interest which was appraised," "the interest described in the text of the condemnation notice," "the interest described in the separate document accompanying the condemnation notice," and "the interest described in the separate additional document sent after the condemnation notice," etc. do not all refer to the same thing.

Town abandoned the Town's quest for an easement altogether, and proceeded to complete the subject project with no easement at all.

Plaintiff alleges that in 2020, the Town began an effort to establish a previously abandoned status of being in a crapshoot for potential partial future federal assistance from the Army Corps of Engineers in connection with the renourishment work that was already completely done. In connection with this effort, the Town then started requesting easements from some landowners again. Here, it is alleged that the Town proceeded in the same manner as before, misrepresenting the nature of what was sought and publicly misrepresenting what Plaintiff had done to cooperate.

The Amended Complaint alleges that Town actors chiefly involved in the misrepresentation then continued in this mode when seeking permission from Town Council to condemn. It is alleged that certain Town actors continued to misrepresent and oversimplify, to Town Council, in a public meeting, the nature and scope of the easement, as well as misrepresent Plaintiff's cooperation as being essentially nonexistent.

It is alleged that Town Council, being either misled in this manner or being a participant in the same fraudulent sham, then voted to condemn. It is alleged that in either case, Town Council never read the easement document.

It is alleged that, because the entire deliberation was confined to a misrepresented oversimplified version of the easement and a misrepresentation that Plaintiff had simply refused any easement at all, Town Council never balanced or even considered the harm to Plaintiff or any other relevant criteria for decision.

It is alleged that Council never considered a single one of the objections Plaintiff had to the scope of the easement the Town Administrator had been seeking previously, because the

Town Administrator misrepresented and oversimplified the easement at the meeting as not including any objectionable items and never mentioned them.

The Amended Complaint alleges that Town Council then voted to authorize condemnation only of the easement it considered at the meeting, viz., one “basically, simply to put sand on the beach,” which was the scope confirmed by the Town Attorney on the record at the public meeting, and which was of a scope he confirmed would leave the landowner with all the same rights after the condemnation as the landowner had before the condemnation.

The Amended Complaint alleges that the Town Administrator or some other Town actor then had an appraisal of a proposed easement done without notifying Plaintiff or requesting permission to enter Plaintiff’s property. It is alleged that the interest in property that the appraiser evaluated was essentially an easement for renourishment with no detail, viz., basically simply an easement to put sand on the beach.

The Amended Complaint alleges that the written terms of the proposed easement the Town Administrator had previously been seeking, with which terms Plaintiff did not agree, were not provided to the appraiser.

The Amended Complaint alleges that the Town never offered to accept or purchase from Plaintiff, the easement which the appraiser described in his appraisal. It is alleged the Town proceeded to violate several material terms of the Eminent Domain Procedure Act. It is alleged that the Town did not provide the appraisal to Plaintiff before initiating a condemnation action, and did not attempt to negotiate with Plaintiff with respect to the results of the appraisal before initiating a condemnation action. The Amended Complaint further alleges that the Town violated both the Act and authority from Town Council, fundamentally, in then seeking to acquire in the condemnation action, not the interest in property for which condemnation was

approved in the Town Council meeting and which was appraised, but, rather, an easement with the written terms the Town Administrator had previously been seeking, with which terms Plaintiff did not agree, and which terms Town Council never authorized to be included in the easement to be condemned.

It is further alleged that in the course of the Town's exchanges with either Plaintiff or other landowners, the Town agreed that certain provisions or features of the easement previously sought by the Town Administrator were not necessary and that the easement would be acceptable for the Town's purposes without them. It is alleged that out of spite and abuse of discretion, the Town nevertheless seeks to condemn an easement including these provisions or features the Town had agreed were not necessary.

III. Procedural Status of the Case, Motions and Discovery

The more detailed history and status of the case is recited in Plaintiff's August 27, 2020 Return to Town's Motion for Protection from All Discovery. The Town moved to expedite this case. However, the Town has since moved to block discovery, and has responded to none.

On August 3, 2020, Defendant Town of Pawley's Island filed a motion to dismiss this challenge action pursuant to Rule 12(b)(6), SCRCP.

On August 28, 2020, after a hearing was set, the Town filed Defendant's Memorandum in Support of Motion to Dismiss Pursuant to Rule 12(b)(6), SCRCP, with two exhibits.

Plaintiff hereby responds to the Motion and the Town's August 28, 2020 Memorandum with two exhibits. The motion must be denied.

IV. Nature and Scope of the Town's Motion and Memorandum

The Town accurately cites part of the standard of decision of a Rule 12(b)(6) motion, acknowledging that the allegations of the Amended Complaint are the sole source of facts, and

must be accepted as true for purposes of the motion. However, the Town disregards that standard and proceeds with extensive factual arguments and materials from outside the subject pleading.³ Under the standard for deciding the motion, these arguments, supported or not, germane or not, are not allowed. The Town thus completely fails to apply or adhere to the standard it cites.

Worse, many of the facts argued by the Town are not supported, not admissible, not germane,⁴ or not true.

While the Town makes, at best, errors of interpretation, such as in the Town's erroneous contention that service of the condemnation notice did not initiate the "condemnation action," most of the law which is cited by the Town actually requires denial of the Town's motion.

For example, applying the correct standard of decision and the substantive law cited by the Town, it is a fair conclusion that when the only five people charged with making a decision do not read the document that they are making the decision about, and are guided by false statements and implications of a town employee not charged with or empowered to make such a

³ The Town even complains at one point of "mischaracterizations" in the Amended Complaint. A 12(b)(6) motion is not the place to make such an argument. Plaintiff's characterizations must be accepted as true.

⁴ For example, the Town argues that the Town did not defraud Plaintiff when the Town sent, for signature, a written document full of onerous terms at odds with the previously described purpose of the document. The Town couches its argument as if Plaintiff were complaining of being the victim of the common law tort of fraud and deceit. In that Plaintiff did not accept the onerous and alarming terms the Town inserted into the document after the Town represented the document both publicly and privately to be something entirely different, Plaintiff was not defrauded into signing the document.

As discussed hereinbelow, what the courts have referred to as "fraud, bad faith or abuse of discretion" in the condemnation process includes fraudulent behavior and lack of honesty in fact in the manner in which the condemnor goes about acquiring or trying to acquire the property, including the decision-making process on whether to condemn, and what to condemn.

decision, and are further guided by incorrect legal advice from the town's counsel, their decision is an abuse of discretion, invalidating an attempt to condemn based on that decision.

The law cited by the Town and other law is addressed herein.

V. Pertinent Facts From the Pleading to Which the Inquiry is Confined

Attached as Addendum 1 is a list of 126 or more of the allegations from the Amended Complaint and inferences which may be drawn from them.

Taking, as it must, the allegations of the Amended Complaint as true facts, and indulging in all reasonable inferences from those facts in favor of Plaintiff, the Court must deny the motion.

Taken as true, the allegations and inferences of the Amended Complaint include the following, among very many others:

1. The Town's condemnation notice seeks things the Town previously agreed in writing were not necessary for the Town's purpose. These things are therefore, per se, things not reasonably necessary to accomplish the "project," whether that "project" is fictitious or not, and no matter how the Town defines the "project." (See, e.g., Am. Cmplt. ¶¶ 20, 44, 52, 56, 57, 61, 67, 86, 89, 90, 98, 103, 112, 113, 123, 124, 135, 150, 153, and 173-177.)

2. The Town's condemnation notice seeks things the Town previously agreed in writing with similarly situated other landowners were not necessary for the Town's purpose, and which the Town did not seek or receive from such owners. Therefore, the Town per se, seeks things not reasonably necessary to accomplish the "project," whether that project is fictitious or not, and no matter how the Town defines the project. (See, e.g., Am. Cmplt. ¶¶ 122, 123, and 124.)

3. In making the May 2020 decision to condemn, the Town Council authorized only a simple easement of the nature described publicly by the Town Administrator in March 2019, characterized at the May 2020 Council Meeting as an easement “basically simply to put sand on the beach.” In doing so, the Town Council was completely misguided and in the dark both legally and factually about any intention or proposal of the Town Administrator or others acting for the Town to condemn something different (the easement the Town presently seeks). Town Council was also misled about the need to condemn at all, in that Town Council was misled about the willingness of the condemnees to grant reasonable easements essentially providing what the Council was authorizing be condemned. (See, e.g., Am. Cmplt. ¶¶ 130-147 and 162.)

4. In the alternative, the Town Council fraudulently projected a false scenario of fact and law in order to intentionally avoid exercise of any proper weighing or judgment or rational decision-making in the matter. (See, generally, entire Am. Cmplt., all paragraphs, and see, e.g., Am. Cmplt. ¶¶ 125-149, 150(a), 150(d), 162, and 177.)

5. Town Council authorized condemnation only of an easement of limited scope for the purpose of putting sand on the beach. Town Council did not authorize condemnation of the easement the Town presently seeks. The easement the Town presently seeks, rather, is a 24/7/365 easement for perpetual public access to the landowner’s land and improvements up to as close as two feet from the supports of the landowner’s house, destruction of the landowner’s improvements with impunity, restriction of the landowner’s access to his own property and other matters to which Plaintiff objected. (See, e.g., Am. Cmplt. ¶¶ 43-49 (describing Fabbri “sand work only” explanations), 126-147 (describing Town Council exclusive consideration of “putting sand on the beach”), 158, 162, 175, and 177.) Town Council never discussed anything of the sort in its deliberations.

6. The Town presently seeks to condemn a 24/7/365 easement for perpetual public access to the landowner's land and improvements up to as close as two feet from the supports of the landowner's house, allowing destruction of the landowner's improvements with impunity, allowing restriction of the landowner's access to his own property, and including other matters to which Plaintiff objected and which Town Council never considered in its deliberations. (See, e.g., Am. Cmplt. ¶¶ 150(e), 88, 89, 153, 154.)

7. The Town presently seeks to condemn an interest in property inconsistent with, and substantially more extensive and onerous than, what was authorized. (Compare Item 6, above, with Item 5.)

8. The Town presently seeks to condemn an interest in property inconsistent with, and substantially more extensive and onerous than, the interest which was appraised. (See, e.g., Am. Cmplt. ¶¶ 150(a), 150(b), 150(c), 150(d), 150(e), 151, and 152. (These allegations outline the Town's violation of the statutory mandate to provide a copy of the appraisal before serving a condemnation notice, the Town's false statement in its pleading of compliance with such mandate, and later revelation that the appraiser had not been provided a copy of the proposed easement he was asked to appraise.⁵))

9. The Town based the offer in the condemnation notice on the value of a materially different interest in real estate from the interest in real estate the Town presently seeks to Condemn, which presently sought interest has materially different value. (See, e.g., Am. Cmplt. ¶ 150(b) and see ¶¶ 150(a), 150(c), 150(d), 150(e), 151, and 152 .)

⁵ The Town's refusal to cooperate in scheduling a deposition of the appraiser after notice of such deposition for August 27, 2020 was sent on August 12, 2020 is described in Plaintiff's August 27, 2020 Return and August 27, 2020 Affidavit opposing the Town's motion to delay discovery. The Town filed the motion to delay discovery after affirming to the Court, without affidavit, the need to expedite this case, and so moving.

VI. Standard of Decision

It bears repeating that in deciding whether to grant or deny a motion to dismiss a complaint pursuant to Rule 12(b)(6), SCRCP, based on a failure to state facts sufficient to constitute a cause of action, consideration is limited to the face of the complaint and any alleged defects therein. Brown v. Leverette, 291 S.C. 364, 353 S.E. 2d 697 (1987); Doe v. Marion, 645 S.E.2d 245, 373 S.C. 390 (2007); Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

In looking to the complaint, the court must view all of the well pled allegations of the complaint as true, and view all of the allegations and all of the reasonable inferences therefrom, in the light most favorable to the Plaintiff. Brown v. Leverette; Turner v. ABC Jalousie Co. of N.C., 251 S.C. 92, 160 S.E. 2d 528 (1968) (deciding so under former demurrer procedure); Jensen v. S.C. Dept. of Social Services, 297 S.C. 323, 377 S.E. 2d 102, (Ct. App. 1988) (denying motion in part because of competing inferences), aff'd 304 S.C. 195, 403 S.E. 2d 615 (1990).

If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Doe v. Marion; Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995).

"The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999); Doe v. Marion, 645 S.E.2d at 248 (quoting Gentry)(additional quotation marks omitted). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Doe v. Marion; Toussaint v. Ham, 292 S.C. 415,

357 S.E.2d 8 (1987); James F. Flanagan, South Carolina Civil Procedure, Ch.12 § 5(c) p.94 (2d ed. 1996).

Rather, the motion must be denied if the facts and reasonable inferences from them show that the plaintiff could prevail on any theory of the case. Murrow Crane Co. v. T.R. Tucker Constr. Co., 296 S.C. 427, 373 S.E.2d 701 (Ct. App. 1988); James F. Flanagan, South Carolina Civil Procedure Ch.12 § 5(c) p.94 (2d ed.1996).

All parts of the complaint must be viewed together. Coral Gables v. Palmetto Brick Co., 183 S.C. 478, 191 S.E. 337 (1937) (deciding issue under demurrer practice); National Loan & Exchange Bank of Columbia v. Argo Development Co., 141 S.C. 72, 139 S.E. 183 (1927) (deciding issue under demurrer practice); Southern States Oil v. Standard Oil Co., 26 F. Supp. 633 (E.D.S.C. 1939) (applying South Carolina procedural law).

“[T]he character of a complaint is determined by its factual allegations, not the label assigned to it.” Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P., 385 S.C. 452, 684 S.E.2d 756 (2009)(considering summary judgment procedure). "The law requires the plaintiff to state the facts constituting his cause of action, and demand the relief which he supposes himself entitled to. *** It does not require him to characterize the facts stated, or to give his cause of action a name. The Court does that, and gives him the appropriate relief, not exceeding his demand."⁶ Furman v. Tuxbury Land & Timber Co., 112 S.C. 71, ___, 99 S.E. 111, 113 (1919)(cited in Atlantic Coast Lumber Corporation v. Morrison, 152 S.C. 305, 149 S.E. 243 (1929).

After viewing the complaint in this manner, the court must deny the motion unless it appears that the Plaintiff could prove no set of facts which would entitle the Plaintiff to any

⁶ Under current rules, the court is not limited to granting the relief demanded, except in cases of default judgment. Rule 54(c), SCRCP.

relief, regardless of what relief or legal theory, if any, is mentioned in the pleadings. Brown v. Leverette.

Further, if the decision is a close call, the motion should be denied. Close or novel legal questions should be resolved with a fully developed factual background. Jensen; Henderson v. Gould, Inc., 288 S.C. 261, 341 S.E. 2d 806 (Ct. App. 1986).

This State's policy is to resolve legal disputes on the merits, rather than upon a mere failure to make an allegation. The court must ordinarily give the plaintiff his day in court, even when the motion is granted. If some defect in the pleadings is determined upon motion, the usual course is to grant the motion without prejudice, Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 826 S.E.2d 585 (2019)(reversing for failure to allow for amendment); Nash v. AT&T Nassau Metals, 294 S.C. 248, 363 S.E. 2d 695 (Ct. App. 1987), and grant the plaintiff leave to amend the pleadings if the defect can be corrected. Skydive; Page v. N.C. Mut. Life Ins. Co., 207 S.C. 277, 35 S.E. 2d 716 (1945); National Loan & Exchange Bank of Columbia v. Argo Development Co.

VII. Substantive Law

In the present case, the Amended Complaint sets forth facts adequate to support one or more causes of action or theories of relief against Defendant Town of Pawleys Island. The Amended Complaint seeks to invalidate, “in whole or in part,” the Town’s attempts to condemn the easement the Town presently seeks on Plaintiff’s land. To invalidate any part requires that the present condemnation action be prohibited in its entirety.

In its motion, the Town does not state any specific defect or omission in the Amended Complaint as grounds for dismissal. The Town states only that there is a failure to state any cause of action. To defeat such a motion, there is no need for the nonmoving party to set forth

all theories of relief, nor all substantive law applicable to all theories of relief, nor all supporting facts. Plaintiff will address some, but not all, substantive theories arising out of the Amended Complaint.

A. Failure to Comply with Statutes Conferring the Power to Condemn

In its Memorandum at 5-6, the Town concedes its power to condemn and authorization to commence an action for condemnation are derived in part from S.C. Code Ann. §28-2-10 et seq., the Eminent Domain Procedure Act (hereinafter the “Act”). (Town Mem. at 5-6, stating that it is “vested with power” to condemn and “authorized to commence an action to acquire an interest in real property” by, inter alia, S.C. Code Ann. §28-2-10 et seq.)

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

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

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

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

This court said in an opinion by Brock, J.:

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

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

Similarly, South Carolina's other neighboring state, Georgia, requires strict compliance with eminent domain procedure statutes. Georgia does not simply allow a "do-over" when a condemning entity exercises its condemning authority casually, sloppily, or dishonestly, or takes unauthorized adversarial shortcuts, costing both the landowner and the public both money and confidence.

In *City of Marietta v. Summerour*, 302 Ga. 645, 807 S.E.2d 324 (2017), the condemnation procedure required that the condemnor provide a summary of the appraisal "before" entering into negotiations. The city did not. Like the Town of Pawleys Island, the city did not do other things it was required to. The landowner nevertheless negotiated, negotiations were unsuccessful, the city condemned, and the landowner later appealed the condemnation.

The Georgia Court of Appeals held the condemnation invalid, based on the fact that the city's failure to follow the procedure of providing the appraisal summary before negotiating was in bad faith. On further appeal, expressing no doubt about bad faith, the Georgia Supreme Court held that it was not even necessary that the noncompliance be bad faith, and that the condemnation was ultra vires -- beyond the powers of the city to condemn -- simply for failure to follow the simple mandates of the act.

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

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

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

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

The South Carolina Eminent Domain Procedure Act also requires a process in which the would-be condemnor must first obtain a bona fide third-party appraisal.⁷ The appraisal is to be

⁷ Act §28-2-70(A) states: "(A) Before initiating a condemnation action, the condemnor shall cause the property to be appraised to determine the amount that would constitute just compensation and shall make the appraisal available to the landowner". (Emphases added.)

undertaken at the condemnor's expense, but is for the landowner's benefit and protection. The appraisal is required, of course, to be an appraisal of the exact same interest in property the condemnor plans, if necessary, to condemn. The appraisal must be obtained before serving a condemnation notice.

The condemnor must then make that appraisal available to the landowner.⁸ The condemnor must then offer at least the amount of the appraisal in good faith negotiations before any papers are served.⁹

If a condemnation notice is later served, the papers are required to again offer to purchase the exact same interest in property which was appraised, and offer to pay the amount of the pre-service bona fide appraisal of that exact same interest in property.¹⁰ If the offer is not accepted

⁸ Act §28-2-70(A).

⁹ Act §28-2-70(B).

¹⁰ Act § 28-2-280(C)(3) requires that the notice must contain "an appropriate legal description of the interest to be taken." Section 28-2-280(C)(4) requires that the notice must contain a statement of compliance with §28-2-70(A), which requires that the pre-service appraisal described by §28-2-70(A) was obtained and made available pre-service. Act §28-2-280(C)(7) requires that the amount which must be offered in the condemnation notice must be the same amount of the appraisal of the property interest which was appraised prior to service pursuant to §28-2-70(A).

These statutes are designed to assure that if the landowner confronted with uninvited government legal action does not have the money or the desire to hire an appraiser of his property and go to court, the landowner can do nothing, and at least receive in exchange for the interest condemned, an amount of money determined by the honest opinion of one professionally qualified third party based on an accurate description of precisely the thing the condemnor is trying to take.

These statutes would make no sense at all if the condemnor were allowed to appraise one interest in property, then seek to condemn another.

They certainly would make no sense if the condemnation notice were allowed to offer the value of the interest which was appraised, instead of the value of a different interest described in the condemnation notice.

Nor would it make sense for the condemnor to plead as a condition of condemning a different interest described in the condemnation notice, that an the appraisal of the appraised

and nothing else stops the matter, the same papers may then be filed, seeking the exact same interest in property which was appraised, already described in the papers, at the exact same price already described in the papers.¹¹

interest was provided and certify to the court that the condemnor attempted to buy the appraised interest, instead of an interest sought in the condemnation notice.

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

¹¹ In the instant case, when Plaintiff filed this challenge action, the Town's condemnation action was stopped pursuant to statute before the Town filed the condemnation notice.

If the Town had validly proceeded to file the condemnation notice, the Town as condemnor would have been allowed to take possession of the same "interest to be taken" which was appraised, not a different interest. There would immediately be a dispute, were Plaintiff not foreclosed from it by statute. As explained herein, this would have led to a completely unfair and impracticable situation, incurable confusion, and further harm to Plaintiff, as the Town would likely have asserted that it could take possession of something it had never had appraised, did not intend to pay proper value for, and reserved the right to unilaterally redefine by public announcement or sending new and additional papers and descriptions.

After the filing of a condemnation notice, the parties ordinarily may litigate the appropriate compensation for the interest the value of which was appraised and possession of which was taken. Act §28-2-230. However, here, those things are not the same, and in the condemnation action, the parties are generally not able to litigate challenge issues.

Further, the filing of the condemnation notice does not then result in transfer of the interest in property to the condemnor. Act §§28-2-90, 28-2-110, 28-2-230, 28-2-280, 28-2-440 and 29-2-480 distinguish between taking "possession" and "vesting of title." Transfer of the interest occurs only after certain specified events.

Unless there is agreement or other action by the condemnee first, transfer of actual ownership of the interest would naturally occur only after all challenges to the right to condemn have been resolved, the precise interest in property to be condemned, if any, has been identified and appropriately described, the appropriately described interest in property has been timely appraised at the expense of the condemnor and the appraisal has been timely provided to the condemnee, the condemnation action has fully run its course, the judge or jury has determined the price the condemnor must pay, and the condemnor pays it.

Proceeding without the ability of Plaintiff to maintain the instant challenge action would be a violation of due process of law, which, even if remedied somehow at a later point, would involve a tremendous waste of resources for Plaintiff, the Town, this Court, and potentially other courts.

The Town did not do any of this right. Instead the Town plotted to condemn an easement of greater scope than authorized by Town Council, and greater scope than appraised, and pay less for it. The Town proceeded by having only the simplistic “sand on the beach” easement authorized by Council appraised, but then seeking to condemn the more onerous and alarming easement the Town Administrator had been seeking before the May 2020 Council meeting.

Notably, the Town strategically delayed sharing of the appraisal, in all three cases, with all three landowners. This delay was a violation of the Act, as more fully discussed below.

The Town never entered into pre-service negotiations with respect to the “just compensation” supposedly opined in the appraisal. This avoided what likely would have been the landowner’s obvious reaction and questions in negotiations after seeing the appraisal: “Is this all you want? This appraisal omits a lot of what we have expressed so much concern about, but that no one will acknowledge. I have already offered you something close to this. Let’s talk.”¹²

¹² The Act contains only one subsection the failure to comply with which is stated to not be fatal to the attempted condemnation action, Act §28-2-70(B)(requiring pre-service negotiation). The Town failed to comply with other requirements that are not part of subsection 28-2-70(B).

These incurable failures are fatal to the condemnation action, and include (1) failing to make the appraisal available pre-condemnation under subsection 28-2-70(A)(not (B)), (2) failing to give reasonable notice of request of the appraiser to enter onto the property under subsection 28-2-70(C), and (3) failing to describe in the condemnation notice, the same interest in property which was appraised.

This last failing also constitutes a fourth failing – failing to state in the notice an “appropriate description of the interest sought to be taken” as required by subsection 28-2-280(C)(3).

While, as noted, failure to conduct pre-service negotiation under Act§ 28-2-70(B) is stated by the same section to not be fatal to the condemnation action, the Town also certified “to the Court” in the notice that the Town had conducted such a negotiation.

The Act contains no provision stating that failure to conduct pre-service negotiation or making false certifications about it may not be considered for purposes of assessing bad faith and other matters. Given the Town’s incorrect assertion that the statute does not require the appraisal to be provided prior to service, it is likely the Town will state that what it was certifying was that it did conduct pre-service negotiation, but purposefully just did so without giving the landowner anything to look at. Such a certification, too, is false.

Then the Town served a condemnation notice describing the interest in property differently than in the appraisal.

The Town served the time-sensitive condemnation notice still without providing the appraisal. In the notice, the Town stated the statutory deadlines for the owner to react or not. The Town represented in the notice that the price offered in the notice was the price determined by an appraisal of the interest in property described in the notice, but this was not true.

With two landowners, Beattie and Sunset, the text of the condemnation notice contained only a description of the whole lot, followed by an additional description of only the location of the proposed easement. The interest in property was described only as an “easement” for the purpose of a certain “renourishment project.” With the other landowner, Stanton, the text of the notice itself contained an easement description – different from the appraised interest -- reciting numerous onerous details of previous concern, but was accompanied by a separate document which had a different description (doubled in length by repeated wording which was not identical in the repeating).

All three condemnation notices were accompanied by a separate proposed easement document, which did recite numerous onerous details of previous concern. The text of the notice stated that a separate granting document was attached which should be signed and sent back

False is false. The Town failed to comply with Rule 11, SCRCP, which requires that statements in pleadings (e.g., stating the appraisal was made available before initiating the action or certifying pre-condemnation negotiation based on appraisal) shall not be made when known to have no factual basis. Rule 11 applies to the extent not inconsistent with the Act. Rule 11’s requirement of nonfrivolity is consistent with the solemn and exclusive nature of the Act.

As also noted, after serving the condemnation notice, the Town sent Stanton another document contradicting the condemnation notice and stating that all prior versions, which would include the version in the condemnation notice, were “withdrawn.” (Am. Cmplt. ¶¶153-156.) This leaves the notice without any description at all and is a written withdrawal of the Condemnation Notice itself.

within the deadline if the offer was accepted.¹³ The Town apparently incorrectly treated this separate document as a way to spontaneously change the game further, contradict the text of the condemnation notice, and change the nature of what was being condemned.

With one landowner, Stanton, the Town in fact subsequently served an additional document with a third description, even more onerous than the previous one served, and more onerous than the description in the text of the notice itself. (Am. Cmpl. ¶¶153 and 154.)

In all three cases, the Town therefore not only failed to furnish the appraisal before serving a condemnation notice, but failed in the notice to provide “an appropriate legal description of the interest to be taken,” and did not describe in the condemnation notice the same interest which was appraised.

The Town also thus cast into a state of continuous uncertainty, what interest the Town would want to condemn next, what interest the Town might later claim it has taken, and what the Town intends to pay for, while none of the varying onerous descriptions are supported by an appraisal based on that description. This makes a fair condemnation proceeding impossible. It also casts not just a cloud, but a pall, on Plaintiff’s title. The Town’s condemnation action should therefore be declared ended and prohibited.

Of the several instances of its failure to comply with the Act, the Town unmeritoriously addresses only its failure to make the appraisal available before serving the condemnation notice. The Town thus additionally leaves all other noted failures intact as bases for invalidating any attempt to condemn. In its Memorandum, the Town states that the law does not require the appraisal to be made available before serving the condemnation notice.

¹³ As the Town points out, Plaintiff did not see this sentence and mistakenly stated in the Amended Complaint that the additional document was not referenced in the condemnation notice. It was. Plaintiff withdraws that part of that allegation and asks to amend.

The Town specifically states that the Act only requires the Town to make the appraisal available before “commencing” a “condemnation proceeding” and, without citation of authority, the Town states that a proceeding is only “commenced” when the condemnation notice is filed, not when it is served.

The Town is in error.

Act §28-2-30(5) defines a “condemnation action” as follows: “(5) ‘Condemnation action’ includes all acts incident to the process of condemning property after service of a Condemnation Notice”. (Emphasis supplied.)

Act §28-2-70(A) states: “(A) Before initiating a condemnation action, the condemnor shall cause the property to be appraised to determine the amount that would constitute just compensation and shall make the appraisal available to the landowner”. (Emphases added.)

The Town served a condemnation notice. The Town thus initiated a “condemnation action.” The Town did not make the appraisal available before doing so. The Town therefore failed to make the appraisal available “before” initiating the condemnation action.

Act §28-2-280(C)(4) states:

SECTION 28-2-280. Form and content of condemnation notice.

(A) The Condemnation Notice must contain the information and allegations required in this section and may contain any other information relevant to the action.

(C) The Condemnation Notice must:

(4) allege *** (iv) a statement that the condemnor has complied with Section 28-2-70(A).

Unequivocally, the notice must thus contain a statement that the condemnor “has complied” with §28-2-70(A), which requires making the appraisal described by §28-2-70(A) available. It would be impossible to truthfully affirm in the notice when serving it, that one “has complied” with a requirement one has actually not yet complied with and does not intend to

comply with until later.¹⁴ Thus, there is no question that the Town was required to make the appraisal available before serving the condemnation notice, decided not to do so, did not do so, and then falsely stated that it had done so.

Whether described as jurisdictional defects, or incurable failures to satisfy elements necessary to state a cause of action for condemnation, or simply reckless steps leaving the proceeding hopelessly confused, disordered and damaged, the defects in the way the Town went about initiating and pursuing its condemnation action require the action to be invalidated, dismissed, and prohibited. Therefore, based solely on the allegations of the Amended Complaint, the Town's motion to dismiss the challenge must be denied.

B. Necessity and Fraud, Bad Faith or Abuse of Discretion

1. An Easement as Requiring Identification of a Group of Attributes

When acquisition of an easement is involved, as opposed to acquisition of a complete fee simple interest in the land, the condemnor's choice and definition of "the interest to be acquired" undeniably has additional dimensions. One may choose to define an easement over real property, as opposed to a fee simple title, as a conveyed right or privilege over real property, which generally runs with the land on which the easement is imposed (the servient tenement) and, in the case of an easement appurtenant, the land in favor of which the easement exists (the dominant tenement), by which, by virtue of ownership of another benefitted specified parcel of property (the servient tenement) or by virtue of being in a class or description of those designated to have an easement in gross, the owner against whose real property the right or privilege exists is obliged to suffer or not to do something on or in regard to his own real property for the

¹⁴ As noted, the Town did include the statement in its notice, but the Town's statement was false.

advantage and benefit of him in whose land the privilege exists or him, such as in the case of an easement in gross, in whose favor the privilege otherwise exists.

An example is an easement to a power company to put overhead power lines across a farmer's corn field. Under the power lines, the farmer can still till the soil and grow corn, but perhaps not grow trees. Absent different agreement, the power company can likely come onto the land and service the lines and poles, and in so doing, trample, if necessary, the corn under the lines and along the way which leads to them, but not the corn elsewhere.

The choice and definition of what the owner is obliged to suffer or not to do on or in regard to his own real property for the advantage of him in whose favor the privilege exists obviously requires definition of not only the geographical location of the easement (if it is an easement of fixed location on part of an overall parcel of the landowner), but also the depth and breadth and height of the activities and prohibitions which define the interest in land to be acquired.

For example, acquiring an "easement for sewer lines" in an urban or suburban setting requires more than stating that the easement is for "sewer lines." The value, and therefore the cost, of the easement could vary dramatically between a sewer line easement five feet wide and six feet deep for one four inch pipe, and an easement twenty-five feet wide and twelve feet deep for a ten inch pipe. The value and the cost for the latter would differ further if the easement allowed surface penetrations for venting, cleanout, lifting or grinding stations, manholes, etc. At its simplest, the latter would involve greater and deeper excavation on the landowner's property, more inversion of soils and lower strata rocks and other materials, more loss of topsoil, etc.

Every increase in scope or change in location changes the interest in property that is being acquired. Knowing that every increase in scope or change in location is potentially more

harmful to the landowner and takes more value from him requires exercise of discretion in deciding on how extensive the requested attributes really need to be, and where those “attributes” are located relative to the rest of the landowner’s land and improvements.

The determination of size and location obviously also requires more and different deliberation as a result of the other attributes to be included. For example, a twenty-five foot wide sewer-line easement for which the condemnor also assumes no responsibility for destruction of present or future paving of the landowner requires more deliberation concerning the impact on the landowner’s present or future paving. A ten inch pipe carrying noxious materials and fumes, with vents and potential backup and sewage overflow surface penetrations requires more consideration of the proximity of the easement to the landowner’s building, improvements, and possible uses and activities.¹⁵

2. Necessity of the Targeted Easement to the Purpose of the Project as Opposed to Necessity of the Project

Insisting on a greater property interest than is necessary or a location that is not necessary is capricious at best and is abuse of discretion and beyond the scope of the condemnation power. See Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 388-89, 175 S.E.2d 805, 810 (1970), and see, e.g., S.C. Code Ann. §28-2-60 (allowing the acquisition of an interest in any real property if “necessary”).

¹⁵ The sewer authority adding additional provisions that the sewer-line easement may also be used by the public as a walking path and that the sewer authority may establish on the twenty-five-foot-wide strip, garbage cans, periodic vehicular garbage pickup, signage, public parking spaces, alarm stations, and antenna towers, would obviously change the deliberation further, along with the contemplated compensation values.

If such provisions were to be added to the easement, they would require thoughtful acknowledgement and consideration, despite any unenforceable, unrecorded statement on the side offered by the ditch digger for the sewer authority, that in his opinion, his present bosses would be around “for a long time,” would not publicize the availability of the walk path, and would never seek to put up antennas.

This is true with regard to insisting on more land than is necessary, insisting on additional other attributes that are not necessary, insisting on a location or route that is not necessary, or insisting on more harm than is necessary. Where the necessity or lack thereof is not objectively demonstrated or stipulated, the determination of necessity is entrusted to the discretion of the condemnor, provided the determination is not fraudulent, in bad faith or the result of an abuse of discretion.

Thus, “lack of necessity” in most instances stands for the proposition that the condemnation is not reasonably necessary to accomplish the purpose of the project, rather than that the project itself is not necessary. See Bookhart v. Central Elec. Power Co-op., 222 S.C. 289, 72 S.E.2d 576 (1952)(noting the readiness of the court to remedy attempted takings of excessive scope or inappropriate location for a stated project, but requiring fraud, bad faith or abuse of discretion when challenging the necessity of the project itself.)¹⁶

In a complaint that there is a lack of necessity, the condemnor is usually alleged to have committed an abuse of discretion or a failure of considerate reasoning in that the scope of the

¹⁶ Thus, historically, “fraud, bad faith or abuse of discretion” has been applied as a standard to questions of necessity for a project as well as to questions of necessity of a project, but the Court has recognized a decidedly lighter standard in the question of the necessity for a project.

The Town apparently devotes much of its Memorandum to arguing the necessity of “the project” itself, and to convincing the Court that, despite the fact that all the sand is already in place, an actual “project” still exists or is planned to commence within a relevant time period. The Town does so instead of discussing the ignored issue of the last year and a half – the necessity of the attributes of the interest in property the Town seeks to condemn.

While the Town’s focus will be touched on briefly further below, as noted previously, Plaintiff will address only some of the facets of necessity which require the Town’s action to be ended and which therefore require the Town’s motion to be denied. This Court must deny the Town’s motion in its entirety, and may do so in a one-word order, if the Amended Complaint alleges any facts which might entitle Plaintiff to any relief at all on any theory, whether specified in the Amended Complaint or not.

acquisition exceeds what is necessary for the purpose of the project in relation to the burden on or loss to the landowner.

In Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 388-89, 175 S.E.2d 805, 810 (1970), the Court stated:

In the law of eminent domain, it is well established that there must be a necessity for the taking, but this does not mean an absolute necessity, but rather a reasonable necessity. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1. Our Supreme Court said in White v. Johnson, 148 S.C. 488, 146 S.E. 411, 412: 'It is well established law that necessity, as well as public use, must always exist in order to warrant the taking of lands, through condemnation, by a grantee of the power of eminent domain. The delegation of the right to exercise that power carries with it the implied condition that it shall be exercised only to the extent found necessary. 'As to what is meant, in this connection, by the term 'necessity', we find the following in 80 C.J., at page 630: 'Necessity * * * does not mean an absolute but only a reasonable necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and the property owner consistent with each benefit * * *'.

Id.

As stated in Bookhart,

The delegation by the State of this great power of eminent domain does not mean that a condemnor is given a free rein, to run rough shod over the lands of the citizens of the State. The Courts will always jealously safeguard the right of landowners against a wrongful method in laying out the right-of-way across their particular tracts of land, but when it comes to the wisdom, or expediency, or reasonable public necessity of the entire project, the department of government through which the State speaks is its legislature, and if such power has been delegated, the condemnor must act in good faith and not in a capricious or wantonly injurious manner.

222 S.C. 289 at 295, 72 S.E.2d 576 at ____.

The Court in Bookhart thus recognized that a court readily will afford relief if a condemnor “attempts to make an unreasonably hurtful” location of a right of way or use of the property sought, or seeks an unnecessary degree of use or of geographical scope of the property sought, such as by “locating a power line on the landowner’s property so as to go through shade trees surrounding the residence, when that could be avoided,” or by taking a right of way that is

“unnecessarily wide,” or locating a railway station “unreasonably on the landowner’s land” as opposed to on the land of others, or unreasonably locating a roadway where there was “already an adequate route.”

In the instant case, there are instances in which the Town has previously recognized in writing, the lack of necessity of some features it now seeks. (See, e.g., Am. Cmplt. ¶¶ 20, 44, 52, 56, 57, 61, 67, 86, 89, 90, 98, 103, 112, 113, 122, 123, 124, 135, 150, 153, and 173-177.) This, alone, is a “game-over” fact relative to the Town’s motion, being conclusive evidence the Town seeks more than it needs. Regardless of whether it now seeks these features out of spite or indifference to its own citizens, the Town has exceeded its power and its condemnation must be prohibited.

A responsible condemnor makes a reasoned and supported determination of what property must be acquired for the proposed project, i.e., what specific property or interest in property is necessary. Southern Dev. and Golf Co. v. South Carolina Pub. Serv. Auth., 305 S.C. 507, 409 S.E.2d 428, 514 (Ct.App. 1991), aff’d as modified, 311 S.C. 29, 426 S.E.2d 748 (1993)(holding that “a condemning authority must exercise its discretion by a rational decision making process which is supported by facts.”) However, the condemning authority may be estopped and permanently barred from proceeding with a condemnation, whether the condemning authority conducts a rational decision-making process or not, if the representations of the condemning authority are inconsistent with the condemnor’s later attempts to condemn.¹⁷

¹⁷ Here, as alleged in the Amended Complaint, by June 2019, the Town ceased all effort to work out acceptable terms for an easement. (Am. Cmplt. ¶¶91 and 92.) At the end of July 2019, the Town decided and publicly declared that no easements were necessary and that the Town would proceed with the Town’s project without easements and without dependence upon any partial potential present of future assistance from the Corps of Engineers. (Id. ¶98.)

In reliance on these statements and actions, Plaintiff took no action to stop the Town. (Id. ¶103.) Between October 1, 2019 and mid-February 2020, the Town placed several thousand

Southern Dev. and Golf Co. v. South Carolina Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993)(affirming Court of Appeals’ holding that condemnor failed to consider appropriate factors in running high voltage power transmission lines and towers through valuable golf course, but holding remand for further evaluation of alternate routes unnecessary because condemnor was permanently estopped from condemnation by representative’s indication of no intention to run overhead lines as an expansion of the existing use or to seek additional 70-foot wide easements over property).

Plaintiff alleges in the Amended Complaint that the Town did not exercise its discretion by a rational decision-making process which is supported by facts. (See Am. Cmplt. ¶¶ 174 and 177, and see, e.g., ¶¶ 20, 44, 52, 56, 57, 61, 67, 86, 89, 90, 98, 103, 112, 113, 122, 123, 124, 130-147, 150, 153, 162, 173, 175, and 176.) This is a question of fact, the truth of which must be assumed when ruling on a Rule 12(b)(6) motion. Brown.

This fact is not alleged conclusorily. The Amended Complaint alleges in extenso, and in vivid terms, some Town actors’ misrepresentation and obfuscation, to both Town Council and other landowners, of both the true nature of the easement the Town now seeks to condemn and the true circumstances of the Plaintiff’s willingness to grant some sort of reasonable easement. (See, e.g., Am. Cmplt. ¶¶ 126, 131-142 and 145.) The Amended Complaint alleges in extenso, and in vivid terms, Town Council’s abdication of its ability and willingness to look into the matter when under this influence of those misrepresenting the matter and those providing legal

cubic yards of sand and other material on Plaintiff’s property. (Id. ¶103.) The sand blocked Plaintiff’s view, interfered with Plaintiff’s access to the ocean and necessitated building steps and associated structures over the sand and other materials. (Id. ¶103.)

The Town’s statement that it was proceeding without an easement, and then actually doing so, while ceasing all pursuit of an easement, indicates a concealment of the material fact that the Town had intentions to pursue an easement.

advice confirming that the easement then under consideration was an easement of different character from the one now sought in the condemnation notice. (See, e.g., Am. Cmplt. ¶¶ 130, 135, 141, 143, 147, and 148.)

Taking this as true, which the Court must do in considering the instant motion, Plaintiff is entitled to have the condemnation ended.¹⁸ Therefore, the motion to dismiss should be denied.

3. Necessity of the Easement, Necessity of the Project, Decision to Condemn, and Fraud, Bad Faith or Abuse of Discretion in General

In its Memorandum at 5, the Town concedes that a landowner may bring a challenge action to enjoin a condemnation proceeding on a more generally stated basis of “fraud, bad faith, or clear abuse of discretion on the part of the condemnor.” (Town Mem. at 5, citing Sease v. City of Spartanburg, 242 S.C. 250 250, 131 S.E.2d 683 (1963); and Cameron v. City of Chester, 253 S.C. 574, 172 S.E.2d 306 (1970).) The Amended Complaint supports all three conditions, which can be overlapping concepts.¹⁹ The facts set forth at the head of this brief as Items 1-9 evince

¹⁸ Part of the condemnation process is a pre-service appraisal of the interest in property to be condemned, and not an appraisal of some other, different, interest. This is followed by required pre-service negotiation to purchase the same interest for at least the same price dictated by the appraisal, so as to possibly avoid court involvement and expense and appraisal expense for, among others, the landowner. An appraisal is a determination of value as of a specific point in time. There is no practicable remedy allowing the Town to keep changing the interest in property it seeks as the condemnation action proceeds, without consent of the landowner.

Under the necessity basis for ending the condemnation, the present condemnation action should be dismissed and never filed. The Town is required to obtain another appraisal, of whatever interest the Town actually rationally decides it seeks to condemn and is willing to pay for. The Town must repeat the pre-service negotiation. If unsuccessful, the Town is required to prepare and serve a new notice of condemnation and repeat the timetable associated with it. The remedy is therefore dismissal of the as-yet unfiled condemnation action and permanent prohibition against filing it.

¹⁹ See, e.g., Sanders v. Luther, 164 S.C. 105, 109, 161 S.E. 70, ____ (1932)(examining whether complaint had allegations “pointing to any element of illegality, oppression, abuse of discretion, or bad faith”) and see id., 164 S.C. 105, 109, 161 S.E.70, ____ (concluding that allegations charging the defendants with being “arbitrary and capricious in their conduct” satisfied the question of an element of “illegality, oppression, abuse of discretion, or bad faith,”

conscious dishonesty, spite, gross ignorance, indifference, recklessness, or a failure of deliberation caused by abdication of responsibility, by knowingly false information or by erroneous legal conclusions, or a combination of many or all these conditions.

These are all conditions not present in Sease or Cameron. Sease involved a determination to condemn property for a roadway which would isolate the condemnee's remaining property and reduce its access in various ways alleged to be very harmful, and was decided on demurrer, where the pleadings alleged no actual facts indicating conscious dishonesty, spite, gross ignorance, indifference, recklessness, or a failure of deliberation caused by abdication of responsibility, by knowingly false information or by erroneous legal conclusions, or a combination of many or all these conditions. Cameron involved a contention that the acquisition of the property for off street parking was unnecessary solely because off-street parking was not needed, and was decided after trial, in which there was no evidence adduced of conscious dishonesty, spite, gross ignorance, indifference, recklessness, or a failure of deliberation caused by abdication of responsibility, by knowingly false information or by erroneous legal conclusions, or a combination of many or all these conditions.

In legal terms, an abuse of discretion occurs, among other possible instances, when a decision is based upon an error of law or upon a factual conclusion that is without evidentiary support. Fields v. Regional Med. Ctr. Orangeburg, 363 S.C. 19, 609 S.E.2d 506 (2005) (See Thompson v. Hammond, 299 S.C. 116, 382 S.E.2d 900 (1989)). “‘Abuse of discretion’ does not

and concluding that even the question of public necessity had been adequately challenged by plaintiff having alleged that the old road proposed to be abandoned was a shorter route between the principal places served than the proposed new road, that the public necessity and convenience would not be better served by relocating the road along the line proposed, and that the real purpose in relocating the road was to take it off of the land of another person and place the same over the land of the plaintiff).

mean any reflection upon the presiding Judge [or nonjudge], and it is a strict legal term, to indicate that the appellate [or other reviewing] Court is simply of the opinion that there was commission of an error of law in the circumstances.” State v. Gregory, 171 S.C. 535, 548, 171 S.E. 692, ____ (1934) (citing Barrett v. Broad River Power Co., 146 S.C. 85, 143 S.E. 650, 654 (1928)). Accord, Bishop v. Bishop, 164 S.C. 493, 162 S.E. 756 (1932).²⁰

²⁰ When a court reviews the decision of another body for abuse of discretion, the court need not address the sufficiency of the putative evidence supporting the reviewed body’s findings, when the “findings are so tainted by errors of law as to require [reversal].” Callen v. Callen, 365 S.C. 618, 620 S.E.2d 59 (2005)(reviewing family court decision). Here, the Town Council made its decision to condemn based on conclusions of law that the easement it was considering was “basically, simply to put sand on the beach,” and that the owners “would have all the same rights after the taking that they had before the taking” (to paraphrase). These were heavily weighted legal conclusions with which the condemnation notices absolutely conflict.

“An abuse of discretion occurs when the decision is controlled by some error of law or is based on findings of fact that are without evidentiary support.” Lewis v. Lewis, 392 S.C. 381, 390, 709, S.E.2d. 650, ____ (2011) (citing Eason v. Eason, 384 S.C. at 479, 682 S.E.2d at 807 (2009)). Accord, State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017) (citing State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)), and State v. Hatcher 392 S.C. 86, 708 S.E. 2d 750 (2011).

Thus, a body can be diverted from the proper exercise of discretion because of being misled or mistaken legally. A body can also be diverted from the proper exercise of discretion because of being totally in the dark as to the true facts when there is no evidentiary basis for the facts the body assumes, incorrectly, exist. A body fraudulently misstating the facts and issues of the case before it for decision would also be abusing its discretion by intentionally refusing to exercise its discretion on the actual case before it.

An abuse of discretion occurs when an active exercise of discretion is controlled by legal error or unsupported factual findings but may also occur when the body whose decision is under review is vested with discretion to decide a matter or issue in favor of or as requested by a party, but the body’s decision reveals no discretion was, in fact, exercised. Fontaine v. Peitz, 291 S.C. 536 at 538-39, 354 S.E.2d 565 at ____ (1987)(reversing even though not permitting further testimony was within trial judge’s discretion because trial judge’s belief he could not permit additional testimony was erroneous). Here, the Town Council acted on a false state of facts never suggesting material issues for decision and received legal advice further stating there were virtually no issues adversely affecting Plaintiff’s title and that there were minimal costs involved.

In its Memorandum at 17-18, the Town concedes, as discussed briefly above, that a failure to establish legitimate criteria for a rational decision-making process and a valid exercise of discretion constitutes an abuse of discretion, that failure to have a factual basis for a choice of the interest in land to acquire is an abuse of discretion, and that failure to consider one of the decision-making criteria is one example of not having a factual basis for decision. (Town Mem. at 17-18, citing Southern Dev. Land and Golf Co. v. S.C. Pub. Serv. Auth., 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991)²¹(concluding power company with criteria of safety, reliability, aesthetics and cost had no factual basis for decision and abused its discretion in selecting route for power transmission lines when it did not consider the cost criterion at all).)

Here, the already cited portions of the Amended Complaint and the pleading in its totality evince the fact that Town Council, which is the sole decision-maker under the council form of municipal government, failed to have any criteria at all for a rational decision-making process. Dealing only in generalities, and under the influence of the misrepresentations of those generalities, one decision-maker referred to the decision with metaphysical aptness as a “no-brainer,” at the same time another stated he “just didn’t understand,” but proceeded to vote to condemn a “sand on the beach” easement. That is, they clearly had no criteria for decision, other than perhaps to listen to the Town Administrator and Town Attorney, neither of whom is a member of Town Council. Neither of those actors covered any criteria either, other than in cited instances of falsely stating the situation or inaccurately stating the law as applied to the situation.

The Amended Complaint also evinces that Town Council had no factual basis for its choice of the interest in land the Town now seeks to condemn, because, as stated in the subject pleading,

²¹ Aff’d as modified, 311 S.C. 29, 426 S.E.2d 748 (1993).

the Council authorized condemnation of a different interest in land than what the Town presently seeks to condemn.

If Town Council secretly meant for the Town Administrator to pursue the more onerous interest the Town presently seeks to condemn, the more than disappointing conclusion is not only that there is no disclosed factual basis for the determination, but also that the whole public meeting process was a fraud and a sham.

If cost was a factor, the Council could not have considered it with any factual basis, because the appraisal was not done yet and any speculation on cost was based on a false scenario. The Town has refused to comply with both a Freedom of Information Act request and a proper Rule 34 request for production of any other appraisals or opinions of value the Town may have had. Accordingly, the Town's motion should be denied.

VIII. The "Allegations" of the Town

The allegations of the Amended Complaint, which are the sole subject of the motion, can barely be detected in the Town's Memorandum.

The Town begins its Memorandum with a three page recitation of assertions, labelled, tellingly, as "Factual Allegations." Many of the Town's allegations are pulled from thin air. These are the Town's "allegations." These are not the allegations of the Amended Complaint. The Town's "allegations" are not germane to a motion under Rule 12(b)(6). Brown.

The Town accompanies its Memorandum with an affidavit of Mr. Fabbri, which also obviously is not part of the Amended Complaint. The affidavit is not germane to a motion under Rule 12(b)(6).²² Brown. Legally, at this stage, nothing in it can be believed, or even considered.

²² While not permitted under Rule 12(b)(6), the affidavit is not permitted by Rule 6(d), either. Affidavits in support of motions shall be served with the motion, not later. Rule 6(d), SCRCP. This is not a mere technical quibble; the requirement is to assure notice, fairness, and

The Town also includes a copy of a condemnation notice as an exhibit, and this exhibit, too, is not an exhibit to, nor part of, the Amended Complaint. The exhibit is not germane to a motion under Rule 12(b)(6). Brown. It cannot be considered.

The remainder of the text of the Memorandum is similarly bare argument and postulation of largely ungermane and ranging factual matters pertaining to unsupported, if not completely unqualified, statements of the briefwriter on coastal science and climate science, hurricanes producing results inconsistent with Town predictions or experience of the last hundred years, irrelevant considerations of Town public finance contradicting previous Town statements and decisions, the unsubstantiated cost of planting sea oats contradicting previous Town records, the habits of, and unsubstantiated “understandings” with, the U.S. Army Corps of Engineers, and other matters.

These matters are not from the Amended Complaint either. These matters and bare arguments are not germane to a motion under Rule 12(b)(6). Brown. They cannot be considered.

Bearing in mind that virtually all of the Town’s Memorandum and its unpermitted accoutrements should be stricken, lest these matters influence the Court in any way,²³ it should be stated that many of the thin-air assertions are contradicted by materials issued by the Town as alleged in the Amended Complaint. Others are the subject of discovery stonewalling by the Town in further disregard of court rules.

due process of law. The affidavit served with the August 28 Memorandum was not served until 25 days after the August 3 motion.

²³ The Town has filed other motions which do require evidentiary support, but which have none. These include the Town’s motion to expedite the case and for expedited hearing of the instant motion, its motion to require a \$10,000,000 bond, and its motion to block discovery already due.

In its Memorandum, the Town argues, to no legal consequence, that certain facts are other than as alleged in the Amended Complaint, and goes to great length, for example, to convince the Court that, although all the sand is already on the beach, a present project with the Corps exists, based on a document, called only an “understanding.”

The Town repetitively refers to something the Town calls “the Partnership Project.” The Town states the “Partnership Project” is based on something called a “Memorandum of Understanding” between the Town and the Corps. The Town does not state the date of the document and the Town does not provide a copy with its other unpermitted, irrelevant exhibits.

The apparent purpose of the repetitive reference to a "Partnership Project" is to describe the putative "project" the Town claims exists, so that the Town can argue that the easement the Town presently seeks is necessary to something.²⁴

While there are other demonstrated reasons why the Town’s motion must be denied, this putative "project" presents another. At this point, the putative “project” is not established by the statements of the Town's brief or affidavit that the project is, in turn, established by an unseen document between the Town and the Corps. The document is not an exhibit to the Amended Complaint, the sole source of fact for the purposes of the Town’s motion.

The documents mentioned by the Town and the Town’s bare statements are off limits for argument in a 12(b)(6) motion. Further, the Town's characterizations of it are nothing but hearsay in a brief.

Even if Plaintiff wanted to engage in analysis of the document and exposure of inaccuracies in the Town's factual assertions, Plaintiff can't.

²⁴ As alleged in the Amended Complaint, the Town has already completed all the subject renourishment work (Am. Cmplt ¶103), after first formally determining that easements were “not necessary” (Am. Cmplt. ¶98).

Plaintiff promptly requested production of precisely this supposed document well over a month ago as of this writing. (See 7/27/20 R.F.P. (filed with the Court around August 27, 2020), Item 2, page 1). The Town's failure to provide it and to respond to an even earlier Freedom of Information Act request for it as well are detailed in Plaintiff's pending motion to compel dated August 26, 2020, and Plaintiff's Return, filed around August 27, 2020, to the Town's recent motion to delay discovery.

The Town made no objection to anything in the request for production, then failed to timely respond to the request, and then moved to delay discovery after the deadline already had run or had virtually run. Without obtaining a ruling, the Town still fails to comply with discovery and now cites things in its Memorandum it won't produce.

In sum, the Town's entire Memorandum and anything the Town filed with it or hereafter files establish nothing, raise nothing, and should be disregarded and stricken.

What the Town almost totally avoids is the main point of over a year of charade by the Town – recognition and discussion of the harmful and onerous attributes of the easement the Town seeks to condemn (e.g., public access, proximity, destruction of improvements, restriction of owner access, etc.), as well as the Town's more than shady and irresponsible behaviors in pursuing these attributes. These matters alone, as discussed hereinabove, require denial of the Town's motion.

The Town's only allusion to these matters is to state that whatever the Corps says, goes. First, the Amended Complaint, which must be accepted as true, alleges there is no present project, or else a prospect so remote and attenuated and improbable as to fail to meet the

threshold of “necessity.”²⁵ Second, the Amended Complaint, which must be accepted as true, alleges any instruction or decision from the Corps in this area is arbitrary, illegal and not official policy. This is another subject on which the Town has stonewalled on discovery, as seen in the motion to compel on file and Plaintiff’s Return to the Town’s motion to delay discovery, which the Town filed in this case after the Town filed a motion to expedite the case. Third, the Town cites absolutely no authority that its decisions may be delegated to the Corps and that Town Council is relieved of a duty of rationality to the landowner. Fourth, the Amended Complaint alleges Town Council was completely in the dark factually and legally and oblivious to Corps requests or requirements involving the overreaching and alarming attributes of the easement the Town presently seeks to condemn. As alleged in the Amended Complaint, the Council thought, and its counsel confirmed, on the record in the official deliberation, that the easement, regardless of who requested it, was “basically, simply to put sand on the beach.”

The Town also makes repeated reference to "project updates," which the Town points out numerous times were "the apparent basis" of the plaintiff's allegations and “were a public record." This has no place in a 12(b)(6) motion or in any argument made to support it.

²⁵ At trial, the Town should be barred from contesting this fact because of failure to cooperate in discovery.

IX. Conclusion

For any one of the foregoing reasons, the Town's motion must be denied. There are others as well.

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

9/7/20

Addendum 1: The Allegations of the Amended Complaint

In addition to the sampling set forth as Items 1-9 at the head of this Memorandum in Opposition, as a convenience to the Court, Plaintiff sets forth here some of the allegations of the Amended Complaint pertinent to the Town's instant motion, along with reasonable inferences which may be made from the allegations²⁶:

1. The Town of Pawleys Island eventually began proceedings in attempts to condemn oceanfront "renourishment" easements from three landowners on the south end of the island. However, in doing so, the Town exceeded the authority granted by the Town Council to take "basically simply an easement to put sand on the beach."

²⁶ These are a truncation, with different numbering, of facts pled with particularity in the Amended Complaint in accordance with Rule 9(b), SCRCp. If they differ in any material respect from the wording of the Amended Complaint, they can be restated by amendment.

2. In attempting to condemn, the Town also failed in numerous respects to comply with the Eminent Domain Procedure Act, which is the “exclusive procedure” for condemnation.

3. These failings include:

(i) not furnishing appraisals to the owners before serving condemnation notices;

(ii) not negotiating reasonably and diligently -- and indeed not negotiating at all -- with the owners before serving the condemnation notices,²⁷ particularly where such negotiating was required to relate to purchase of the limited interests in real estate which were described in the appraisals and not some other interests described in the condemnation papers;

(iii) falsely certifying in the condemnation notices that (i) and (ii), above, were done; and

(iv) not describing in the condemnation notices and associated papers, as required by statute, the same interests in real estate which were described in the appraisals – thus seeking in the condemnation papers, to condemn a greater interest in real estate than was appraised.

4. In addition to the above failings, the history of the Town’s attempts to obtain the easements – from making first requests in 2019, through the Council meeting in 2020, and through the service of condemnation notices in 2020 – is rife with, if not fraud and bad faith, then with an abuse of discretion. 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

²⁷ This one failing is stated by S.C. Code § 28-2-70 (B) not to be a defense to condemnation, but this statute does not provide any exception for falsely certifying compliance with this requirement.

owners had refused any easements at all, while other Town actors either abdicated their responsibility to know the contrary or, worse, did know and pretended not to know;

(iii) knowing concealment and omission by some Town actors of issues some owners had raised concerning the wording and scope of the proposed easements, while other Town actors were either ignorant of these issues or, worse, pretended to be ignorant of them;

(iv) legal error or misinformation that the easements proposed to property owners allowed no more than placing sand on the beach and did not affect the property rights of the owners in any way;

(v) failure to timely provide appraisals to owners (constituting not only straight noncompliance with statutory mandate as described above, but also a deliberate concealment and delay as an instance of bad faith);

(vi) falsely certifying to the court, the public, and the owners, in the condemnation notices, that negotiations with respect to the conclusions of the appraisals were timely conducted when in fact such negotiations were not conducted at all;

(vi) attempting, dishonestly, to condemn interests in real estate of different and greater scope than the interests in real estate which were the subjects of the appraisals; and

(vii) attempting, dishonestly, to condemn interests in real estate of different and greater scope than the interests in real estate of which Town Council publicly authorized condemnation.

5. Long before 2019, the Town of Pawleys Island announced to property owners, plans to pursue “beach renourishment” on the south end, middle island, and parts of the north end.

6. Before 2019, the Town made no mention to property owners, and therefore, made no explanation, of any need for any easements at all for renourishment.

7. At times, the Town stated its pursuit of renourishment would involve, or potentially involve, at least in some part of the project, the U.S. Army Corps of Engineers.

8. In 2018, the Town proceeded with plans to do a project on its own.

9. There was no mention of any need for any easement at all.

10. However, then the Town announced the Town would wait and do a project that involved the Corps on part of it.

11. In early 2019, the Town of Pawleys announced to property owners for the first time that the Town would need easements over land involved in any portion of the project done by the Corps.

12. At this time, this meant easements would be sought only over land on the south end.

13. In “selling” property owners on the course the Town was taking, the Town speakers and writers on the subject described the requested easement as essentially an easement to allow the Town to place additional sand on the beach and to allow access for the personnel, machinery and other equipment necessary to do so.

14. Town Administrator Ryan I. Fabbri explained in writing in March 2019, that the Town had already drawn up easements and that in February the Town had begun mailing out proposed easements documents for owners to sign.

15. He had seen the documents drafted by the Town. He was the one sending them out.

16. Fabbri explained in the same writing in March 2019, “The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.”

17. Fabbri did not state one word or give any indication, then, previously, or subsequently, about easements granting perpetual 24/7/365 public access over land of the owners or other radical, onerous conditions.

18. It was the Town which drafted the easement documents the Town sent out.

19. The Town sent perpetual easement documents only to south end property owners.

20. The Town obtained some, but not all, easements the Town requested for the Corps portion of the larger work.

21. However, after delays and uncertainties associated with the Corps, the Town then decided to do all the work on its own, as it had planned to do previously, without the Corps or any present or future reliance on Corps financing or assistance, and without getting any more easements.

20. At this time the Town Council expressly determined easements were “not necessary.”

21. The Town then completed all the renourishment work in late 2019 and early 2020, depositing all the 1,100,000 cubic yards of sand on the beach and incurring liability of in excess of \$14,000,000, which the Town had fully considered before proceeding.

22. Afterwards, the Corps expressed interest in still getting involved.

23. The Town then began to request easements again in 2020 from south end owners on the basis of the prospect of Corps involvement in possible future projects.

24. In 2019 and 2020, in the course of the foregoing events and later, the Town made various repeated separate assurances that the Town would not damage owner improvements implicated in the proposed easement and that the purpose of the easement was simply to allow placement of sand on the beach and to allow access for purposes of doing so.

25. Despite these assurances, primarily from Fabbri on behalf of the Town, some south end property owners had concerns.

26. The concerns, further set out below, were about the written terms the Town included, without prior warning, acknowledgement or explanation, in the proposed easements drafted by the Town and sent out as final for signature.

27. By May of 2020, Fabbri and Mayor Brian Henry had been put on notice of these concerns in the following ways:

a. Questions were posed to Fabbri before and during the public, recorded, meeting of April 20, 2019, at which he mentioned only some of these questions;

b. Explicit changes were made by landowners to the proposed document, including changes by three who would later become plaintiffs in actions challenging condemnation;

c. Explicit discussions were had and e-mails were exchanged by an owner, Stanton, and perhaps others, with Fabbri;

d. Discussion by Stanton, and perhaps others, occurred with the Town Attorney about problems with the proposed document;

e. Events occurred which were related to cancellation by the Town of an ostensible easement on the Beattie property, which public records indicate was not the easement intended by Beattie and was filed by Fabbri for the Town without authorization; and

f. Materials were provided in April 2020 by Stanton to Henry, setting forth an extensive history of issues with the proposed easement and Stanton's efforts to correct it, along with a markup of the proposed document, containing comments explaining each problem and the suggested change.

28. In 2019, of the three landowners who would later become plaintiffs in actions challenging condemnation: one sent the Town a signed easement – free of charge -- redrafted in a form he agreed to, and when the Town rejected it, sent one or more markups indicating an easement he would be willing to grant free of charge and offered cooperation and assistance in any further discussion, negotiation or drafting needed; public records reflect that another owner drafted and tendered – free of charge -- an easement in a form he agreed to, but later discovered Fabbri, for the Town, had recorded a different one and had the Town cancel it; and public records reflect that another owner drafted an easement in a form the owner agreed to and – free of charge -- recorded it.

29. All three of the foregoing proper, formal easements allowed – free of charge -- placement of sand on the beach in front of the owners' homes and had provisions accommodating such placement. Importantly, this was essentially what the Town Council would later vote to condemn and pay for.

30. Among the issues some property owners have had with the document as initially drafted and proposed by the Town through Fabbri were the following:

a. Within the legal document, there were material provisions included which were not necessary to permitting the work of depositing sand on the owner's property;

b. The accesses allowed and activities permitted to the Town, to its assigns and to the public, throughout the area covered, included “to patrol and operate a public beach” on

the landowner's land and improvements and "public use and access" on the landowner's land and improvements, and these provisions applied not only to the owner's yard itself, but also to any improvements such as decks, stairs, slabs, and other structures;

c. to be clear, the easement allowed permanent public access to the owner's yard, and under the most restrictive reading of the document, did so up to two feet from the main pilings of the owner's house;

d. The easement was not limited to the stated project of a few months of adding sand to the beach; the easement was forever, i.e., "perpetual," thus requiring, unless changed to being temporary, even more attention to the stated scope of uses and activities allowed by the easement, and the restrictions imposed by the easement on the landowner;

e. In some cases, the map attached to the document showed an easement area which included parts of the landowner's improvements, such as decks, stairs, slabs, and other structures;

f. In addition to public access, the activities the Town and its assigns were specifically permitted to perform throughout the area covered included to "trim, cut, fell, and remove" from the landowner's land, "obstructions, structures and obstacles," including the landowner's improvements, such as decks, stairs, slabs, and other structures;

g. Despite the map attached to the document, the granting clause of the document literally stated, in plain English, that the easement "and right of way" ran "over, upon, through, and under" the entire described lot of the landowner;

h. Even if the foregoing inclusion of the entire lot could be cleared up,²⁸ the attached map, which apparently designated only a portion of the lot for the easement, still placed the easement – and all the activities and accesses it allowed -- only two feet from the main walls and supports of the house;

i. Also among the rights irrevocably granted forever to the Town and anyone to whom the Town might assign the easement was to “limit access” [of anyone] to something vaguely called “dune areas” on the landowner’s land, including limiting the access of the owner, the owner’s family, heirs, agents, contractors and guests;

j. The easement was not limited to use or effectiveness only in periods of active renourishment (including planning, preparation, work, withdrawal and cleanup), but was effective twenty-four hours a day, seven days a week and twelve months a year;

k. The easement was not limited to use by the Town, did not revert to the owner if not used, and could be assigned by the Town to others; and

l. Even with all the above broad and grave encumbrances on the land and improvements, the easement was not conditioned on an enforceable agreement for the Corps to actually provide any actual benefit; that is, the easement was not even conditioned on the Corps – whose history of authorization and participation was fickle at best -- receiving funding from Congress, or being involved in the work, or continuing to be involved after doing only a small amount of work, was not conditioned upon the work being done within a certain number of

²⁸ Through Fabbri, the Town eventually began offering to clear up this defect for some landowners (as well as, for some owners, a few other defects), and did so, but the Town later stated in writing by the paralegal for the Town Attorney, that at least for Stanton, the Town intends to condemn an easement not containing the clarification. I.e., the Town, out of spite, reckless caprice, effort to intimidate or other impetus, is seeking things which Fabbri and the Town previously confirmed in writing are not necessary. (See, e.g., Am. Cmplt. ¶¶ 122, 123, and 124.)

years, or being maintained, or ever being done at all, and was not set up to terminate or revert to the owner upon failure of one of these events.

31. The proposed easement was thus, instead of being permission to put sand on the beach on the owner's property, a land grab.

32. The proposed easement, while called an "easement" in favor of the Town, was tantamount to a reversal of the stated relationship, i.e., it was tantamount to the owner deeding a parcel of land to the Town and to "the public," and reserving only thin rights to the owner amounting to no more than a limited easement in favor of the owner.

33. This parcel was to be between the ocean and the owner's formerly oceanfront house.

34. The conveyance of this parcel would essentially make the owner's property no longer oceanfront, and would create a separate parcel of very different character between the owner's remaining parcel and the ocean.

35. The rights of the owner retained in the parcel conveyed would not include the right of the owner to exclude others.

36. The rights retained by the owner would not include the right of the owner to access and occupy the parcel if prohibited by the Town or others on the vague basis of "facilitating preservation" of dunes or vegetation.

37. The rights retained by the owner would not include the right to prohibit destruction of existing improvements located within the parcel.

38. The rights retained would only include the illusory right to build a "walkover" structure if an unspecified Town "designee" subjectively decided to allow it.

39. Even then, the walkover would at all times be subject to destruction by the Town or others with impunity if deemed to be in the way of the “construction, operation, maintenance repair, rehabilitation and replacement”²⁹ of a chameleon referred to as “the project.”

40. Additionally, any such walkover would be public.

41. The Town did not consider any of the above concerns in deliberating on whether to condemn “easements.”

42. In proposing condemnation to Town Council in May 2020, the Town’s Administrator pretended these concerns did not exist or were never explained and presented the matter simply as if the owners had refused any easement at all and that the owners had refused to provide explanation regarding their refusal to sign any easement.

43. In proposing condemnation to Town Council, the Town’s Administrator, Fabbri, also never brought up or presented or recited to Town Council for approval, the words in the document causing the concerns, or any other parts of the actual proposed document.

44. In authorizing condemnation, Town Council either was ignorant of these matters or pretended to be.

45. Before authorizing condemnation, Town Council had not read the proposed document.

46. In authorizing condemnation, Town Council, did not read the proposed document.

47. In authorizing condemnation, Town Council received erroneous legal advice, at the meeting, on the record, that the easement altered no rights of the owners and that the easement did no more than allow sand to be placed on the beach and would be worth nothing.

²⁹ This subordination includes the prospect of a 45,000 pound skid steer or an even larger earth mover some days or years or decades later intentionally or accidentally running over, or through, the walkover.

48. The Town Council authorized only condemnation of an easement “basically, simply to put sand on the beach.”

49. To wit, on May 18, 2020, the Town Council of the Town of Pawleys Island met (live-streamed and now recorded, found at <https://www.facebook.com/TownofPawleysIsland/>).

50. Other than a previous meeting in which Council determined no easements were necessary at all for the Town to renourish the beach, this May 18, 2020 meeting was the sole meeting at which Council considered and deliberated upon what interest in real estate, if any, was reasonably necessary to follow up on the completed project the Town had before it at that time.

51. This May 18, 2020 meeting was the sole meeting at which Council considered and deliberated upon whether to condemn the three easements the Town later sought to condemn.

52. If the May 18, 2020 meeting was accompanied by previously occurring illegally secretive and completely fraudulent discussions by the Town Council, the May 18, 2020 meeting was a sham for purposes of a public showing; if the May 18, 2020 meeting was truly the only discussion regarding condemnation of the easements, then Town Council operated with a complete dearth of necessary facts, with other facts falsely presented to it, and under the guide of erroneous legal assumptions.

53. It is also plausible that the May 18, 2020 meeting was accompanied by illegally secretive activities, and was completely fraudulent, and was a sham for purposes of a public showing, because for Fabbri or the Council to publicly discuss the implications of the objectionable wording and excessive scope of the document would be to alarm other owners of a betrayal by Council and admit that the Town had led over a hundred other owners to create a

separate class of beachfront property for about a third of the length of the island and ruin the titles of those owners.

54. At the meeting, the Council, then consisting of Henry, Guerry Green, Rocky Holliday, Ashley Carter, and Sarah Zimmerman, joined by Fabbri as Town Administrator, first had an off-the-record "executive session" with the Town Attorney, David Durant, to get "legal advice."

55. In the meeting, the Council then indicated publicly that it couldn't understand why the subject owners wouldn't "sign" "an easement" or "the easement," and the Council simultaneously never mentioned in the entire public meeting or discussed the fact that all three owners had actually signed and tendered easements, but had serious concern and disagreement only with the terms and scope of the easements as drafted by the Town.

56. The clear and only implication of these statements and omissions was that Council believed the three owners had refused to grant any renourishment easement at all.

57. The clear and only implication of these statements and omissions was that Council believed the three owners had refused to allow placement of sand on the beach in front of their homes.

58. In the meeting, Fabbri assured the Council on the record that he had worked diligently on the matter of obtaining easements for "a year and a half."

59. In the meeting, Fabbri stated to Town Council (at 59:10) that "for whatever reasons," the owners in question had not "signed."

60. Fabbri did not disclose to Council that all three owners who would later become plaintiffs in actions challenging condemnation had, in fact, signed, easements.

61. In the meeting, Fabbri did not disclose to Council that he had personally received the explicit “reasons” from at least one owner why what the owner did sign differed from what was drafted by the Town.

62. In the meeting, Fabbri did not disclose to Council that all three owners who would later become plaintiffs in actions challenging condemnation had either filed or provided to him directly, easement documents with differences which unmistakably showed the “reasons” the documents were different, e.g., by striking the words “public,” “obstacles,” “structures,” etc.

63. No mention was made in the entire meeting of a public record stating that one subject owner, Beattie, actually gave Fabbri an easement to deposit sand in front of the owner’s house, in person, on or about April 25, 2019, at Fabbri’s office, and that what happened after that was that Fabbri filed a different, unauthorized document in the title records of Georgetown County.

64. No mention was made by Fabbri or any other person present of a public record stating Beattie’s later discovery of the more-than-a-little-inauthentic recorded document, letter to Fabbri, and efforts to get his title corrected.

65. No mention was made in the entire meeting of whether, as part of Fabbri’s 1 ½ years of claimed diligence, Fabbri or anyone with the Town ever asked that owner, Beattie, again in 2019 for an easement.

66. No mention was made in the entire meeting of whether, as part of Fabbri’s 1 ½ years of claimed diligence, Fabbri or anyone with the Town ever asked that owner, Beattie, again in 2020 for an easement.

67. No mention was made in the entire meeting of another owner’s (Stanton’s) tendering a signed easement to Fabbri on April 8, 2019 for deposit of sand, and that owner’s

extensive, if not extraordinarily personally time-consuming and exhaustive, efforts to accommodate the Town, and give it every opportunity to work out an acceptable easement.

68. No mention was made in the entire meeting that another of the owners, Sunset Lodge, had long ago, at its own expense, actually signed in June 2019 and directly recorded in July 2019, an easement responsive to the publicly stated needs of the Town for an “easement basically simply to put sand on the beach.”

69. No specific information was provided or discussed in the entire meeting about, what part, if any, of Fabbri’s 1 ½ years of claimed dialogue or diligence, involved Fabbri or anyone with the Town communicating with this owner before pressing Council for condemnation.

70. Contrary to the stated impressions of Town Council at the May 18, 2020 meeting, and contrary to statements and implication of those furnishing information to Council at the meeting for purposes of guiding a decision on whether to condemn a sand-deposit easement, the documents tendered by all three of the referenced owners indicated they had been willing, since the previous year, to grant the Town – free of charge -- the right to renourish in front of their homes, and the right “simply to put sand on the beach.”

71. At the meeting, Fabbri acutely knew that it was false to imply that the reasons why three of the subject owners had refused to grant any easement at all were unknown.

72. However, doing so allowed Fabbri to avoid disclosing his knowledge of the reasons why the documents offered by the three owners differed in scope from the Town’s proposal.

73. Fabbri’s publicly making this false implication and avoiding disclosure of his knowledge to Council avoided a deliberation by Council on the issues of the excessive, reckless

and unnecessary scope of the easement requested, which Council would have been honor bound to consider, weigh, and decide, publicly.

74. At the meeting, Fabbri added, when addressing Council, “they do not owe us an explanation.”

75. In so stating, Fabbri clearly implied, falsely, again, that no easement was agreeable to the landowners, that no explanation was given for refusal, and that no reason for refusal was known.

76. Having been so briefed, council member Ashley Carter confirmed this implication and stated for the record in the May 18, 2020 meeting, simply, "I can't understand it."

77. In the meeting, Henry stated that he had gone to bat for concerned owners.

78. However, Henry stated absolutely nothing to the other Council members about the nature of the concerns.

79. Henry also stated absolutely nothing about to whose concerns he referred.

80. Henry also stated absolutely nothing about his position or opinion as to whether the unidentified concerns were reasonable or any other position on the unidentified concerns.

81. Henry also stated absolutely nothing about what he did to go to bat.

82. Not one Council member mentioned in the entire Council meeting ever having read the proposed easement.

83. The few questions and comments also indicated a lack of first hand familiarity with the document and indicated reliance, rather, on statements of Fabbri and counsel.

84. Not one Council member mentioned in the entire meeting, knowing the contents of the proposed easement, nor was there any indication from any other source in the meeting that any Council member knew the contents of the proposed document, other than possibly the vague

statement of Henry alone, that he had somehow been to bat over concerns he then did not describe.

85. Not one Council member had south end property for which an easement was requested and therefore clearly not one Council member had signed the subject requested easement.

86. In the meeting, David Durant, the Town Attorney providing legal guidance to the Council for purposes of its decision, stated and advised Council, definitively that the owners "would still have all the same rights they had before granting the easement."

87. This statement was erroneous. However, it was at least indicative of his reference to an easement with the most minimal scope conceivable, not resembling what Fabbri had been seeking.

88. Town Attorney, Durant, added: "property owners will still have title to the property." This consideration was meaningless to the point of being capricious, not providing any description of the extent and quality of the remaining title, as altered by the easement, but at least was indicative of his overt reference to an easement with the most minimal scope conceivable, not resembling the easement Fabbri had been seeking.

89. In the meeting, Zimmerman, at time stamp 1:02:35, asked Town Attorney Durant, on the record, for legal guidance in making the decision whether to condemn, "and the easement basically is simply to put sand on the beach, right, David?"

90. Durant officially replied, advising Council, definitively, "Yes, that is correct."

91. Thus, having exhibited the clear perception and understanding that the easement was limited to merely putting sand on the beach, the Town Council then made virtually no mention in the entire meeting of the level of certainty or uncertainty or enforceability of actual

future Corps involvement, future Corps decision making, future funding by the Corps, future funding of the Corps by Congress, or future performance by the Corps. The subject meeting of Council was held during the worldwide novel corona virus pandemic and over two months into the COVID-19 crisis in the United States. It has been explained by Fabbri only that what would be accomplished would be “being in the club” of communities with whom the Corps might do something, as opposed to “not being in the club.” For this, the Town Council was willing to condemn the properties of its constituent owners, but officially only in order to obtain permission to “put sand on the beach.”

92. I.e., no examination was made of whether any easement at all would likely serve any real and reasonably certain present purpose, and certainly nothing was done to weigh the injury to the landowner against the actual probability of actually needing the easement. This weighing was avoided by only considering and approving condemnation of an easement drastically less onerous than what Fabbri had been seeking. The only certain purpose of obtaining the easement, other than for the comparatively miniscule purpose of having the Corps plant grass and install sand fence costing as much as approximately one half of one (0.5%) percent of what the Town had already spent, was to have the easement “just in case,” someday, a benefit alleged to be conditioned upon the easement might arise and actually be available and be provided.

93. Similar to the verbal statements and omissions in the meeting, the proposed resolution before the Council for a vote at the meeting recited as a preface, numerous putative facts taken into account in deciding to condemn, but again recited none relating to the willingness of subject landowners to grant an easement of different scope, and again recited none

relating to the concerns of landowners with the excessive, reckless and unnecessary scope of the easement Fabbri had been seeking.

94. Notably, the proposed resolution was prepared in advance.

95. The resolution also, like the verbal part of the Council meeting, did not reflect the details of the easement the Town Council was authorizing to be condemned, other than that it was for renourishment, which is defined generally as adding sand. Avoided like the plague and obscured with every device convenient, were the only issues that mattered -- any actual issues with the wording of the proposed easement Fabbri had been seeking.

96. This fraud was carried forward into the later condemnation proceedings themselves.

97. That is, the typewritten resolution also made no further mention of the different nature or of the previously described invasive terms of the previously proposed easement, made no mention of any concern expressed about the unnecessary scope of the easement Fabbri had been seeking, and made no mention of any specific wording of the easement the Council was authorizing the Town to condemn.

98. Thus, in the May 18, 2020 meeting, the Council based its decision to seek condemnation solely on the following findings:

- a. That all the Town needed was an easement “basically simply to put sand on the beach”;
- b. That the three subject owners had refused to grant such an easement; and
- c. That it was possible that the Town might benefit from Corps involvement at some time in the future if such easements were acquired.

99. Thus, in the May 18, 2020 meeting, the Council authorized only the condemnation of an easement “basically simply to put sand on the beach.”

100. An easement of this scope actually authorized by Council is radically different, less invasive, and unquestionably much less costly to acquire, than the interest in real property Fabbri had been seeking from the owners prior to the time of the Council meeting.

101. Here, however, the Town obtained an appraisal of an interest in real estate not including any of the wording of the easement previously sought by Fabbri.

102. The Town fraudulently skipped required pre-service negotiation and offered in the condemnation notice to pay a figure based only on the appraisal of a the interest in real estate described in the appraisal, which did not include any of the wording of the easement previously sought by Fabbri and which the appraiser had not seen.

103. In the condemnation notice and associated papers, the Town seeks to condemn something very different from what was authorized in the resolution, without ever having it appraised, namely, the easement previously sought by Fabbri.

104. The Town seeks to condemn something very different from what was authorized in the resolution without ever offering to pay anything relevant with respect to it, and, more importantly, seeks to do so without the Town Council ever having authorized condemnation of anything near the scope of what the Town now seeks to condemn.

105. This makes a farce of the Town Council’s proceeding and of the landowner protections built into the Eminent Domain Procedure Act.

106. Unbeknownst to the landowners until later, in pursuing condemnation, the Town did first obtain appraisals.

107. No one asked the owners for access to their property or notified them of any intended trespass.

108. The affected landowners would verify only later that the Town did not obtain appraisals of the interests in real property Fabbri had been seeking up to the time of the Council meeting.

109. Rather, when receiving the appraisals much later than they were required to be provided, the landowners verified that the appraisals only valued an easement with a general purpose of renourishment and essentially no other known wording at all.

110. I.e., with no wording and only a description that the easements were for “renourishment,” the appraisals valued only what was described by Zimmerman and the Town Attorney at the Council meeting as “an easement basically, simply to put sand on the beach.” This was essentially what all three of the owners had previously offered the Town free of charge.

111. Concluding that in giving permission only to put sand on the beach and to only do it periodically, and that the owner would not be giving up much, the appraiser would place a low proposed purchase price on this easement he was told to appraise.

112. He was not given the wording of the easement he was asked to appraise.

113. Yet, in a continuing jumble of confusion, rule-breaking, and falsity, the Town served legal papers apparently seeking the opposite of what was appraised and approved by the Town’s resolution: the Town served condemnation notices apparently seeking to condemn the highly invasive and onerous interest Fabbri had been previously seeking, and yet did so without ever having obtained Town approval for such a broad easement, or having obtained an appraisal of it in accordance with law or offering to pay for it in accordance with law.

114. The Town sought instead to pay a price based on an appraisal of something unquestionably different and less onerous than was sought in the condemnation notices.

115. The Town thus served legal documents which sought easements that exceeded the authorization granted by Town Council.

116. The Town thus served legal documents which sought easements that were different from the easements described in the appraisals the Town had obtained but had not yet provided to the owners.

117. The Town served legal documents which contained falsehoods.

118. In the condemnation notices, the Town falsely stated that the Town had performed statutorily required elements, including previously making appraisals available to the owners and negotiating reasonably and diligently with respect to compensation in light of the appraisals of the interest to be taken.

119. The Town did not make the appraisals available before serving the condemnation notices, as required by law.

120. The Town did not make the appraisals available as part of any negotiation or offer before serving the condemnation notices, as required by law.

121. The Town did not make an offer to purchase the limited easements described in the appraisals before serving the condemnation notices, as required by law.

122. Some landowners had previously offered or recorded easements of very similar if not greater scope than the easements described in the appraisal -- without all the excessive scope -- and might have sold the Town an easement with all the onerous, radical wording omitted, as contemplated in all the appraisals.

123. The Town also did not make the appraisals available at the time of serving the condemnation notices, and these notices were themselves a limited-time offer to purchase based on the appraisals.

124. What the Town did do was serve condemnation notices which contained fraudulent offers. The condemnation notices contained statements that the appraisals determined stated values or prices applicable to the more onerous easements which were the subjects of the condemnation notices, when in truth, the stated values and prices were applicable to the less onerous easements actually appraised by the appraiser.

125. The condemnation notices fraudulently contained purchase offers based on these appraisals of easements of a different scope than the easements the Town offered to buy in the condemnation notices and for which the limited-time tender was made, and the Town did not send the appraisal reports, which were over 50 pages, with the notice.

126. Therefore, in addition to the Town's efforts to acquire the presently sought easements being contaminated by fraud, bad faith and abuse of discretion, the condemnation notices simply exceed the authority granted by Council, and also, in addition to the other described violations, simply seek to take an interest in real estate that was not previously appraised, in violation of the Eminent Domain Procedure Act.

September 28, 2020 e-mail notice for October 30, 2020 hearing of Landowner motion for summary judgment.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Monday, September 28, 2020 10:26 AM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MSUMJM-Motion/Summary Judgment/Stanton" for Case "2020CP2200600-Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 10/30/2020 at 2:00 PM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator @ jlawrence@gtcounty.org or 843-545-3114 or Lucinda LeSane @ llesane@gtcounty.org or 843-545-3228. (401 Cleland St., Georgetown, SC).

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

September 28, 2020 e-mail notice for October 30, 2020 hearing of Town motion to halt discovery.

## Barry Stanton

---

**From:** Courtmail22\_DoNotReply@sccourts.org  
**Sent:** Monday, September 28, 2020 10:26 AM  
**To:** Barry Stanton  
**Cc:** jlawrence@gtcounty.org  
**Subject:** Motion "MPROTE-Motion/Protection from Discovery/Durant" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 10/30/2020 at 2:30 PM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator @ jlawrence@gtcounty.org or 843-545-3114 or Lucinda LeSane @ llesane@gtcounty.org or 843-545-3228. (401 Cleland St., Georgetown, SC).

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

September 28, 2020 e-mail notice for October 30, 2020 hearing of Landowner motion to compel.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Monday, September 28, 2020 10:26 AM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MCOMPL-Motion/Compel/Stanton" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 10/30/2020 at 3:00 PM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator @ jlawrence@gtcounty.org or 843-545-3114 or Lucinda LeSane @ llesane@gtcounty.org or 843-545-3228. (401 Cleland St., Georgetown, SC).

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

October 12, 2020 Court e-mail reminder notice for October 30, 2020 hearing of  
Landowner motion for summary judgment.

## Barry Stanton

---

**From:** Courtmail22\_DoNotReply@sccourts.org  
**Sent:** Monday, October 12, 2020 10:12 AM  
**To:** Barry Stanton  
**Cc:** jlawrence@gtcounty.org  
**Subject:** Motion "MSUMJM-Motion/Summary Judgment/Stanton" for Case "2020CP2200600-Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 10/30/2020 at 2:00 PM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>. Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

Judge Gibbons prefers oral argument instead of only briefs. If you wish to present oral arguments, please contact Judge Gibbons' Law Clerk for scheduling. If decided to proceed without oral arguments. Please E-File briefs/memorandums prior to the October 30, 2020 term of motions.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please submit correspondence through the E-Filing System. If you have any communication regarding this case, please contact CP Court Coordinator at [jlawrence@gtcounty.org](mailto:jlawrence@gtcounty.org).

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

October 12, 2020 Court e-mail reminder notice for October 30, 2020 hearing of Town motion to halt discovery.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Monday, October 12, 2020 10:12 AM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MPROTE-Motion/Protection from Discovery/Durant" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 10/30/2020 at 2:30 PM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>. Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

Judge Gibbons prefers oral argument instead of only briefs. If you wish to present oral arguments, please contact Judge Gibbons' Law Clerk for scheduling. If decided to proceed without oral arguments. Please E-File briefs/memorandums prior to the October 30, 2020 term of motions.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please submit correspondence through the E-Filing System. If you have any communication regarding this case, please contact CP Court Coordinator at jlawrence@gtcounty.org.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

October 12, 2020 Court e-mail reminder notice for October 30, 2020 hearing of Landowner motion to compel.

## Barry Stanton

---

**From:** Courtmail22\_DoNotReply@sccourts.org  
**Sent:** Monday, October 12, 2020 10:12 AM  
**To:** Barry Stanton  
**Cc:** jlawrence@gtcounty.org  
**Subject:** Motion "MCOMPL-Motion/Compel/Stanton" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 10/30/2020 at 3:00 PM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>. Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

Judge Gibbons prefers oral argument instead of only briefs. If you wish to present oral arguments, please contact Judge Gibbons' Law Clerk for scheduling. If decided to proceed without oral arguments. Please E-File briefs/memorandums prior to the October 30, 2020 term of motions.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please submit correspondence through the E-Filing System. If you have any communication regarding this case, please contact CP Court Coordinator at [jlawrence@gtcounty.org](mailto:jlawrence@gtcounty.org).

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

October 14, 2020 Town motion to continue hearing of summary judgment and other motions.

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

TO: THE PLAINTIFF ABOVE NAMED AND ITS ATTORNEY, M. BARON STANTON, ESQUIRE

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through its undersigned counsel, hereby moves before the presiding Judge of the Circuit Court for the Fifteenth Judicial Circuit, at the Georgetown County Courthouse, South Carolina, for an Order of continuance of the motions in the above-captioned case which are scheduled for hearing on October 30, 2020 until the next available term of court for motion hearings in Georgetown County. In support of this Motion, the undersigned counsel states as follows:

1. Good cause exists for the request for continuance.
2. There are three (3) pending motions in this case, to wit:
 - a. Motion for Summary Judgment filed by Plaintiff;
 - b. Motion for Protection from Discovery filed by Defendant; and,
 - c. Motion to Compel and for Expenses filed by Plaintiff.
3. On September 28, 2020, the undersigned received the initial notice of motions roster, which indicated that the motions will be decided by the Court based on written briefs only, and that the no court appearance was required.
4. A subsequent notice received by the undersigned counsel on Monday, October 12, 2020 indicated that the presiding Judge prefers to hear oral arguments over briefs only submissions.

5. The undersigned counsel has long-standing plans and substantial investments in the Clemson football games. The sixth home game is scheduled for October 31, 2020, but counsel is committed to get to Clemson two days before that, i.e., on October 29, 2020. The only other home game left is scheduled for the Friday after Thanksgiving.

6. Furthermore, discovery in this case is not complete. The Defendant served its first set of interrogatories and first set of requests for production of documents on the Plaintiff on or about October 6, 2020. The Plaintiff's discovery responses are not due until November 6, 2020 (after the October 30th motion hearing date).

7. The undersigned counsel has reached out to opposing counsel to obtain consent to this Motion. Defendant's counsel would state that Plaintiff's counsel was responsive and cooperative, but is not able to consent.

8. The undersigned counsel is unable to find an attorney who is able to handle this case and be prepared for oral arguments on the current hearing date set.

9. This motion is not intended to delay the proceedings in this case and will not prejudice any parties.

Based upon the foregoing, N. David DuRant, Sr. requests a continuance of the motions in above-captioned case which are scheduled for hearing on October 30, 2020 until the next available term of court for motion hearings, on December 4, 2020, in Georgetown County.

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

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

October 14, 2020

October 14, 2020 Landowner brief and affidavit in response to Town request for continuance.

| | | |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS) |
| COUNTY OF GEORGETOWN |) | CIVIL ACTION NO. 2020-CP-22-00600 |
| |) | |
| Sunset Lodge, LLC, |) | RETURN (OPPOSITION) TO TOWN'S |
| |) | MOTION FOR CONTINUANCE |
| Plaintiff, |) | SUMMARY JUDGMENT HEARING |
| |) | AND HEARING OF OTHER MOTIONS |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

Plaintiff hereby files a return to the Defendant Town's motion to continue the scheduled October 30, 2020 hearing of Plaintiff's August 21, 2020 motion to for summary judgment until December 4, 2020. Plaintiff also files this return to the Town's request in the same motion to continue, as well, Plaintiff's August 27, 2020 motion to compel discovery and for expenses, and also to continue the Town's own August 25, 2020 motion to delay discovery, filed after Plaintiff began following up on responses which would be due on or around August 27. These latter motions may be partially resolved, but counsel have yet to discuss them.

The Town's initial request for consent to continue -- before making the motion -- was based solely on a Saturday Clemson football game and festivities the day before, which, alone, is worthy of some accommodation, but not what the Town seeks.

In response to this initially presented issue, Plaintiff has sought every way to accommodate Defendant short of significantly prejudicing Plaintiff's case and Plaintiff's own plans and pocketbook.

This included offering to explore a different time on the same day, a different day earlier in the week, or a different day the following week. Plaintiff obtained a kind offer of the

scheduled hearing judge to hear the matters by teleconference on the previous day, Thursday, October 29, at 1:30. It is unknown what other time he might offer.

The grounds now adduced by the Town now include other tactical concerns not presented to Plaintiff as the basis, which are not properly presented. It also appears that the Town has other procedural measures of some sort in mind, which have not been adduced as a reason.

In addition to the matter of the football game plans, the Town now simply states, without a proper Rule 56 (f) affidavit – or any affidavit at all – that discovery is not complete.

The Town also had a public Council meeting two days ago, on the evening of Monday, October 12, and partially resolved to amend privately, after the public meeting, the Council's May 18, 2020 resolution to authorize the condemnation papers which were served in the separate action, which led to this action challenging the condemnation proceeding thus commenced. It is unknown what attempted use, if any, will be made of this measure, which has not been adduced as a reason to put off summary judgment, but making time for it should not be allowed.

It was the Town which moved to delay discovery against the Town. The Town acknowledges that the Town has only recently commenced discovery against Plaintiff. The case was filed on July 21 and Plaintiff's motion for summary judgment was filed August 21 on undisputed facts, amidst claims of the Town that the case was an emergency and that Plaintiff should be required to post a ten million dollar (\$10,000,000) bond. Today is October 14.

Lack of perfect vigilance in discovery is not shocking, as the parties and counsel all have other things to do, but the Town does not explain in compliance with Rule 56 (f) why discovery is necessary to dispute the seemingly undisputable facts on which Plaintiff's summary judgment motion is based. Incomplete discovery also has nothing to do with Plaintiff's other motion, except that the motion seeks discovery and costs of the motion.

Plaintiff and Plaintiff's counsel want to make it absolutely clear that they believe personal and family time of both counsel and parties is important and wish to accommodate not only business and professional conflicts, but also personal ones, including personal ones for pleasure, as Plaintiff would want his needs accommodated as well, when possible. Those needs include more than the usual time off during the coming Thanksgiving and Christmas of a very stressful and eventful year.

Additionally, Plaintiff does not want to end up procedurally and financially compromised in this case by having to expend time and money – and suffer the previously described negative press releases by the Town as in the past -- for ensuing months through the holidays when this matter could be wholly or partially ended by affirmatively granting relief to Plaintiff on summary judgment based on as yet undisputed facts.

In the event summary judgment were not granted, Plaintiff also does not want to end up procedurally and financially compromised as a result of inadequate time to complete post-hearing discovery, perform research, and prepare for hearing without ruining family Thanksgiving-time vacation and Christmas-time vacation.

That is, the Town, in earlier seeking expedited hearing of its own motions and seeking expediting of the case itself, has contended that the case is a matter of great urgency. The Court heard the Town's motions on an expedited basis while the Town refused to provide discovery, and declined to consent to early hearing of the summary judgment motion as well. The Court denied the Town's motion to expedite the overall case, and denied the Town's other motions, and the peak of hurricane season has now passed. However, Plaintiff specifically does not now want to be rushed into discovery and case preparation throughout the holidays, which holidays are more important to Plaintiff than football.

Nor does Plaintiff want to be rushed into a final merits hearing without adequate time to prepare a case when the Town itself has delayed discovery. To be clear, this is not intended as accusative or grudging; it is intended as self-protective and fair.

Two lawyers from the same firm have entered appearance for the Town, both signing both the Town's motion to dismiss, and the memorandum later filed in support of it.

Plaintiff would prefer a live hearing as scheduled at 2:00 on Friday, October 30, but would be willing to explore a different time on the same day, a different day earlier in the week, or a different day the following week. Plaintiff obtained an offer of the scheduled hearing judge to hear the matters by teleconference on the previous day, Thursday, October 29, at 1:30. It is not ideal to present such a case by teleconference, but Plaintiff can do it.

Plaintiff's counsel would like to clarify that Plaintiff's counsel only saw the initial (9-28-20) roster notice and then pulled up the actual roster, saw the notation on the actual roster that the motions were requested to be with briefs or memos, and calendared the hearing. Plaintiff's counsel now understands that the original, separate, "roster news" document said the hearing was without oral argument. Another electronic notice came out 10-12-20. The "news" document linked to the roster states that oral argument is preferred, and briefs-only is elective. Plaintiff acknowledges that the Town's counsel may have relied on the "briefs only" status until the 10-12-20 notice came out again a couple of days ago, when apparently the separate "news" document was changed. Plaintiff assumed all along that it was a live hearing, like the earlier hearing.

In the alternative that the motions are continued into December, Plaintiff would request that the same order set the trial, if any, of the case as "not before" March 31, 2021.

This Return is based on the matters already of record, including the 8-11-20 Return to the Town's motion for priority and bond, the 8-21-20 affidavit of undisputed facts in support of the summary judgment motion, the 8-27-20 motion to compel, and the 8-27-20 affidavit opposing the Town's motion to delay discovery against the Town, and is additionally based on the accompanying affidavit of even date with this Return.

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

10/14/20

| | | |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF GEORGETOWN |) | CIVIL ACTION NO. 2020-CP-22-00600 |
| |) | |
| Sunset Lodge, LLC, |) | AFFIDAVIT IN RESPONSE TO |
| |) | TOWN'S |
| Plaintiff, |) | MOTION FOR MONTH CONTINUANCE |
| |) | OF SUMMARY JUDGMENT MOTION |
| v. |) | AND OTHER MOTIONS |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

1. August 10, 2020, the Defendant Town of Pawleys Island filed a motion to give the Town's previously filed Rule 12(b)(6) motion, which the Town filed in lieu of answer, priority for hearing on the nonjury docket.

2. The Town also moved for an order requiring Plaintiff to post a ten million dollar (\$10,000,000) bond as a condition of the condemnation attempt of the Town remaining stayed as provided by the condemnation statute.

3. On August 11, 2020, Plaintiff filed a return to the motion for priority and bond. There, Plaintiff stated, among other things, with citation of authority and references to the record, that the 12(b)(6) motion, still not briefed by the Town, should be denied.

4. On August 17, 2020, the Town's motions were scheduled for September 11, 2020.

5. On August 21, 2020, Plaintiff filed a motion for summary judgment with a supporting affidavit of undisputed facts, outlining some of the several independent reasons why the present condemnation attempt must be dismissed and quashed.

6. When Plaintiff's counsel called to consult before filing a motion to compel discovery from the Town, the consultation was postponed and the Town then filed a motion without consultation and without certification of consultation as required by Rule 11.

7. On August 25, 2020, the Defendant Town of Pawleys Island filed a motion for protection from discovery, seeking an overall delay of discovery from the Town.

8. On August 27, 2020, Plaintiff filed a motion to compel already served discovery and for expenses.

9. On October 14, 2020, the Defendant Town of Pawleys Island filed a motion to continue until December 4, the October 30 hearing of Plaintiff's pending motions, including Plaintiff's August 21 motion for summary judgment.

10. The October 30 hearing of Plaintiff's summary judgment motion and other motions was noticed September 28, and Plaintiffs and Plaintiff's counsel have planned accordingly, including likely plans to do other things, later, at the times Defendant's counsel may find it more convenient or desirable to have hearings or pursue discovery. Plaintiff's counsel has plans for more time off during the weeks of Thanksgiving and Christmas than in previous years.

11. Defendant Town's counsel was at a public meeting two days ago, the evening of October 12, with the Town Council of his client, presenting for consideration some public statement of alteration of his client's May 18, 2020 position in this matter, and I do not know whether this increases the Town's impetus to put my motion for summary judgment off for a month, even if that is not the stated reason for the request. In my estimation, it is not a valid reason for continuance or for anything else.

12. My clients and I, on the other hand, after being sued first by the Town (to take oceanfront land and subject it to, among other things, public access, and not pay a dime), have

virtually been publicly accused by the Town of somehow delaying the Town, and yet every delay in discovery and delay of anything else in the matter has been requested, or simply indulged in, by the Town of Pawleys Island.

13. Loving fall football, and valuing personal time of others, I have nevertheless informed Defendant's counsel that I would cooperate to see if Judge Gibbons or another judge could hear us earlier in the day on Friday, which is a day before the game Defendant's counsel references.

14. Or we suggested we might be able to do it earlier in the week, or at worst, the following week. I personally have to travel 3 hours one way for the hearing, and I do prefer a live hearing, as was held for the Town's motions earlier, including a motion to dismiss the case and to require the \$10,000,000 bond.

15. But I oppose pushing my motion out a month. The Town opposed hearing my motion in the last motion hearing, at which was heard the Town's own motions, which the Town had scheduled on an expedited basis without even filing an affidavit. The setting of the expedited hearing required me to cancel and seek refund for an expensive trip my wife and I may now never get to take. These things happen in the practice of law, but civility and consideration of the schedules and needs of others is a two-way street and I don't want to be the doormat.

16. I am willing to work on and support having the hearing another time soon, especially if sooner instead of later.

17. Before the motion was filed, I obtained a kind offer of the scheduled hearing judge to hear the matter by teleconference Thursday, October 29, 2020 at 1:30 and I do not know if other times might be offered, as a response to the offer has not been made.

18. Until after trying to solve the meritorious question of working around the football game, I was not presented with any argument about the adequacy of time for discovery nor a statement of for what reasons any discovery was needed in order to address the pending motions.

19. My initial response to counsel 10-12-20 was as follows:

David, you have asked my consent to move the 10-30-20 hearing of our motion for summary judgment and other motions because of a Clemson football game.

I'd like to accommodate you, but don't want to end up with the short end of the stick -- again. Maybe you can suggest a solution.

I have only looked at the rosters, roster notices, and terms of court online, but the best I can tell, it doesn't look there will be another motions term before sometime around Thanksgiving. That's too late and I have plans for the week of Nov. 23-27.

Based on the last hearing, it appears the unusual background of this matter benefits from being explained in person, so I prefer a live hearing.

You'll recall that you arranged for an expedited hearing for 9-11-20 of your own motion to dismiss and to require a 10 million dollar bond, and the notice came out on 8-17-20.

I cancelled an expensive trip to Virginia for me and my wife for the weekend of the 9-11-20 expedited hearing. When I then filed the motion for summary judgment on 8-21-20 and asked if that could be scheduled along with the other motions to be heard 9-11-20, you informed the court you did not consent, and stated your reasons.

So our 8-21-20 motion for summary judgment and motion to compel discovery was scheduled for 10-30-20. The notice came out on 9-28-20, a month ahead. I calendared it and made plans for 10-30-20.

The reminder notice just came out again today, 10-12-20. I do not see any other motions terms anytime soon.

If we could be moved to earlier in the day Friday, 10-30-20, I could probably come down the night before. We could maybe even do it earlier in the week, but I don't see an indication that the court is available. We could do it Nov. 2-6 if we had to, but I don't know that it is available. I don't want to do it later. I certainly don't want to do it much later.

I will work with you if you think we can manage something that accommodates both of us, but given the stated importance of timing in this case, I would ask to be included on any written or spoken communications with the court regarding scheduling matters.

Let me know if you have an idea we can pursue.

Best,

Barry

20. Moving the hearing to December 4 is a personal imposition, falling immediately after the week of Thanksgiving, and in my estimation is also to the financial and procedural detriment of Plaintiff. If the hearing is nevertheless continued, it would be helpful if the same order could set the case overall for “not before March 31, 2021.”

Pursuant to S.C. Sup. Ct. Order 2020-04-22-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify the foregoing and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

s/M. Baron Stanton

M. Baron Stanton

Date: 1-14-20

October 30, 2020 Town affidavit of Fabbri, with November 20 certificate of service.

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 RYAN FABBRI**

I, RYAN FABBRI, BEING DULY SWORN, DEPOSE AND STATE AS FOLLOWS:

1. I am the Town Administrator for the Town of Pawleys Island, the sole party Defendant in the above-captioned case.

2. I execute this Affidavit in my capacity as Town Administrator, in support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment.

3. This Affidavit is provided, separately, to focus on and dispute allegations contained in sub-paragraph c of Plaintiff's Motion for Summary Judgment. Specifically, it is submitted herein that there was no fraud, bad faith, or abuse of discretion in the Town's attempt to obtain the easement sought to be acquired. Plaintiff's allegations in sub-paragraph c of its Motion for Summary Judgment are factually incorrect.

4. The Town began working with the United States Army Corps of Engineers (the "Corps") in 2000 to develop the Town's Hurricane and Storm Damage Reduction Project. Although it was supposed to be federally funded, the project never received Congressional approval as the years went by. In late 2015, the Town decided to move ahead with its own beach renourishment plan (the "Town Project") to rebuild the Town's shoreline that had been severely washed away in the course of time. Then, just a matter of weeks before signing the contract with the lowest bidder, Marinex Construction, the Town was notified that the Corps has obligated funds through a supplemental appropriation allocated for the Town's Coastal Storm Damage Reduction Project. This was excellent news, but the Town Project was ready to go with a Fall 2018 scheduled start date. Forgoing the Town Project and moving forward with the Corps opportunity would certainly delay the Town's beach renourishment plan for at least a year. After careful consideration, the Town believed the cost share benefit of the federal government was too attractive to pass up and the decision was made to abandon the Town Project to take advantage of the Corps opportunity, *i.e.*, a 50-year project with periodic renourishments taking place every 9 years following the initial undertaking. Thus, the beach renourishment plan evolved into a hybrid of the Corps design and the Town Project design, resulting into 2 separate project areas, to wit: Federal Project area; and, Betterment area. Easements were required by the federal government

from 113 oceanfront properties (including the Plaintiff's), located in the federal portion of the beach renourishment plan.

5. Mailing of the easement packages to the affected property owners (including the Plaintiff) began in late February 2019. The contents of the proposed easement grant documents were in accordance with what the Corps required. Although the Town was able to obtain easements from a majority of the oceanfront properties, some difficulties were encountered with a few property owners who had concerns about the easement agreements as originally drafted. Recognizing the importance of a renourished beach as the first line of defense against coastal storms and beach erosion, the Town negotiated in good faith with the owners and began discussions about accommodating certain language revisions, additions, deletions, and other modifications to the agreements.

6. In late July 2019, the Town felt that the Corps did not appreciate the urgency of and was not moving fast enough with the beach renourishment plan. The Town decided to have Marinex Construction move forward with the original Town Project, which would be funded through a \$4.9M grant from the State of South Carolina, \$6.1M from the Town's beach fund and \$1.2M loan. The initial plan was for at least 850,000 cubic yards of sand, but a subsequent revision gave rise to a larger undertaking, *i.e.*, 1,100,000 cubic yards of sand. The total project cost was fourteen million eight hundred eighty-three thousand two hundred thirty-seven (\$14,883,237.00) dollars.

7. Shortly after the Town Project was started, however, the Corps proposed a memorandum of understanding that would let the Corps finish the project through planting sea oats and installing sand fences, and allow the Town's beach renourishment project to become a federal project (the "Partnership Project") once it is completed. In such instance, the Town would be eligible for PL 84-99 post storm rehabilitation and future periodic renourishments as follows:

- a. The total construction costs for future periodic renourishments are projected to be one hundred twenty-nine million five hundred twenty-two thousand five hundred thirty-three (129,522,533.00) dollars. The costs will be allocated based on a 50-50 split, so the Corps' share of such costs is projected to be sixty-four million seven hundred sixty-one thousand two hundred sixty-seven (\$64,761,267.00) dollars and the Town's share of such costs is projected to be the same, *i.e.*, sixty-four million seven hundred sixty-one thousand two hundred sixty-seven (\$64,761,267.00) dollars.
- b. The Corps is responsible for 100% of the costs to repair beach damage resulting from a significant storm, irrespective of a federal declaration. Furthermore, the Corps will share half of the cost of future periodic renourishments to take place over the course of the 50-year Partnership Project, and give the Town credit for the initial work performed when it calculates its cost-sharing match for the next renourishment.

8. As a condition precedent for the Partnership Project, the Corps requires easements from the previously identified 113 oceanfront properties in the project area to allow for construction, repair and maintenance of the beach.

9. The Town recognizes that beach renourishment is a costly endeavor and has reasonably determined that the Partnership Project is an economically expedient and practicable undertaking that will serve the best interests of the Town. Under the Partnership Project, the Town is assured that its beach-building efforts to the tune of fourteen million eight hundred eighty-three thousand two hundred thirty-seven (\$14,883,237.00) dollars are federally protected, because the Corps will replace any lost sand if the Town is hit by a major hurricane and the beach is destroyed. The Partnership Project is necessary to achieve a continuous strategy that would address, prevent and/or mitigate shore erosion.

10. The Town resumed its efforts to obtain easement agreements and was successful in acquiring easements for only 110 out of 113 oceanfront properties. Any further efforts to negotiate with the 3 holdouts (including the Plaintiff), including a few adjustments to the proposed easement grant documents, were unsuccessful. Recognizing that the delay in providing the Corps with the necessary easements would not only increase the cost of or potentially frustrate or shelve the Partnership Project, but also result in substantial harm to the public health, safety and welfare, the Town resolved to authorize the exercise of its power of eminent domain to acquire the easements.

11. The “instances” that Plaintiff listed in sub-paragraph c of Plaintiff’s Motion for Summary Judgment in support of Plaintiff’s allegations of fraud, bad faith, and abuse of discretion, are factually incorrect. Thus:

i. Descriptions of the wording and meaning of the requested easements

In its Motion for Summary Judgment, the Plaintiff states that the Town Council authorized the Town only to “basically simply an easement to put sand on the beach”. In the Affidavit from counsel for Plaintiff, which was submitted separately, it is stated that the easement was to “place additional sand on the beach and to allow access for the personnel, machinery and other equipment necessary to do so.” See: Paragraph 18 of the Affidavit from Counsel for Plaintiff. In the same Affidavit, it is stated, as well, that “[Town Administrator] Ryan Fabbri explained in writing in March 2019 that ‘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. See: Paragraph 21 of the Affidavit from Counsel for Plaintiff.

Although the beach renourishment process is frequently described as “placing additional sand on the beach”, it is logical to assume that necessary and incidental activities are involved. The Plaintiff in this case felt that the proposed easement grant document contained words and meanings that the Plaintiff perceived to be material terms not previously disclosed by the Town. However, it is important to note that the general purpose of the easement sought (*i.e.*, activities related to construction and maintenance) was disclosed and brought to the attention of the public through project updates circulated

by the Town. There was no concealment of what the Town needed the easements for. The Plaintiff's expectation that the prior disclosures from the Town actors should have been as exhaustive as the language used in the proposed easement grant document is impractical, if not unreasonable.

The Town disagrees with Plaintiff's suggestion that the Town committed fraudulent acts and/or abused its discretion and/or acted in bad faith by failing to priorly mention all of the "material terms" in the proposed easement grant documents. The general purpose of the easement was publicized before the Town sent out the proposed easement grant document. The nature and scope of the easement, on the other hand, was expressed in the proposed easement grant document. While the prior representations of the Town did not meet the Plaintiff's expectations, in that certain things were "not mentioned", the proposed easement grant document definitely was clear and exhaustive. The fact that the proposed grant was reduced into writing clearly shows the Town did not conceal any material information from the Plaintiff. It is quite a stretch to conclude that the Town committed fraudulent acts and/or abused its discretion and/or acted in bad faith just because the Town's prior representations were not as exhaustive as the Plaintiff wanted them to be.

ii. False implications or statements by Town actors that the owners had refused any easements at all

The Plaintiff would have the Court believe that the Town Council resolved to authorize the exercise eminent domain to acquire the easements in question "without the benefit of necessary facts, with other facts falsely presented to it, and under the guide of erroneous legal assumptions." The Plaintiff directs the attention of the Court to a Town Council meeting held on May 18, 2020 which The Plaintiff claims was the "sole meeting at which the Town Council considered and deliberated upon whether to condemn the three easements in question." Worse, the Plaintiff suggests that the Town Council could have had all the necessary facts if the May 18, 2020 meeting was accompanied by "illegally secretive activities" and "was completely fraudulent and a sham for purposes of a public showing."

The allegations set forth by the Plaintiff are absurdly speculative and malicious. There is absolutely no evidence to support Plaintiff's claim of incompetence, much less wrongdoing, on the part of the Town Council. As lengthily discussed above, the Town's formative beach renourishment plans started as early as the year 2000. The strategies changed as events developed and, accordingly, the plans evolved as the designs, qualifications, timetables, and costs and benefits were studied and analyzed. The objective, however, remained the same, that is, beach renourishment.

The Town Council has always recognized that the Partnership Project is a long-term beach management program and that oceanfront easements are required to allow access to the project area for construction and maintenance activities. If the Town intends to facilitate and remove obstacles to project implementation, the Corps needs safe and suitable access to the site. Without the easements, the Corps will not be able to rebuild and maintain the shoreline, as needed.

It appears the Plaintiff felt, *albeit* wrongly, unappreciated for the efforts, on Plaintiff's part, to accommodate the Town. The Plaintiff questions why the Town Council indicated, at the May 18, 2020 meeting, that they "could not understand why the Plaintiff wouldn't sign an easement." The Plaintiff also questions why it was never mentioned, at the same meeting, that "the Plaintiff had actually signed and tendered an easement, but had serious concern and disagreement only with the terms and scope of the Town's proposed easement grant document." In this regard, the Plaintiff argues that the "clear and only implication is that the Town Council believed the Plaintiff had refused to grant any renourishment easement at all." This, of course, is another speculative statement as none of the Town Council members has ever said that.

Assuming for the sake of argument, that the Town Council did not know about Plaintiff's efforts to grant an easement to the Town, it is unclear how this instance would rise to the level of fraud, or bad faith, or abuse of discretion. The Plaintiff was never accused of failing to cooperate with the Town or refusing, flat out, to grant a renourishment easement. The only reason that the Town resolved to authorize the exercise of eminent domain is the fact that the Town and the Plaintiff failed to agree on an easement grant document that complies with the terms required by the Corps.

iii. Concealment and omission by Town actors of issues some owners had raised concerning the wording and scope of the proposed easements

Based only upon the May 18, 2020 meeting, the Plaintiff further speculates that not all of the members of the Town Council were informed of the concerns that the property owners (including the Plaintiff herein) raised regarding the wording and scope of the proposed easements. Just because the Town Council stated they "couldn't understand why the property owners who had not signed the proposed easement grant documents would not sign", does not mean that the Town Council did not know about their concerns, or that some Town actors concealed the owners' concerns from the other Town actors. It is easy to speculate on what the Town Council knew or did not know, but their state of mind is not something that anybody can prove by simply viewing a video or reading the minutes of a Town Council meeting. Just as the Plaintiff believes it is possible that some Town Council members were not informed of the owners' concerns, it is also quite possible that all of the Town Council members knew about, but disagreed with, the owners' concerns. This latter possibility could very well be the reason that they said "they could not understand why the owners would not sign the proposed easement grant documents."

And, again, assuming for the sake of argument that the Town Council was not aware of the Plaintiff's concerns prior to resolving to authorize condemnation of the easement sought from the Plaintiff, such lack of awareness does not rise to the level of fraud, bad faith, or abuse of discretion. The fact of the matter remains that no agreement was reached that would comply with the terms of the Corps.

To be sure, the Plaintiff also harps on the failed negotiations between the Town and another landowner, Frank Beattie. The Plaintiff alleges that Mr. Beattie had signed a revised easement grant document but the Town tricked him into signing another signature

page and subsequently filed a document Mr. Beattie he did not authorize in the title records for Georgetown County. The Plaintiff's description of what transpired is, of course, his own conclusion not necessarily reflective of what actually happened.

It is herein acknowledged that the Mr. Beattie hand-delivered a signed easement to my office. I reviewed it to confirm it contained all the required signatures and noticed that it was only signed by one (1) witness. I asked Mr. Beattie if he would mind signing another copy while he was present in my office to make sure his signed easement was witnessed by two (2) people. Mr. Beattie agreed and I pulled up the easement on my computer and printed a new clean copy for him to sign. He signed the easement that I printed from my computer and I signed it as a witness. The Town Clerk notarized and signed it as well. If Mr. Beattie made revisions to his easement I would not have known because he never shared it with me. I did not look at any other page other than the signature page to make sure it was properly witnessed. When Mr. Beattie agreed to sign a new copy, I printed it from my computer, and it was the original and only version of the easement I had ever seen. It is unclear as to why Mr. Beattie (or the Plaintiff herein for that matter) assumed the copy that I printed from my computer would be the version containing Mr. Beattie's revisions (if any). Mr. Beattie did not leave the easement he brought into my office, so I am unable to ascertain what it contained. All he left was a small plat he asked me to include with the easement when it was recorded, and I did just that. In any event, the Plaintiff does acknowledge that the recording of the easement was eventually cancelled by the Town. Had the Town acted in bad faith, the Town would have insisted on the enforceability of the recorded easement.

The Plaintiff's allegations of fraud, bad faith, and abuse of discretion on the part of the Town are not supported by any evidence. At best, the events that transpired during the course of the Town's attempts to obtain easements, as laid out in Plaintiff's summary judgment motion, are suggestive of misunderstandings in negotiations. It is apparent that all parties did their best to accommodate requested clarifications of and adjustments to the proposed easement grant documents but, regrettably, failed to reach an agreement.

iv. Legal error or misinformation that the easements proposed to property owners allowed no more than placing sand on the beach and did not affect the property rights of the owners in any way

The Plaintiff contends that the Town misrepresented the nature and scope of the easements sought to be acquired for the renourishment project. As already heretofore stated, the general purpose of the easement was sufficiently publicized and the terms of the easement were set forth in the proposed easement grant documents. The Town did not represent that the easement was for placement of additional sand only, even as the term "beach renourishment" is generally known and described as "placement of additional sand." The Town expressly stated that the easement was 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." Such purpose, of course, can be achieved by making sure that the nature and scope of the easements is set forth adequately in the proposed easement grant documents.

The circumstance that the Plaintiff disagrees with the language of the proposed documents or maintains a different interpretation of the wording and scope of the easement in question is not equivalent to misrepresentation on the part of the Town. As discussed previously, the terms of the easement were in accordance with the requirements by the Corps and the general purpose of the construction and maintenance. Even as the Plaintiff insists that the scope of the easement is greater than necessary, there is no evidence to support that the Town misled the Plaintiff into accepting terms that Plaintiff was not comfortable with. The fact that the Town and the Plaintiff communicated several times and attempted to make some adjustments to the proposed easement grant document, *albeit* unsuccessful, is indicative of good faith.

To be sure, the terms of the easement are expressed in a way that would provide the Corps with a safe and suitable access to the area, and to facilitate and remove obstacles to periodic renourishments over the 50-year period envisioned by the Partnership Project. The beach renourishment process is not intended to be a single event. Even when the initial construction is completed, the Corps would still need access to the area for purposes of repair and maintenance, as need arises. This does not mean, however, that the Corps will be at Plaintiff's property 24/7/365 as the Plaintiff wants the Court to believe.

v. Copy of the appraisal in compliance with statutory procedure

The Town Attorney provided Plaintiff with a copy of the appraisal prior to initiating a condemnation action. The Plaintiff contends that the appraisal should have been exchanged before a condemnation notice was served. Upon advice of counsel, I have been informed that the Eminent Domain Procedure Act requires that a copy of the appraisal be provided to the property owner prior to initiating a condemnation action, not prior to service of a condemnation notice.

Assuming for the sake of argument that Plaintiff was not timely provided with a copy of the appraisal, it is quite a stretch to conclude that such instance proves deliberate concealment and bad faith on the part of the Town. Furthermore, there is no indication that the Plaintiff was prejudiced at all.

vi. Attempt to condemn interests of different and greater scope than the interests which are the subject of the appraisals

The Plaintiff contends that the appraisal of the easement area in question did not include any wording of the easement that was previously sought. The Plaintiff omits to mention that actual map of the property and the easement area was provided to the appraiser and reproduced in the appraisal. It is unclear why the Plaintiff suggests that the easement described in the appraisal is different from the easement sought by the Town. Without a showing that there are unexplained discrepancies or divergences, it is difficult to draw a conclusion that the Town committed fraud, bad faith, or abuse of discretion.

vii. Attempt to condemn interests of different and greater scope than the interests which the Town Council publicly authorized condemnation.

At the risk of being repetitive, the easement sought and the proposed easement grant document are a requirement by the Corps. 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 sufficiency thereof. 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.

Contrary to Plaintiff's allegations, the Town is not unmindful of the fact that condemnation of property interests may cause injury to the owners. In this case, however, the fact that the property owners (including the Plaintiff herein) stand to benefit from the Town's undertaking is readily discernable. Beach renourishment serves as a defense against coastal storms and tidal surges, providing safety for nearby property when hurricanes hit. Additional beach areas are also expected to increase the value of coastal properties (including the Plaintiff's).

12. Based on all the foregoing, it is respectfully submitted herein that the Plaintiff's allegations are factually incorrect and, therefore, do not establish fraud, bad faith, and abuse of discretion on the part of the Town.


 Ryan Fabbri
 Town Administrator – Pawleys Island
 (Curriculum Vitae attached)

SWORN TO BEFORE ME this 30th
 day of October, 2020


 Notary Public of South Carolina
 My Commission Expires: 1/24/21

Certificate of Electronic Notification

Recipients

M. Stanton - Notification transmitted on 11-20-2020 12:30:15 PM.

Norwood DuRant - Notification transmitted on 11-20-2020 12:30:15 PM.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2020CP2200600

Official File Stamp: 11-20-2020 12:30:05 PM

Court: CIRCUIT COURT

Common Pleas

Georgetown

Case Caption: Sunset Lodge Llc VS Pawleys Island Town Of

Document(s) Submitted: Affidavit/Affidavit of

Filed by or on behalf of: Norwood David DuRant, Sr.

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Norwood David DuRant, Sr. for Pawleys Island
Town Of

M. Baron Stanton for Sunset Lodge Llc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

November 5, 2020 e-mail notice for December 4, 2020 hearing of Landowner motion for summary judgment.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Thursday, November 5, 2020 3:39 PM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MSUMJM-Motion/Summary Judgment/Stanton" for Case "2020CP2200600-Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 12/4/2020 at 2:00 PM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator at jlawrence@gtcounty.org or Lucinda LeSane, Common Pleas Supervisor @ llesane@gtcounty.org ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

November 5, 2020 e-mail notice for December 4, 2020 hearing of Town motion to halt discovery.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Thursday, November 5, 2020 3:39 PM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MPROTE-Motion/Protection from Discovery/Durant" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 12/4/2020 at 2:00 PM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator at jlawrence@gtcounty.org or Lucinda LeSane, Common Pleas Supervisor @ llesane@gtcounty.org ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

November 5, 2020 e-mail notice for December 4, 2020 hearing of Landowner motion to compel.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Thursday, November 5, 2020 3:39 PM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MCOMPL-Motion/Compel and for Expenses/Stanton" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 12/4/2020 at 2:00 PM

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator at jlawrence@gtcounty.org or Lucinda LeSane, Common Pleas Supervisor @ llesane@gtcounty.org ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

November 5, 2020 Landowner motion to compel re answers to August 13, 2020 first interrogatories, including discovery requests and responses as exhibits.

| | | |
|-------------------------|---|--|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GEORGETOWN |) | CIVIL ACTION NO. 2020-CP-22-00600 |
| Sunset Lodge, LLC, |) | |
| Plaintiff, |) | NOTICE OF MOTION |
| v. |) | AND MOTION |
| Town of Pawleys Island, |) | TO COMPEL AND FOR EXPENSES |
| Defendant. |) | (Rule 40(a)(2) Priority Matter) |
| |) | |

Plaintiff hereby moves the Court pursuant to Rule 37, SCRPC, for an order compelling Defendant to answer the interrogatories and/or respond to the requests for production here listed:

Plaintiff's First Interrogatories, Items Specified Below.

If the motion is granted, Plaintiff also moves pursuant to Rule 37(a)(4), SCRPC for an award of the expenses of making the motion, including reasonable attorney's fees.

Copies of these discovery requests, their certificate(s) of service, and any responses received are attached hereto. (The responses are included without the documents which were attached to the responses. These were attached instead of answering some of the questions, but these will be brought to court or filed if the Court so instructs. The attachments include a 98-page manual and also include several documents pertaining to the properties of other landowners. The latter are not privileged and do not include "personal identifiers" subject to redaction rules, but these documents do not currently appear necessary to the resolution of this motion.)

The grounds for this motion are that the requests were duly served on the dates indicated and:

XX that no response has been received within the time prescribed, or within the time of any applicable extension: Item(s) All. A response document was received, but after expiration of a granted extension, and the more particular shortfalls detailed herein and the timing of this motion are occurring with that background.

XX that the responses are evasive or nonresponsive to the request and are therefore equivalent to a failure to respond: Item(s) 2, 5d, 5e, 5h, 10, 11, 13, 20, 22, and 23.

_____ that an unspecific or otherwise unsupported claim of privilege is asserted: Item(s) _____.

_____ that the objection stated is invalid or otherwise unsupported by facts: Item(s) _____.

XX that the responses are not provided under oath as required by rule.

XX that:

Item 2: The answer refers to unspecified color copies and video, but they do not accompany the interrogatory response. The rule requires that documents provided in lieu of full answer be provided with the response. Nor have they yet been provided afterwards.

Item 2 also refers to recordings of meetings as having been previously produced, but no audio or video recordings of meetings have been produced now or then, unless movant has overlooked something. For example, the Amended Complaint specifically references a Town meeting which was video recorded April 20, 2019, at which Mr. Fabbri misrepresents the scope of the proposed easements and conspicuously fails to call attention to terms to which the subject landowners later objected. The Amended Complaint also references a Town Council meeting

video recorded May 18, 2010 at which Mr. Fabbri again omits all pertinent issues and misrepresents the scope of the proposed easements to Council, at which he also misrepresents the nature of his contacts with the subject landowners and their positions with respect to the matter, at which Council receives incorrect advice as to the scope and effect of the proposed easements without ever looking at the proposed language, and at which Council, as either a misled body or a participant in the sham, publicly authorizes only a condemnation more limited than that which was actually commenced.

Additionally, on October 12, 2020, another video recorded Town Council meeting was held at which an “addendum to resolution” was passed publicly, but was acknowledged to not be final, and was left for later private “tweaking.”

This resulted in a different, unpublished resolution, and in both versions of the resolution, the Town states, without public discussion of the objections of the landowners, that the Town authorizes condemnation of the easements described as being attached.

In both versions, the Town falsely states that the attached easement deeds for which condemnation is authorized are the ones “previously proposed” to the landowners and were the ones “sent” to the landowners, slickly implying (without using the word “served”) that these are the ones which were the subject of the condemnation notices served in June 2010. In both cases, some of the proposed easement deeds attached to the resolution included some language different from the language used in the condemnation papers served. I.e., there has been a change.

The “final” proposed document attached to the privately tweaked “October 12” resolution in all three cases has a 9-line footnote added that is not a part of the condemnation commenced in

June 2020 or the papers served at that time. These videos and any others are thus highly germane and need to be produced and preserved.

The response to Item 2 also appears incomplete in other respects. Rather than list and identify documents pertaining to the case as requested by Item 2, the Town, as is often the practice in the case of voluminous records, refers to items attached or previously produced in response to a request for production. However, it does not appear that the Town has produced some documents either acknowledged to exist or indicated by other sources to exist. If the following do not exist, they of course cannot be produced, but if they do exist, they need to be identified or produced:

a. Work papers, correspondence, and facts and data considered (whether adopted or rejected) as found in the files of the Town's expert, appraiser Brian Donovan.

Mr. Donovan testified in deposition that he was hired by Town Administrator, Mr. Fabbri, but had never been provided the language of the proposed easements Mr. Donovan was hired to place a value upon. He testified that he had prepared the appraisals of the easements the Town sought to condemn without a copy of the proposed easement itself or any of its language.

He testified that for the scope of the easements, he relied only on the diagrams or plats prepared by surveyors, on the surveyors' limited advice as to the location of any setbacks, and on verbal information solely from Ryan Fabbri, the Town Administrator.

Mr. Donovan testified that he had never been told that there was public access language in the proposed "renourishment" easement, or that the easement allowed present or future destruction of landowner improvements within the subjected area, or that the easement allowed restricting the landowner from access to the landowner's own subjected property.

He testified that he assumed from the information provided only verbally by Mr. Fabbri about when work would be done, that the easements would only be “used” on average one month per year and that they would not “affect” landowner improvements.

He acknowledged that if the sand piled up on the landowner’s property as a result of the project was intended to remain all year, year after year, and if the public was given access to the landowner’s subjected land and included improvements 24/7/365, the easement would be different in scope from what he assessed and his assumptions would not apply. He thus acknowledged that if use was not limited to an average of one month per year, one phase of his calculation may have used a value that was one-twelfth of what it should have been.

Therefore, just as alleged in the Amended Complaint, although Mr. Fabbri had acute knowledge beforehand that the only objections of the landowners (now plaintiffs) to granting renourishment easements were objections to the scope of the language proposed for the easements and the easement being literally two feet from their doors, the easement the Town had Mr. Donovan appraise was one without the language Mr. Fabbri acutely knew the landowners objected to, and NOT the same as the easement the Town then proceeded to try to condemn.

Mr. Donovan had a work file for the appraisal of each property. However, the Town has only produced the appraisal reports themselves and e-mails of the Town to and from Mr. Donovan. The entire work file of the Town’s expert, Mr. Donovan, who was very candid, is highly germane and should be produced.

b. Corps transmittal to Town Attorney or Town Administrator in spring of 2019 and all related communications pertaining to the Corps’s proposed revisions to the proposed easement for Stanton (between April 2019 discussion of Stanton with Corps personnel and mid-June 2019, at which time the Town provided a revised document to Stanton).

As alleged in the Amended Complaint, in April 2019, landowner Stanton, trying to accommodate the Town's request for an easement and the Town's manufactured deadline, had a discussion with Corps personnel in the Real Estate Division in Savannah concerning the excessive scope and unreasonable proximity of the proposed easement. The Corps agreed to make changes. As also alleged, the Corps, however, instead of agreeing to work directly with Stanton on the wording of the changes, as offered by Stanton, stated that the changes would be sent to the Town or Town Attorney within a couple of weeks.

As also alleged in the Amended Complaint, the Town sent Stanton proposed changes in mid-June 2019, which did not come close to accomplishing what had been discussed with the Corps.

For example, the language, as re-drafted, did include an "except for" clause, which Stanton had called to the Corps's attention was found in some other easements on Corps projects in the Northeast. The clause was inserted following a list, set off as a separate clause by semicolons, of things the easement holder was allowed to do, such as remove "obstructions" and "structures" in the proposed easement area.

The exceptions were stated for "elevated decks, stairs and walkways" instead of simply all owner improvements. The exceptions also did not clear up what it means for a deck to be "elevated," or clear up whether walkways and stairs, such as Stanton's concrete stairs, also had to be "elevated". Worst, the exceptions were only associated with, and only referred to the tearing down of owner improvements. The exceptions did not except the improvements from the explicit encumbrance for "public use and access." The exceptions also did nothing to assure the right to maintain, repair and replace improvements, because the exceptions were only stated in conjunction with the right to tear things down and remove them. The Corps may have intended

to provide these remedies to the previous document, but what was sent to Stanton most certainly did not.

The exception was stated in an approximately 350-word conveyancing sentence which was already clouded with misspellings, partial words, and such extraordinarily poor punctuation that it would have received an “F” in law school, or elementary school. It hard to believe anything of the sort could have been duly published in the Federal Register and been approved as anything official. The half-page sentence suddenly lapsed, with no introductory words or punctuation, into use of semicolons to separate approximately eight similar dependent, rather than independent clauses, but which internally used – for no reason other than the drafter not knowing what to do – semicolons instead of commas. The half-page sentence continued with other clauses without any signal (e.g., “and”) following the penultimate clause of an intended series of clauses, but continued to simply employ semicolons with no introductory words to set off the transition.

As also alleged, Stanton then sent reasonable suggested changes to this crude document which third parties proposed to make a perpetual part of Stanton’s title, and tried not to change the structure and format of the document, whether desirable or not. As also alleged, after spending all this time and effort and offering profound concessions, Stanton did not hear back from the Town with any substance for about another eight months, after the renourishment was already complete.

What the Corps sent to the Town in the spring of 2019, who did the drafting, and what input the various people involved had is thus highly germane.

Whether the spring 2019 proposed changes and transmittal correspondence were sent to the Town Attorney or to the Town Administrator for forwarding to the attorney, or to someone

else, those documents and all related documents concerning the changes or potential changes -- before or after the transmittal -- need to be produced, no matter where found.

c. Documents relating to decision to move the dune/berm at the south end parking lot 30 feet seaward.

Around paragraph 108 of the Amended Complaint, it is alleged that the Town moved the proposed location of the berm at the south end parking lot 30 feet seaward, which would involve moving the project construction line that distance, and, if there were an easement, the so-called “perpetual easement line.” No documents appear to have been produced concerning the decision to do so and communications incident to same. These need to be produced if they exist.

d. Mr. Traynum’s report regarding the minimal amount of sand lost in the near-landfall of Hurricane Isaias at the worst possible high tide on August 3, 2020.

The Town’s coastal engineering firm overseeing the renourishment project which was completed in late February to early March 2020 reported on August 10, 2020, through Mr. Traynum, that the project was expected to lose a predictable amount sand relatively soon after completion as the various levels and locations settled in and adjusted, and stated that Hurricane Isaias, coming along when it did on August 3, simply accelerated the process. He stated that despite Isaias impacting Pawleys at the worst possible timing of tides, i.e., exactly at high tide on the higher high tide of the day on one of the higher tides of the month, the storm kept moving and went on by, and the completed project only lost a then estimated three (3%) percent of the 1.1 million cubic yards of sand that had been pumped onto shore in the project.

Yet in this lawsuit, virtually the same day as Traynum’s report, the Town claimed in its motion to expedite hearing of its motions earlier in the case (and motions for three \$10 million bonds), that a hurricane may suddenly wash away all 1.1 million cubic yards of sand which were

added to the beach. The Amended Complaint alleges that the Town's own previous studies showed a long term accretional trend in the landowners' stretch of beach and a possible lack of "need" to renourish on the Island in general again for 22 years or more. Mr. Traynum's report concerning the volume of sand lost in Isaias, and any later studies or updates to the report, should be produced if they exist.

Item 5d: Not answered as to the expert, Donovan, although he has been deposed. If Defendant will state that Mr. Donovan will state no facts or opinions at trial other than what he stated in the deposition, that will suffice; if not, the substance of anything else he is expected to testify to should be stated. 5d is not answered as to expert Ingram at all.

Item 5e: Not answered as to Donovan, although he has been deposed. If Defendant will state that Mr. Donovan will state no grounds for his facts or opinions at trial other than the grounds he stated in the deposition, that will suffice; if not, the other grounds for anything he is expected to testify to should be stated. 5d is not answered as to Ingram at all.

Item 5h: Identification of materials relied on is not answered as to either expert identified.

Item 10: Evasive. The answer states the purpose of an identified call, rather than, as requested, "the actual substance of what was communicated" in any post-suit communication with the Corps. A sole communication is identified as a September 16, 2020 call "to coordinate beach survey activity." Regardless of what they were calling to coordinate, these are some of the people who regularly asked about the acquisition of easements, by condemnation or otherwise. There also are not identified, any e-mails or personal notes or memos relating to the call, as preceding the call, occurring during the call, or following the call. If there are none, there is of course nothing to identify or produce, but if there are e-mails, they

should be identified or produced, and if there are any notes or memos referring to or pertaining in any way to the condemnation or any claims or defenses, they should be identified as well.

Item 11: Appears incomplete. Six deeds of easements, which contain objections or proposed changes by other landowners, are identified by stating a street address and someone's name beside each. The six deeds of easements – some with considerable markup -- are also attached, but that is all. Not a single letter, e-mail, transmittal note or any item of correspondence, preceding, accompanying, or following, the six documents is identified.

Of course, if no such things exist and these documents sprang fully formed from the mail only, in solo form, with no transmittal correspondence or explanation before or after, and without any followup producing any documentation at all, there is nothing else to identify. However, if there are any other documents, as requested, “setting forth, responding to, commenting on, analyzing, or summarizing,” any person's “objections to or proposed changes to any oceanfront easement on Pawleys Island,” those should be identified.

Item 13: Withholds telephone numbers and e-mail addresses of potential witnesses as “private.” No objection is stated. Privacy, without privilege (which is not claimed), is not a valid objection. The information will be treated sensitively and sensibly. These people are potential witnesses and little or no correspondence with them or about them has been provided.

Item 20: Evasive. The question asks, among other things, for full identification of documents containing certain information, and for the location where the documents are stored. The answer states that “the documents” are stored in a stated place but never identifies any of the documents so stored.

Item 22: Incomplete and evasive. The Town is asked the date on which it was first provided wording for the requested easements which are the subject of this lawsuit. The Town is also asked who provided the wording on that first occasion and in what document the wording was first provided.

The Town provides a date of 11-15-2018, states that the language was provided by e-mail, and states that “a copy of” “template language” is enclosed.

The Town never states who sent the e-mail nor specifically identifies the document referred to that was sent on the 11-15-18 date the Town refers to.

The Town encloses an entire USACE Savannah guidebook with apparent recommended easement language on one of the 98 pages, but does not identify this as the thing sent on 11-15-18, and does not produce the e-mail along with the answer, as required by rule when one refers to some document instead of just answering the question that was asked.

Item 23: Evasive and not an answer. The Town is asked to describe a potential witness. The Town is asked to identify the person, if any, who first explained the meaning of the desired contents to include in the easements for south end property owners.

The Court is likely aware that the Amended Complaint in this case highlights the Town’s repetitive mischaracterizations of the language of the easements the Town proposed. Highlighted are nondisclosures of the language in every verbal description of, or reference to, the proposed easements. Highlighted as well are virtual denials that the so-called mere “renourishment easements” contain the substantive provisions inserted in them, such as public access to, and use of, the landowner’s land and improvements and the ability of the Town or anyone to whom it assigns the easement, now or later, perpetually, to destroy landowner improvements in the area, which area in most cases runs all the way to two feet from the

landowner's oceanside door. Where the existence of these features is not denied outright, unenforceable side assurances contrary to the provisions are offered.

The Amended Complaint also highlights the efforts of at least one of the landowners to bring these and other issues acutely to the attention of the Corps, the Mayor, and the Town Administrator, for discussion and some remedy, thus requiring at least someone in the Town to understand, and admit understanding, what the Town has actually been asking for and the obvious reasons why it is objectionable as far more than reasonably necessary.

The Court may also take judicial notice, if the matter is not already in the Courthouse file at time of hearing, that, after this suit was filed, the Town has also passed publicly on October 12, 2020 -- and privately shortly thereafter -- an after-the-fact resolution (not ordinance) attempting to "discuss," in a 9-line, not publicly deliberated footnote, in a vague and inconclusive manner, with no citation of source material, the meaning of the second use of the word "public" in the proposed easement language.

The word "public" is included four times, without such muddy language, in the proposed document on which the attempted condemnation is based. I.e., "patrol; operate ...a public beach a dune system" [sic], "together with the right of public use and access", and "existing easements for public roads and highways, public utilities". There are other terms of concern in the actual June 2020 condemnation papers as well.

As but one example, however, the question of whether the Corps understands and has explained to the Town that "public" actually means public, is thus highly germane. Also highly germane is whether the Corps had any knowledge of or input on the new muddy footnote. It is also germane whether the Town, despite its false ratiocinations, understands "public" to actually

mean public, and knows its actions are a continuing sham, coverup, and increasingly expensive blight on the titles clouded by these actions.

In addition to asking who, if anyone, ever explained the nondifficult meaning of this word or any different meaning intended by the Corps, and, if so, when it was first explained, the question in Item 23 asks in what document and or by what means this explanation occurred, if it occurred at all. In violation of Rule 33's requirement that questions be answered "separately and fully," the Town simply refers to the answer to Item 22, stating, "See Answer to Item No. 22 above." The answer to Item 22 was not a complete answer to Item 22, and is not an answer to Item 23 at all.

The response to Item 22 refers to a document containing some language, but does not reference an explanation of the language, does not reference a date of explanation of the language, and does not identify a person who explained anything.

Item 23 should be answered fully, and separately. As noted above, as required by Rule 33, all answers should be under oath from Ryan Fabbri or whoever is answering them.

Accordingly, this Court should enter its order compelling full responses to these requests within fifteen (15) days of the date of entry of the order, or within any shorter period prescribed by the Court.

The undersigned hereby affirms

_____ that the opposing party is pro se, and no consultation is required, or

_____ that prior to filing this motion he has communicated orally or in writing with opposing counsel and has attempted in good faith to resolve the matter, or

_____ that consultation would serve no useful purpose, or

XX that consultation could not timely be held, or
XX that if any of this motion can be resolved before hearing, the movant
will try to notify the Court.

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

11/5/20

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

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL:

YOU ARE HEREBY REQUIRED to answer the following interrogatories pursuant to South Carolina Rule of Civil Procedure 33. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them and a copy of such answers, and objections if any, shall be served upon the undersigned within (30) days after the service hereof.

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, videotapes, plats, sketches, correspondence, notes, memoranda, agendas, logs, studies, minutes, press releases, resolutions, reports, charts, other writings and recordings, e-mails, texts, IMs, blogs, other electronically stored information, or other prepared documents in possession of the party that relate to the attempt to condemn and related contemplated proceedings, the instant lawsuit, Plaintiff's claims or Defendant's defenses.

(By "electronically stored information," this party means to include all information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software, including, but not limited to the following: accounting or bookkeeping information stored or accessed with QuickBooks or similar software; e-mail of any type, category, or status, including incoming, outgoing, draft, or deleted e-mail; social networking website postings or commentary; chat room logs, transcripts, archives, or commentary; instant messaging logs, archives, or history files; internet browser temporary files, cache files, cookies, or history information; online discussion group files; blog text, postings, or commentary; and any data stored on a computer network, servers, pop drives, disks, snap drives, flash drives, thumb drives, USB hard drive, cell phone, PDA, or other electronic device capable of storing data.)

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness, and provide a copy of any written or recorded statements taken from such witnesses.

5. For each person whom the party may call as an expert or opinion witness at the trial, identify the person in complete detail and provide the following information:

- a. Name, occupation, title, business address, area of specialization, if any, and professional relationship to the responding party;
- b. The manner in which such person became familiar with the facts of the case;

- c. The subject matter on which the person is expected to testify;
- d. Substance of the facts and opinions to which the person is expected to testify;
- e. A summary of the grounds for each opinion;
- f. The person's area of expertise;
- g. The person's educational background and experience qualifying the person as an expert in that area;
- h. Identification of all documents, materials, reports, articles, treatises or other information the expert will rely upon in forming opinions; and
- i. A summary of the expert's prior history of consultation and/or testimony in legal matters.

6. Please identify any documents or things (as broadly defined), regardless of whether or not favorable to you, which you believe relevant to this case, or which you intend to use as a demonstrative exhibit at trial, or which you intend to introduce into evidence at trial, or which you intend to use for cross examination or refresher of recollection.

7. State the detailed factual basis for each of the claims or defenses you assert in your pleadings.

8. If you claim this inquiring party made any verbal or written statement about the incident or transaction complained of which was contrary to this party's pleading or against the interest of this party, please state the name and address of the person to whom the statement was made, the substance of the statement, whether the statement was written or oral, and the circumstances of the making of the statement.

9. Give the telephone number and e-mail address of each person known to you or counsel to be a witness concerning the facts of the case.

10. Please identify any and all instances in which you, your attorney, or the agent of either of you has spoken with or otherwise communicated with any of the following since this suit was filed and state the actual substance of what was communicated: Any employee or member or officer of or person serving in the U.S. Army Corps of Engineers.

11. Please identify with specificity as to authors, dates, signatories, addressees, and all persons to whom copies were disseminated, any and all of the following documents within your possession, custody or control and set forth briefly the substance of any document so identified: Any document setting forth, responding to, commenting on, analyzing or summarizing any person's objections to or proposed changes to any proposed oceanfront easement on Pawley's Island.

12. Do you know of the existence (or former existence) of any documents that fit the foregoing descriptions, but which no longer exist, or which you cannot find, or which you do not have? If so, identify them with the same specificity and summary of substance requested in the foregoing interrogatory.

13. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons who objected to or proposed changes to any proposed oceanfront easement on Pawley's Island.

14. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved clarification that the easement did not run over and across the entire lot.

15. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved moving the "perpetual easement line" (the western boundary of the geographical area of the easement depicted on the proposed attached map/plat), eastward.

16. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved adding a modifying word or phrase with respect to, inserting, or removing, the word "public."

17. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved stating any exception to the easement with respect to any portions of the house or other improvements which were in, or shown as being in, the geographical area of the easement depicted on the proposed attached map/plat.

18. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons who granted an easement which was recorded by you but which you later contended was unacceptable.

19. For each of the foregoing, state (a) whether you later received an easement which you accepted, and (b) whether you recorded the later easement.

20. Please fully identify any documents, logs, information storage systems or files in which the information requested in the foregoing interrogatory would be reflected if it exists, including the location and custodian of such documents, logs, information systems, or files.

21. Please explain why you recorded a different easement for the Beattie property than the one presented to you initially by the landowner.
22. State and describe in detail, the date you were first provided with specific wording the Corps of Engineers wanted you to include in easements from south end property owners and who provided that wording and in what document or by what means.
23. State and describe in detail, the date a person from the Corps of Engineers first explained to you the meaning of the desired contents to include in easements from south end property owners and who provided that explanation and in what document or by what means.
24. Have you withheld production or description of any documents you claim are privileged, and, if so, please identify those documents.
25. Have you obtained any appraisals or preliminary or partial appraisals or opinions of value of the subject property other than the one dated June 8, 2020 effective June 3, 2020? If so, for each such appraisal or opinion, please identify the person or entity who performed the appraisal or assessment, the date it was performed, the address and phone number of each person or entity performing said appraisal or assessment, and the value of the subject property according to the appraisal or assessment.
26. Identify all exhibits you plan to introduce at the trial of this matter.

s/M. Baron Stanton
M. Baron Stanton (Bar#7970)
STANTON LAW OFFICES, P.A.
(1230 Richland Street (29201))
P.O. Box 245
Columbia, SC 29202
Tel: (803) 929-1484
bstanton@stantonlaw.com
Attorney for Sunset Lodge, LLC

8/13/20

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

The undersigned does hereby certify that the undersigned has this date served the foregoing by causing a copy thereof to be e-mailed as indicated in the attached e-mail copy pursuant to S.C. Sup. Ct. Ord. 2020-04-22-01, to the address indicated below:

ddurant@lawofficesofdurant.com
(N. David DuRant, Sr., Esquire)

s/M. Baron Stanton
M. Baron Stanton

Date: 8/13/20

| | | |
|-------------------------|---|--|
| 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, |) | |
| |) | |
| Plaintiff, |) | DEFENDANT'S ANSWERS TO |
| v. |) | PLAINTIFF'S FIRST INTERROGATORIES |
| |) | |
| TOWN OF PAWLEYS ISLAND, |) | |
| |) | |
| Defendant. |) | |
| |) | |

TO: PLAINTIFF AND HIS ATTORNEY, M. BARON STANTON, ESQ.

Pursuant to Rule 33, of the South Carolina Rules of Civil Procedure, the Defendant, TOWN OF PAWLEYS ISLAND, hereby answers Plaintiff's First Set of Interrogatories, as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- a. Members of Pawleys Island Town Council
- b. Pawleys Island Town Administrator
- c. Pawleys Island Town Clerk¹

The above-named town officials are expected to have knowledge, observations and involvement concerning the conduct of meetings. No known written or recorded statement.

- d. 30(b)(6) Sunset Lodge, LLC
- e. Charles E. Howard
- f. Frank Beattie
- g. M. Baron Stanton

The above-named Plaintiffs are expected to have knowledge surrounding the claims involved in the challenge actions. No known written or recorded statement.

¹ Please note that the Town Clerk, Diane Allen, is no longer employed with the Town.

2. Set forth a list of photographs, videotapes, plats, sketches, correspondence, notes, memoranda, agendas, logs, studies, minutes, press releases, resolutions, reports, charts, other writings and recordings, e-mails, texts, IMs, blogs, other electronically stored information, or other prepared documents in possession of the party that relate to the attempt to condemn and related contemplated proceedings, the instant lawsuit, Plaintiffs claims or Defendant's defenses. (By "electronically stored information," this party means to include all information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software, including, but not limited to the following: accounting or bookkeeping information stored or accessed with QuickBooks or similar software; e-mail of any type, category, or status, including incoming, outgoing, draft, or deleted e-mail; social networking website postings or commentary; chat room logs, transcripts, archives, or commentary; instant messaging logs, archives, or history files; internet browser temporary files, cache files, cookies, or history information; online discussion group files; blog text, postings, or commentary; and any data stored on a computer network, servers, pop drives, disks, snap drives, flash drives, thumb drives, USB hard drive, cell phone, PDA, or other electronic device capable of storing data.)

ANSWER: See Defendant's Response to Plaintiff's First Request for Production of Documents dated September 30, 2020 (copies of relevant agendas, minutes of meetings, recordings of meetings, email correspondences, appraisals, and other relevant materials were enclosed therein). In addition, color copies of photographs as well as a video depicting the condition of an oceanfront property before the Town's beach renourishment undertaking was started will be sent via email to Attorney for the Plaintiff.

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER:

Brian Donovan
 Jayroe Appraisal Company
 1601 N. Oak Street, Ste. 107
 Myrtle Beach, SC 29588

Hector Ingram
 Ingram & Company, Inc.
 1221 Floral Pkwy
 Wilmington, NC 28403

4. For each person known to the parties or counsel to be a witness concerning the facts of the

case, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness, and provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory No. 1 above.

5. For each person whom the party may call as an expert or opinion witness at the trial, identify the person in complete detail and provide the following information:
 - a. Name, occupation, title, business address, area of specialization, if any, and professional relationship to the responding party;
 - b. The manner in which such person became familiar with the facts of the case;
 - c. The subject matter on which the person is expected to testify;
 - d. Substance of the facts and opinions to which the person is expected to testify;
 - e. A summary of the grounds for each opinion;
 - f. The person's area of expertise;
 - g. The person's educational background and experience qualifying the person as an expert in that area;
 - h. Identification of all documents, materials, reports, articles, treatises or other information the expert will rely upon in forming opinions; and
 - i. A summary of the expert's prior history of consultation and/or testimony in legal matters.

ANSWER: The experts identified in Item No. 3 above are expected to testify regarding the easement areas sought to be condemned by the Town, the value of said easement areas, the benefits and added value that the Plaintiff's property will gain from the Town's beach renourishment project, and other related matters. Their CVs are enclosed.

6. Please identify any documents or things (as broadly defined), regardless of

whether or not favorable to you, which you believe relevant to this case, or which you intend to use as a demonstrative exhibit at trial, or which you intend to introduce into evidence at trial, or which you intend to use for cross examination or refresher of recollection.

ANSWER: See Answer to Item No. 2 above.

7. State the detailed factual basis for each of the claims or defenses you assert in your pleadings.

ANSWER: The Defendant maintains the position that the Plaintiff's challenge action has no basis in law or in fact because the Town did not commit any fraud, bad faith or abuse of discretion in its efforts to obtain the easements required by the Army Corps. The Defendant will supplement this Answer upon completion of discovery.

8. If you claim this inquiring party made any verbal or written statement about the incident or transaction complained of which was contrary to this party's pleading or against the interest of this party, please state the name and address of the person to whom the statement was made, the substance of the statement, whether the statement was written or oral, and the circumstances of the making of the statement.

ANSWER: None at this time.

9. Give the telephone number and e-mail address of each person known to you or counsel to be a witness concerning the facts of the case.

ANSWER:

Brian Henry (Mayor)
323 Myrtle Avenue
Pawleys Island, SC 29585
(843) 237-1698

Ashley Carter (Council Member)
323 Myrtle Avenue
Pawleys Island, SC 29585
(843) 237-1698

Guerry Green (Council Member)
323 Myrtle Avenue
Pawleys Island, SC 29585
(843) 237-1698
Rocky Holliday (Council Member)

323 Myrtle Avenue
Pawleys Island, SC 29585
(843) 237-1698

Sarah Zimmerman (Council Member)
323 Myrtle Avenue
Pawleys Island, SC 29585
(843) 237-1698

Ryan Fabbri (Town Administrator)
323 Myrtle Avenue
Pawleys Island, SC 29585
(843) 237-1698

10. Please identify any and all instances in which you, your attorney, or the agent of either of you has spoken with or otherwise communicated with any of the following since this suit was filed and state the actual substance of what was communicated: Any employee or member or officer of or person serving in the U.S. Army Corps of Engineers.

ANSWER: On September 16, 2020, a conference call between the Town and the Army Corps to coordinate beach survey activity was held. Those on the call are as follows:

Ryan Fabbri (Town)

Nova Robbins (Army Corps)

Jeff Livasy (Army Corps)

11. Please identify with specificity as to authors, dates, signatories, addressees, and all persons to whom copies were disseminated, any and all of the following documents within your possession, custody or control and set forth briefly the substance of any document so identified: Any document setting forth, responding to, commenting on, analyzing or summarizing any persons objections to or proposed changes to any proposed oceanfront easement on Pawley's Island.

ANSWER:

560 Myrtle Ave. – James Mills

600 Springs Ave – Andy Sherard

608 Springs Ave – Mike Tighe

636 Springs Ave – Frank Robinson

714 Springs Ave – Bill Turnipseed

754 Springs Ave - Howard Bond

Copies of proposed easements are enclosed.

12. Do you know of the existence (or former existence) of any documents that fit the foregoing descriptions, but which no longer exist, or which you cannot find, or which you do not have? If so, identify them with the same specificity and summary of substance requested in the foregoing interrogatory.

ANSWER: Other than the listing in Item No. 11 above, none.

13. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons who objected to or proposed changes to any proposed oceanfront easement on Pawley's Island.

ANSWER: See Answer to Item No. 11 above. The telephone numbers and email addresses are considered private information.

14. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved clarification that the easement did not run over and across the entire lot.

ANSWER: The Town does not have a record of any specific property owner who requested any specific change to the Town's proposed easement grant document as a condition of signing. However, it became apparent that the issue of the easement area was something that several property owners asked about and, accordingly, the Town added the following sentence to all easement descriptions before going out: *This easement does not cover the entire Lot as described above; but only that portion as shown as the shaded area of Exhibit "A" attached hereto.*

15. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved moving the "perpetual easement line" (the western boundary of the geographical area of the easement depicted on the proposed attached map/plat), eastward.

ANSWER: The "perpetual easement line" (or "PEL") was altered on 4 properties so that the PEL moved far enough seaward to remove the foundations of the home. The 4 affected properties were:

754 Springs Avenue

756 Springs Avenue

758 Springs Avenue

760 Springs Avenue

16. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved adding a modifying word or phrase with respect to, inserting, or removing, the word "public."

ANSWER: None.

17. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved stating any exception to the easement with respect to any portions of the house or other improvements which were in, or shown as being in, the geographical area of the easement depicted on the proposed attached map/plat.

ANSWER:

560 Myrtle Ave. – James Mills

756 Springs Ave – Barry Stanton

18. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons who granted an easement which was recorded by you but which you later contended was unacceptable.

ANSWER:

732 Springs Avenue - Rescom Investments, not perpetual, easement revocable by Grantor after of 12/31/2020. (not acceptable)

748 Springs Avenue- Beattie, retracted signed easement, signed

document is missing whole paragraph re: public use and access, dunes and walkovers.

19. For each of the foregoing, state (a) whether you later received an easement which you accepted, and (b) whether you recorded the later easement.

ANSWER:

732 Springs Avenue - Rescom Investments. Yes

748 Springs Avenue - Frank Beattie. No

20. Please fully identify any documents, logs, information storage systems or files in which the information requested in the foregoing interrogatory would be reflected if it exists, including the location and custodian of such documents, logs, information systems, or files.

ANSWER: The documents are saved on the Town Administrator's office computer, and backed up on the cloud (Microsoft OneDrive).

21. Please explain why you recorded a different easement for the Beattie property than the one presented to you initially by the landowner.

ANSWER: Mr. Beattie hand-delivered the signed easement to the Town Administrator's office. The Town Administrator reviewed it to confirm it contained all the required signatures and noticed that it was only signed by one (1) witness. The Town Administrator asked Mr. Beattie if he would mind signing another copy while he was present in the Town Administrator's office to make sure his signed easement was witnessed by two (2) people. Mr. Beattie agreed and the Town Administrator pulled up the easement on his computer and printed a new clean copy for him to sign. Mr. Beattie signed the easement that the Town Administrator printed from his computer and signed it as a witness. The Town Clerk notarized and signed it as well.

If Mr. Beattie made revisions to his easement the Town Administrator wouldn't know because he Mr. Beattie never shared it with him. The Town Administrator did not

look at any other page other than the signature page to make sure it was properly witnessed. When Mr. Beattie agreed to sign a new copy, the Town Administrator printed it from his computer, and it was the original and only version of Mr. Beattie's easement he had ever seen. It is unclear as to why Mr. Beattie assumed the copy that the Town Administrator printed from his computer would be the version containing Mr. Beattie's revisions (if any). He did not leave the easement he brought into the Town Administrator's office, so the Town is unable to ascertain what it contained. All Mr. Beattie left was a small plat he asked that the Town Administrator include with the easement when it was recorded, and the Town Administrator did just that.

The Town Administrator didn't think anything of it until about a month later when the Town Attorney called him to let him know that Mr. Beattie contacted his office claiming the Town Administrator swapped out or changed the easement before recording it. The Town Administrator had no idea what Mr. Beattie was talking about, and instructed the Town Attorney to unrecord Mr. Beattie's easement and notify him immediately that it was going to be done.

22. State and describe in detail; the date you were first provided with specific wording the Corps of Engineers wanted you to include in easements from south end property owners and who provided that wording and in what document or by what means.

ANSWER: By email on 11-15-2018. Template language was provided, of which a copy is herewith enclosed.

23. State and describe in detail, the date a person from the Corps of Engineers first explained to you the meaning of the desired contents to include in easements from south end property owners and who provided that explanation and in what document or by what means.

ANSWER: See Answer to Item No. 22 above.

24. Have you withheld production or description of any documents you claim are privileged, and, if so, please identify those documents.

ANSWER: No.

25. Have you obtained any appraisals or preliminary or partial appraisals or opinions of value of the subject property other than the one dated June 8, 2020 effective June 3, 2020? If so, for each such appraisal or opinion, please identify the person or entity who performed the appraisal or assessment, the date it was performed, the address and phone number of each person or entity performing said appraisal or assessment, and the value of the subject property according to the appraisal or assessment.

ANSWER: No.

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



N. David DuRant, Sr., Esquire (SCB# 1803)
P.O. Box 14722
Surfside Beach, SC 29587
Telephone: (843) 650-7800
Facsimile: (843) 650-8090
Email: ddurant@lawofficesofdurant.com
Attorney for Defendant

October 26, 2020

26. Identify all exhibits you plan to introduce at the trial of this matter.

ANSWER:

The Defendant reserves the right to amend, supplement or modify foregoing Answers to Interrogatories up to and including the time of trial.

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

N. David DuRant, Sr., Esquire (SCB #1803)
P.O Box 14722
Surfside Beach, SC 29587
Telephone: 843-650-7800
Facsimile: 843-650-8090
Email: ddurant@lawofficesofdurant.com
ATTORNEY FOR DEFENDANT

October 20, 2020

November 20, 2020 Landowner motion for refused enlargement of time for discovery response.

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

Plaintiff hereby moves the Court pursuant to Rule 6, SCRCF, for an order enlarging the time to respond to the Town's interrogatories and requests for production by the same amount of time initially required, i.e., thirty days. The enlargement would make the responses due on December 10.

Good cause exists because Plaintiff's counsel has done some work on the responses but they are not complete, has timely contacted opposing counsel, has numerous other practice and personal commitments, has had plans to be out all week the week of Nov. 23-27, which includes the Thanksgiving holiday, and believes more time may be required.

The undersigned certifies that he has attempted to resolve the matter of this request with opposing counsel but he was unwilling or unable to accommodate as requested or respond to a followup request. The undersigned certifies the foregoing is true.

Pursuant to S.C. Sup. Ct. Order 2020-04-22-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify the foregoing and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

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

11/20/20

November 24, 2020 Town brief opposing Landowner motion for summary judgment, with four exhibits – Fabbri 10-30-20 aff., 5-18-20 and 10-12-20 resolutions, 60-page appraisal, and partial copy of condemnation papers served.

| | | |
|-------------------------|---|-------------------------------------|
| 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, |) | DEFENDANT'S MEMORANDUM |
| v. |) | IN OPPOSITION TO PLAINTIFF'S |
| |) | MOTION FOR SUMMARY JUDGMENT |
| TOWN OF PAWLEYS ISLAND, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

The Defendant, TOWN OF PAYLEYS ISLAND, hereby submits the following Memorandum in Opposition to Plaintiff's Motion for Summary Judgment pursuant to Rule 56(c), SCRCF. It is the Defendant's position that Plaintiff has failed to establish the absence of triable issues of fact that would warrant summary judgment in this case.

BACKGROUND

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

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

This action was commenced by the Plaintiff to challenge the Town's authority to acquire, by condemnation, an easement on a portion of the Property for the public purpose of beach renourishment. A brief history of the Town's beach renourishment efforts in conjunction with the United States Army Corps of Engineers (the "Corps") that started in the year 2000 is explained in the Affidavit of Ryan Fabbri, the Town Administrator, of which a copy is hereto attached and made an integral part hereof as Exhibit "A". As set forth therein, the total project cost of the Town's renourishment undertaking is fourteen million eight hundred eighty-three thousand two hundred thirty-seven (\$14,883,237.00) dollars.

The Plaintiff's Amended Complaint, filed on July 31, 2020, is a voluminous pleading consisting of fifty-nine (59) pages of allegations that read more like a novel than your typical Summons and Complaint. It is claimed that the Town Council (mayor and council members), Town Administrator, Town Attorney, and other Town employees all combined to carry out a condemnation action tainted by fraud, bad faith and/or abuse of discretion. There are six (6) causes of action asserted in the Amended Complaint, with the gravamen of the allegations surrounding the: 1) alleged fraud, bad faith or abuse of discretion on the part of the Town in attempting to condemn the Plaintiff's property interest despite lack of necessity therefor; and, 2) alleged bad faith or abuse of discretion on the part of the Town in concealing or misrepresenting the nature and extent of the easement sought.

The Plaintiff's Motion for Summary Judgment in this case was filed on or about August 21, 2020. Presently, the parties are still engaged in discovery proceedings.

A challenge action must be predicated on the condemnor's: 1) fraud; 2) bad faith; or, 3) clear abuse of discretion. "When a landowner brings a challenge action to enjoin a condemnation proceeding, the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor." Sease v. City of Spartanburg, 242 S.C. 250, 131 S.E.2d 683 (1963); Cameron v. City of Chester, 253 S.C. 574, 172 S.E.2d. 306 (1970); Oien Family Investments, LLC v. Piedmont Municipal Power Agency, 424 S.C. 168, 817 S.E.2d 657 (Ct. App. 2018).

It is Defendant's position that the Plaintiff has failed to establish a showing of entitlement to summary judgment and, further, that triable issues of fact exist to preclude summary judgment in this case.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. SCRCP Rule 56(c); Fleming v. Rose, 350 S.C. 488 (2002).

“The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (2004). “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party.” Id. “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Further, summary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusion to be drawn therefore.” Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005).

ARGUMENTS

A. The Town did not exceed its authority to condemn the property interest that is sought to be condemned.

The Plaintiff contends that the Town “exceeded the authority granted by the Town Council to take ‘basically simply and easement to put sand on the beach’, and the condemnation notices and associated papers served by the Town are therefore an *ultra vires* act which should be quashed as invalid.” The Defendant couldn’t disagree more.

The Town is vested with the power of condemnation and authorized to commence an action to acquire an interest in any real property necessary for a public use. See: S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.* The Supreme Court has defined the concept of public use broadly, and offered an expansive, contextual definition thereof. See: Riley v. Charleston Union Station Co., 71 S.C. 457, 51 S.E. 485 (1905) (the term public use is flexible and cannot be confined to public use known at the time of framing the Constitution); Timmons v. South Carolina Tricentennial Comm’n., 254 S.C. 378, 175 S.E.2d 805 (1970) (the term public use is an elastic one and must keep abreast of changing social conditions, and the question is one of fact in each particular case).

One cannot deny that beach erosion is responsible for coastal property loss and, over time, produces public safety issues. The extent and severity of the problem is worsening with increased coastal flooding and global sea level rise. Beach renourishment is an accepted management strategy to rebuild shorelines after severe erosion and create a safer environment for the public. A widened shoreline provides an improved defense against beach erosion as well as extended protections for oceanfront residential and business properties. Wider beaches also benefit tourism and wildlife.

The Town has reasonably determined that partnering with the Corps to achieve a continuous strategy to address, prevent and/or mitigate shore erosion is necessary and cost-effective. In this regard, the Town is committed to acquire easements on oceanfront properties, as required by the Corps, for safe and suitable access to the site as well as to facilitate and remove obstacles to project implementation.

The easements sought to be acquired by the Town are intended for the public purpose of beach renourishment that would benefit both residents and visitors. By undertaking a long-term continuous effort to improve, repair and/or reconstruct shorelines in conjunction with the Corps, the Town hopes to keep the community safe and maintain the beach as the keystone to the Town's lifestyle and economic viability.

As set forth in Mr. Fabbri's Affidavit (See: Exhibit "A"), the Town initially reached out to the property owners by sending proposed easement grant documents to property owners. Out of 113 proposed easements, the Town received 110 easement grants. Attempts to reach an agreement with the remaining 3 holdouts (including the Plaintiff herein) were unsuccessful.

Recognizing that the continued erosion of the shorelines of the island was a danger to the people, their homes, and businesses beyond the beach, the Town resolved to exercise its power of eminent domain to obtain the unacquired easements in order to go forward with its beach

renourishment plans in conjunction with the Corps. Copies of the Town Council resolution dated May 18, 2020 and addendum to resolution dated October 12, 2020 are hereto attached and made an integral part hereof as Exhibit “B”.

The Plaintiff contends that the Town Council authorized the condemnation of easements to take “basically simply and easement to put sand on the beach.” Although the term “beach renourishment” is often described as placing additional sand on the beach, it is important to understand that the process is not limited thereto and, in fact, includes other activities such as sand fencing and planting of beach grass. When the Town Council resolved to obtain the 3 unacquired easements by condemnation, it was the Town Council’s intention to use the easements not just to put sand on the beach, but to undertake all activities related to construction and maintenance of the renourished beach.

To be sure, the Town made the following representation: “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.” See: Paragraph 44 of the Plaintiff’s Amended Complaint; Paragraph 21 of the Affidavit submitted by Plaintiff’s Attorney separately from Plaintiff’s Motion for Summary Judgment¹.

The Town’s condemnation notices and associated papers were served on the Plaintiff in preparation for a condemnation action. They are not an *ultra vires* act, as Plaintiff contends, because the Town Council passed a resolution authorizing the condemnation of the property interest that is required for easement purposes. In this instance, the Plaintiff’s arguments must fail.

¹ The Town’s “representation” is also contained in one of the project updates that were publicly circulated by the Town in connection with the beach renourishment undertaking.

B. The Town complied with the requirements of the Eminent Domain Procedure Act.

The Plaintiff asks the Court to quash the Town’s condemnation notice and associated papers² on the alleged ground that “the Town failed in numerous respects to comply with the strict mandates of the Eminent Domain Procedure Act.”. The Plaintiff’s so-called “failings”, however, are not established. Thus:

i. Furnishing the Plaintiff with copy of appraisal

Contrary to the Plaintiff’s claim, the statute does not require that the appraisal report be made available to the Plaintiff prior to serving the condemnation notice; rather, the statute requires that the appraisal report be made available to the Plaintiff prior to initiating a condemnation action.

Section 28-2-70(A) of the Eminent Domain Procedure Act states as follows:

§ 28-2-70. Appraisal of property; necessity of negotiation; condemnor's right to enter upon land for limited purposes.

(A) **Before initiating a condemnation action**, the condemnor shall cause the property to be appraised to determine the amount that would constitute just compensation for its taking and shall make the appraisal available to the landowner. (emphasis supplied).

Section 28-2-30(5) of the same Act defines a “condemnation action” as follows:

§ 28-2-30. Definitions.

...

(5) “Condemnation action” includes all acts incident to the process of condemning property **after the service of a Condemnation Notice**. (emphasis supplied).

The Town has not initiated a condemnation action; the Town merely served a condemnation notice as a prerequisite to commencement of lawsuit which is done by filing of

² Presumably, the term “associated papers” refer to the following papers that accompanied the Town’s condemnation notice: a) Exhibit “A” – map of the property with shaded area representing the easement sought; b) proposed easement grant document; and c) appraisal report.

the condemnation notice with the clerk of court pursuant to S.C. Code Ann § 28-2-230 upon the expiration of the 30-day period within which the Plaintiff is required to accept or reject the Town's tender. See also: S.C. Code Ann § 28-2-220 (prescribing the specific form of condemnation notice to be used "prior to commencing a condemnation action").

The Town respectfully submits that service of condemnation notice is not equivalent to initiating a condemnation action. As defined by statute quoted above, a condemnation action "includes all acts incident to the process of condemning property after the service of a condemnation notice." The statute does not state that a condemnation action is commenced by serving a condemnation notice or upon service of a condemnation notice; neither does the statute state that a condemnation action includes the act of serving a condemnation notice. When the Plaintiff herein was provided with a copy of the appraisal simultaneously with the condemnation notice, the statutory requirement that the appraisal be furnished to the Plaintiff "before initiating a condemnation action" was satisfied³.

A copy of the appraisal is hereto attached and made an integral part hereof as Exhibit "C".

ii. Negotiation with the Plaintiff

It is to be noted, at the outset, that the Town initially reached out to the Plaintiff for an easement grant in 2019 (See: Exhibit "A", Paragraphs 5-10). The parties negotiated and made a few adjustments to the Town's proposed easement grant document but, ultimately, failed to reach an agreement. The Town Council resolution authorizing the exercise of eminent domain was issued only in May 2020 and the condemnation notice together with the associated papers

³ In the interest of completeness, the Court is hereby respectfully advised that the Town's initial attempt to serve the condemnation notice by restricted deliver on June 10, 2020 included all associated papers. The initial attempt failed, and a second attempt was made on June 18, 2020; this second attempt was successful but, due to honest oversight and inadvertence, the appraisal was omitted from the packet at that time. The Town re-served the Condemnation Notice and all associated papers on July 3, 2020 upon discovery of the inadvertence.

served on the Plaintiff the following month. A copy of the condemnation notice is hereto attached and made an integral part hereof as Exhibit “D”.

Section 28-2-70(B) of the Eminent Domain Procedure Act reads as follows:

...

(B) The condemnor and landowner shall make reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid. The condemnor shall certify to the court that a negotiated resolution of the conflict was attempted prior to the institution of the condemnation action. A failure of any party to comply with this subsection is not a defense to a condemnation action.

The Plaintiff contends the Town’s condemnation notice should be quashed because the Town “failed to negotiate in good faith with respect to the appraisal report for the purchase of an easement prior to serving the condemnation notice.” This contention, however, fails for two reasons: 1) the statute requires the Town to negotiate prior to initiating a condemnation action, not prior to serving a condemnation notice; 2) the Plaintiff filed the instant challenge action, which stayed all proceedings under the Town’s condemnation notice and, obviously, precluded the Town from negotiating⁴.

It is not amiss to state, and the Plaintiff does acknowledge in Plaintiff’s motion for summary judgment, that “the failure of any party to comply with the negotiation requirement is not a defense to a condemnation action.” See: S.C. Code Ann § 28-2-70(B).

iii. Town certification in condemnation notice

The Plaintiff further contends that “the Town falsely certified in the condemnation notice, that the Town had first made an appraisal report available to Plaintiff and that the Town had

⁴ S.C. Code Ann. § 28-2-470 provides that: “An action challenging a condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas in the county in which the property or a portion thereof is located. The action must be commenced within thirty days after service of the Condemnation Notice upon the landowner. All proceedings under the Condemnation Notice are automatically stayed until the disposition of the action, if any, unless the landowner and the condemnor consent otherwise. No issues involving the condemnor's right to condemn may be heard in the trial upon the issue of just compensation.”

negotiated in good faith with respect to that appraisal report for the purchase of an easement prior to serving the condemnation notice.”

It is to be noted that the condemnation notice was served on the Plaintiff as a prerequisite to filing a condemnation action. The Town’s certification is in the notice (See: Exhibit “**D**”, Paragraph 7) because the statute requires that said certification be included therein⁵. The condemnation notice would have been filed with Court after thirty (30) days from service thereof on the Plaintiff, pursuant to S.C. Code Ann § 28-2-230, had the Plaintiff not filed the instant challenge action. At the risk of being repetitive, service of condemnation notice is not equivalent to initiation of condemnation action. The statutory procedure allows the Town to produce the appraisal report simultaneously with the service of the condemnation notice, as long as the condemnation action is not started until after thirty (30) days from that date have elapsed. Similarly, the Town would have had thirty (30) days to negotiate with the Plaintiff prior to filing, with the Court, the condemnation notice with its certification of compliance with S.C. Code Ann. §28-2-70(A). The Plaintiff’s contention that the Town made a false statement is negated by the statutorily-prescribed form of procedure for condemnation actions.

Assuming, *arguendo*, that the Town failed to strictly comply with the procedural requirements of the Eminent Domain Procedure Act, it is respectfully submitted herein that such instance is insufficient to establish fraud, bad faith, or abuse of discretion. It is not a proper basis for a challenge action.

The Town also respectfully submits that the procedural rule is not jurisdictional. The Court, if it deems necessary, may order the Town to serve an amended notice to cure the defect (if any).

⁵ S.C. Code Ann. § 28-2-280(4) requires “a statement that the condemnor has complied with 28-2-70(A).”

iv. Description of the property interest that is sought to be condemned

The Plaintiff contends that the Town's condemnation notice and associated papers failed to describe the same property interest that was described in the appraisal, and that said condemnation notice and associated papers condemn a greater interest in real estate than was appraised.

As set forth in Mr. Ryan's Affidavit (See: Exhibit "A"), the actual map of the Plaintiff's property and the easement area is made an integral part of the Town's condemnation notice. Additionally, a copy of the map was provided to the appraiser and reproduced in the appraisal (See: Exhibit "C"). It is unclear why the Plaintiff suggests that the easement described in the appraisal is different from the easement sought by the Town. Without a showing that there are unexplained discrepancies or divergences, it is difficult to draw a conclusion that the Town committed fraud, bad faith, or abuse of discretion.

It is to be noted 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 beach renourishment. Even if the Court should decide that the easement area is greater than necessary, it is respectfully submitted that it still would not be tantamount to fraud, bad faith, or abuse of discretion on the part of the Town (or the Corps for that matter).

The Town is not unmindful of the fact that condemnation of property interests may cause injury to the owners. In this case, however, the fact that the property owners (including the Plaintiff herein) stand to benefit from the Town's undertaking is readily discernable. Beach renourishment serves as a defense against coastal storms and tidal surges. Additional beach areas are also expected to increase the value of coastal properties (including the Plaintiff's).

C. The Town's efforts to acquire the easements were done in good faith.

The determination that an acquisition is necessary to accomplish a project for a public purpose lies within the sound judgment and discretion of the entity exercising the power of eminent domain. In the case of Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 212 S.E.2d 743 (1961), the Supreme Court held as follows:

“The legislature may delegate the power of determining the necessity of exercising the power of eminent domain to public officers or boards or to private corporations vested with the power of eminent domain, and in the absence of any statutory provision submitting the matter to a court or jury the decision of the question of necessity lies with the body of individuals to whom the state has delegated the authority to take. Generally, a determination by the grantee of the power is conclusive and is not subject to judicial review, in the absence of fraud, bad faith, or clear abuse of discretion.”

In this case, the Town's determination that beach renourishment is a necessary public purpose undertaking is a legitimate exercise of the Town's discretion. The Town recognized that, like any other major infrastructure, restored beaches must be maintained to stay healthy. Even after the initial construction has been completed, tidal movements can and will cause sand to erode back into the sea over time. Storms accompanied by tidal surges create damaging conditions to the protective buffer, and sand can be displaced faster after a hurricane. To ensure that the Town's nourished beach continues to provide a strong buffer against coastal storms and hurricanes, periodic renourishments are needed. As set forth in Mr. Ryan's Affidavit (See: Exhibit “A”), the Town has reasonably determined that the beach renourishment project in conjunction with the Corps is a cost-effective strategy for a continuous commitment to address, prevent and/or mitigate shore erosion. It is economically expedient, to say the least.

The Town's beach renourishment plans will unquestionably serve the interests of the Town and benefit the residents (including the Plaintiff herein), not to mention tourists. The easements sought are necessary to achieve the purpose of the project which, as already stated, involves not just the initial construction but also the periodic renourishments to maintain the beach. As set forth also in Mr. Ryan's Affidavit (See: Exhibit "A"), partnering with the Corps is expected not only to accomplish the Town's end goals, but also to provide the Town with necessary federal matching funds. In this instance, it is clear the Town needs the easements sought and is entitled to condemn the property interest sought to be condemned herein.

It must be stressed, further, that an easement acquisition causes a lesser private injury as opposed to taking the land outright. The Town does not seek to acquire more property interest than is required by the Corps for the purpose of facilitating the beach renourishment process. There is no evidence that an equally practicable or less injurious measure exists, other than what the Town seeks to undertake.

Finally, it is submitted herein that the Town has the right to determine what public improvements it will undertake and to take property interests required for such improvements by eminent domain. The Town, in conjunction with the Corps, has made a reasoned determination of what property interests are necessary for the undertaking. Such decision is entitled to deference.

CONCLUSION

There is nothing to support the Plaintiff's claim of fraud, bad faith, or abuse of discretion on the part of the Town in the attempt to obtain easements for its beach renourishment plans. Even viewing all the allegations and inferences in the light most favorable to the Plaintiff, it is readily seen that the allegations in Plaintiff's motion for summary judgment are not established by the facts of the case.

There is a lack of basis to support the Plaintiff's summary judgment motion. Even in the event that the Plaintiff subsequently offers evidence, "[a]ll ambiguities, conclusions, and inferences arising in and from the evidence must be construed most strongly against the movant." Baugus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991). Where the facts are in dispute or where conflicting inferences may be drawn from the evidence, summary judgment must be denied.

For the reasons set forth above, it is respectfully requested that this Court deny Plaintiff's motion for summary judgment in its entirety.

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

s/N. David DuRant, Sr.

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

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: ddurant@lawofficesofdurant.com

Attorney for Defendant

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

s/Norwood D. DuRant, Jr.

Norwood D. DuRant, Jr. (SCB #101723)

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: norwooddurant@lawofficesofdurant.com

Attorney for Defendant

November 24, 2020

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 RYAN FABBRI**

I, RYAN FABBRI, BEING DULY SWORN, DEPOSE AND STATE AS FOLLOWS:

1. I am the Town Administrator for the Town of Pawleys Island, the sole party Defendant in the above-captioned case.

2. I execute this Affidavit in my capacity as Town Administrator, in support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment.

3. This Affidavit is provided, separately, to focus on and dispute allegations contained in sub-paragraph c of Plaintiff's Motion for Summary Judgment. Specifically, it is submitted herein that there was no fraud, bad faith, or abuse of discretion in the Town's attempt to obtain the easement sought to be acquired. Plaintiff's allegations in sub-paragraph c of its Motion for Summary Judgment are factually incorrect.

4. The Town began working with the United States Army Corps of Engineers (the "Corps") in 2000 to develop the Town's Hurricane and Storm Damage Reduction Project. Although it was supposed to be federally funded, the project never received Congressional approval as the years went by. In late 2015, the Town decided to move ahead with its own beach renourishment plan (the "Town Project") to rebuild the Town's shoreline that had been severely washed away in the course of time. Then, just a matter of weeks before signing the contract with the lowest bidder, Marinex Construction, the Town was notified that the Corps has obligated funds through a supplemental appropriation allocated for the Town's Coastal Storm Damage Reduction Project. This was excellent news, but the Town Project was ready to go with a Fall 2018 scheduled start date. Forgoing the Town Project and moving forward with the Corps opportunity would certainly delay the Town's beach renourishment plan for at least a year. After careful consideration, the Town believed the cost share benefit of the federal government was too attractive to pass up and the decision was made to abandon the Town Project to take advantage of the Corps opportunity, *i.e.*, a 50-year project with periodic renourishments taking place every 9 years following the initial undertaking. Thus, the beach renourishment plan evolved into a hybrid of the Corps design and the Town Project design, resulting into 2 separate project areas, to wit: Federal Project area; and, Betterment area. Easements were required by the federal government

from 113 oceanfront properties (including the Plaintiff's), located in the federal portion of the beach renourishment plan.

5. Mailing of the easement packages to the affected property owners (including the Plaintiff) began in late February 2019. The contents of the proposed easement grant documents were in accordance with what the Corps required. Although the Town was able to obtain easements from a majority of the oceanfront properties, some difficulties were encountered with a few property owners who had concerns about the easement agreements as originally drafted. Recognizing the importance of a renourished beach as the first line of defense against coastal storms and beach erosion, the Town negotiated in good faith with the owners and began discussions about accommodating certain language revisions, additions, deletions, and other modifications to the agreements.

6. In late July 2019, the Town felt that the Corps did not appreciate the urgency of and was not moving fast enough with the beach renourishment plan. The Town decided to have Marinex Construction move forward with the original Town Project, which would be funded through a \$4.9M grant from the State of South Carolina, \$6.1M from the Town's beach fund and \$1.2M loan. The initial plan was for at least 850,000 cubic yards of sand, but a subsequent revision gave rise to a larger undertaking, *i.e.*, 1,100,000 cubic yards of sand. The total project cost was fourteen million eight hundred eighty-three thousand two hundred thirty-seven (\$14,883,237.00) dollars.

7. Shortly after the Town Project was started, however, the Corps proposed a memorandum of understanding that would let the Corps finish the project through planting sea oats and installing sand fences, and allow the Town's beach renourishment project to become a federal project (the "Partnership Project") once it is completed. In such instance, the Town would be eligible for PL 84-99 post storm rehabilitation and future periodic renourishments as follows:

- a. The total construction costs for future periodic renourishments are projected to be one hundred twenty-nine million five hundred twenty-two thousand five hundred thirty-three (129,522,533.00) dollars. The costs will be allocated based on a 50-50 split, so the Corps' share of such costs is projected to be sixty-four million seven hundred sixty-one thousand two hundred sixty-seven (\$64,761,267.00) dollars and the Town's share of such costs is projected to be the same, *i.e.*, sixty-four million seven hundred sixty-one thousand two hundred sixty-seven (\$64,761,267.00) dollars.
- b. The Corps is responsible for 100% of the costs to repair beach damage resulting from a significant storm, irrespective of a federal declaration. Furthermore, the Corps will share half of the cost of future periodic renourishments to take place over the course of the 50-year Partnership Project, and give the Town credit for the initial work performed when it calculates its cost-sharing match for the next renourishment.

8. As a condition precedent for the Partnership Project, the Corps requires easements from the previously identified 113 oceanfront properties in the project area to allow for construction, repair and maintenance of the beach.

9. The Town recognizes that beach renourishment is a costly endeavor and has reasonably determined that the Partnership Project is an economically expedient and practicable undertaking that will serve the best interests of the Town. Under the Partnership Project, the Town is assured that its beach-building efforts to the tune of fourteen million eight hundred eighty-three thousand two hundred thirty-seven (\$14,883,237.00) dollars are federally protected, because the Corps will replace any lost sand if the Town is hit by a major hurricane and the beach is destroyed. The Partnership Project is necessary to achieve a continuous strategy that would address, prevent and/or mitigate shore erosion.

10. The Town resumed its efforts to obtain easement agreements and was successful in acquiring easements for only 110 out of 113 oceanfront properties. Any further efforts to negotiate with the 3 holdouts (including the Plaintiff), including a few adjustments to the proposed easement grant documents, were unsuccessful. Recognizing that the delay in providing the Corps with the necessary easements would not only increase the cost of or potentially frustrate or shelve the Partnership Project, but also result in substantial harm to the public health, safety and welfare, the Town resolved to authorize the exercise of its power of eminent domain to acquire the easements.

11. The “instances” that Plaintiff listed in sub-paragraph c of Plaintiff’s Motion for Summary Judgment in support of Plaintiff’s allegations of fraud, bad faith, and abuse of discretion, are factually incorrect. Thus:

i. Descriptions of the wording and meaning of the requested easements

In its Motion for Summary Judgment, the Plaintiff states that the Town Council authorized the Town only to “basically simply an easement to put sand on the beach”. In the Affidavit from counsel for Plaintiff, which was submitted separately, it is stated that the easement was to “place additional sand on the beach and to allow access for the personnel, machinery and other equipment necessary to do so.” See: Paragraph 18 of the Affidavit from Counsel for Plaintiff. In the same Affidavit, it is stated, as well, that “[Town Administrator] Ryan Fabbri explained in writing in March 2019 that ‘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. See: Paragraph 21 of the Affidavit from Counsel for Plaintiff.

Although the beach renourishment process is frequently described as “placing additional sand on the beach”, it is logical to assume that necessary and incidental activities are involved. The Plaintiff in this case felt that the proposed easement grant document contained words and meanings that the Plaintiff perceived to be material terms not previously disclosed by the Town. However, it is important to note that the general purpose of the easement sought (*i.e.*, activities related to construction and maintenance) was disclosed and brought to the attention of the public through project updates circulated

by the Town. There was no concealment of what the Town needed the easements for. The Plaintiff's expectation that the prior disclosures from the Town actors should have been as exhaustive as the language used in the proposed easement grant document is impractical, if not unreasonable.

The Town disagrees with Plaintiff's suggestion that the Town committed fraudulent acts and/or abused its discretion and/or acted in bad faith by failing to priorly mention all of the "material terms" in the proposed easement grant documents. The general purpose of the easement was publicized before the Town sent out the proposed easement grant document. The nature and scope of the easement, on the other hand, was expressed in the proposed easement grant document. While the prior representations of the Town did not meet the Plaintiff's expectations, in that certain things were "not mentioned", the proposed easement grant document definitely was clear and exhaustive. The fact that the proposed grant was reduced into writing clearly shows the Town did not conceal any material information from the Plaintiff. It is quite a stretch to conclude that the Town committed fraudulent acts and/or abused its discretion and/or acted in bad faith just because the Town's prior representations were not as exhaustive as the Plaintiff wanted them to be.

ii. False implications or statements by Town actors that the owners had refused any easements at all

The Plaintiff would have the Court believe that the Town Council resolved to authorize the exercise eminent domain to acquire the easements in question "without the benefit of necessary facts, with other facts falsely presented to it, and under the guide of erroneous legal assumptions." The Plaintiff directs the attention of the Court to a Town Council meeting held on May 18, 2020 which The Plaintiff claims was the "sole meeting at which the Town Council considered and deliberated upon whether to condemn the three easements in question." Worse, the Plaintiff suggests that the Town Council could have had all the necessary facts if the May 18, 2020 meeting was accompanied by "illegally secretive activities" and "was completely fraudulent and a sham for purposes of a public showing."

The allegations set forth by the Plaintiff are absurdly speculative and malicious. There is absolutely no evidence to support Plaintiff's claim of incompetence, much less wrongdoing, on the part of the Town Council. As lengthily discussed above, the Town's formative beach renourishment plans started as early as the year 2000. The strategies changed as events developed and, accordingly, the plans evolved as the designs, qualifications, timetables, and costs and benefits were studied and analyzed. The objective, however, remained the same, that is, beach renourishment.

The Town Council has always recognized that the Partnership Project is a long-term beach management program and that oceanfront easements are required to allow access to the project area for construction and maintenance activities. If the Town intends to facilitate and remove obstacles to project implementation, the Corps needs safe and suitable access to the site. Without the easements, the Corps will not be able to rebuild and maintain the shoreline, as needed.

It appears the Plaintiff felt, *albeit* wrongly, unappreciated for the efforts, on Plaintiff's part, to accommodate the Town. The Plaintiff questions why the Town Council indicated, at the May 18, 2020 meeting, that they "could not understand why the Plaintiff wouldn't sign an easement." The Plaintiff also questions why it was never mentioned, at the same meeting, that "the Plaintiff had actually signed and tendered an easement, but had serious concern and disagreement only with the terms and scope of the Town's proposed easement grant document." In this regard, the Plaintiff argues that the "clear and only implication is that the Town Council believed the Plaintiff had refused to grant any renourishment easement at all." This, of course, is another speculative statement as none of the Town Council members has ever said that.

Assuming for the sake of argument, that the Town Council did not know about Plaintiff's efforts to grant an easement to the Town, it is unclear how this instance would rise to the level of fraud, or bad faith, or abuse of discretion. The Plaintiff was never accused of failing to cooperate with the Town or refusing, flat out, to grant a renourishment easement. The only reason that the Town resolved to authorize the exercise of eminent domain is the fact that the Town and the Plaintiff failed to agree on an easement grant document that complies with the terms required by the Corps.

iii. Concealment and omission by Town actors of issues some owners had raised concerning the wording and scope of the proposed easements

Based only upon the May 18, 2020 meeting, the Plaintiff further speculates that not all of the members of the Town Council were informed of the concerns that the property owners (including the Plaintiff herein) raised regarding the wording and scope of the proposed easements. Just because the Town Council stated they "couldn't understand why the property owners who had not signed the proposed easement grant documents would not sign", does not mean that the Town Council did not know about their concerns, or that some Town actors concealed the owners' concerns from the other Town actors. It is easy to speculate on what the Town Council knew or did not know, but their state of mind is not something that anybody can prove by simply viewing a video or reading the minutes of a Town Council meeting. Just as the Plaintiff believes it is possible that some Town Council members were not informed of the owners' concerns, it is also quite possible that all of the Town Council members knew about, but disagreed with, the owners' concerns. This latter possibility could very well be the reason that they said "they could not understand why the owners would not sign the proposed easement grant documents."

And, again, assuming for the sake of argument that the Town Council was not aware of the Plaintiff's concerns prior to resolving to authorize condemnation of the easement sought from the Plaintiff, such lack of awareness does not rise to the level of fraud, bad faith, or abuse of discretion. The fact of the matter remains that no agreement was reached that would comply with the terms of the Corps.

To be sure, the Plaintiff also harps on the failed negotiations between the Town and another landowner, Frank Beattie. The Plaintiff alleges that Mr. Beattie had signed a revised easement grant document but the Town tricked him into signing another signature

page and subsequently filed a document Mr. Beattie he did not authorize in the title records for Georgetown County. The Plaintiff's description of what transpired is, of course, his own conclusion not necessarily reflective of what actually happened.

It is herein acknowledged that the Mr. Beattie hand-delivered a signed easement to my office. I reviewed it to confirm it contained all the required signatures and noticed that it was only signed by one (1) witness. I asked Mr. Beattie if he would mind signing another copy while he was present in my office to make sure his signed easement was witnessed by two (2) people. Mr. Beattie agreed and I pulled up the easement on my computer and printed a new clean copy for him to sign. He signed the easement that I printed from my computer and I signed it as a witness. The Town Clerk notarized and signed it as well. If Mr. Beattie made revisions to his easement I would not have known because he never shared it with me. I did not look at any other page other than the signature page to make sure it was properly witnessed. When Mr. Beattie agreed to sign a new copy, I printed it from my computer, and it was the original and only version of the easement I had ever seen. It is unclear as to why Mr. Beattie (or the Plaintiff herein for that matter) assumed the copy that I printed from my computer would be the version containing Mr. Beattie's revisions (if any). Mr. Beattie did not leave the easement he brought into my office, so I am unable to ascertain what it contained. All he left was a small plat he asked me to include with the easement when it was recorded, and I did just that. In any event, the Plaintiff does acknowledge that the recording of the easement was eventually cancelled by the Town. Had the Town acted in bad faith, the Town would have insisted on the enforceability of the recorded easement.

The Plaintiff's allegations of fraud, bad faith, and abuse of discretion on the part of the Town are not supported by any evidence. At best, the events that transpired during the course of the Town's attempts to obtain easements, as laid out in Plaintiff's summary judgment motion, are suggestive of misunderstandings in negotiations. It is apparent that all parties did their best to accommodate requested clarifications of and adjustments to the proposed easement grant documents but, regrettably, failed to reach an agreement.

iv. Legal error or misinformation that the easements proposed to property owners allowed no more than placing sand on the beach and did not affect the property rights of the owners in any way

The Plaintiff contends that the Town misrepresented the nature and scope of the easements sought to be acquired for the renourishment project. As already heretofore stated, the general purpose of the easement was sufficiently publicized and the terms of the easement were set forth in the proposed easement grant documents. The Town did not represent that the easement was for placement of additional sand only, even as the term "beach renourishment" is generally known and described as "placement of additional sand." The Town expressly stated that the easement was 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." Such purpose, of course, can be achieved by making sure that the nature and scope of the easements is set forth adequately in the proposed easement grant documents.

The circumstance that the Plaintiff disagrees with the language of the proposed documents or maintains a different interpretation of the wording and scope of the easement in question is not equivalent to misrepresentation on the part of the Town. As discussed previously, the terms of the easement were in accordance with the requirements by the Corps and the general purpose of the construction and maintenance. Even as the Plaintiff insists that the scope of the easement is greater than necessary, there is no evidence to support that the Town misled the Plaintiff into accepting terms that Plaintiff was not comfortable with. The fact that the Town and the Plaintiff communicated several times and attempted to make some adjustments to the proposed easement grant document, *albeit* unsuccessful, is indicative of good faith.

To be sure, the terms of the easement are expressed in a way that would provide the Corps with a safe and suitable access to the area, and to facilitate and remove obstacles to periodic renourishments over the 50-year period envisioned by the Partnership Project. The beach renourishment process is not intended to be a single event. Even when the initial construction is completed, the Corps would still need access to the area for purposes of repair and maintenance, as need arises. This does not mean, however, that the Corps will be at Plaintiff's property 24/7/365 as the Plaintiff wants the Court to believe.

v. Copy of the appraisal in compliance with statutory procedure

The Town Attorney provided Plaintiff with a copy of the appraisal prior to initiating a condemnation action. The Plaintiff contends that the appraisal should have been exchanged before a condemnation notice was served. Upon advice of counsel, I have been informed that the Eminent Domain Procedure Act requires that a copy of the appraisal be provided to the property owner prior to initiating a condemnation action, not prior to service of a condemnation notice.

Assuming for the sake of argument that Plaintiff was not timely provided with a copy of the appraisal, it is quite a stretch to conclude that such instance proves deliberate concealment and bad faith on the part of the Town. Furthermore, there is no indication that the Plaintiff was prejudiced at all.

vi. Attempt to condemn interests of different and greater scope than the interests which are the subject of the appraisals

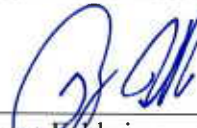
The Plaintiff contends that the appraisal of the easement area in question did not include any wording of the easement that was previously sought. The Plaintiff omits to mention that actual map of the property and the easement area was provided to the appraiser and reproduced in the appraisal. It is unclear why the Plaintiff suggests that the easement described in the appraisal is different from the easement sought by the Town. Without a showing that there are unexplained discrepancies or divergences, it is difficult to draw a conclusion that the Town committed fraud, bad faith, or abuse of discretion.

vii. Attempt to condemn interests of different and greater scope than the interests which the Town Council publicly authorized condemnation.

At the risk of being repetitive, the easement sought and the proposed easement grant document are a requirement by the Corps. 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 sufficiency thereof. 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.

Contrary to Plaintiff's allegations, the Town is not unmindful of the fact that condemnation of property interests may cause injury to the owners. In this case, however, the fact that the property owners (including the Plaintiff herein) stand to benefit from the Town's undertaking is readily discernable. Beach renourishment serves as a defense against coastal storms and tidal surges, providing safety for nearby property when hurricanes hit. Additional beach areas are also expected to increase the value of coastal properties (including the Plaintiff's).

12. Based on all the foregoing, it is respectfully submitted herein that the Plaintiff's allegations are factually incorrect and, therefore, do not establish fraud, bad faith, and abuse of discretion on the part of the Town.


 Ryan Fabbri
 Town Administrator – Pawleys Island
 (Curriculum Vitae attached)

SWORN TO BEFORE ME this 30th
 day of October, 2020


 Notary Public of South Carolina
 My Commission Expires: 1/24/21

RESOLUTION NO.: 2020-06
 TOWN OF PAWLEYS ISLAND
 PAWLEYS ISLAND SOUTH CAROLINA
 May 18, 2020

Authorizing Condemnation for easement acquisition for Beach Renourishment Project

WHEREAS, the Town of Pawleys Island is in the process of a Beach Renourishment Project ("Project") in conjunction with the Army Corps of Engineers the purpose of which is the improvement, repair and/or reconstruction of rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach;

WHEREAS, the Town of Pawleys Island has identified all property interests that must be obtained for the Project, and the acquisition of easements from the property owners are necessary to allow the Project to proceed;

WHEREAS, the Town of Pawleys Island has made numerous attempts to negotiate for acquisition of the easements for the Project but, despite utmost efforts, was unable to reach an agreement with respect to the properties described below ("Properties");

WHEREAS, the Project cannot proceed until the Town provides the Army Corps of Engineers easements on the Properties, and the failure to provide the necessary easements would delay, increase the cost of, and potentially frustrate or shelve the Project;

WHEREAS, the potential delay and increase in cost and/or the shelving of the Project is a matter of urgency and importance, and would result in substantial harm to the public health, safety, and welfare; and,

WHEREAS, the Town of Pawleys Island is empowered to acquire the necessary easements for public purpose through the exercise of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and S.C. Code Ann. § 28-2-10 *et seq.*;

NOW, THEREFORE, BE IT RESOLVED, by the Town Council this 18th day of May 2020, that it has determined that for the public purpose of the Beach Renourishment Project, it is necessary to acquire an easement on a portion of the properties described below and shown on Exhibit "A" attached hereto and incorporated herein by reference. The Town Administrator is authorized to offer the appraised value of the easement areas to each of the landowners in exchange for a conveyance of the referenced property interests. If the landowner does not accept within thirty (30) days of the offer or, if the landowner rejects the offer, the Town Attorney is authorized to commence an action for acquisition of the easements by eminent domain.

| Owner(s) | TM# and Location | Property Description |
|--|---|--|
| Earle G. Prevost
Marshall L. Bessinger
M. Donovan Bessinger
Don Bessinger | # 42-0176-013-00
718 Springs Avenue | ALL that piece, parcel or lot of land on Pawley's Island, in the County of Georgetown, State of South Carolina, designated on a plat made by George S. Ward, Engineer, dated May, 1950, and recorded in said County in Plat Book G at Page 83, as the Northeastern 22 feet of Lot 205 and all of Lot 204, said lots measuring and continuing in width on the beach of the Atlantic Ocean for a distance of 82 feet and on the rear line, to wit, Salt Creek, for a width of 82 feet, and extending back in depth on each side line approximately 130 feet; more or less, butting and bounding as follows: To the northeast the remaining portion of Lot 203 of said subdivision having a width of 22 feet; to the southeast on the Atlantic Ocean; to the southwest on the remaining portion of Lot 205; and to the northwest by Salt Creek. |
| Sunset Lodge, LLC | # 42-0176-027-00-00
746 Springs Avenue | All that certain piece, parcel or lot of land situate, lying and being on the Southern End of Pawley's Island, designated as Lot No. 306 on a plat made by George S. Ward, Engineer, dated January 1954, recorded in the Office of the Register of Deeds for Georgetown County in Plat Book J, Page 15, and on a Plat made by Samuel M. Harper, dated 15 January 1955, recorded in Plat Book J at Page 72; and shown on plat made by J. Luckey Sanders, RLS, dated July 21, 1998 and recorded in Plat Book 17 at Page 332 and having such metes and bounds as shown on said plat. This description in lieu of metes and bounds as permitted under Section 30-5-200 of the 1976 Code of Laws of South Carolina. |
| Frank Beattie | # 42-0176-028-00-00
748 Springs Avenue | All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in |

| | | |
|---------------|---|---|
| | | the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats. |
| Barry Stanton | # 42-0176-032-00-00
756 Springs Avenue | ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley's Island, State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S. Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat; to the East by the high water mark of the Atlantic Ocean; to the South on Lot #311, as shown on said plat; and to the West on the high water mark of said creek as shown on said plat. Saving and excepting on the West side a twenty-five (25') foot width for street and utility lines. |

MOVED, APPROVED, AND ADOPTED ON THIS 18th DAY OF MAY 2020, AS FOLLOWS:

Those in favor: Brian Henry, Ashley Carter, Cherry Green, Rocky Holliday & Sarah Zimmerman

Those opposed: None

APPROVED:


BRIAN HENRY, MAYOR

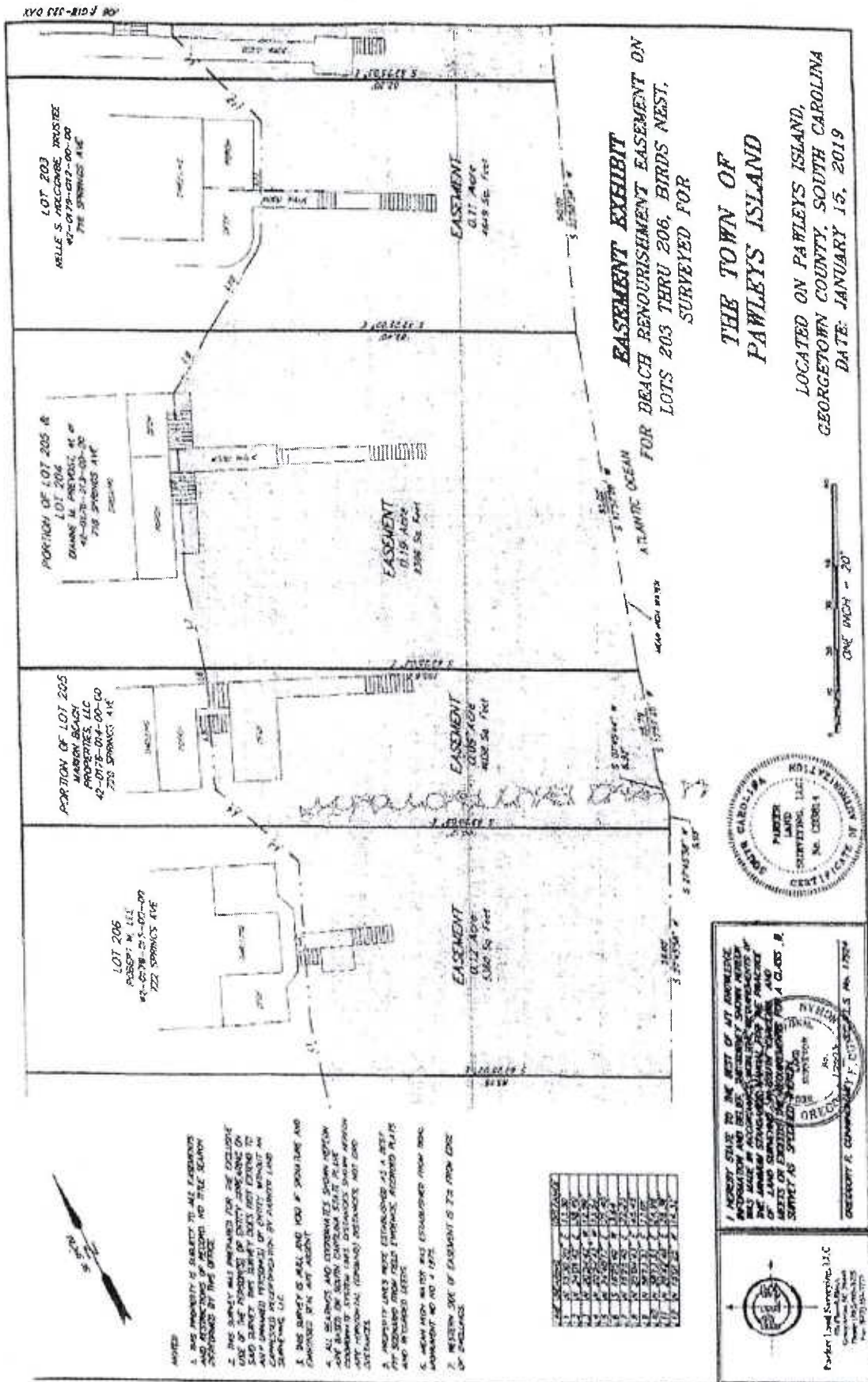
DATE: 5/29/20

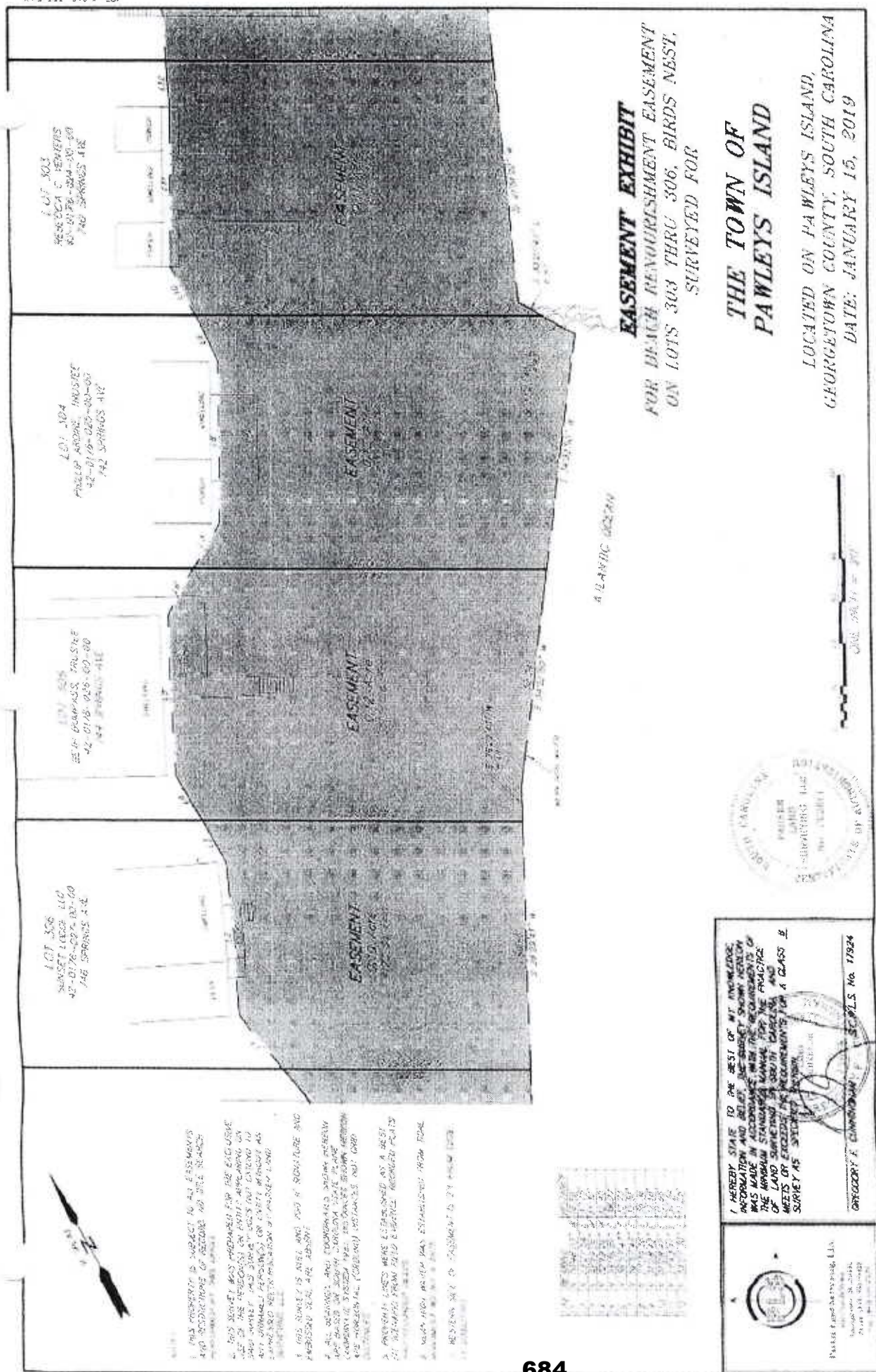
ATTEST:

Diane Allen
DIANE ALLEN, TOWN CLERK

DATE: 5/18/20

**Exhibit “A”
(Easement Areas)**







RESOLUTION NO. 2020-07
TOWN OF PAWLEYS ISLAND
PAWLEYS ISLAND SOUTH CAROLINA
October 12, 2020

Addendum to Resolution 2020-06 Authorizing Condemnation for easement acquisition for Beach Renourishment Project

WHEREAS, on May 18, 2020, the Town of Pawleys Island passed Resolution No. 2020-06 ("Resolution"), identifying four property easements necessary for the Town's Beach Renourishment Project in conjunction with the Army Corps of Engineers;

WHEREAS, the Resolution authorized the Town Attorney to commence condemnation actions for acquisition of the easements if the property owners do not accept an offer of the appraised value of the easement areas within thirty days from the offer, or if the landowners reject the offer;

WHEREAS, the Town of Pawleys Island had successfully negotiated and acquired one out of four property easements since then;

WHEREAS, the Town Attorney has served each of the property owners of the three remaining easements that have not been acquired with a Condemnation Notice and Tender of Payment;

NOW, THEREFORE, BE IT RESOLVED, by the Town Council this 12th day of October 2020, that upon acquisition of the property easement, either by eminent domain or by easement agreement, the title to the property shall remain with the property owner, and that the terms of the use of the easement shall be pursuant to and as set forth in the Beach Renourishment Easement agreement that the Town had previously proposed to the property owner. A copy of the Beach Renourishment Easement agreement sent to each of the three property owners is hereto attached as Exhibit "A" (Sunset Lodge, LLC), Exhibit "B" (The Franklin D. Beattie Preservation Trust); and, Exhibit "C" (M. Baron Stanton).

MOVED, APPROVED, AND ADOPTED ON THIS 12TH DAY OF OCTOBER 2020, AS FOLLOWS:

Those in favor: BRIAN HENRY, SARAH ZINNERMAN, ROCKY HOLLIDAY, GUEY GREEN

Those opposed: NONE

APPROVED:

BRIAN HENRY, MAYOR

DATE: 10-13-2020

ATTEST:

RYAN ABBRI, ADMINISTRATOR

DATE: 10-13-2020

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

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

Sunset Lodge, LLC

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

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

Lot 306 (Easement Exhibit) recorded Data, referenced and shown as 0.10 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-027.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

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

incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use¹ and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

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

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary

¹ "Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Sunset Lodge, LLC

By: _____
Its Authorized Agent

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

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

WITNESS my hand and official seal this ____ day of _____, 20 ____.

Notary
Printed Name: _____

My Commission Expires: _____

THE TOWN OF PAWLEYS ISLAND

By: _____

of Pawleys Island

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

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

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

A F F I D A V I T

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

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 746 Springs Avenue, **Pawleys Island, SC 29585**, bearing Georgetown County Tax Map Number **42-176-027.00,00**.
3. Check one of the following: The Deed is
 - (a) _____ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) _____ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The Deed recording fee is composed as follows:

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

SWORN to before me this _____

day of _____, 20____.

(Notary Public)

My commission expires _____

Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.

Print or Type Name Here



EXHIBIT “B”

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

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

The Franklin D. Beattie Preservation Trust

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

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

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

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

any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use¹ and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

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

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described

¹ "Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

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

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

The Franklin D. Beatties Preservation Trust

By: _____
Its Authorized Agent

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

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

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

Notary
Printed Name:

My Commission Expires: _____

THE TOWN OF PAWLEYS ISLAND

By: _____
_____ of Pawleys Island

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

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

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

AFFIDAVIT

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

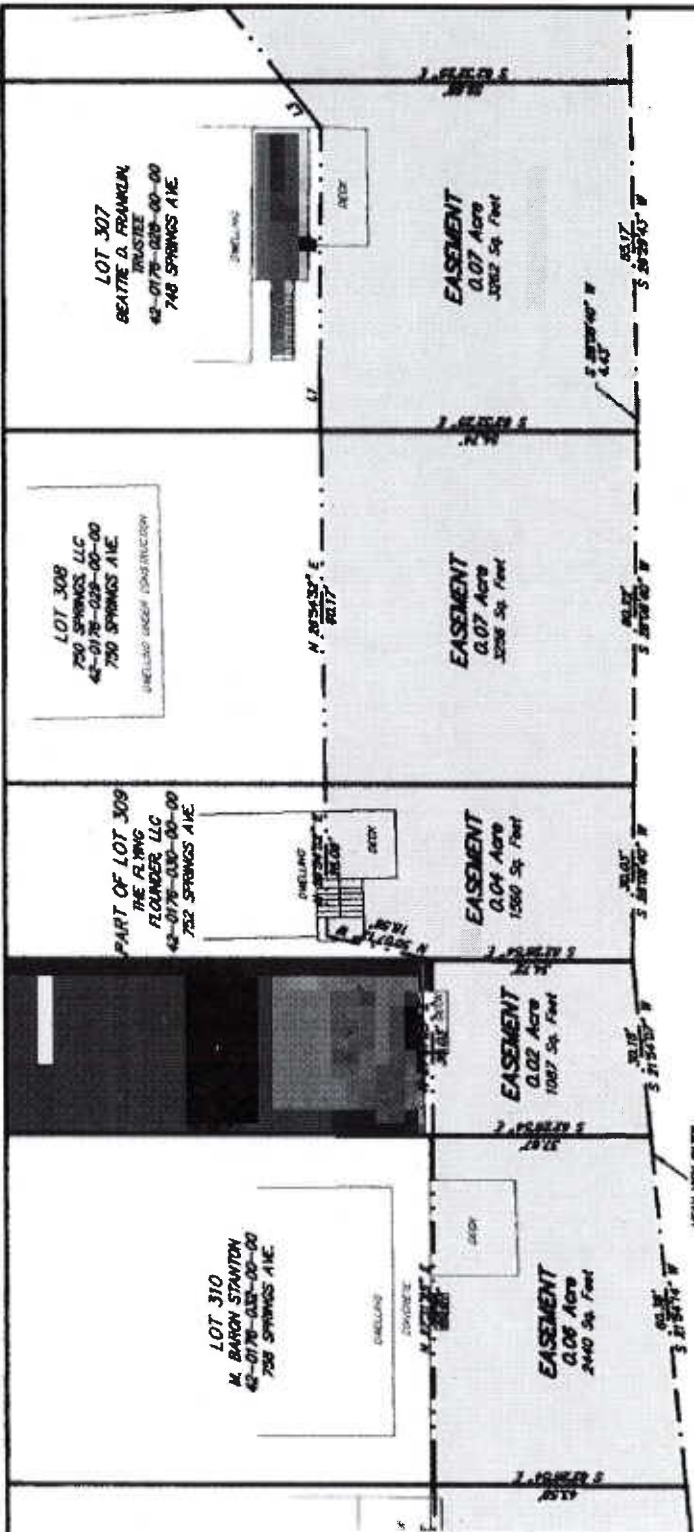
1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 748 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-028.00.00.
3. Check one of the following: The Deed is
 - (a) _____ Subject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

SWORN to before me this _____
day of _____, 20____.

(Notary Public)
My commission expires _____

Responsible Person Connected with Transaction

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



ATLANTIC OCEAN

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---|---|---|---|---|---|---|---|---|-----|

- NOTES:
1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. NO TITLE SEARCH PERFORMED BY THIS OFFICE.
 2. THIS SURVEY WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSONS OR ENTITY APPOINTED BY THE COURT IN THE MATTER OF THE ESTATE OF MARY ANN (UNNAMED PERSONS) OR ENTITY BEQUEST AN EXPRESS REDEVELOPMENT BY PARKER LAND SURVEYING, LLC.
 3. THIS SURVEY IS MADE AND MADE F. SURVEYING AND ENGINEERING, LLC.
 4. ALL BEARINGS AND COORDINATES SHOWN HEREON ARE BASED ON THE SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM 1983. DISTANCES SHOWN HEREON ARE HORIZONTAL (DIAGONAL) DISTANCES. NOT GRID DISTANCES.
 5. PROPERTY LINES WERE ESTABLISHED AS A BEST FIT SKETCHED FROM FIELD EVIDENCE, INCREASING PLATS AND RECORDS DEEDS.
 6. MEAN HIGH WATER WAS ESTABLISHED FROM NOAA MONUMENT NO. 4783.
 7. WESTERN SIDE OF EASEMENT IS 2' FROM EDGE OF FENCELINE.

EASEMENT EXHIBIT
FOR BEACH RENOURISHMENT EASEMENT
ON LOTS 307 THRU 310, BIRDS NEST,
SURVEYED FOR

**THE TOWN OF
PAWLEYS ISLAND**

LOCATED ON PAWLEYS ISLAND,
GEORGETOWN COUNTY, SOUTH CAROLINA
DATE: JANUARY 15, 2019
REVISED MAY 6, 2019

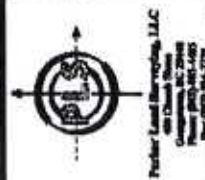
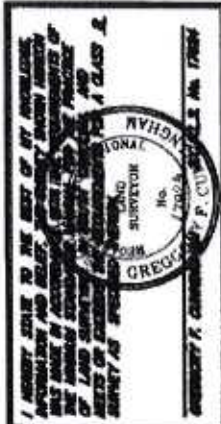


EXHIBIT “C”

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

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

M. Baron Stanton

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

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

Lot 310 (Easement Exhibit) recorded Data, referenced and shown as 0.06 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-032.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easement is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish

any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies, to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use¹ and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the Town of Pawleys Island and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired, subject however to existing easements for

¹ "Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

public roads and highways, public utilities, railroads and pipelines.

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

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

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

M. Baron Stanton

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed M. Baron

Stanton personally appeared before me this _____ day of _____, 20____ and
acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this ____ day of _____, 20____.

Notary

Printed Name:

My Commission Expires:

THE TOWN OF PAWLEYS ISLAND

By: _____
_____ of Pawleys Island

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

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

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

AFFIDAVIT

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

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 756 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-032.00.00.
3. Check one of the following: The Deed is
 - (a) _____ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) _____ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The Deed recording fee is composed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____
 - (b) Place the amount listed in item 5 above here: \$ _____
 - (c) Subtract item 6(a) from item 6(b) and place result here: \$ _____
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this _____

day of _____, 20____

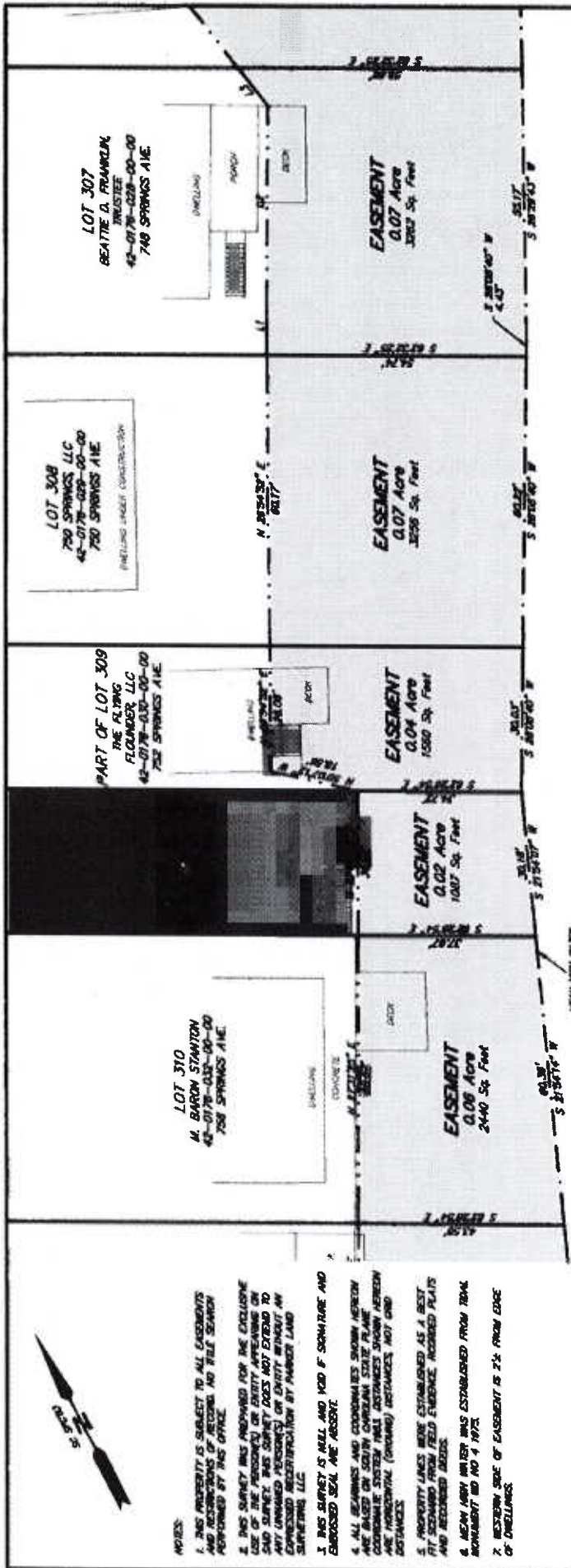
(Notary Public)

My commission expires _____

Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.

Print or Type Name Here



- NOTES:**
1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD, NO FIELD SEARCH PERFORMED BY THIS OFFICE.
 2. THIS SURVEY WAS PREPARED FOR THE EXCLUSIVE USE OF THE CITY OF PAWLEYS ISLAND, SOUTH CAROLINA. THIS SURVEY DOES NOT EXTEND TO ANY UNLAWFUL PERSONS OR ENTITY WITHOUT AN EXPRESSED RECOGNITION BY PARKER LAND SURVEYING, LLC.
 3. THIS SURVEY IS WELL AND KIND OF SURVEY AND EMBOSSED SEAL ARE ACCURATE.
 4. ALL BEARINGS AND COORDINATES SHOWN HEREON ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM. ALL DISTANCES SHOWN HEREON ARE HORIZONTAL (DIAGONAL) DISTANCES, NOT END DISTANCES.
 5. PROPERTY LINES WERE ESTABLISHED AS A BEST FIT STANDARD FROM FIELD EVIDENCE, INCREASING PLATS AND INCREASING DEEDS.
 6. MEAN HIGH WATER WAS ESTABLISHED FROM TIDEAL MONUMENT NO. 4 IN 1971.
 7. WESTERN SIDE OF EASEMENT IS 2' FROM EDGE OF DOWELLING.

| DATE | TIME | TEMP. | WIND | SEA | WAVE | SWELL | WIND | SEA | WAVE | SWELL |
|----------|----------|-------|------|------|------|-------|------|------|------|-------|
| 11/15/19 | 11:10 AM | 68°F | SE | 1-2' | 1-2' | 1-2' | SE | 1-2' | 1-2' | 1-2' |
| 11/15/19 | 11:10 AM | 68°F | SE | 1-2' | 1-2' | 1-2' | SE | 1-2' | 1-2' | 1-2' |
| 11/15/19 | 11:10 AM | 68°F | SE | 1-2' | 1-2' | 1-2' | SE | 1-2' | 1-2' | 1-2' |

EASEMENT EXHIBIT
FOR BEACH RENOURISHMENT EASEMENT
ON LOTS 307 THRU 310, BIRDS NEST,
SURVEYED FOR

**THE TOWN OF
PAWLEYS ISLAND**
LOCATED ON PAWLEYS ISLAND,
GEORGETOWN COUNTY, SOUTH CAROLINA
DATE: JANUARY 15, 2019
REVISED MAY 6, 2019

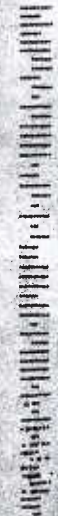


I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE SURVEY AND MAPS HEREON WERE MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF SOUTH CAROLINA. I HAVE NOT BEEN CONVICTED OF ANY CRIME INVOLVING FRAUD OR PERJURY. I HAVE NOT BEEN DECEASED, DECLARED INSANE, OR OTHERWISE INCAPACITATED. I HAVE NOT BEEN EXCLUDED FROM THE PRACTICE OF SURVEYING BY ANY COURT OF LAW OR ANY BOARD OF SURVEYING. I HAVE NOT BEEN EXCLUDED FROM THE PRACTICE OF SURVEYING BY ANY BOARD OF SURVEYING. I HAVE NOT BEEN EXCLUDED FROM THE PRACTICE OF SURVEYING BY ANY BOARD OF SURVEYING.

PARKER LAND SURVEYING, LLC
1000 Highway 17 North
Georgetown, SC 29144
Phone: (803) 541-1400
Fax: (803) 541-7779



7019 1640 0000 8629 9967



RECEIVED
06/11/2020
10:00 AM

LAW OFFICES OF N. DAVID DURANT
AND ASSOCIATES, P.A.
Post Office Box 14722
Surfside Beach, South Carolina 29587

TO:

Sunset Lodge, LLC
746 Springs Avenue
Pawleys Island, SC 29585

NIXIE 274 CE 1728 0206/23/20

RETURN TO SENDER
NO MAIL RECEIPT
UNABLE TO FORWARD

ELSON BROWN, L.L.C. - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200600

JAYROE APPRAISAL COMPANY

**APPRAISAL OF THE TAKING
AND DAMAGES / BENEFITS TO THE REMAINDER
OF AN EASEMENT ACQUISITION FROM PROPERTY LOCATED AT
746 SPRINGS AVENUE
PAWLEYS ISLAND, GEORGETOWN COUNTY, SC**

FOR

RYAN FABBRI, TOWN ADMINISTRATOR
TOWN OF PAWLEYS ISLAND
321 MYRTLE AVENUE
PAWLEYS ISLAND, SC 29585

DATE OF VALUATION: JUNE 3, 2020

PREPARED BY

JAYROE APPRAISAL COMPANY

J. BRIAN DONOVAN
STATE CERTIFIED GENERAL REAL ESTATE APPRAISER
CERTIFICATION NOS. CG 3798 (SC), A 6432 (NC)

JAYROE APPRAISAL COMPANY
REAL ESTATE APPRAISERS AND CONSULTANTS

PHONE: (843) 497-7158
 EMAIL: jbdonovan@sc.rr.com

1601 N. OAK STREET, SUITE 107
 MYRTLE BEACH, SOUTH CAROLINA 29577

June 8, 2020

Ryan Fabbri, Town Administrator
 Town of Pawleys Island
 321 Myrtle Avenue
 Pawleys Island, SC 29585

Mr. Fabbri:

At your request, I have made an appraisal investigation of an easement acquisition from real property located 746 Springs Avenue, Pawleys Island, Georgetown County, South Carolina. This property is more particularly described by a legal and complete narrative description within the text of the following report.

The purpose of this appraisal was to estimate the market value in fee simple of the easement rights to be acquired, as well as damages and/or benefits to the remainder, after the easement acquisition by the Town of Pawleys Island, effective June 3, 2020. Market value, fee simple interest and other appraisal terms are defined within the text of the following appraisal report. The value estimate is based upon no adverse effects upon the subject property from any environmental cause.

The opinion of value is made, in part, based on the appraiser's interpretation of the easement surveys prepared by Parker Land Surveyors as well as the easement rights as described by Town officials. If any interpretations regarding the analysis of the easement acquisition and remainder are in error, I reserve the right to amend this report as needed.

As a result of my investigation into those matters which affect market value, and by virtue of my experience and training, I have estimated the market value of the fee simple interest in the subject property, effective June 3, 2020, to be as shown in the table below. The concluded value is as vacant and include value before the easement acquisition, value of the easement rights acquired, damages and benefits to the remainder.

| | | |
|---|----|----------|
| Before Value | \$ | 900,000 |
| Value of Easement | \$ | 46,722 |
| Damages to Remainder | \$ | - |
| Benefits to Remainder | \$ | (90,000) |
| Value of Taking &
Damages / Benefits | \$ | (43,278) |

Page II
June 8, 2020

TOWN OF PAWLEYS ISLAND

This report was intended to conform with the Uniform Standards of Professional Appraisal Practice (USPAP). Furthermore, this appraisal is intended to meet the standards set forth in 12 CFR 34.44, as amended. This appraisal also conforms with the competency provision set forth in the USPAP Guidelines.

This letter of transmittal precedes the full narrative report which follows, further describing the property and containing the reasoning and most pertinent data leading to the final value estimate. Your attention is directed to the "General Assumptions," "General Limiting Conditions" and "Certificate of Appraisal" which are considered usual for this type of assignment and are included within the text of this report.

Respectfully submitted,

JAYROE APPRAISAL COMPANY



J. Brian Donovan

State Certified General Real Estate Appraiser

Certification Numbers: CG 3798 (SC)
A 6432 (NC)

JBD/
20038

JAYROE APPRAISAL COMPANY

TABLE OF CONTENTS

| | |
|---|----|
| SUMMARY OF APPRAISAL | 1 |
| DEFINITION OF APPRAISAL TERMS | 7 |
| SCOPE OF WORK | 9 |
| SUBJECT PROPERTY DATA | 11 |
| REGIONAL AREA / NEIGHBORHOOD ANALYSIS | 13 |
| SITE DESCRIPTION | 25 |
| HIGHEST AND BEST USE ANALYSIS | 27 |
| APPRAISAL PROCESS | 30 |
| SALES COMPARISON APPROACH | 31 |
| VALUATION AFTER EASEMENT ACQUISITION | 44 |
| CERTIFICATE OF APPRAISAL | 51 |
| QUALIFICATIONS OF THE APPRAISERS | 53 |
| GENERAL ASSUMPTIONS | 55 |
| GENERAL LIMITING CONDITIONS | 56 |
| ADDENDA | 58 |

JAYROE APPRAISAL COMPANY

SUMMARY OF APPRAISAL

| | | | | | |
|---------------------------------------|---|----------|-------------------|---------------|-------------------|
| <u>Location</u> | The subject property is located at 746 Springs Avenue, Pawleys Island, Georgetown County, SC. | | | | |
| <u>Ownership</u> | Sunset Lodge, LLC | | | | |
| <u>Tax Map Number</u> | 42-0176-027-00-00 | | | | |
| <u>Type of Property</u> | Improved single-family lot | | | | |
| <u>Site Data*</u> | <table> <tr> <td>Lot area</td><td>7,440 square feet</td></tr> <tr> <td>Easement area</td><td>4,173 square feet</td></tr> </table> | Lot area | 7,440 square feet | Easement area | 4,173 square feet |
| Lot area | 7,440 square feet | | | | |
| Easement area | 4,173 square feet | | | | |
| <u>Improvements</u> | Single-family residence (not impacted by easement and not valued in this assignment) | | | | |
| <u>Zoning</u> | R-1, Low Density Residential, Town of Pawleys Island | | | | |
| <u>Highest and Best Use</u> | | | | | |
| As Vacant | Single-family | | | | |
| As Improved | Existing use | | | | |
| After Acquisition | Similar use | | | | |
| <u>Interest in Property Appraised</u> | Fee Simple | | | | |
| <u>Date of Valuation</u> | June 3, 2020 | | | | |
| <u>Value Summary</u> | | | | | |
| Before Value (Land) | \$900,000 | | | | |
| Value of Easement | \$46,722 | | | | |
| Damages to Remainder | \$0 | | | | |
| Benefits to Remainder | (\$90,000) | | | | |
| Value of Taking & Damages / | (\$43,278) | | | | |
| Benefits to Remainder | | | | | |
| | <i>The negative value represents a net benefit to the property</i> | | | | |

JAYROE APPRAISAL COMPANY

Conditions

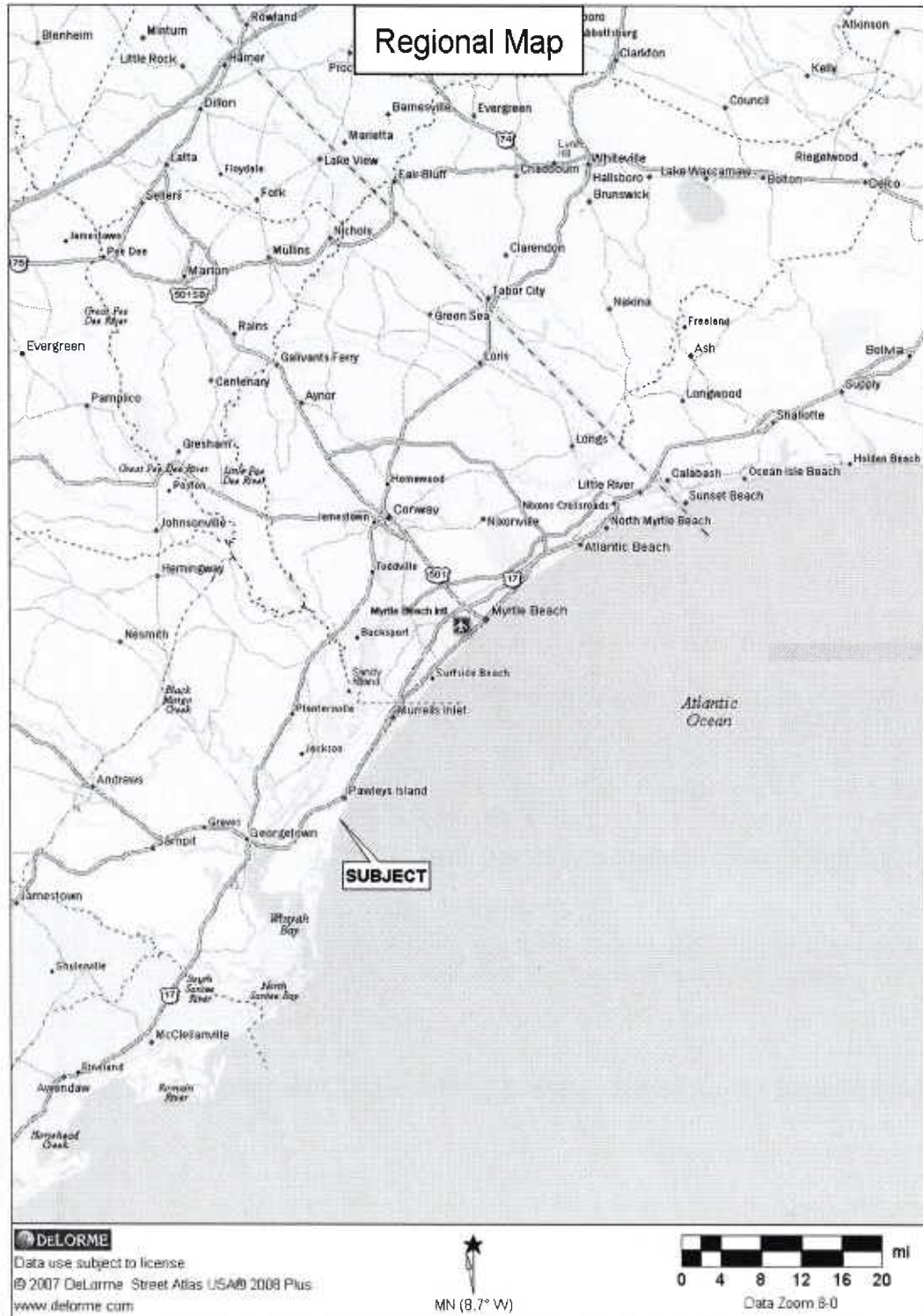
This appraisal is subject to "General Assumptions" and "General Limiting Conditions" included in the text.

The before value is based on the extraordinary assumption that the planned easement acquisition and beach renourishment project did not exist as of the date of valuation.

The after value is based on the hypothetical condition that the project is complete as of the effective date.

Use of the foregoing assumption and condition may have affected the assignment results.

JAYROE APPRAISAL COMPANY

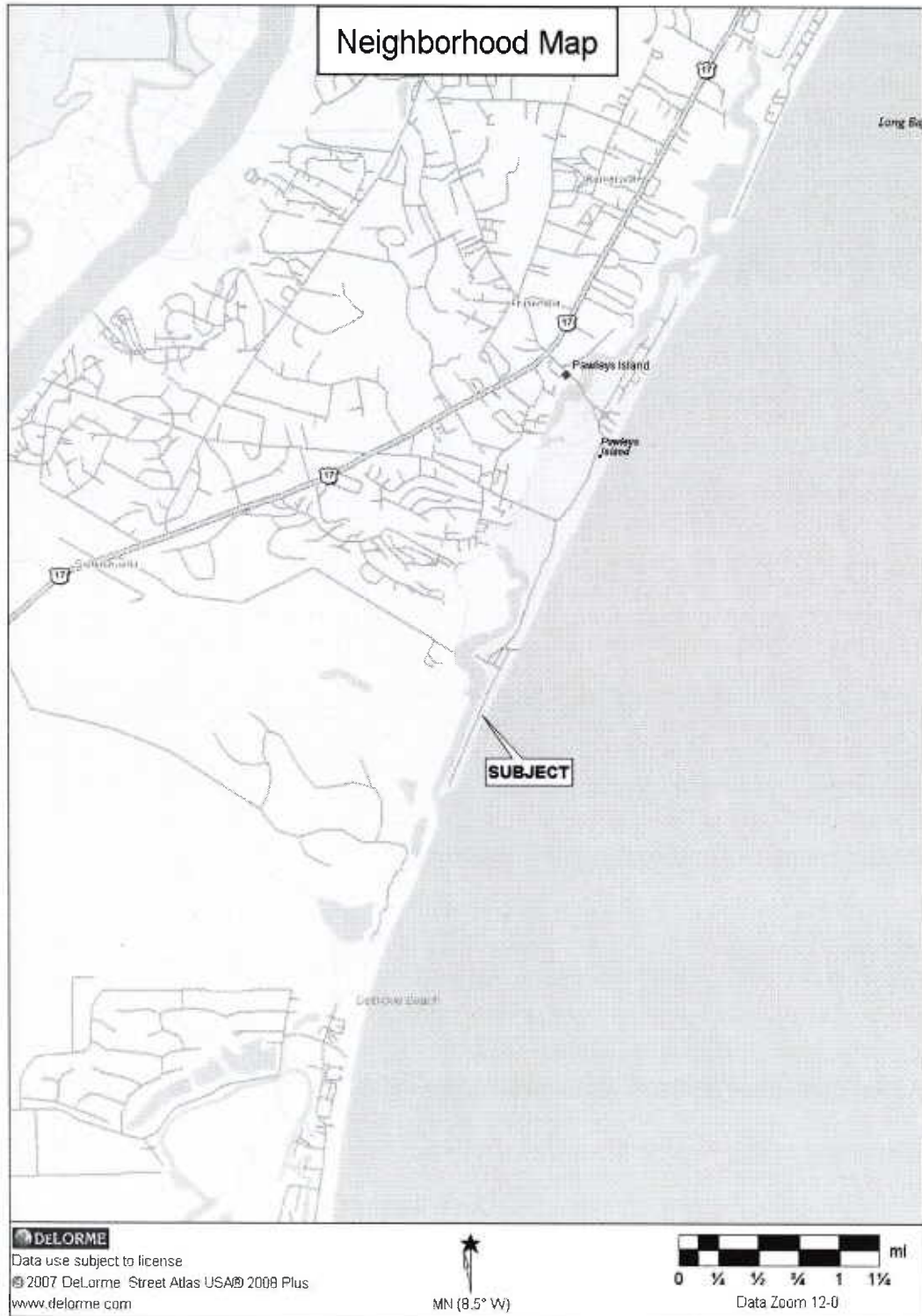


Myrtle Beach, South Carolina

716
3

20038-746 Springs

JAYROE APPRAISAL COMPANY



JAYROE APPRAISAL COMPANY



746 SPRINGS AVEUE-FRONT



STREET SCENE

JAYROE APPRAISAL COMPANY



BEACH FRONT & EASEMENT AREA

JAYROE APPRAISAL COMPANY

DEFINITION OF APPRAISAL TERMS

Market Value is defined as the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. buyer and seller are typically motivated;
- b. both parties are well informed or well advised, and each acting in what he considers his own best interest;
- c. a reasonable time is allowed for exposure in the open market;
- d. payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and
- e. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.¹

Fee Simple Estate is defined as the absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.²

Leased Fee Estate is defined as an ownership interest held by a landlord with the right of use and occupancy conveyed by lease to others; the rights of lessor (the leased fee owner) and leased fee are specified by contract terms contained within the lease.³

Leasehold Estate is defined as the right to use and occupy real estate for a stated term and under certain conditions as conveyed by the lease. A leasehold interest arises from the margin of economic productivity of the property, subject to meeting the terms and provisions of the lease.⁴

Highest and Best Use is defined as the reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and which results in the highest value. The four criteria the highest and best use

¹ Office of the Comptroller of the Currency, 12 CFR Part 34, Subpart C "Real Estate Appraisals" (8/24/90), pursuant to FIRREA, Public Law 101-73, Title XI (8/18/89).

² The Dictionary of Real Estate Appraisal, Third Edition (Chicago: The Appraisal Institute, 1993): 140.

³ The Dictionary of Real Estate Appraisal, Third Edition (Chicago: The Appraisal Institute, 1993): 177.

⁴ Ibid., 177.

JAYROE APPRAISAL COMPANY

must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.⁵

Hypothetical Condition is that which is contrary to what exists, but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis.⁶

Extraordinary Assumption an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraisers opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in the analysis.⁷

Reasonable Marketing time is defined as an opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal.⁸

Reasonable Exposure time is defined as the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based on an analysis of past events assuming a competitive and open market.⁹

Functional Obsolescence may be caused by a deficiency or a superadequacy; some forms are curable and others are incurable.¹⁰

Absorption period is defined as the actual or expected period required from the time a property is initially offered for purchase or use by its eventual users until all portions have been sold or stabilized occupancy has been achieved. Although marketing may begin before the completion of construction, most forecasters consider the absorption period to begin after the completion of construction.¹¹

Absorption Rate is defined as the rate at which properties for sale or lease have been or are expected to be successfully marketed in a given area; usually used in forecasting sales or leasing activity.¹²

⁵ _____ The Dictionary of Real Estate Appraisal, Third Edition (Chicago: The Appraisal Institute, 1993): 171.

⁶ _____ Uniform Standards of Professional Appraisal Practice, DEFINITIONS, USPAP 2006 Edition © Appraisal Foundation: 3 (Line 91-92).

⁷ _____ Ibid, p. 2

⁸ _____ Advisory Opinion 7. (AO-7) USPAP 2006 Edition © The Appraisal Foundation: 141.

⁹ _____ Statement on Appraisal Standards No. 6. (SMT-6) USPAP 2006 Edition © The Appraisal Foundation: 93.

¹⁰ _____ The Appraisal of Real Estate, Twelfth Edition, 2001 © The Appraisal Institute: 405.

¹¹ _____ The Dictionary of Real Estate Appraisal, Third Edition (Chicago: The Appraisal Institute, 1993): 2.

¹² _____ Ibid, p. 2

JAYROE APPRAISAL COMPANY**SCOPE OF WORK**

The "Scope of Work" is intended to mean the extent of the process of collecting, confirming and reporting data. The scope of the appraisal requires compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation. The Standards contain rules that must be followed and specific guidelines that deal with the procedures to be followed in developing an appraisal, analysis, or opinion. These uniform standards set the requirements to communicate the appraisers' analyses, opinions, and conclusions in a manner that will be meaningful and not misleading to the intended users. The scope of the assignment further requires compliance with the client's requirements set forth in their letter of engagement.

This appraisal report was prepared in accordance with the 2020-2021 edition of the USPAP. In 2006, extensive changes to the USPAP were enacted as a result of the Appraisal Standards Board examination of the proper role of the scope of work and departure concepts in the appraisal process. The most significant changes beginning with the 2006 edition of the USPAP are the elimination of the Departure Rule and the introduction of the Scope of Work Rule. Other changes include the discontinued use of the terms "Complete" and "Limited" to describe the appraisal process. The Ethics Rule now also requires full disclosure of services performed on the subject property within the past 36 months and any prospective interest in the property or parties involved.

The Standards clearly impose a responsibility on the appraiser to determine the scope of work necessary in relation to the significance of the appraisal problem, and to communicate with the client the steps taken to arrive at the opinions and conclusions. The Scope of Work is intended to be unique for each appraisal assignment.

The subject of this appraisal assignment is an improved single-family lot located 746 Springs Avenue, Pawleys Island, SC. The purpose of this assignment was to provide an opinion of value for the property before the planned easement acquisition, the value of the easement rights acquired, and damages and/or benefits to the remainders as a result of the easement acquisition.

In providing the opinion of value for the subject property before the taking, the Sales Comparison Approach was developed. Since the proposed easement does not impact the improvements, this was the only applicable approach to value the subject property, as if vacant.

JAYROE APPRAISAL COMPANY

In developing the opinions of value for the subject property, the appraiser has analyzed the forces influencing market values within the general area and neighborhood of the subject properties. Regional and neighborhood data and trends are considered in the valuation process as well as the determination of highest and best use. An on-site inspection was performed on June 3, 2020, which is the effective date of this report.

The appraiser has analyzed the physically possible, legally permissible and economically feasible uses of the subject and has made a determination of the highest and best use as vacant. Factors considered in the determination of highest and best use include uses allowed by zoning, physical characteristics, supply and demand for similar properties, and land use patterns within the neighborhood.

The data collection process involved researching the subject area for comparable oceanfront land sales. For comparable sales, the search area included the Waccamaw Neck region of Georgetown County. The comparable sales were selected based on their transfer dates, similar physical characteristics, location and zoning. Sources used to compile these comparables included County records, my appraisal files, brokers and the local MLS.

The comparable sales were verified, either by direct participants or knowledgeable third parties, and direct comparisons were applied to the subjects. Given the number of properties involved and their similarity, adjustment grids for each individual lot was not necessary.

In determining the value after the easement acquisition, the appraiser considered the physical impacts the easement will have on the subject and the market's likely reaction to the lot encumbered with a beach renourishment easement. The after value estimate and damages and/or benefits to the remainder are based on an interpretation of the after condition and anticipated expectations and reactions of market participants.

JAYROE APPRAISAL COMPANY**SUBJECT PROPERTY DATA**Purpose of the Appraisal

The purpose of this appraisal is to set forth an informed and independent opinion of the market value of the subject property before the planned easement acquisition. In addition, the purpose of this appraisal also involves an estimation of the value of the proposed easement acquisition, and the damages and/or benefits to the remainder as a result of the acquisition.

Effective Date(s) of the Report

The effective date of the value opinion is June 3, 2020, the date of the final inspection.

Intended Use and Users of Appraisal

The intended use of this appraisal is for The Town of Pawleys Island's exclusive internal use, including but not limited to, eminent domain proceedings and condemnation actions by the Town for the acquisition of the oceanfront easement. The primary intended user of the report is identified as the Town of Pawleys Island and/or their assigns.

Type and Address

The subject property is located at 746 Springs Avenue, Pawleys Island, Georgetown County, South Carolina. The subject property consists of an improved oceanfront lot.

Legal Description

Lot 306 Birds Nest Subdivision. The subject is identified by Georgetown County as Tax Map Number 42-0176-027-00-00.

Interest Appraised

The interest appraised in this report is the fee simple interest.

JAYROE APPRAISAL COMPANY

Property History

The subject property is owned by Sunset Lodge, LLC. There have been no transfers within three years of the effective date. A search of the local MLS revealed no current or recent historical listings.

Flood Hazard Statement

According to Community Map 4502550001D, as published by the Federal Emergency Management Agency, revised August 2, 1996, the subject is located in a flood hazard area (Zone VE).

Zoning

The subject property is zoned by the Town of Pawleys Island and administered by Georgetown County. The oceanfront portion of the subject is zoned R-1, Low Density Single-family. The primary intended use of this district is single-family dwellings excluding mobile homes. Other permitted uses include non-commercial farms and public use buildings. Minimum lot size is 7,500 square feet with a minimum lot width of 50 feet at the building line for single-family dwellings. For duplexes, the minimum lot size is 12,500 SF with minimum lot width of 60 feet. Front building setbacks are 20 feet. Rear building setbacks are to the Shore Protection Line, as established by the Town of Pawleys Island.

The portion of the lot that extends westward of Springs Avenue to the creek front is zoned Conservation Preservation. The CP zoning allows such uses as private boat docks, walkways, boat houses and gazebos, but no habitable structures.

Assessment and Taxes

The subject is identified as tax parcel number 42-0176-027-00-00 by Georgetown County. The subject has a total parcel value of \$934,400 (\$875,000 land and \$59,400 improvements). Taxes in the amount of \$12,603.19 were billed for the 2019 tax year.

JAYROE APPRAISAL COMPANY

REGIONAL AREA / NEIGHBORHOOD ANALYSIS

The Thirteenth Edition of *The Appraisal of Real Estate* defines a neighborhood as “a group of complimentary land uses”. Neighborhoods are characterized by individual boundaries being either physical or socio-economic. In addition, neighborhoods are usually in one of four stages; either declining, growing, static or transitional. This portion of this appraisal will define the neighborhood, the neighborhood boundaries, and make projections as to current and future status of the neighborhood.

Area Overview

The Grand Strand, or Greater Myrtle Beach area, is located in Horry and Georgetown Counties of South Carolina and the County of Brunswick in coastal North Carolina. It comprises a long coastal beach area from Brunswick County, North Carolina southward to the city of Georgetown, a distance of approximately 60 miles. It is primarily the area (ranging from one to five miles) east of the Intracoastal Waterway, although areas west of the Waterway are an integral part of the economy. The City of Conway is the second largest city in Horry County and is also the county seat.



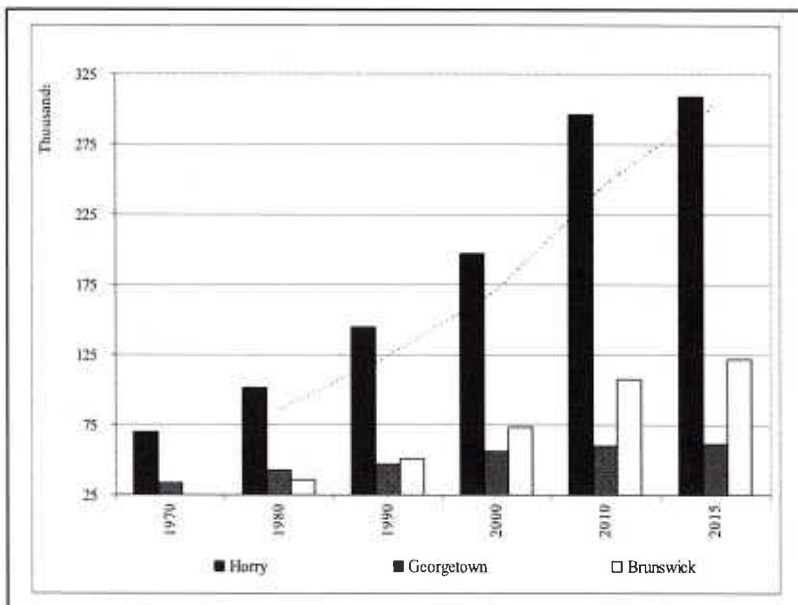
The focal point of development in the Grand Strand is Myrtle Beach, the largest city in the region. The northern area contains the coastal communities of Brunswick County, the town of Little River and the city of North Myrtle Beach (an incorporation of several former towns including Windy Hill, Crescent Beach, Ocean Drive and Cherry Grove). South Strand areas include Surfside Beach, Garden City and Murrells Inlet. The southernmost part of the Grand Strand, in Georgetown County, is known as the Waccamaw Neck Region. This includes

Pawleys Island and Litchfield.

Population

According to 2015 census data, Horry County's year round population is 309,205, which reflects a 3.8% annual growth rate from 2000. Horry County was the 3rd fastest growing county in the state from 2000 to 2010, following Dorchester and York Counties.

JAYROE APPRAISAL COMPANY



Georgetown County, the 8th largest county in the state, has slightly more than 1% of the state's population. Georgetown County had an annual growth rate of 2.67% during the 1970's. This growth decreased to an annual rate of 0.91% from 1980-1990. Georgetown County grew from 55,797 in 2000 to 60,158 in 2010, and has exhibited an annual

growth rate of 0.07%. The majority of growth is occurring in the coastal Waccamaw Neck region, with rural areas losing population.

According to recently released data from the US Census Bureau, the Myrtle Beach Metropolitan Statistical Area was the 2nd fastest growing MSA in the nation from 2014 to 2015. The MSA's population increased from 417,177 to 431,964 during this period, reflecting a 3.5% increase. The median age of the population is 45.3 years in Horry County, 47.9 in Georgetown County and 50.9 in Brunswick County.

Based on data compiled by DK Shifflet, Ltd, the Myrtle Beach Area Chamber of Commerce reports the total number of visitors to the area in 2016 at just over 18.6 million. This includes day trippers and overnight visitors. The profile of a typical Grand Strand visitor is employed in a professional field (46%), is between the ages of 35 and 54 (45%) and has a household income of over \$45,000 (75%). The typical visitor is part of a family group, stays 4 to 7 nights (59%), travels by car (84%) and spends \$130 per day.

Grand Strand Annual Visitors (millions)

| | |
|------|------|
| 2006 | 14.6 |
| 2007 | 15.2 |
| 2008 | 14.6 |
| 2009 | 13.7 |
| 2010 | 14.1 |
| 2011 | 14.5 |
| 2012 | 15.2 |
| 2013 | 16.1 |
| 2014 | 16.7 |
| 2015 | 18.0 |
| 2016 | 18.6 |

JAYROE APPRAISAL COMPANY

Industry and Workforce

The Grand Strand economy is heavily reliant on the tourism industry, and the largest employment sectors are hospitality, services and retail. Approximately 70% of the workforce in Horry County is either directly or indirectly employed in tourism-related jobs. According to the Myrtle Beach Regional Economic Development Corporation, the largest industries by workforce sector are: Retail (18.3%), Hospitality/Food Service (15.9%), followed by Healthcare (10.9%) and Construction (9.0%).

With a high number of service industry jobs, the area's per capita and household income levels are below state and national averages, particularly in the 18-64 age group. For 2016, the median household income in Horry County was \$45,621 which was a 4% decline from 2015 and 90.2% of the state of South Carolina's MHI. For the same period, Georgetown County had a MHI of \$45,299 which grew 5.8% from 2015. Brunswick County had a median household income of \$49,356 in 2016 which was 97.6% of the state level and an increase of 5.3% from 2015.

The table below shows the area's (Horry and Georgetown County) largest non-manufacturing and manufacturing employers, as tracked by the Myrtle Beach Area Chamber of Commerce.

Grand Strand Largest (Non-Manufacturing) Employers (2017)

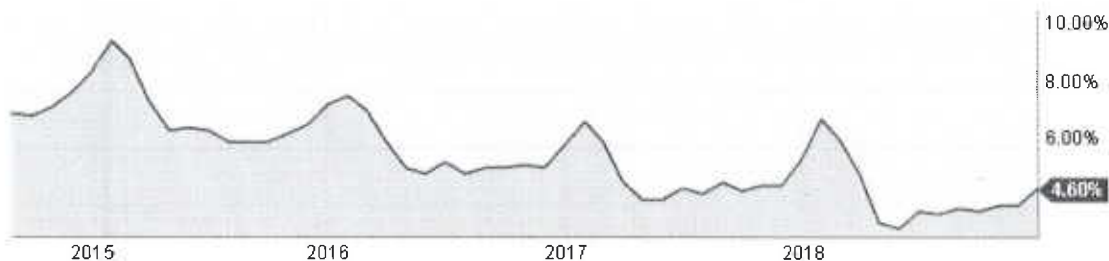
| <i>Employer</i> | <i>Product/Service</i> | <i># Employees</i> |
|------------------------------|------------------------|--------------------|
| Horry County School District | Education | 5,650 |
| Wal-Mart | Retail | 2,800 |
| Horry County Government | Government | 2200 |
| Coastal Carolina University | Education | 2125 |
| Conway Medical Center | Healthcare | 1400 |
| Grand Strand Regional Med. | Healthcare | 1350 |
| Food Lion | Retail | 1150 |
| McLeod Loris Seacoast | Healthcare | 980 |
| City of Myrtle Beach | Municipal | 904 |

Grand Strand Largest (Manufacturing) Employers (2017)

| <i>Employer</i> | <i>Product/Service</i> | <i># Employees</i> |
|-----------------------|------------------------|--------------------|
| International Paper | Paper | 820 |
| Conbraco Industries | Plumbing | 420 |
| MetGlass, Inc. | Glass | 188 |
| New South Lumber | Lumber | 185 |
| Three D Metal Works | Fabrication | 180 |
| Precision Southeast | Plastics | 180 |
| 3V Sigma | Chemicals | 178 |
| UFP Mid Atlantic | Bldg materials | 175 |
| Builders First Source | Bldg materials | 150 |
| Palmetto Corporation | Asphalt | 150 |

JAYROE APPRAISAL COMPANY

The unemployment rate in Horry County is seasonal in nature, with higher levels in the slower winter months with labor shortages in the peak summer season. In 2018, the unemployment rate in Horry County ranged from 3.20% in May 2018 to 7.00% in January 2018. As of December 2018, the rate was 4.60% compared to 4.00% for the state of South Carolina. For Georgetown County, the December 2018 unemployment rate was also 4.6%, up from 3.8% in May 2018.



Horry County Unemployment 2015-2018 (US Bureau of Labor Statistics)

Lodging Market Overview

The lodging market in the Grand Strand caters mainly to the transient tourist segment. Although a significant portion of this demand segment uses air transportation, the Grand Strand is primarily a drive-to destination. The Myrtle Beach area accommodates nearly 18 million visitors each year. Vacationing families account for 61% of the visitors and the average stay is six days for vacationers and three days for business travelers, according to the Myrtle Beach Area Chamber of Commerce.

The Grand Strand currently has over 60,000 lodging rooms, many of which are condominium units on rental programs. Traditional franchise hotel and motel rooms account for 28,438 accommodation units, according to Smith Travel Research's Monthly Lodging Outlook, August 2015 (Horry County only). Supply growth has been limited over the past few years. Most new lodging properties developed have been along the oceanfront and in the form of timeshare resorts and condotels.

The greatest concentration of accommodation units is along Ocean Boulevard in Myrtle Beach from about 30th Avenue North to 28th Avenue South, with similar areas along the oceanfront at the north end of Myrtle Beach and in North Myrtle Beach. These properties consist of newer, high rise, upscale resorts on the oceanfront, to more modest, older and smaller properties on the second and third rows. There are some remaining low- to mid-rise, mom and pop motels, however, most are operating with minimal capital improvements while awaiting future redevelopment.

Average daily rates and RevPAR's have been increasing each year along the Grand Strand since 2010. RevPAR growth has largely been rate driven with modest but

JAYROE APPRAISAL COMPANY

appreciable increases in occupancy. A large amount of supply came on the market in 2006 to 2008 with the opening of several new oceanfront condotel resorts which were in development when the real estate market collapsed. Despite the consistent increases in demand, supply growth has been limited. Shown below are recent ADR's and occupancy levels in Horry County, as compiled by the Clay Brittain Center for Resort Tourism at Coastal Carolina University.

| Lodging Industry Results for the First 37 Weeks, Horry County, S.C.¹ | | | | | | | | | |
|---|----------|----------|----------|----------|----------|----------|--------------------|--------------------------------|--------------------------------|
| Dec. 30, 2012-Sept. 7, 2013; Dec. 29, 2013-Sept. 6, 2014; Jan. 4-Sept. 12, 2015; Jan. 3-Sept. 10, 2016; Jan. 1-Sept. 9, 2017; Dec. 31, 2016-Sept. 8, 2018 | | | | | | | | | |
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Delta
2017-2018 | Percent
change
2017-2018 | Percent
change
2013-2018 |
| Hotels, condo-hotels and campsites | | | | | | | | | |
| Average percent occupancy | 59.3 | 60.5 | 60.4 | 61.7 | 60.8 | 62.0 | 1.1 | 1.9% | 4.4% |
| Average daily rate per unit | \$103.00 | \$103.93 | \$113.17 | \$117.40 | \$123.73 | \$123.24 | \$6.33 | 5.1% | 19.6% |
| Revenue per available room | \$61.13 | \$62.88 | \$68.34 | \$72.41 | \$75.26 | \$76.35 | \$2.64 | 7.0% | 24.0% |
| Voluntary weekly sample (units) | 10,118 | 9,737 | 9,596 | 9,691 | 9,226 | 8,254 | | | |
| Average bedrooms per unit | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | | | |
| Vacation rental properties | | | | | | | | | |
| Average percent reserved | 63.8 | 71.1 | 63.4 | 64.0 | 63.5 | 63.9 | 0.4 | 0.6% | 0.2% |
| Average daily rate per unit | \$264.49 | \$265.77 | \$279.11 | \$283.17 | \$296.31 | \$286.67 | -\$9.84 | -3.3% | -8.4% |
| Estimated daily revenue per available unit | \$168.81 | \$188.86 | \$176.86 | \$183.12 | \$188.38 | \$183.29 | \$7.26 | 3.7% | 8.6% |
| Scientific random sample weekly (units) | 217 | 217 | 217 | 217 | 206 | 209 | | | |
| Average bedrooms per unit | 4.0 | 4.0 | 4.0 | 4.0 | 4.1 | 4.0 | | | |

¹ Drawn from the tourism economy study database of the Brittain Center for Resort Tourism on Sept. 26, 2018

Golf

Golf is a base industry in the Grand Strand area and has extended the tourist season to nearly year round. As of year-end 2016, there were roughly 80 18-hole equivalent courses in the Grand Strand market with approximately 80% being public. The number of courses is down significantly from the nearly 120 in the early 2000's. Several courses closed during the housing boom for redevelopment, and more closed following the recession.

| Grand Strand Paid Golf Rounds | | |
|--------------------------------------|--------------|----------|
| Year | Total Rounds | % Change |
| 2010 | 2,639,343 | |
| 2011 | 2,816,994 | 6.7% |
| 2012 | 2,789,900 | -1.0% |
| 2013 | 2,638,979 | -5.4% |
| 2014 | 2,891,261 | 9.6% |
| 2015 | 2,868,102 | -0.8% |
| 2016 | 2,748,309 | -4.2% |
| 2017 | 2,913,901 | 6.0% |
| 2018 | 2,682,425 | -7.9% |

The continued contraction of courses coupled with flat golf demand has resulted in generally declining rounds played area wide. According to the marketing group Myrtle Beach Golf Holiday, paid golf rounds held steady at around 2.6 to 2.9 million from 2010 to 2014. The total number of golf rounds played on area courses increased in 2017, but declined nearly 8% in 2018 primarily due to a harsh winter and Hurricane Florence in the fall. Despite the decrease in the total number of rounds, rounds per course have been fairly consistent to slightly increasing.

JAYROE APPRAISAL COMPANY

Although the Grand Strand has a reputation for affordable tee times, more than half the area's course carry at least a 4-star rating, according to Golf Digest magazine. Three area courses, The Dunes Club, Caledonia Golf & Fish Club and TPC-Myrtle Beach, were ranked in the publication's most recent survey of "America's Top 100 Public Courses". In addition, Golf Magazine lists seven Grand Strand courses in the top ten of their most recent ranking of Best Public Courses in South Carolina.

Conventions

According to figures gathered by the Myrtle Beach Area Convention & Visitor's Bureau and the Travel Industry Association of America, over \$700 million was generated in 2013 by convention and group-related tourism. More than 30 area properties provide full-function meeting space with several having the ability to host groups of 500 or more at a single site.

The area's largest meeting facility, the Myrtle Beach Convention Center, underwent a \$20 million expansion project in 1994. The 249,100 square foot center is one of the largest on the east coast and can accommodate 10,000 people. Furthermore, it can handle up to 1,500 people at a seated meal. A new \$48 million, 404 room convention center hotel (currently flagged by Sheraton) opened in early 2003 on the convention center grounds.

In an effort to capitalize on the growing sports tourism industry in the area, the City of Myrtle Beach recently completed construction on a \$13.8 million, 100,000 square foot, indoor sports complex on city-owned land behind the convention center. The complex, which opened in February 2015, includes several multi-purpose courts (basketball, tennis, volleyball), café and retail space designed to attract tournament-style play. The City estimates the center will generate nearly \$7 million in visitor spending in its first year, and over \$28 million annually by its fifth year.

Housing and Development Trends

The Myrtle Beach area realized substantial housing growth during the early to mid 2000's to meet the needs of the growing population. New home starts peaked in 2005-2006 prior to the market downturn. New housing starts remained below 2,000 annual units through 2011. In 2014, there were a total of 3,473 new residential permits issued in Horry County, 88% of which were for single-family dwellings. New multi-family units are primarily being developed as rental apartments as demand remains somewhat soft for condo and townhome sellout properties. The following table shows recent, historic residential permit activity in Horry County. It does not include permits issued by individual municipalities.

JAYROE APPRAISAL COMPANY

Horry County Residential Permit Activity

| Year | Single-Family Residences | | Multifamily Residences | | | Total |
|------|--------------------------|---------------|------------------------|-------|---------------|-----------------|
| | Bldgs. | Value | Bldgs. | Units | Value | |
| 2003 | 3,363 | \$446,663,759 | 113 | 1,767 | \$177,879,155 | \$624,542,914 |
| 2004 | 4,253 | \$582,130,732 | 220 | 2,815 | \$274,627,300 | \$856,758,032 |
| 2005 | 6,471 | \$936,513,534 | 345 | 5,357 | \$685,307,577 | \$1,621,821,111 |
| 2006 | 6,452 | \$961,143,644 | 210 | 3,851 | \$520,111,473 | \$1,481,255,117 |
| 2007 | 3,813 | \$606,313,278 | 91 | 1,455 | \$203,679,539 | \$809,992,817 |
| 2008 | 1,867 | \$291,655,836 | 52 | 1,128 | \$227,984,954 | \$519,640,790 |
| 2009 | 1,457 | \$209,682,370 | 19 | 254 | \$42,567,877 | \$252,250,247 |
| 2010 | 1,388 | \$205,112,076 | 12 | 120 | \$19,186,858 | \$224,298,934 |
| 2011 | 1,481 | \$238,917,873 | 10 | 295 | \$26,483,109 | \$265,400,982 |
| 2012 | 2,029 | \$351,863,907 | 46 | 279 | \$44,832,612 | \$396,696,519 |
| 2013 | 2,605 | \$450,939,594 | 56 | 568 | \$42,880,388 | \$493,819,982 |

Myrtle Beach Area Chamber of Commerce

For year-end 2019, the median sale price of a site-built home in the Grand Strand market (new and existing) was \$245,000, according to data from the Coastal Carolina Association of Realtors (local MLS). This was the seventh consecutive year of increases in median home prices, and the 10th straight year of increasing gross sales dollars and sales volume, with over 10,000 home sales (excluding condos) in 2019. Shown in the table below are sales data for single-family home sales as tracked by the local MLS.

Single-Family (Site Built) Home Sales

| | No. Sales | % Diff. | Average SP | % Diff. | Median SP | % Diff. | Avg DOM | Gross Sales | % Diff. |
|------|-----------|---------|------------|---------|------------|---------|---------|------------------|---------|
| 2007 | 4,227 | | \$ 291,924 | | \$ 227,478 | | 191 | \$ 1,233,962,748 | |
| 2008 | 3,096 | -26.8% | \$ 277,818 | -4.8% | \$ 210,000 | -7.7% | 209 | \$ 860,124,528 | -30.3% |
| 2009 | 3,255 | 5.1% | \$ 238,368 | -14.2% | \$ 185,000 | -11.9% | 210 | \$ 775,887,840 | -9.8% |
| 2010 | 3,725 | 14.4% | \$ 228,736 | -4.0% | \$ 182,500 | -1.4% | 180 | \$ 852,041,600 | 9.8% |
| 2011 | 3,929 | 5.5% | \$ 223,748 | -2.2% | \$ 171,000 | -6.3% | 191 | \$ 879,105,892 | 3.2% |
| 2012 | 4,677 | 19.0% | \$ 213,551 | -4.6% | \$ 168,999 | -1.2% | 183 | \$ 998,778,027 | 13.6% |
| 2013 | 5,613 | 20.0% | \$ 225,213 | 5.5% | \$ 180,000 | 6.5% | 178 | \$ 1,264,120,569 | 26.6% |
| 2014 | 6,122 | 9.1% | \$ 230,206 | 2.2% | \$ 190,000 | 5.6% | 165 | \$ 1,409,321,132 | 11.5% |
| 2015 | 7,180 | 17.3% | \$ 238,993 | 3.8% | \$ 200,952 | 5.8% | 160 | \$ 1,715,969,740 | 21.8% |
| 2016 | 7,538 | 5.0% | \$ 248,433 | 3.9% | \$ 209,035 | 4.0% | 155 | \$ 1,872,687,954 | 9.1% |
| 2017 | 8,446 | 12.0% | \$ 259,027 | 4.3% | \$ 217,582 | 4.1% | 149 | \$ 2,187,742,042 | 16.8% |
| 2018 | 8,801 | 4.2% | \$ 272,396 | 5.2% | \$ 234,000 | 7.5% | 146 | \$ 2,397,357,196 | 9.6% |
| 2019 | 10,667 | 21.2% | \$ 285,679 | 4.9% | \$ 245,000 | 4.7% | 141 | \$ 3,047,337,893 | 27.1% |

Transportation

As with any resort area, particularly one that is growing rapidly, transportation is of vital importance. The location of Myrtle Beach, adjacent to the Atlantic Ocean,

JAYROE APPRAISAL COMPANY

inhibits the flow of traffic since it must of necessity dead end at the ocean. Given the geography of the area, the two main traffic arteries run in a north-south direction. These are U.S. Highway 17 (Kings Highway in Myrtle Beach) and Highway 17 Bypass. The Bypass was completed in the early 1980's to alleviate traffic congestion on Business 17.

Historically, the roads leading to the beach were inadequate for traffic during the peak season. U.S. Highway 501 is the major artery from Conway and carries most of the traffic into Myrtle Beach.

To help alleviate some of this traffic congestion, frontage roads and overpasses along the most congested portions of US 501 and US 17 Bypass have recently been completed. The Conway Bypass (S.C. Highway 22), a 28.5 mile road extending from U.S. Highway 501 (east of Aynor) to U.S. Highway 17 between Myrtle Beach and North Myrtle Beach was completed in 2001 to help alleviate traffic congestion into Myrtle Beach on Highway 501.

In January 2003, the first phase of the Carolina Bays Parkway (SC Highway 31) was opened from U.S. 501 to S.C. 9 in North Myrtle Beach. This six-lane, limited access highway runs parallel to U.S. Highway 17 Bypass west of the Intracoastal Waterway. The second phase, from U.S. 501 to S.C. Highway 544, was completed in early 2005. The third phase southward to SC 707 is scheduled for completion in early 2018.

Many of the area's road projects have been funded by the RIDE initiative, a voter-approved one cent sales tax, with the RIDE III approved in November 2016. Road projects to be funded by RIDE III include widening the inbound lanes of US 501 from Conway to Carolina Forest, widening Carolina Forest Boulevard and the final phase of SC 31 which will extend the highway from SC 9 to the North Carolina state line.



An interstate highway known as I-73 is also planned, with preliminary funding and route planning in place. I-73 will intersect with I-95 near Latta, SC and run east (towards Aynor, SC) and intersect with S.C. Highway 22 near the S.C. Highway 319 and U.S. Highway 701 interchanges.

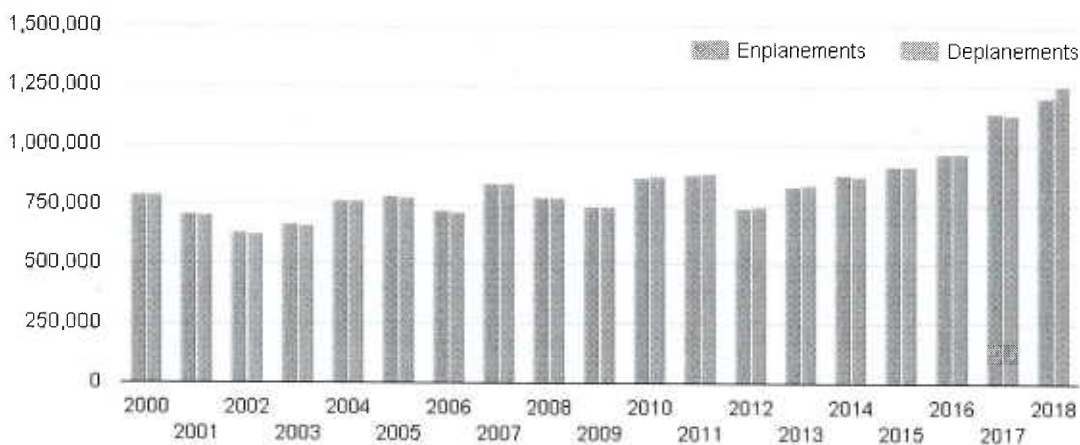
The proposed Interstate 73 may incorporate portions of U.S. Highway 501 inland and link to S.C. Highway 22, however, the exact route is not yet finalized. Another proposed interstate is I-74, which will connect with S.C. Highway 31 at its planned terminus

JAYROE APPRAISAL COMPANY

in northern Horry County. This extension will link the existing I-74 in North Carolina with S.C. Highway 31 in South Carolina.

Although the Grand Strand is primarily a drive-to destination, a significant number of visitors use air travel. The Myrtle Beach International Airport provides air transportation needs, and has a very convenient location in the heart of Myrtle Beach. The airport is served by most major carriers including Delta, US Airways, Continental, as well as several regional carriers. The growth that has occurred over the past several years has resulted in the need for expansion. In 2012, construction was completed on a \$118 million terminal expansion project that added six new gates. The new terminal is located on the north side adjacent to the current facility. An additional \$10 million was also spent to extend Harrelson Boulevard eastward to Kings Highway. A new \$4.5 million general aviation terminal was completed in May 2010, located on the south side of the runway near Market Common.

The addition of new destinations offering non-stop flights along with the terminal expansion resulted in a record number of passengers served in 2015, with the number of passengers served surpassing 2 million in 2017. For year-end 2018, there were 2.47 million passengers served (1,209,332 enplanements and 1,257,761 deplanements), an increase of 8.3% over 2017. Arrival and departure statistics for MYR are shown in the following graph.



Source: *Flymyrtlebeach.com*

Conclusion

The Grand Strand area has exhibited rapid growth during the past 10-20 years, outpacing growth noted in similar tourist-oriented metropolitan areas. The area's appeal

JAYROE APPRAISAL COMPANY

has widened from the Carolina's to the entire East Coast of the United States. Due primarily to golf and more recently, sports tourism, the tourist season has expanded from the summer months to practically year round. Almost exclusively a middle income market in the past, many luxury developments have experienced success in the past few years.

Our review of the various sources of economic and demographic data for the local market area encompassing the subject property indicate that the local economy has improved following the recent recession and housing market collapse from the latter part of the past decade. The physical, economic, social and governmental forces impacting market values in the regional area appear stable and positive. Down sides noted within the Grand Strand market are the heavy reliance on tourism as compared to other industry and the character of the workforce, which may deter future private sector investment requiring a highly skilled labor pool.

Neighborhood Location

The subject property is located along the oceanfront in the Town of Pawleys Island, in the Waccamaw Neck area of Georgetown County. The Waccamaw Neck is the north coastal region of Georgetown County extending from the north end of Murrells Inlet south to the Waccamaw River's outlet at Winyah Bay. With the exception of the Prince George and Debordieu neighborhoods, much of the southern portion of the Waccamaw Neck is protected and undeveloped, including the 17,500 acre Hobcaw Barony wildlife refuge. The subject neighborhood is considered to be those areas in the central Waccamaw Neck, south of Brookgreen Gardens-Huntington Beach State Park and north of the Prince George ocean and river communities. The Atlantic Ocean and Waccamaw River form natural geographic east west boundaries. The neighborhood consists mainly of the Pawleys Island and Litchfield communities.

Access

Access to the neighborhood is provided solely by US Highway 17 (Ocean Highway), the main north-south traffic artery through the Grand Strand. Numerous east-west connectors provide access to residential areas off the highway, however, there are no alternative north-south through routes. Traffic tends to bottleneck in this area, as there is no other route from Myrtle Beach to Georgetown and Charleston. Waccamaw Neck residents have generally been opposed to future evacuation routes westward off the Neck. The current four-lane US 17 is becoming inadequate to handle traffic loads at peak periods and will require widening and/or improvements in the near future.

JAYROE APPRAISAL COMPANY

Development

Commercial development is present primarily along the US 17 corridor, where zoning is predominantly General Commercial. Big box uses have been discouraged by size limitations for retail buildings, however, retail development is well represented in the area. The area includes several grocery-anchored neighborhood centers, many of which have been developed within the past few years. There are also numerous, smaller retail centers, restaurants, specialty retail shops and complexes, office parks as well as typical highway commercial uses (banks, c-stores, etc.). Some light industrial and wholesale trade areas are present west of Highway 17 in the north-portion of Pawleys Island. Architectural guidelines favoring Low County-style designs in the Litchfield and Pawleys Island areas, particularly along the US 17 corridor, have generally resulted in aesthetic conformity throughout much of the area.

In addition to the many restaurants, tourist-oriented uses include Brookgreen Gardens and Huntington Beach State Park at the north end of the neighborhood, the Litchfield Beach & Golf Resort, Litchfield-By-The-Sea, and several other golf courses and golf resort-residential communities. The Pawleys Island-Litchfield area features nine golf courses, most of which are in the upper tier of Grand Strand courses. True Blue and the Caledonia Golf and Fish Club were both ranked in the recent *Top 100 Best Public Courses* by Golf Digest Magazine. Other courses in the area include the River Club, Litchfield Country Club, Willbrook Plantation, The Founders Club and the Tradition Club. Pawleys Plantation is another large destination resort with golf, accommodation and meeting facilities at the south end of Pawleys Island.

Other than single-family and resort/multi-family projects around the numerous golf courses, residential uses in the central Waccamaw Neck region are quite varied, ranging from million-plus dollar homes along the oceanfront and tidal creeks/marsh east of US 17 and riverfront homes in the golf plantations, to more modest and established single family areas west of the main highway. The Waccamaw Neck region is the fastest growing and most populous area of Georgetown County, having an estimated 13,000 permanent residents. Many of the newer developments have targeted upper-middle income population segments and retiring baby boomers as opposed to entry-level communities, however, some mid-priced units and homes are available. Community services, schools, churches and employment centers are in reasonable proximity to most residential areas.

The subject is located along the oceanfront on Springs Avenue. The creek and salt marshes separate the oceanfront from Highway 17 and are accessed via the North and South Causeways. This area is mostly single-family in nature (including the oceanfront)

JAYROE APPRAISAL COMPANY

and zoned R-1, or low density residential. Many of the homes are seasonally occupied and/or are placed on rental programs with local rental management companies. Homes range in age from new to over 100 years with new construction and renovations subject to architectural guidelines designed to protect the character of the neighborhood. This area lacks the high-density oceanfront accommodations present in Myrtle Beach and North Myrtle Beach.

Demographically, the Waccamaw Neck region is comprised of an older population base with median income levels above the County average. Within the 29585 Pawleys Island Zip Code, the 2016 population was 14,634, which represents a 7.6% increase from the 2010 Census. The area has a median age of 58 years and a median household income of \$58,038 (2016). According to MLS data, the 2018 median single-family home price was \$343,000 for the 29585 area, a 3.8% increase from the previous year. The area attracts a significant number of relocating, retiring baby-boomers.

Summary/Conclusion

The Waccamaw Neck is a desirable south Strand region with architectural guidelines, land use patterns, zoning restrictions and geographical features that separate the region from other Grand Strand areas. Golf and resort areas are well represented, however, the area lacks the high-density oceanfront growth present in Myrtle Beach and North Myrtle Beach.

Vacant land is available for future growth and development, however, significant growth is not likely south of the Prince George community given large tracts of protected lands. Traffic issues, including alternative and evacuation routes may need to be addressed in order for long-term growth to continue at the rate noted over the past decade.

Forces impacting real property values in both the residential and commercial sectors within the subject neighborhood appear stable and positive, with values trending upward. These conditions are forecast to continue within the near future. Of the four neighborhood stages, much of the area is in a growth phase.

JAYROE APPRAISAL COMPANY

SITE DESCRIPTION

Area and Dimensions



The subject lot is roughly rectangular in shape with 60 feet of frontage on Springs Avenue and an average depth of roughly 124 feet. According to GIS data, the lot area east of Springs Avenue (buildable portion) is 7,440 square feet. The creek front area west of Springs Avenue is approximately 2,3400 SF with an average depth of roughly 39 feet. Total site area is 9,780 SF. Area and dimensions are based on County GIS data.

Easements, Encroachments and Utilities

No adverse easements or encroachments were noted. Any utility or drainage easement is assumed to be within the required building setback or public rights-of-way. All utilities, including public water and sewer service, are available to the subject parcels. Water and sewer service is provided by Georgetown County Water & Sewer/

Topography and Drainage

The subject oceanfront lot is generally level and at road grade, with slopes and drainage toward the ocean. Open drainage is present along Springs Avenue. The subject is within flood hazard areas and homes are required to be elevated. Drainage appears adequate.

The beach front areas at and near the subject have been impacted by natural erosion and recent major storms. There is little to no stable vegetation along the dune

JAYROE APPRAISAL COMPANY

lines. During high tides, ocean waters often encroaches onto the buildable areas, and during particularly high tides, pass under the raised beach homes onto the street. Rock groins have been installed approximately every 600 feet, which extend from the dune line perpendicular to the shore. These groins are designed to capture and retain sand along the beaches. According to Town officials, there has been no significant, recent beach renourishment projects that have taken place in this area.

Soil and Subsoil

We assume no responsibility for hidden or unapparent conditions beyond the area of our expertise as appraisers (see Item 6 of General Assumptions). Only a visual surface inspection was made of the subject property. No soil or subsoil problems were apparent. No hazardous environmental conditions were noted in proximity to the subject. Soils are sandy, well drained and typical of coastal areas.

Access and Street Improvements

Access to the subject is provided by frontage on Springs Avenue. This is a two-lane, paved, publically maintained neighborhood road within Pawleys Island. Access to the mainland is provided by the North and South Causeways which cross the salt marsh and tidal creeks, both intersecting with Ocean Highway at signaled intersections.

Improvements

The subject is improved with a one-story, single-family dwelling (raised beach home). Since the easement area does not impact the dwelling, the improvements are not valued in this analysis and are not described in detail.

JAYROE APPRAISAL COMPANY**HIGHEST AND BEST USE ANALYSIS**

The Highest and Best Use may be defined as "that reasonable and probable use that supports the highest present value, as defined, as of the effective date of the appraisal.

Alternatively, that use from among reasonable, probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible and which results in the highest land value (maximally productive).

This definition applies specifically to the Highest and Best Use of unimproved land. Implied within these definitions is recognition of the contribution of that specific use to community development goals, in addition to wealth maximization of individual property owners.

Also implied is that the determination of Highest and Best Use results from the appraiser's judgment and analytical skills, i.e., that the use determined from analysis represents an opinion, not a fact, to be found. In appraisal practice, the concept of Highest and Best Use represents the premise upon which value is based. In context of most probable selling price (Market Value), another appropriate term for Highest and Best Use would be the most profitable use."

In order to value a property at its Highest and Best Use, it is analyzed on its legal, physical and economic aspects. Since the proposed easement acquisitions do not impact any existing improvements, the Highest and Best Uses are analyzed as if vacant.

As Vacant

Legally Permissible: The subject is zoned R-1, Low Density Residential, by the Town of Pawleys Island. This is primarily a single-family district although a few other permitted and conditional uses are allowed. Minimum lot size for a single-family use in this district is 7,500 square feet with a minimum lot width of 50 feet. Front setbacks are 20 feet and rear setbacks are determined by the Pawleys Island Shore Protection Line, which may or may not differ from the OCRM setback. Since the subject is located along the oceanfront, it would be further subject to other state and federal regulations. The small area west of Springs Avenue along the creek is zoned Conservation-Preservation. Only non-habitable structure such as boat docks, cabanas, etc. are permitted.

Physically Possible: The subject consists of an oceanfront lot with 60 feet of frontage and a small area across Springs Avenue with creek frontage. The subject has

JAYROE APPRAISAL COMPANY

physical characteristics that would support development of a raised beach home within the buildable footprint, with dock area along the creek.

Financially Feasible: The financial feasibility of a commercial property is measured by its income producing capability. Essentially, any use that produces a positive return to the land is considered to be financially feasible. The types of uses that are feasible are market driven and influenced by surrounding uses, supply and demand and market conditions.

Based on the oceanfront location, neighboring land uses, zoning and the physical characteristics, the most feasible use of the lot, as vacant, is a raised beach, single-family dwelling.

Coronavirus-COVID-19: As of the effective date, the subject market is being impacted by the Coronavirus (COVID-19). Prior to disruption in the market caused by the pandemic, the underlying economic forces in the subject area were stable and positive.

Since early to mid March 2020, the appraiser has been tracking the affects of the Coronavirus on the local real estate market. While some segments such as hotels, restaurants and tourist-oriented uses have been significantly impacted, the housing market remains mostly unaffected. This is evidenced by comparing single-family home sales that closed in April 2019 with sales closing in April 2020. According to MLS data, April 2020 closed sales (749) were down only slightly from 2019 (770). This was expected due to the logistics involved and office closures. However, the median sale price increased 2.8% year-over-year. Anecdotal evidence from interviews with sales agents and developers also indicates that the local housing market should not suffer from the impacts of the Coronavirus, unless shutdowns linger and unemployment and under-employment affect income levels.

Maximally Productive: Among the physically possible, legally permissible and financially feasible uses, that use which produces the highest residual land value consistent with the rate of return warranted by the market is the use that is maximally productive. The maximally productive use of the subject, as vacant, is for single-family use.

Exposure Time / Marketing Time

Exposure time is the estimated length of time the property would have been offered prior to a hypothetical market value sale on the effective date of appraisal. It is a

JAYROE APPRAISAL COMPANY

retrospective estimate based on an analysis of recent past events, assuming a competitive and open market. It assumes not only adequate, sufficient, and reasonable time but also adequate, sufficient, and reasonable marketing effort.

Marketing time is the period a prospective purchaser would forecast to sell the subject property immediately after the date of value, at the value opinion provided. The marketing time is an estimate of the number of months it will require to sell the subject from the date of value, into the future. The anticipated marketing time is essentially a measure of the perceived level of risk associated with the marketability or liquidity of the subject property.

Based on an analysis of recent oceanfront lot sales in the regional area, both exposure time and marketing time are estimated at no greater than 12 months for the sale of the subject as a vacant lot.

JAYROE APPRAISAL COMPANY**APPRAISAL PROCESS**

There are three traditional approaches normally used by appraisers in the estimation of market value. These three approaches provide data from the market from three different sources when all are available. These three techniques are the Cost Approach, the Income Approach and the Sales Comparison Approach (Market Approach).

The Cost Approach is the sum of the land value and the depreciated reproduction cost new of the improvements. The Cost Approach is based on the premise that an informed, rational investor/purchaser would pay no more for an existing property than it would cost him to reproduce a substitute property with the same utility.

The Income Approach is based on the premise that a prudent investor would pay no more for the subject property than he would for another investment with similar risk and return characteristics. Since the value of an investment can be considered equal to the present worth of anticipated future benefits, dollar income or amenities, this approach estimates the market value of the net income that the property is capable of producing. This amount is capitalized at a rate which should reflect risk to the investor and the amount of income necessary to support debt service or mortgage requirements.

The Sales Comparison Approach (Market Approach) is the process of comparing prices paid for properties having satisfactory degrees of similarity to the subject property. This approach is based on the principle of substitution, which implies that a prudent purchaser will not pay more to buy a property than it would cost him to buy a comparable substitute property, without undue delay.

Given the assignment conditions, only the Sales Comparison approach will be used to value the subject parcels, as if vacant.

JAYROE APPRAISAL COMPANY**SALES COMPARISON APPROACH**

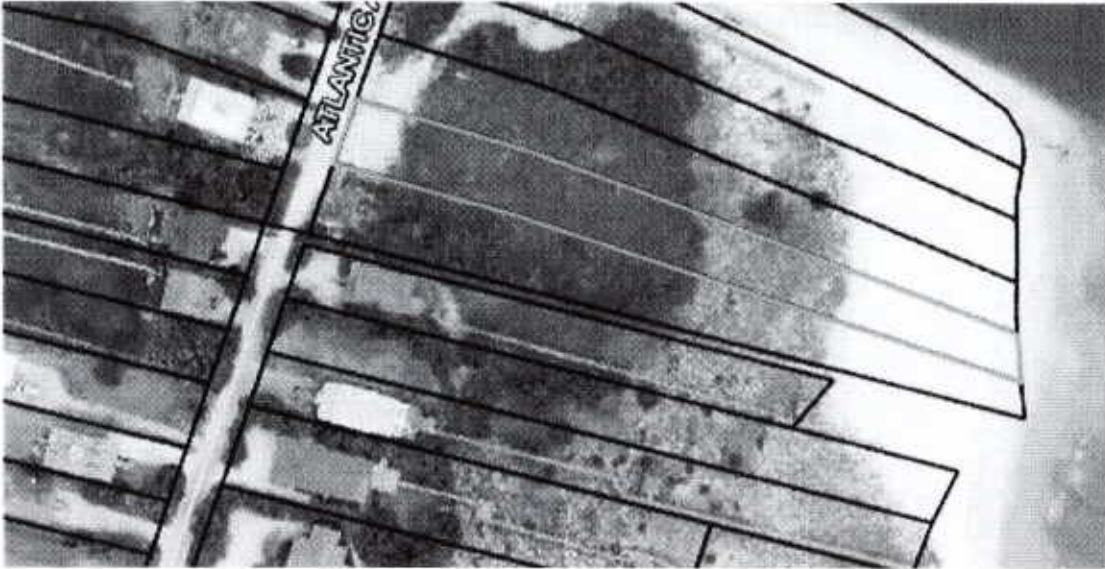
The Sales Comparison Approach was used to estimate the values of the subject properties before the easement acquisitions. This approach is based on the premise that a prudent buyer would pay no more for the subject property than he would for an equally desirable substitute property similar in size, shape, location and utility (i.e., usefulness). Also known as the Market Approach, the value estimate for the subject property is made by comparing recent sales of similar properties with the subject property on some basis such as price per square foot or price per unit, and then adjusting for differences in location, date of sale and physical characteristics.

Several oceanfront lot sales in the local market were analyzed. Properties with generally similar utility, location, size and highest and best use were selected for comparison. The sales used were compared to the subject properties and then adjusted for differences such as time of sale, location, condition, physical characteristics, etc. Given the large number of properties involved and their similarities, an adjustment grid for each subject lot was not necessary.

Please refer to the following pages for the individual write-ups of these comparable sales. Following the write-ups are a master adjustment grid, a discussion of the necessary adjustments which lead to the value conclusions, and a location map.

JAYROE APPRAISAL COMPANY

OCEANFRONT LAND SALE 1



| | |
|--------------------------|--|
| <u>Location</u> | 108 Atlantic Avenue, Pawleys Island, Georgetown County, SC. |
| <u>Tax Parcel Number</u> | 42-0159-002-06-01 |
| <u>Grantor</u> | Living Beach, LLC |
| <u>Grantee</u> | Anderson D. Caperton, et al, Co-Trustees |
| <u>Sale Price</u> | \$1,140,000 |
| <u>Sale Date</u> | September 23, 2016 |
| <u>Financing</u> | Cash to seller |
| <u>Verification</u> | Agent in transaction (MLS# 1611702), County records |
| <u>Recorded</u> | Deed Book 2886/203 |
| <u>Description</u> | Sale consists of a 60-foot wide oceanfront lot with rear property line extending to the mean high water mark a distance of approximately 620 feet. Depth to the OCRM setback is roughly 399 feet for an effective lot area of 23,940 square feet. Rear building setback is 169 feet from Atlantic Avenue R/W. |
| <u>Zoning</u> | PD, Planned Development, Georgetown County |
| <u>Comment</u> | This lot is located at the north end of Pawleys Island in a gated area. The lot included a dunes walk-over to the beach and an easement to the creek across Atlantic Avenue, but no dock or dock permit. There is a terminal groin near the beachfront for erosion control. According to the 2015 plat, erosion is occurring at a rate of 0.2 feet per year at this location. Asking price at time of sale |

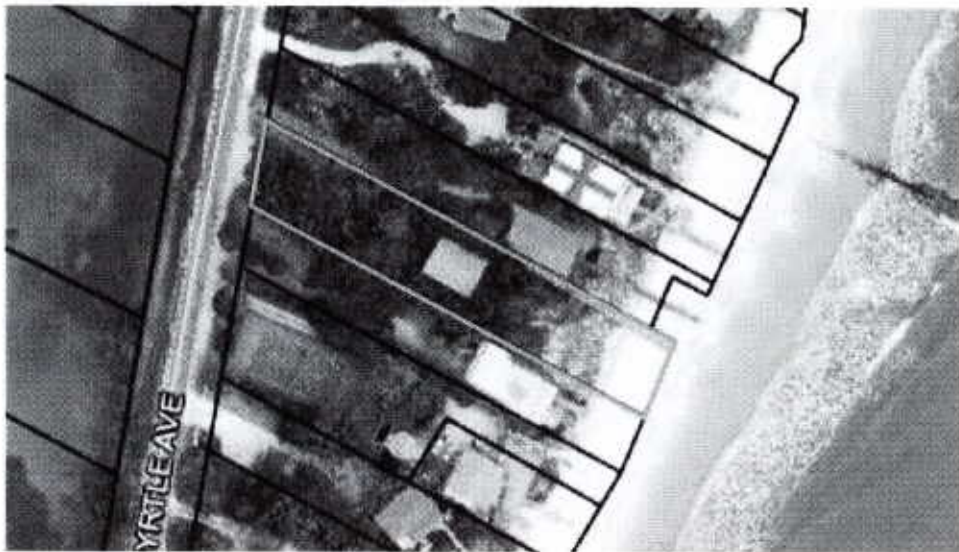
JAYROE APPRAISAL COMPANY

Analysis

was \$1,375,000 and the property sold after 110 days on market.
Seller acquired in May 2015 for \$900,000.
The sale price reflects \$47.62 per effective SF and \$19,000 per front foot.

JAYROE APPRAISAL COMPANY

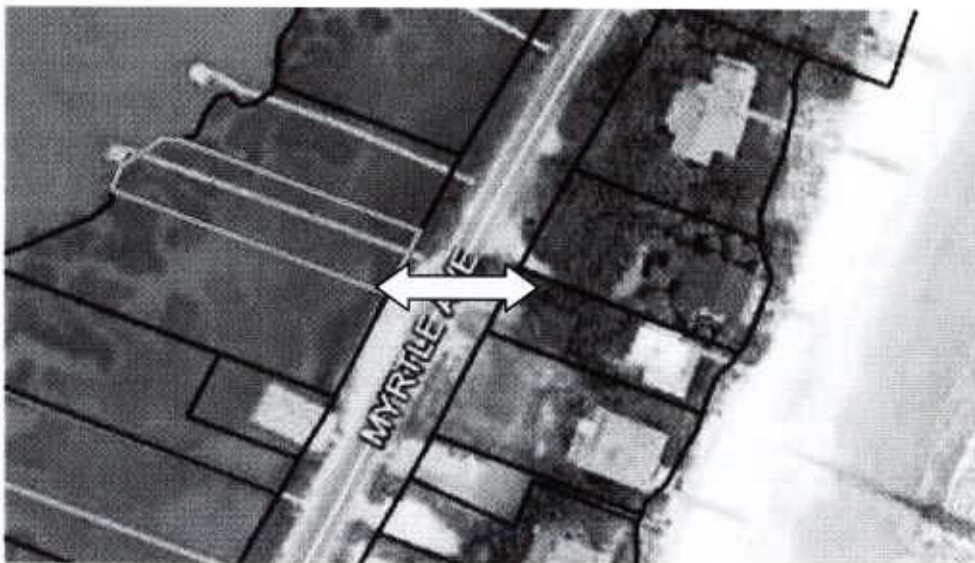
OCEANFRONT LAND SALE 2



| | |
|--------------------------|--|
| <u>Location</u> | 466 Myrtle Avenue, Pawleys Island, Georgetown County, SC. |
| <u>Tax Parcel Number</u> | 42-0172-026-00-00 |
| <u>Grantor</u> | Donald H. Howe, et al |
| <u>Grantee</u> | Charles B. & Barbara Sue Brodie |
| <u>Sale Price</u> | \$1,275,000 |
| <u>Sale Price Adj</u> | \$30,000 (estimated demolition cost) |
| <u>Effective SP</u> | \$1,305,000 |
| <u>Sale Date</u> | November 10, 2017 |
| <u>Financing</u> | Cash to seller |
| <u>Verification</u> | Knowledgeable third party, County records |
| <u>Recorded</u> | Deed Book 3160/301 |
| <u>Description</u> | Sale consists of a 72-foot wide oceanfront lot with rear property line extending beyond the dune line and the OCRM setback an average depth of approximately 368 feet. Site area calculated at 26,496 SF. |
| <u>Zoning</u> | R1, Town of Pawleys Island |
| <u>Comment</u> | This lot was improved with an older, 3-bed raised beach home that had no contributing value and was razed by the purchasers at an estimated cost of \$30,000. No creek front dock was included but the ocean lot did contain a dune walkway. The property was not openly marketed but was considered to be an arm's length sale. |
| <u>Analysis</u> | The effective sale price reflects \$49.25 per SF and \$18,125 per front foot. |

JAYROE APPRAISAL COMPANY

OCEANFRONT LAND SALE 3



| | |
|--------------------------|---|
| <u>Location</u> | 388 Myrtle Avenue, Pawleys Island, Georgetown County, SC. |
| <u>Tax Parcel Number</u> | 42-0171-019-00-00 |
| <u>Grantor</u> | Camilla D. Matthews, et al |
| <u>Grantee</u> | Pella Beach, LLC |
| <u>Sale Price</u> | \$1,100,000 |
| <u>Sale Price Adj</u> | \$0 (estimated demolition cost offset by creek front lot) |
| <u>Effective SP</u> | \$1,100,000 |
| <u>Sale Date</u> | November 3, 2017 |
| <u>Financing</u> | Cash to seller |
| <u>Verification</u> | Agent in transaction (MLS# 1603066), County records |
| <u>Recorded</u> | Deed Book 2913/90 |
| <u>Description</u> | Sale consists of a 50-foot wide oceanfront lot with rear property line extending beyond the OCRM setback to mean high water mark. The lot has an average depth of approximately 226 feet. Site area per plat is 0.26 acre, or 11,326 SF. |
| <u>Zoning</u> | R1, Town of Pawleys Island |
| <u>Comment</u> | This lot was improved with an older, 3-bed raised beach home that had no contributing value and was razed by the purchasers. The estimated demo cost is considered equivalent to the added value of the creek front lot (0.24 acre with dock) across Myrtle Ave. These lots can only be used for docks and walkways over the salt marsh. The property was offered for sale originally at \$1,395,000, lowered |

JAYROE APPRAISAL COMPANY

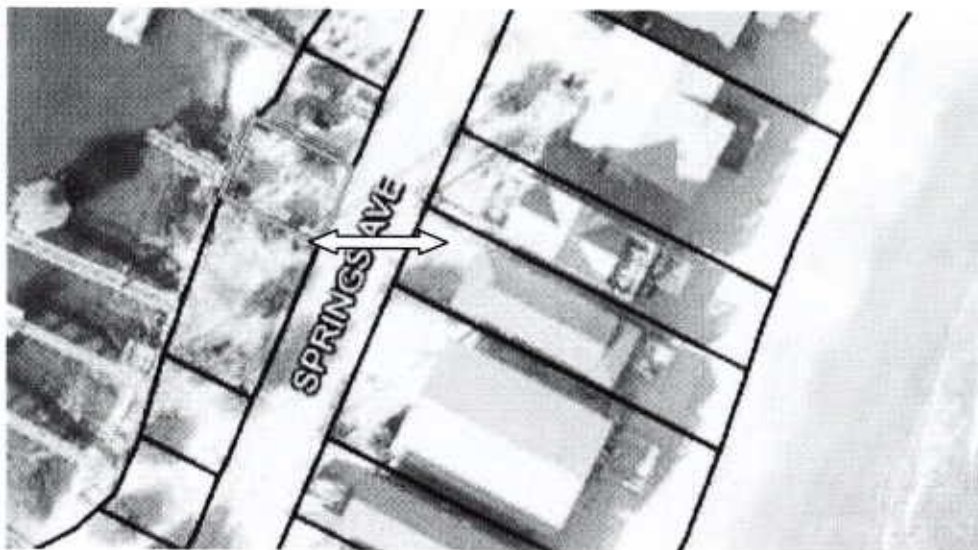
Analysis

to \$1,250,000 at time of contract, and sold after 267 days on market.

The effective sale price reflects \$97.12 per SF and \$21,825 per front foot.

JAYROE APPRAISAL COMPANY

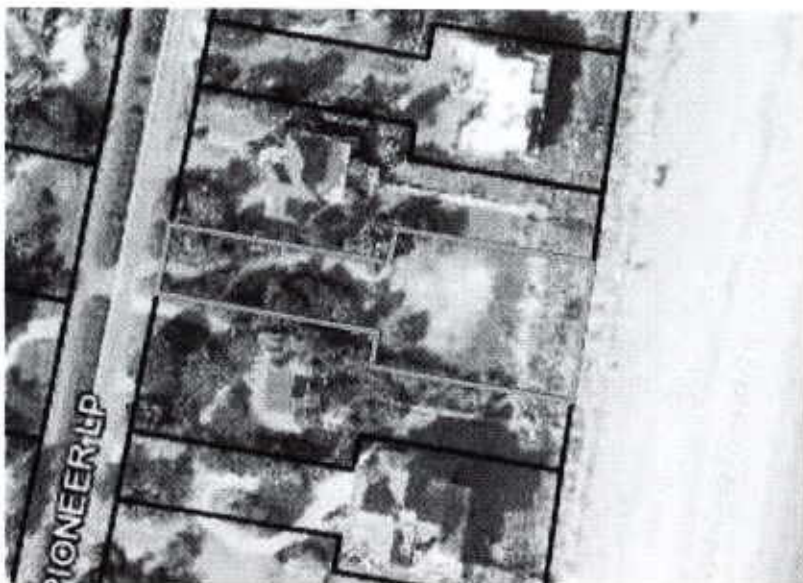
OCEANFRONT LAND SALE 4



| | |
|--------------------------|--|
| <u>Location</u> | 754 Springs Avenue, Pawleys Island, Georgetown County, SC. |
| <u>Tax Parcel Number</u> | 42-0176-031-00-00 |
| <u>Grantor</u> | Marjorie B. Whittington, PR, Est. of Denny W. Whittington |
| <u>Grantee</u> | Howard Kenneth John Bond |
| <u>Sale Price</u> | \$850,000 |
| <u>Sale Price Adj</u> | \$150,000 (est. contributing value of SF home & creek front lot) |
| <u>Effective SP</u> | \$700,000 |
| <u>Sale Date</u> | April 12, 2018 |
| <u>Financing</u> | Cash to seller |
| <u>Verification</u> | Agent in transaction (MLS# 1718347), County records |
| <u>Recorded</u> | Deed Book 2913/90 |
| <u>Description</u> | Sale consists of a small, 30-foot wide oceanfront lot with rear property line extending to the mean high water mark. The lot has an average depth of approximately 130 feet. Site area is 3,900 SF. |
| <u>Zoning</u> | R1, Town of Pawleys Island |
| <u>Comment</u> | This lot was improved with an older, 4-bed raised beach home that had minimal contributing value. Other improvements included a creek front dock and dune walkway. The property was offered for sale originally at \$1,250,000, lowered to \$949,000 at time of contract, and sold after 232 days on market. |
| <u>Analysis</u> | The effective sale price reflects \$179.49 per SF and \$23,333 per front foot. |

JAYROE APPRAISAL COMPANY

OCEANFRONT LAND SALE 5



| | |
|--------------------------|--|
| <u>Location</u> | 123 Pioneer Loop, Pawleys Island, Georgetown County, SC. |
| <u>Tax Parcel Number</u> | 04-0190-041-00-00 |
| <u>Grantor</u> | 123 Pioneer Loop, LLC |
| <u>Grantee</u> | Adebusola Keels, Trustee |
| <u>Sale Price</u> | \$1,200,000 |
| <u>Sale Date</u> | April 2, 2018 |
| <u>Financing</u> | Cash to seller |
| <u>Verification</u> | Agent in transaction (MLS# 1709152), County records |
| <u>Recorded</u> | Deed Book 3238/284 |
| <u>Description</u> | Sale consists of a "piano key" oceanfront lot containing approximately 23,100 SF with 50 feet of road frontage and 100 feet of ocean frontage. All utilities available. |
| <u>Zoning</u> | PD, Planned Development, Georgetown County |
| <u>Comment</u> | This is the sale of an oceanfront lot within Debordieu Colony. The lot is at the north beach portion of the community which has less beach erosion than the south end, oceanfront lots. All lots at Debordieu are subject to a special assessment to fund an initial 17-year beach renourishment project through 2034. The assessment varies, with south end, ocean properties paying higher contributions. This lot is subject to approximately \$4,000 per year. |

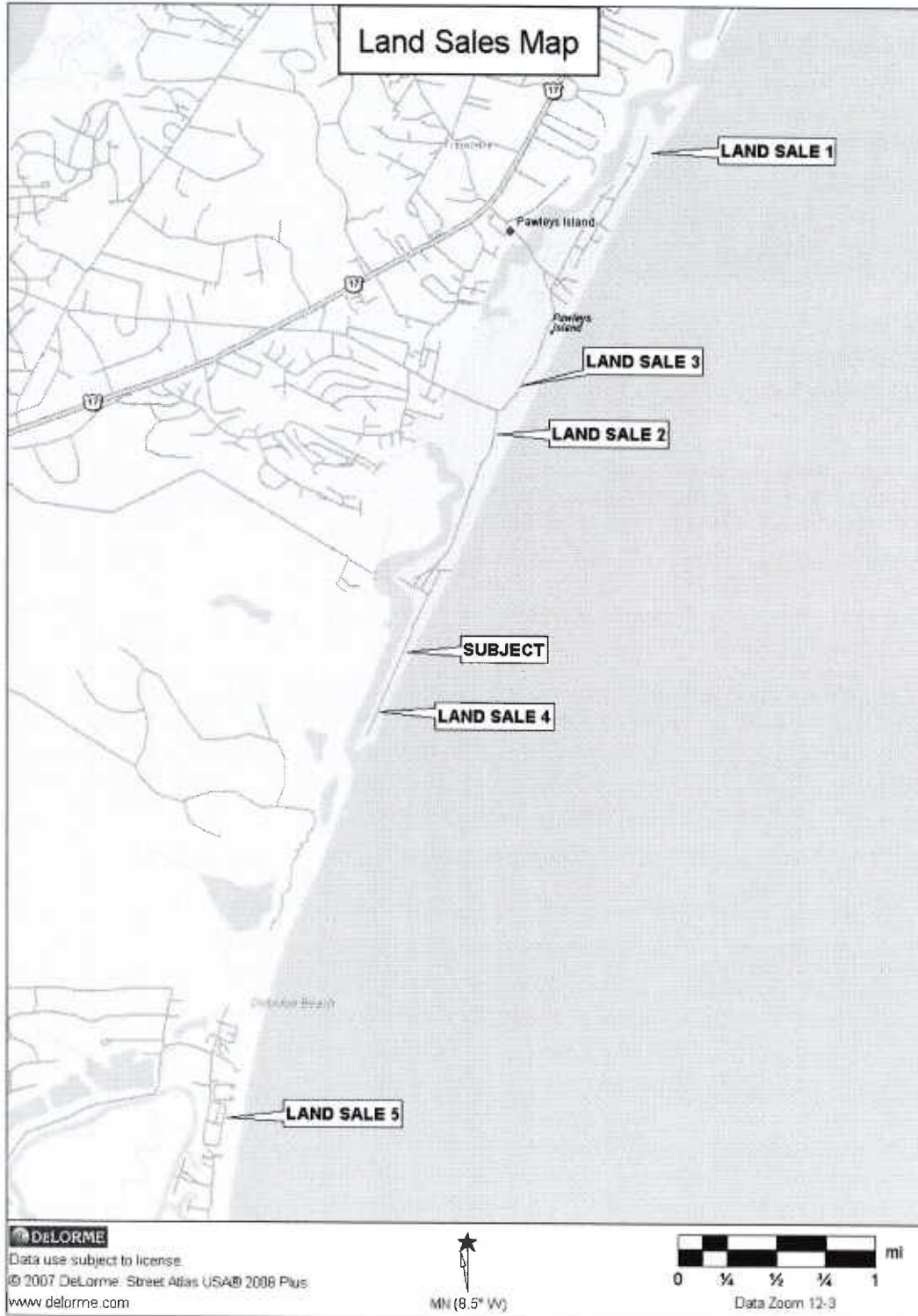
JAYROE APPRAISAL COMPANY

Analysis

The property was originally listed at \$1,500,000, with asking price lowered to \$1,300,000 at time of sale. Marketing time was 347 days. HOA fees, not including the beach renourishment assessments, are \$233 per month.

The sale price reflects \$51.95 per SF and \$12,000 per front foot.

JAYROE APPRAISAL COMPANY



JAYROE APPRAISAL COMPANY

Sales Comparison Analysis

| | <u>Subject</u> | <u>Land Sale 1</u> | <u>Land Sale 2</u> | <u>Land Sale 3</u> | <u>Land Sale 4</u> | <u>Land Sale 5</u> |
|------------------------|-----------------|--------------------------|-------------------------|-------------------------|--------------------------|---------------------------|
| Location | 746 Springs Ave | 108 Atlantic Ave-Pawleys | 466 Myrtle Ave, Pawleys | 388 Myrtle Ave, Pawleys | 754 Springs Ave, Pawleys | 123 Pioneer Lp, Debordieu |
| Front Feet-Ocean | 60 | 60 | 72 | 50 | 30 | 100 |
| Site Depth | 124 | 399 | 368 | 226 | 130 | 250 |
| Size-SF | 7,440 | 23,940 | 26,496 | 11,326 | 3,900 | 23,100 |
| F-T-D Ratio | 0.48 | 0.15 | 0.20 | 0.22 | 0.23 | 0.40 |
| Sale Date | N/A | 09/23/16 | 11/10/17 | 11/03/17 | 04/12/18 | 04/02/18 |
| Adj/Eff Sale Price | N/A | \$ 1,140,000 | \$ 1,305,000 | \$ 1,100,000 | \$ 700,000 | \$ 1,200,000 |
| Sale Price/SF | | \$ 47.62 | \$ 49.25 | \$ 97.12 | \$ 179.49 | \$ 51.95 |
| Sale Price/FF | | \$ 19,000 | \$ 18,125 | \$ 22,000 | \$ 23,333 | \$ 12,000 |
| Trans. Adjust's | | | | | | |
| Financing Adj. | Market | 0% | 0% | 0% | 0% | 0% |
| Adjusted SP/FF | | \$ 19,000 | \$ 18,125 | \$ 22,000 | \$ 23,333 | \$ 12,000 |
| Conditions of Sale | Arm's Length | 0% | 0% | 0% | 0% | 0% |
| Adjusted SP/FF | | \$ 19,000 | \$ 18,125 | \$ 22,000 | \$ 23,333 | \$ 12,000 |
| Market Conditions | Stable-Imp | 11% | 8% | 8% | 6% | 7% |
| Cash Equiv SP/FF | | \$ 21,090 | \$ 19,575 | \$ 23,760 | \$ 24,733 | \$ 12,840 |
| Phys. Adjust's | | | | | | |
| Location Adj. | Pawleys-OF | -20% | -15% | -15% | 0% | 0% |
| Zoning Adj. | R1 | 0% | 0% | 0% | 0% | 0% |
| Size Adj. | 60 | 0% | 0% | -10% | -25% | 10% |
| F-T-D Adj. | 0.48 | -5% | -5% | 0% | 0% | 0% |
| Physical Adj. | Creek access | 0% | 5% | 0% | 0% | 0% |
| Net Adjustments | | -25% | -15% | -25% | -25% | 10% |
| Ind. Value/SF | \$ - | \$ 15,818 | \$ 16,639 | \$ 17,820 | \$ 18,550 | \$ 14,124 |

Mean of Adjusted Sales \$ 16,590

Indicated Value

Size-Front Feet 60
 Value/FF \$ 15,000
 Value Indication \$ 900,000

Discussion of Adjustments

Unit of Comparison: In comparing the sales to the subject lot, units of comparison considered were the sale price per square foot and the sale price per front foot. The former method works better when lots are of uneven shapes or sizes, while the latter is more appropriate when the primary variable is amount of ocean frontage. Given the relative uniformity of the subject and comparable sales, and the lower degree of

JAYROE APPRAISAL COMPANY

deviation, this analysis will use the price per front foot (ocean frontage) as the unit of comparison.

Transactional Adjustments: All sales were fee simple transfers and required no adjustments for property rights. All sales were financed at market terms (or were cash sales) and no adjustments were made for financing. To the extent that could be verified, all sales had relatively similar motivations between the buyers and sellers, and no adjustments were made for conditions of sale.

The market conditions adjustment deals with changing values over time. Conditions within the local market, relative to the property class, have been generally stable to improving over the past three to four years. To make this adjustment, the appraiser has examined re-sales of oceanfront properties in the subject neighborhood as well as bulk data of oceanfront properties that have sold since 2016.

Sale 1 had a price increase of nearly 18% per year based on the difference in the May 2015 and September 2016 sales, but this high rate was likely due to motivations of the first seller. Bulk data analyzed included MLS data of all oceanfront, detached and semi-detached single-family dwellings that have sold since 2016 in the Horry-Georgetown market. These data, which can be affected by the type properties available, can show high degrees of fluctuations as demonstrated in the data set below.

Oceanfront Detached SFR Sales Data

| | No. Sales | Avg Sale Price | Med Sale Price |
|------|-----------|----------------|----------------|
| 2016 | 44 | \$ 1,286,460 | \$ 1,125,000 |
| 2017 | 63 | \$ 1,299,857 | \$ 1,100,000 |
| 2018 | 64 | \$ 1,173,712 | \$ 967,790 |
| 2019 | 17 | \$ 1,645,288 | \$ 1,525,000 |

2019 sales YTD thru April

In this analysis, the market conditions adjustment is reconciled at a rate of plus 3% per year.

Location: With the exception of Sale 5, all comparables were located on Pawleys Island. Sale 5 is located in Debordieu Colony and was used due to its higher amount of ocean frontage. It was also used to compare to Debordieu lots at the south end of the plantation, which have inferior beaches to the north end ocean lots. Although located within a private, gated community, this sale did not warrant a location adjustment due to the amount of HOA dues, including the special assessments for private beach renourishment.

JAYROE APPRAISAL COMPANY

Beach conditions are also considered, as they have a significant impact on value. For the immediate subject area, the conditions improve from south to north, with less beach erosion for the north end lots along Myrtle Avenue and higher degrees of erosion southward along Springs Avenue. Sales 1, 2 and 3 are located on the north end and are superior to the subject lot. These sales are adjusted downward 15% to 20%.

Zoning: This adjustment deals with uses permitted by zoning and their impacts on value. All sales had similar zonings and no adjustments were required.

Size: Size adjustments take into account the tendency for smaller lots to sell for more per unit area (or price per front foot) than larger lots. This is evidenced by the high price per front foot for the 30-foot wide Sale 4 compared to the 100-foot Sale 5.

Frontage-to-Depth Ratio: This adjustment is used primarily when the unit of comparison is the sale price per square foot or per acre. In this analysis, the deeper lots (Sales 1 and 2) are each adjusted a minus 5%.

Physical: Other physical adjustments consider intangibles such as topography, configuration, access, utilities, easements, etc. The subject contains a small area across Springs Avenue that fronts the creek and can accommodate a boat dock, boardwalk, etc. Sale 2 lacks this feature and is adjusted upward. Sale 5 is not adjusted as common areas within the subdivision allow similar access to creek and marsh areas. All other physical characteristics are generally similar and no further adjustments are required.

Reconciliation of Values

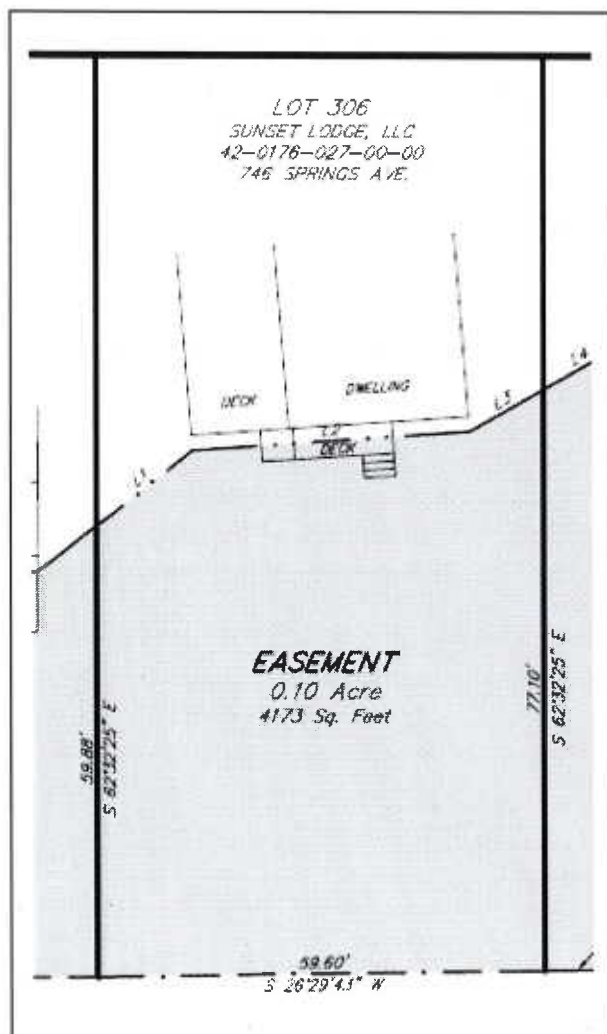
The adjusted sales range from \$14,124 to \$18,550 per front foot, with a mean of \$16,590 per FF. In reconciling an opinion of value for the subject, least weight is accorded Sale 4 due to its smaller size as well as the adjustment to the sale price for the contributing value of the improvements. Placing the subject in the middle to lower portion of the range, a value of \$15,000 per FF is reconciled. Applied to the 60 front feet, the value is indicated at **\$900,000**.

JAYROE APPRAISAL COMPANY

VALUATION AFTER EASEMENT ACQUISITION

In this section of the report, an opinion of value is concluded for the subject after the planned easement acquisition. The final opinion of value is intended to be the net of the values of the acquisition, and damages and/or benefits to the remainder as a result of the acquired easement rights.

Description of Easement Area



The proposed easement is located along the oceanfront portion of the subject lot. The easement begins at the rear property line, or mean high water mark, and extends landward to roughly the rear building setback. The easement area contains 4,173 square feet, according to the Parker Land Surveying plat. The easement does not encroach onto the existing dwelling, although portions of the rear site improvements may be within the easement area. The easement will be permanent in nature and will be acquired for periodic beach renourishment projects.

An easement is a portion of the "bundle of rights." It is a legal right to use another's property (specified portion of) for a specific, limited purpose. Fee title to the easement area remains with the landowner. Although no documents were provided, it is my understanding that the easements will only be used during the beach renourishment projects, and only if access to the property is required for

the work. I am unaware of the frequency of the planned beach renourishment work to be

JAYROE APPRAISAL COMPANY

performed in the future. According to Town officials, the proposed easement does not encroach onto the existing building setback, and no buildable area will be lost as a result of the easement. Any site improvements within the easement (rear decks, walkways, etc.) will be unaffected. Such site improvements would also be allowed within easement areas as new construction on vacant lots or redevelopment of existing homes. It is also my understanding that no rights of use that existed in the before will be affected by the planned easement.

Description of Lot (Remainder) in the After

After the acquisition of the easement rights, the subject will retain the same size, width and amount of buildable area as existed in the before. The easement will not impact the physical utility of the lot.

Highest and Best Use in the After

The planned easement will have no impact on the highest and best use of the subject in the after. The easement will be located in the rear setback area, and the amount of buildable area that was present in the before will remain the same in the after. The highest and best use of the subject remains development with a single-family dwelling.

Valuation of Easement Acquisition

Since only a portion of the bundle of rights is being acquired, the value of the easement area is a portion of the fee simple value of the parent parcel. There is little direct market evidence to determine or support this portion of value, which can vary based on the location of the easement and its use. An easement along a property boundary and within a required setback such as a water-sewer or other utility easement has little impact on the physical utility of the parent tract, and has a low percentage of value. An easement passing through the center of a property which impacts how the parent tract can be used would represent a much higher portion of the whole value, particularly if the easement was for a power line or other above ground utility.

Based on the location of the easement at the rear of the property, which is assumed not to impact the rear building setback, limited use restrictions within the easement area, and the temporary use of the easement only during beach improvement projects, the value of the easement area is fairly low in relation to the entire fee simple value.

JAYROE APPRAISAL COMPANY

To conclude a value for the easement, the area encumbered is treated as a rental of this portion of the property. In my experience with land leases that are based on percentages of market value, annual lease rates typically range between 8% and 12% of the whole parcel value. For purpose of this analysis, 10% is reconciled. Although the easement is permanent, they will only be used during beach improvement projects. Since I am unaware of the frequency of use, I have assumed an average of one month per year, or a multiplier of 1/12 (0.0833). This figure is then applied to the square footage of the easement area to determine an annual rent.

The final step in this analysis is to capitalize the annual income from the hypothetical lease to determine the value of the easement area. There are multiple factors that contribute to an overall capitalization rate such as the term of the lease, safety of the income stream, mortgage and equity requirements, etc. Based on my experience and current market conditions as well as cap rate trends for a variety of property classes, the capitalization rate is reconciled at 9.0%. The annual rent is then capitalized, or divided by, the 9.0% rate to yield a value indication for the easement area to be acquired.

The value of the easement area is determined by the following formula:

Easement Value = (Before Value per SF x rent factor x use period x easement area) / cap rate

Calculations for the subject are summarized below.

| Before Value | Lot Area | Value per
Sq. Ft. | Rent
Factor | Use
Period | Easement
Area | Net
Income | Cap
Rate | Easement
Value |
|--------------|----------|----------------------|----------------|---------------|------------------|---------------|-------------|-------------------|
| \$ 900,000 | 7,440 | \$ 120.97 | 10.0% | 0.0833 | 4,173 | \$ 4,205 | 9.0% | \$ 46,722 |

Damages to the Remainder

In order to determine if there are damages to the parent parcel as a result of the beachfront easement, the appraiser has examined sales of oceanfront properties that are encumbered with similar easements compared to sales of similar properties with no beach nourishment easements. Interviews with market participants were also conducted.

In the course of this assignment, I have consulted with Hector Ingram, MAI, owner of Ingram and Company, Inc., an appraisal firm in Wilmington, NC. Mr. Ingram and his associates had recently collected sales data of encumbered and unencumbered

JAYROE APPRAISAL COMPANY

oceanfront properties in Nags Head and North Topsail Beach for a similar assignment and shared the comparable data which is summarized below.

The first data set examined were three oceanfront land sales that occurred from July 2012 to October 2013 at the Old Settlers subdivision on Topsail Road, North Topsail Beach, NC. One of the sales was encumbered with a beach easement and two were not. These sales are summarized below.

| Address | PID | Size-Acre | Sale Date | Sale Price | Easement |
|----------------|--------|-----------|-----------|------------|----------|
| 118 Topsail Rd | 809-16 | 0.30 | Oct. 2013 | \$250,000 | Yes |
| 106 Topsail Rd | 015643 | 0.30 | July 2012 | \$250,000 | No |
| 132 Topsail Rd | 809-13 | 0.28 | Aug. 2012 | \$250,000 | No |

The above lot sales have very similar locations, sizes, ocean frontage and sold within a period of stable market conditions. It was reported that the sale encumbered with the easement required a downward price adjustment of \$1,000 to account for the amount paid by the seller for a sewer tap fee. According to the broker, this was unrelated to the easement and was made to facilitate the closing. Therefore, the encumbered sale was not penalized for the beach easement.

Also referenced is a trend study from the Town of Nags Head, NC. In 2011, the Town acquired beach renourishment easements from multiple oceanfront properties south of Bonnet Street to the southern town limits, a distance of approximately 10 miles. Properties north of Bonnett Street to the northern town limits were left unencumbered. The location of the easements and rights of use were very similar to the subject easements and did not encroach onto the buildable areas of the encumbered lots. The trend study compared oceanfront single-family home sales that were encumbered with beach renourishment easements with improved sales that had no beach easements. Since there were not a sufficient number of vacant lot sales, the analysis was performed on improved lots.

The sales analyzed occurred during the periods of April 2012 to April 2013 and March 2014 to February 2015. There were no unencumbered sales that occurred during the interim period. To eliminate the affects of market conditions, encumbered sales from May 2013 to February 2014 were not considered. Also eliminated were any sales that were distressed and improved sales that were acquired for redevelopment. The sales data are shown in the table below.

JAYROE APPRAISAL COMPANYNags Head OF SF Home Sales-March 2014 to February 2015

| | | Unencumbered Sales | | Encumbered Sales | |
|-------------|--------|---------------------------|------------|-------------------------|------------|
| Total Sales | | 3 | | 9 | |
| | | Sale Price | SP / Sq Ft | Sale Price | SP / Sq Ft |
| Low | | \$ 1,400,000 | \$ 321.81 | \$ 620,000 | \$ 280.67 |
| High | | \$ 1,512,500 | \$ 352.89 | \$ 1,625,000 | \$ 442.86 |
| Mean | | \$ 1,467,500 | \$ 333.78 | \$ 1,111,667 | \$ 336.05 |
| Median | | \$ 1,490,000 | \$ 326.64 | \$ 970,000 | \$ 323.19 |
| Size Range | Low | | 4,286 | | 4,286 |
| | High | | 4,630 | | 4,630 |
| | Mean | | 4,401 | | 4,401 |
| | Median | | 4,286 | | 4,286 |

Nags Head OF SF Home Sales-April 2012 to April 2013

| | | Unencumbered Sales | | Encumbered Sales | |
|-------------|--------|---------------------------|------------|-------------------------|------------|
| Total Sales | | 3 | | 6 | |
| | | Sale Price | SP / Sq Ft | Sale Price | SP / Sq Ft |
| Low | | \$ 1,161,000 | \$ 285.71 | \$ 605,000 | \$ 275.33 |
| High | | \$ 1,200,000 | \$ 290.25 | \$ 1,829,000 | \$ 379.31 |
| Mean | | \$ 1,187,000 | \$ 287.23 | \$ 1,172,333 | \$ 328.49 |
| Median | | \$ 1,200,000 | \$ 285.71 | \$ 1,055,000 | \$ 329.58 |
| Size Range | Low | | 4,000 | | 1,701 |
| | High | | 4,200 | | 5,448 |
| | Mean | | 4,133 | | 3,629 |
| | Median | | 4,200 | | 3,363 |

Source: Ingram & Company, Inc.

For the period of April 2012 to April 2013, the data show that the mean sale price of single-family dwellings encumbered with beach easements sold at a sale price per heated square foot 14.4% higher than the unencumbered properties. The median sale price per SF of homes with beach easements was 15.4% higher than unencumbered homes. The data set for the later period shows little change in prices between the encumbered and unencumbered properties.

The above data suggest that properties encumbered with beach renourishment easements at worst suffer no diminution in value when compared to properties with no such easements, and at best are benefitted by such easements. The problem with forming definitive conclusions based on this data set are the limited number of sales and the affects that the improvements have on the sale prices. However, when coupled with the

JAYROE APPRAISAL COMPANY

sales data from Old Settlers subdivision in North Topsail Beach, the opinion that beach renourishment easements have no adverse impacts on market value is more supportable.

The appraiser has also interviewed several brokers and sales agents that have experience in marketing oceanfront properties in the Grand Strand. None of those interviewed could recall an instance where a beach easement that did not impact the utility of an oceanfront lot had any negative influence on the sale price or the marketability of the property.

Given the foregoing, it is my opinion that the placement of the beach renourishment easement on the subject property has no adverse affects on value and there are no damages to the remainders as a result of these easements.

Benefits to the Remainders

After the acquisition, the subject lot will be encumbered with an easement that will allow for periodic beach renourishment designed to improve beach conditions along the oceanfront within the project area. As was discussed earlier in the report, beach erosion has been prevalent in the project area. At high tides, there is very little sand and during king tides, the ocean waters often spill over the dunes and under the raised beach homes.

Benefits that may accrue to the remainders as a result of the beach renourishment easement would be based on the anticipation of improved beach conditions. Oceanfront properties with wide beaches have greater value than similar properties with narrow, eroded beaches, all other factors being equal. This was documented in the Sales Comparison approach when the before values were estimated. However, it would be inappropriate to conclude an after value assuming that beach conditions are similar to other areas not subject to erosion, as the after value is based on the value immediately following the placement of the easement.

Increased values for superior beach conditions are evident when comparing Sales 1, 2 and 3 from the Before valuation with the recent listing of 614 Springs Avenue that was used in the 2019 Project Appraisal. This vacant lot (58 front feet) had a list price of \$1,000,000, or \$17,241 per FF, and was on market for just over a year prior to being withdrawn. Sales 1-3 are located north of the project area in Pawleys Island where beach conditions are superior. Accounting for transaction adjustments, the average effective sale price for these 3 sales is \$20,750 per front foot. The 614 Springs Ave, listing is located at the south end of the project area, and has inferior beach conditions. Adjusting the list price a minus 15% based on average sale-to-list price ratios, the adjusted list price

JAYROE APPRAISAL COMPANY

is \$14,655 per front foot. The average sale price of Sales 1-3 is 41.6% higher than the adjusted list price of the listing. Although Sale 4 is within the project area, it has only 30 feet of frontage which is the primary reason for the higher price per front foot.

An additional paired sale comparison is made between Sale 5 (123 Pioneer Loop, Debordieu) in the Sales Comparison approach and the recent closed sale at 1121 Debordieu Boulevard (MLS # 1816112). Sale 5 is located at the north end of Debordieu, which has a much superior beach than the south end sale on Debordieu Boulevard. This sale closed in June 2019 for \$545,000. It has the same configuration as Sale 5 with the same amount of ocean frontage (100 feet) and similar gross area. The difference in sale price was just over 120% for the superior Sale 5.

The foregoing comparisons are of sales with differing beach conditions that existed on the respective dates of sale. Any benefits to the subject would come over time, assuming that the renourishment project with recurring work would result in improved beach conditions. It is reasonable to assume that a potential purchaser of the subject (as if vacant) would anticipate improvement from the renourishment. Therefore, it is my opinion that the beach easements will result in benefits to the subject. The amount of benefits is estimated at 10% of the before value.

Summary

The table below summarizes the before value, value of the easement acquisition, damages and benefits to the remainder.

Note: Since the purpose of the assignment is to estimate the just compensation due to the property owner, the benefits to the remainder is expressed as a negative dollar amount. The net of the values of the taking, damages and benefits is a negative value, meaning that the after value is greater than the before value.

| | |
|---|-------------|
| Before Value | \$ 900,000 |
| Value of Easement | \$ 46,722 |
| Damages to Remainder | \$ - |
| Benefits to Remainder | \$ (90,000) |
| Value of Taking &
Damages / Benefits | \$ (43,278) |

JAYROE APPRAISAL COMPANY

CERTIFICATE OF APPRAISAL

The undersigned hereby certify that:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.

I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

My engagement in the assignment was not contingent upon developing or reporting predetermined results.

My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction that favors the cause of the client, the amount of the value opinion, estimate, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

J. Brian Donovan has made a personal inspection of the property that is the subject of this report.

No one provided significant professional assistance to the person signing this report.

As of the date of this report, J. Brian Donovan, has completed the requirements of the continuing education program of the South and North Carolina Real Estate Appraisers Boards.

JAYROE APPRAISAL COMPANY

I have performed prior services as an appraiser, but in no other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

The subject of this appraisal report consists of an oceanfront parcel located at 746 Springs Avenue, Pawleys Island, Georgetown County, South Carolina.

As a result of my investigation into those matters which affect market value, and by virtue of my experience and training, I have estimated the market value of the fee simple interest in the subject property, effective June 3, 2020, to be as shown in the table below. The concluded value is as vacant and include value before the easement acquisition, value of the easement rights acquired, damages and benefits to the remainder.

| | |
|---|-------------|
| Before Value | \$ 900,000 |
| Value of Easement | \$ 46,722 |
| Damages to Remainder | \$ - |
| Benefits to Remainder | \$ (90,000) |
| Value of Taking &
Damages / Benefits | \$ (43,278) |

Respectfully Submitted,

JAYROE APPRAISAL COMPANY



J. Brian Donovan
 State Certified General Real Estate Appraiser
 Certification Numbers: CG 3798 (SC)
 A 6432 (NC)

JAYROE APPRAISAL COMPANY

QUALIFICATIONS OF THE APPRAISERS

J. Brian Donovan
 JAYROE APPRAISAL COMPANY
 1601 Oak Street, Suite 107
 Myrtle Beach, South Carolina 29577
 Phone: 843-497-7158 Email: jbdonovan@sc.rr.com

• EDUCATIONAL BACKGROUND

Chamberlain High School
 Tampa, Florida

Graduate, 1983
 Graduation Marshall, Top 10% of Class

University of South Florida
 Tampa Florida

Pre-Med program, 1983-1987

South Carolina Institute of Real Estate
 Columbia, South Carolina

L1, Foundations of Real Estate Appraisal, 1997
L2, Appraising the Single Family Residence, 1998
L3, Standards and Ethics, 1999

JT & T Seminars
 Pawleys Island, South Carolina

C1, Introduction to Income Property Appraisal, 2001
C2, Advanced Income Capitalization Procedures, 2001
C3, Applied Income Property Valuation, 2001

♦ SAMPLE OF APPRAISAL COURSES : (excluding USPAP Updates)

- Supporting Capitalization Rates, 2003
- National USPAP Update, 2003
- Rates and Ratios, 2004
- Eminent Domain, National USPAP Update, Condo Hotel Valuation, 2005
- Motel Valuation, 2006
- Subdivision Valuation, 2006
- Business Practices & Ethics, 2008
- Even Odder-More Oddball Appraisals, 2010 (McKissock)
- Mortgage Fraud, 2010 (McKissock)
- Private Appraisal Assignments, 2010 (McKissock)
- Appraising & Analyzing Office Buildings for Mortgage Underwriting, 2011 (McKissock)
- Appraising & Analyzing Industrial and Flex Buildings for Mortgage Underwriting, 2012 (McKissock)
- The Sales Comparison Approach, 2014
- Land and Site Valuation, 2014
- Appraising Self-Storage Facilities, 2014 & 2018
- Appraisal of Assisted Living Facilities, 2016
- Advanced Hotel Appraising-Full Service Hotels, 2016
- Appraising Small Apartments, 2016
- Appraisal of Owner Occupied Properties, 2018
- The Appraiser as an Expert Witness, 2018

JAYROE APPRAISAL COMPANY

• PROFESSIONAL EXPERIENCE

Jayroe Appraisal Company, Myrtle Beach, South Carolina 1996 to present
Research Associate, Data analyst, Market demographic studies, Appraiser

• TYPES OF PROPERTY APPRAISED

- | | | |
|--------------------|----------------------------|--------------------|
| • Motels | • Golf Courses | • Shopping Centers |
| • Apartments | • Acreage | • Retail Stores |
| • Restaurants | • Subdivisions | • Condominiums |
| • Auto Dealerships | • Manufacturing/Industrial | • Residential |

• SAMPLE OF PROPERTIES APPRAISED:

- | | |
|---|------------------------------------|
| • Wachesaw East Golf Course | Murrells Inlet, South Carolina |
| • Wild Wing Plantation | Conway, South Carolina |
| • Colonial Mall | Myrtle Beach, South Carolina |
| • Barefoot Landing, Phase III | North Myrtle Beach, South Carolina |
| • Jordan Care Assisted Living | Conway, South Carolina |
| • Addys Harbor Dodge | Myrtle Beach, South Carolina |
| • Wild Water & Wheels | Surfside Beach, South Carolina |
| • Holiday Inn West | Myrtle Beach, South Carolina |
| • Days Inn | Various locations within SC |
| • Microtel Inn | Myrtle Beach, South Carolina |
| • Sand Castle Oceanfront Resort | Myrtle Beach, South Carolina |
| • Queens Harbour Office Park & phases | Surfside Beach, South Carolina |
| • The Galleria Shopping Center | Myrtle Beach, South Carolina |
| • Alligator Adventure | North Myrtle Beach, South Carolina |
| • Anderson Ocean Club & management contract | Myrtle Beach, South Carolina |
| • Oceans One Resort & management contract | Myrtle Beach, South Carolina |

References Available Upon Request

BCD1254282

State of South Carolina
Department of Labor, Licensing and Regulation
Real Estate Appraisers Board

JONATHAN BRIAN DONOVAN

Is hereby entitled in practice as a:
Certified General Appraiser

License Number: 3798

Expiration Date: 06/30/2020
OFFICE COPY

Laura L. Smith
Administrator

NORTH CAROLINA APPRAISAL BOARD
APPRAISER QUALIFICATION CARD
Expires June 30, 2019

REGISTRATION / LICENSE / CERTIFICATE HOLDER

18 JONATHAN BRIAN DONOVAN 19

A6432 G Y

APPRAISER NUMBER TYPE NATIONAL REGISTRY

Jon Donovan
APPRAISER'S SIGNATURE

David M. [Signature]
EXECUTIVE DIRECTOR

JAYROE APPRAISAL COMPANY**GENERAL ASSUMPTIONS**

1. The legal description used in this report is assumed to be correct.
2. No survey of the property has been made by the consultant and no responsibility is assumed in connection with such matters. Sketches in this report are included only to assist the reader in visualizing the property.
3. No responsibility is assumed for matters of legal nature affecting title to the property nor is an opinion of title rendered.
4. Information and data furnished by others is usually assumed to be true, correct and reliable. When such information and data appear to be dubious and when it is critical to the analysis, a reasonable effort has been made to verify all such information; however, no responsibility for its accuracy is assumed by the consultant.
5. All mortgages, liens, encumbrances, leases and servitudes have been disregarded unless so specified within this report. The property is analyzed as though under responsible ownership and competent management.
6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.
7. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws, unless noncompliance is stated, defined and considered in this report.
8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined and considered in this report.
9. It is assumed that all required licenses, consents or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. It is assumed that the utilization of the land and improvements is within the bounds of property lines of the property described and that there is no encroachment or trespass unless noted in this report.

JAYROE APPRAISAL COMPANY**GENERAL LIMITING CONDITIONS**

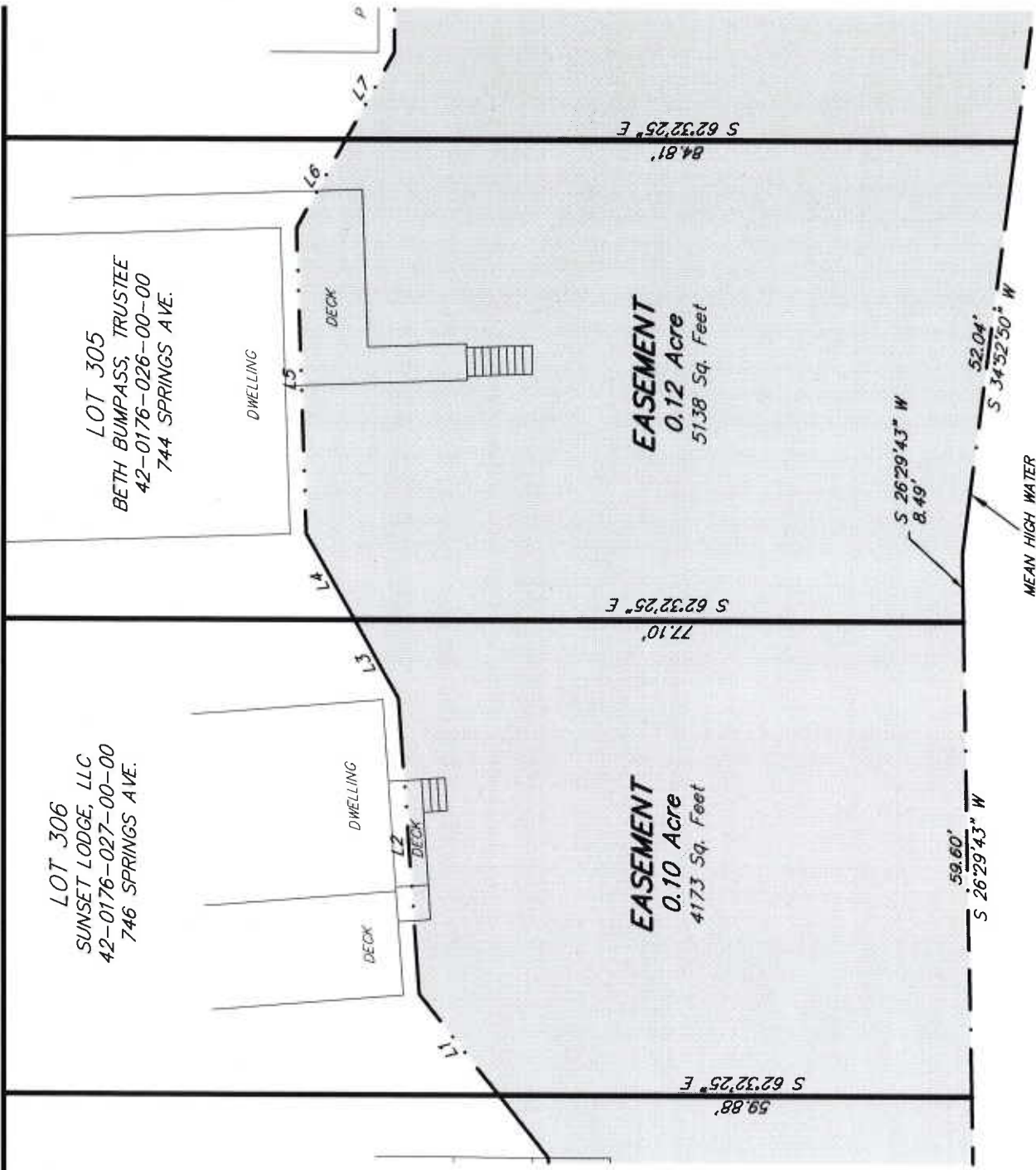
1. The consultant will not be required to give testimony or appear in court because of having made this analysis, with reference to the property in question, unless previous arrangements have been made thereof.
2. Possession of this report, or copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the consultant and, in any event, only with proper written qualifications and only in its entirety.
3. The distribution of the total valuation in this report between land and improvements, if any, applies only under the reported highest and best use of the property. The allocations of value for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.
4. No environmental impact studies were either requested or made in conjunction with this analysis, and the consultant hereby reserves the right to alter, amend, revise, or rescind any of the value opinions based upon any subsequent environmental impact studies, research or investigation.
5. Neither all nor any part of the contents of this report, or copy thereof, shall be conveyed to the public through advertising, public relations, news, sales, or any other media without written consent and approval of the consultant. Nor shall the consultant, firm or professional organization of which the consultant is a member be identified without written consent of the consultant.
6. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of such substances as **asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials** may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for them. The client is urged to retain an expert in this field, if desired.

JAYROE APPRAISAL COMPANY

7. Unless otherwise stated in this report, no pertinent environmental laws affecting the property were made known to the appraiser. Examples of such laws include **wetlands, coastal area legislation, clean water legislation and clean air legislation.** Since the appraiser does not possess the expertise to identify these factors, a survey or proper certification by governing authorities is recommended to indicate areas of concern. Presence of wetlands, or any other environmental concern, may affect the value of the property.
8. Acceptance of this report signifies acceptance of the foregoing "General Assumptions" and "General Limiting Conditions" presented in this report.
9. In the event that any material data provided the appraiser is found to be erroneous, the sole responsibility of Jayroe Appraisal Company is to provide an amended appraisal report based upon corrected data.

JAYROE APPRAISAL COMPANY

ADDENDA



NOTES:

1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. NO TITLE SEARCH PERFORMED BY THIS OFFICE.
2. THIS SURVEY WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON(S) OR ENTITY APPEARING ON SAID SURVEY. THIS SURVEY DOES NOT EXTEND TO ANY UNNAMED PERSON(S) OR ENTITY WITHOUT AN EXPRESSED RECERTIFICATION BY PARKER LAND SURVEYING, LLC.
3. THIS SURVEY IS NULL AND VOID IF SIGNATURE AND EMBOSSED SEAL ARE ABSENT.
4. ALL BEARINGS AND COORDINATES SHOWN HEREON ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM 1983. DISTANCES SHOWN HEREON ARE HORIZONTAL (GROUND) DISTANCES, NOT GRID DISTANCES.
5. PROPERTY LINES WERE ESTABLISHED AS A BEST FIT SCENARIO FROM FIELD EVIDENCE, RECORDED PLATS AND RECORDED DEEDS.
6. MEAN HIGH WATER WAS ESTABLISHED FROM TIDAL MONUMENT WD NO 4 1975.
7. WESTERN SIDE OF EASEMENT IS 2'± FROM EDGE OF DWELLINGS.

| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | N 10°46'03" W | 16.18' |
| L2 | N 23°27'54" E | 37.15' |
| L3 | N 02°19'26" W | 11.32' |
| L4 | N 02°19'26" W | 12.40' |
| L5 | N 25°36'01" E | 38.27' |
| L6 | N 56°57'47" E | 12.73' |
| L7 | N 56°57'47" E | 12.51' |
| L8 | N 27°35'36" E | 38.36' |
| L9 | N 01°28'42" E | 12.18' |
| L10 | N 01°28'42" E | 12.66' |
| L11 | N 27°43'41" E | 37.24' |
| L12 | N 23°27'50" E | 11.25' |

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Town of Pawleys Island,)

Condemnor,)

v.)

Sunset Lodge, LLC,)

Landowner.)

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

**CONDEMNATION NOTICE
AND
TENDER OF PAYMENT**

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

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

1. The Town of Pawleys Island is the condemnor herein and seeks to acquire an easement on the real property described herein ("the Property") for public purpose.
2. Sunset Lodge, LLC is named as Landowner by virtue of their claim of title or interest in the Property as shown by that certain Deed dated September 18, 2015 and recorded on September 21, 2015 in Book 2655, at Page 15 in the Register of Deeds for Georgetown County.
3. The following is a description of the Property subject of this Condemnation Notice and a description and map of the property interest sought to be acquired in and to the Property by the Condemnor:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

June 9, 2020

December 3, 2020 Landowner brief in support of motion for summary judgment.

| | | |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GEORGETOWN |) | CIVIL ACTION NO. 2020-CP-22-00600 |
| |) | |
| Sunset Lodge, LLC, |) | |
| |) | PLAINTIFF'S |
| Plaintiff, |) | MEMORANDUM IN SUPPORT OF |
| |) | 8/21/20 MOTION FOR |
| v. |) | SUMMARY JUDGMENT |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Plaintiff submits this brief in support of Plaintiff's motion for summary judgment. The motion was filed on August 21, 2020, along with the Affidavit of M. B. Stanton, which sets forth the uncontested facts pertinent to the motion.

Plaintiff has moved the Court pursuant to Rule 56(c), SCRPC for an order granting summary judgment, declaring the inability of the Defendant Town of Pawleys Island to condemn the interest in Plaintiff's oceanfront property set forth in the condemnation notice, forbidding same, quashing the condemnation notice and associated papers served upon Plaintiff, and permanently prohibiting the filing thereof. The motion should be granted.

I. Nature of the Action

The present action was preceded by the Defendant Town of Pawley's Island's commenced, still pending, but unfiled, "condemnation action."¹ The present action is a separate

¹ As discussed further below in conjunction with the Town's failure to comply with the exclusive statutory procedure, the Town was the first to invoke legal action, suing Plaintiff in a "condemnation action."

Under the exclusive statutory procedure governing the matter, the Town commenced its condemnation action against Plaintiff when the Town served a condemnation notice. The Court will note that a large portion of the Town's opposition to summary judgment fails because the Town relies heavily on an incorrect argument of a matter of pure law, without any dispute of the underlying facts. The Town's argument that it did not fail to provide an appraisal and negotiate with respect to it before commencing the action is premised entirely, and fails, on the legally

action pursuant to S.C. Code Ann. §28-2-470 to invalidate the Town's subject condemnation action.²

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

It has always been the terms and location of the easement described in the condemnation papers which have presented the biggest problem. However, as anyone reading the entire Amended Complaint would conclude, the manner in which the Town has gone about the entire matter now counsels against anything but the strongest, if not absolute, caution in dealing with the Town.

II. The Standard of Decision of a Motion for Summary Judgment

This action was commenced on July 21, 2020. A party seeking to recover upon a claim may, at any time after the expiration of 30 days from the commencement of the action, move

incorrect assertion that a condemnation action is not commenced until the notice is later filed. Compare the Town's brief at pages 6-9, especially, at 7, absurdly misciting and incorrectly implying the contents of S.C. Code Ann. §28-2-220(A), which requires that, "[p]rior to commencing a condemnation action," the condemnor decide which of two procedures to use and decide which of two notice forms to use. In that the procedure undeniably requires that service of the notice precede filing of the notice, this statute clearly does not allow that decision to be made after serving the chosen notice, which would be impossible.

² As noted below, as an additional sustaining ground for granting summary judgment, the Town has recently abandoned the subject challenged action. The Town did so by commencing a new, additional action on the same subject matter. Before doing so, the Town Council, off the record, passed a later Town resolution containing false recitations. The Town then served, in October, new condemnation notices falsely backdated to June 9, 2020.

with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof. Rule 56(a), SCRCP.

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

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

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

Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Dawkins. “Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence.” Dawkins, 354 S.C. at 69, and see Middleborough Horizontal Property Regime Council v. Montedison, 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct. App. 1995)(“Montedison advances

no good reason why four months was insufficient time ... to develop documentation in opposition to the motion for summary judgment”).

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

If on motion under Rule 56, judgment is not rendered for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. Rule 56(d), SCRCF. It may thereupon make an order specifying the facts that appear without substantial controversy. Id.

III. Procedural Status of the Case

The more detailed early history and status of the case is recited in Plaintiff’s August 27, 2020 Return to Town’s Motion for Protection from All Discovery.

The Town previously moved to expedite not only its own motions but also this entire case, but afterwards moved to block discovery against the Town until the Town's own motions could be heard on an expedited basis.

On August 3, 2020, Defendant Town of Pawley's Island filed a motion to dismiss this challenge action pursuant to Rule 12(b)(6), SCRCP.

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

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

Plaintiff had opposed the Town's motion to block discovery and had moved to compel, but those motions were not heard on September 11. As of this writing, those motions are still pending and include Plaintiff's request to compel the Town to swear to October 26, 2020 answers to interrogatories that were served by Plaintiff August 12, 2020, and to answer certain interrogatories not answered or not answered fully.

The appraiser hired by the Town to place a value on the easement sought to be condemned has also been deposed.

The Town served interrogatories and requests for production on or around October 6, 2020.

The Town abandoned the underlying condemnation action in the instant case, by commencing separate and additional condemnation actions on the same subject matter on

October 16, 2020, to which Plaintiff and others have filed corresponding additional challenge actions, 2020CP2200930, 931 and 932.

IV. Undisputed Facts

The easement the Town seeks in the subject action, according to the proposed easement's actual, written, terms which are stated in the condemnation papers served, subjects the entire affected part of the owner's land to "public use and access." These written term also subject the entire affected part to "operation of a public beach" on the owner's land, "patrolling" on the owner's land, restriction of the owner's own access to the owner's land and right of access to the ocean, destruction and prohibition of existing and future owner improvements, and other features. It is undisputed that this is written in the proposed document and condemnation papers served. (See, e.g., Stanton Aff. ¶¶33 and 37.)

However, the crux of the matter is that Town, when soliciting similar easements from other owners, and when publicizing the names of those who did not grant the easement, and when voting to condemn the easement, has almost always described publicly what it seeks as being simply for "beach renourishment," with no reference whatsoever to these other profound encumbrances – as if they do not exist. This fact of avoidance and concealment is undisputed. (See, e.g., Stanton Aff. ¶¶3(a), 3(c), 5(a), 5(b)(iv), 5(c)(i)-(iv), 5(c)(vi)-(vii), 18-22, 31, 33, 38-56, 58-69, 71-90, and 94-99.)

The Town's own opposing brief and opposing affidavit of Mr. Fabbri confirm this undisputed fact of avoidance and concealment; these documents persist to this day in never once even mentioning "public access" or any of the actual, true, objections to the terms and location of the proposed easement.

The Town thus refuses to adduce actual facts about or publicly acknowledge – even in court -- the wording of the easement in connection with the specified location of the easement.

By adding to what was being “sold” by the Town Administrator, Mr. Fabbri, as a mere construction easement for sand placement, an additional perpetual right of “public use and access” throughout the easement area, and then locating the easement area, spatially, only two feet from homes and in fact enveloping owner improvements, the proposed easement, factually and legally, grants perpetual public access to private decks.

This matter of law cannot be disputed; it is not a question of fact. The only factual question is whether the Town has inserted the language in the document, and the Town has done so.

Adding the right of public use and locating the perpetual easement two feet from homes grants perpetual public access to private steps, walkways, showers, etc. in the easement area, and invites the public onto even unimproved parts of the yard to peer into windows if the public desires.³ This matter of law cannot be disputed.

The renourishment for which the Town began requesting the easements has been done. If no renourishment is ever done again, the granted perpetual right of public use and access would remain. This is a question of law and cannot be disputed.

If the renourishment sand already placed in the proposed easement area never washes away and no one does any renourishing again, the right of public use and access would remain, two feet from the door. If the dunes and the sand already placed ever did wash away, and no

³ The location of the easement also allows these things to be torn down, and casts into doubt, the ability to maintain, repair and replace them, which is an additional issue.

renourishment were done, public use and access, two feet from the door, would remain. This matter of law cannot be disputed.

Confirming the Town's persistent and conspicuous aversion to publicly acknowledging the issues, the Town's brief and Mr. Fabbri do not mention public access or destruction of owner improvements or unreasonable proximity. Instead, they pretend that the objection of Plaintiff is merely over providing "safe and suitable access" to the worksite (TOP brf. at 4),⁴ merely adding "sand fencing and planting beach grass" (TOP brf. at 5), and merely undertaking "all activities related to construction and maintenance of the renourished beach" (TOP brf. at 5).⁵

The Town admits, as an undisputed fact, that it represented, early on, in at least two writings, "The easement is required solely for activities related to the construction and

⁴ It would be charitable to recharacterize this pretense as lay misunderstanding of what an easement is, and misunderstanding the difference between a permanent easement and a construction easement, but the issues have been extant for nearly two years and the Town has had plenty of time to get legal advice.

The Town's publicly professing to seek a "mere" "renourishment easement" is, rather, an inverse version of "The Emperor's New Clothes," in which the Town persists in attempting to foment consensus that the Town will really be wearing nothing, when the Town in fact consciously seeks to clothe itself in an extraordinary fashion, forever. The referenced story is a Danish folktale of the 1800s, retold by Hans Christian Andersen, echoing similar stories in other cultures in preceding centuries. In the story, the emperor's new "clothes" were publicized as being invisible only to the stupid, and thus, when the king walked naked, those not wishing to appear as fools marveled at how nice the "clothes" were. Except for a child, who called it like it truly was, and laughed at the naked emperor. The Town seeks to walk off fully clothed in Plaintiff's property rights while feigning belief that it is wearing nothing.

⁵ Every judge and other lawyer knows that casual euphemism and inaccurate shorthand reference have no place in drafting formal conveyancing documents permanently affecting the title to land.

The matter is all the more serious – and deserving of care and accuracy, rather than recklessness and repeated casual inattention -- when the land is being taken, or its title polluted, against the owner's will, by the government elected and hired to serve.

Euphemism and inaccurate shorthand reference, when purposefully repeated in the face of a call for clarity, become pretense; pretense, when purposefully repeated in the face of objection and recognition, becomes just plain bad faith, indifference, and conscious dishonesty.

maintenance of the project, including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.” (TOP brf. at 5 (emphasis added).)

“Solely” means solely. This admitted representation is demonstrably false to the point of no genuine dispute.

The Town provided in the easement, for example, an unrestricted, unqualified additional land grab, not at all dependent on or “required for construction and maintenance of the project,” i.e., the Town provided that the grant of permission to place sand on the beach, groom it, move equipment, etc., was “together with the right of public use and access.”⁶ (Stanton Aff., e.g., ¶37(b).)

It is undisputed that the Town started out with the above representations as to the sole activities the easement would allow, and that what the Town sent to be signed stated, instead, exactly that the rights granted were “together with the right of public use and access,” among other things.⁷ (TOP brf. at 5, admitting representation.)

⁶ This was a legal document, sent largely to elderly and lay people, with a notation of dire urgency, to sign and send back. In a word, it is fraudulent.

⁷ It is not material why the Town persisted, and persists, still, in these false representations of the limited nature of the proposed easement. It is fairly obvious, however, that in the early stages, the Town falsely represented the matter in order to induce and cajole trusting landowners into signing the requested document under the owner’s fear of beach erosion and subtle threats of public shaming, while the Town did conduct a shaming program with respect to those who did not capitulate, by, for example, publishing their names and addresses.

It also is apparent that in later stages, and even now, in its brief and affidavit, the Town did not want draw the attention of the signing landowners to the true content and consequences of the document they had been induced to sign, and wanted to continue to pretend the document meant something else and wanted to portray Plaintiff and other condemnees as being crackpots, unreasonably opposed to sand and beach grass, and being deserving of being sued by their own Town with Town funds.

Similar easements were sought in this manner for only about half of the Town's overall renourishment project. The easements were sought only for the limited part on the south end of the island, on which the Town had engaged in ongoing, on-again-off-again discussions and conditional agreements to get present assistance from the U.S. Army Corps of Engineers. (Stanton Aff. ¶¶16 and 17.)

It is undisputed that any such assistance, and its timeliness, would be conditioned, among other things, on unpredictable appropriation of money for same by Congress. That appropriation would of course now have to occur in a post-COVID-pandemic environment. (Stanton Aff. ¶¶90, 91, and 97(c), and see ¶¶12, 13, 15, 26, 29, and 30.)

No such assistance was to be involved in the other part of the project north of where there is future prospect of Corps involvement, and no such easements have ever been proposed to Town Council members or other owners in that part. (Stanton Aff. 12,15-17, 24, 30, 32, 48(c)-(h), and 81-84.) This is undisputed.⁸ The Town Administrator also has not signed one and does not live in the Town or own property in it.

It is undisputed that all three condemnees, in 2019, provided to the Town, signed deeds of easement, and that the easements they provided granted the Town the following, among other things:

⁸ The Town contends, in Mr. Fabbri's affidavit, falsely, that easements in the subject area are necessary to get future federal assistance which would protect the over 14 million dollars the Town spent completing the overall project. (Fabbri Aff. at 3.)

Federal assistance from the Corps – if it were needed and if it did indeed materialize -- would be limited to only the part or the project subjected to the easements, while the other part would continue in the same status currently applicable to all of the renourished beach -- to be self-funded by the Town, unless supplemental funds are available from the state, or different channels of the federal government. But any such falsehood about the easements saving the entire beach is not a fact material to the bases set forth herein for summary judgment. That, like much of Mr. Fabbri's affidavit, is not the issue.

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

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

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

D. The ability to undertake all activities related to construction and maintenance of the renourished beach (compare TOP brf. at 5, stating this was a requirement of the easement).

(Stanton Aff. ¶¶34(b), 34(c), 34(e), 34(f), 35, 36, 48(b), 54, 59, 60, 61, 62, 66, 67, 69, 72, 74, 92, 99, 112, 113, and 126.)

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

After obtaining easements from numerous other owners in the deceptive and coercive manner described above, the Town proceeded to complete the actual overall renourishment without any involvement of the Corps at all. (Stanton Aff. ¶¶26-28.) This is undisputed.

The renourishment is done. (Stanton Aff. ¶28.) This is undisputed. The Town did this without any easement at all from two condemnees⁹ and some other owners from whom the Town had not obtained easements or whose easements the Town rejected. (Stanton Aff. ¶¶35, 25-28.) This is undisputed. The Town did so after publicly determining easements were “not necessary.” (Stanton Aff. ¶27.) This is undisputed.¹⁰

After the renourishment was completed, however, the Town Council voted May 18, 2020 to condemn easements from remaining owners, proceeding in the same manner, describing the easements authorized to be condemned only as “renourishment easements,” without describing the profound encumbrances which have always been the crux of the matter. (Stanton Aff. ¶¶33-48; see also ¶¶49-99.) This is undisputed.

It is undisputed that there is a full, official, verbatim recording of the meeting and that before the condemnation action was served, there is no public record whatsoever of Town Council considering the specific objections of the proposed condemnees to the easement requested. (Compare Fabbri Aff., devoid of any evidence of any such consideration.)

It is undisputed that before the condemnation action was served, there is no public record whatsoever of Town Council discussing, having mentioned to them, or acknowledging, that the three condemnees had in fact provided the Town with signed easements providing the things in A-D, above, and more. (Compare Fabbri Aff., devoid of any evidence of any such discussion by Town Council.)

⁹ Condemnee Sunset Lodge, LLC had not only provided, but also recorded, an easement, but inasmuch as the Town sued Sunset to condemn an easement, it is assumed the recorded easement was rejected.

¹⁰ The Town also did so after publicly determining that the most probable scenario under the amount of sand the Town planned to pump onto the shore was that renourishment would not be needed again for over 22 years.

It is undisputed that before the condemnation action was served, there is no public record whatsoever of any person on Town Council mentioning having read the terms of the easement described in the condemnation papers later served. (Compare Fabbri Aff., devoid of any evidence of any such reading.)

For purposes of the thus approved condemnation of a “renourishment easement,” the Town then procured an appraisal report without describing these profound encumbrances to the appraiser. This is undisputed. (Stanton Aff. ¶¶105, 106, 107, 111, 112, 113, 114, 115, 116, 128, and 129.)

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

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

Any site improvements within the easement area (e.g., rear decks, walkways, etc.) will be unaffected. Such site improvements would also be allowed within the easement areas as new construction on vacant lots or redevelopment of existing homes.¹¹

For purposes of the thus approved condemnation action, the Town procured an appraisal report without giving to the appraiser a copy of the language of the proposed easement his sole task was to place a value upon. (Stanton Aff. ¶¶105, 106, 107, 111, 112, 113, 114, 115, 116, 128, and 129.) This is undisputed.

¹¹ Unless Mr. Fabbri intended to condemn what he described to the appraiser, Mr. Fabbri thus lied to the appraiser. Either way, the condemnation action is fatally flawed. If Mr. Fabbri did intend to condemn what he described to the appraiser – an easement involving no public access, not affecting improvements, not limiting the owner’s rights of access, and only active when renourishment machinery is present -- it makes no sense that Mr. Fabbri would have rejected the much more comprehensive easement offered earlier by Plaintiff for free.

This appraiser was required by statute to be hired by the Town to value the easement “to determine the amount that would constitute just compensation for its taking.”¹²

The Town did not make the appraisal report available to Plaintiff before serving the condemnation notice. (Stanton Aff. ¶123.)¹³ This is undisputed.

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

V. The Town’s Opposing Affidavits or Other Rule 56(c) Materials Argued By the Town to Create an Issue of Fact Material to the Motion

As its sole rule 56(c) opposing material,¹⁴ on or about November 20, 2020, the Town filed an affidavit of Ryan Fabbri.

In it, Mr. Fabbri testifies without personal knowledge and as hearsay, if even that, to “the intent of Town Council” (e.g., Aff. at 4 and 7) and Town Council’s “awareness” (e.g., Aff. at 5). Mr. Fabbri is not on Town Council and is not Town Council and is certainly not Brian Henry, Sarah Zimmerman, Rocky Holliday, Guerry Green, or Ashley Carter, who are not testifying. Plaintiff objects and moves to strike.

¹² S.C. Code Ann. §28-2-70(A).

¹³ However, the Town did make the flawed appraisal reports available to the local newspaper.

¹⁴ As noted above, Rule 56(c) does not recognize unsworn statements in a brief and additional things impermissibly simply attached to a brief.

He makes legal arguments on the definition of “commencement” of a “condemnation action” (e.g., Aff. at 7), and on other possible matters on which, as a nonlawyer, he is not qualified to give opinion testimony, and is otherwise precluded from offering as hearsay from his lawyer, particularly when the statements are legally incorrect. Plaintiff objects and moves to strike.

He makes legal or factual arguments – it is unclear which – that all of the profound encumbrances objected to, which he persists in not identifying, “are required by the Corps” and that “the Corps is the ultimate decision maker” (e.g., Aff. at 8), on which statements, as a nonlawyer, he is not qualified to give opinion testimony, and is otherwise precluded from offering as hearsay, particularly when his soi-disant “partner,” the Corps, has offered no sworn testimony at all. The Corps is not the party who made the decision to condemn. The Town is the condemning party and as a matter of law is the decision maker on that issue.¹⁵ (See also Aff. at 5 (stating there was failure to agree on an easement grant document that “complies with the terms required by the Corps”).) Plaintiff objects and moves to strike.

¹⁵ The Amended Complaint alleges that any instruction or decision from the Corps in this area is arbitrary, illegal and not official policy in any event. The Town has made no showing or legal argument to the contrary. Certainly, if the condemnor is not allowed by law to act unreasonably and arbitrarily, the condemnor cannot delegate to a third party, the ability to act unreasonably and arbitrarily.

The Town cites absolutely no authority that its decisions may be delegated to the Corps or that Town Council is relieved of a duty of rationality to the landowner.

Further, the Amended Complaint alleges Town Council was completely in the dark factually and legally and oblivious to Corps requests or requirements involving the overreaching and alarming attributes of the easement the Town presently seeks to condemn. As shown herein, the Council’s record of its sole consideration of the matter states that Council thought, and its counsel confirmed, on the record in the official deliberation, that the easement was “basically, simply to put sand on the beach.” If the Town now contends that the Council knew that the Corps had a byzantine request for something else and that Council was aware of it, the Town has not squared that with the fact that Town Council never considered it.

Mr. Fabbri also makes false factual statements on issues meant to sway, but that are not material to granting summary judgment, e.g., that the Corps “will replace any lost sand,” “federally protecting” the entire “\$14,883,237.00” the Town has already spent. (Aff. at 3.) He does not disclose that if replacement is ever needed and if Congress appropriates money, and if any other conditions are met, the Corps might, on an unknown, unguaranteed, level of responsiveness and timeliness, replace only the sand on the less than half the island affected by the proposed easements.

Mr. Fabbri otherwise primarily argues, rather than state objective facts.

What he does not do is address the issue of public access to and use of the owner’s land, two feet from the door.

He never even mentions this issue of almost two years.

The grand pretense of Mr. Fabbri, and now others, is something he will not come out and say: that the public use and access of Plaintiff’s land is only such public use and access as is necessary to put sand on the beach.

This is ridiculous and insulting to the intelligence of a literate person. That is why it is not stated. His “testimony,” however, is a persistent, oblique offer for someone else to “bite” on such absurdity, when he states, “The Plaintiff in this case felt that the proposed easement grant document contained words and meanings that the Plaintiff perceived to be material terms not previously disclosed by the Town.” Here, his slick, implied, “testimony” is that public access up to two feet from one’s door is not a material term, and is to be shrugged off, or that the “words” in the document do not mean that – they are only “felt” to mean that, in some wary people’s “perception.” When called on these matters, his backup plea is to trust him and the Town

Council, and whoever may succeed them. Finally, his backup is to argue that this is an important matter.

He also never disputes what was said and what was never said in the May 18, 2020 Town Council meeting or that it was the sole public meeting at which the issues pertaining to the condemnation were to be considered. (Aff. at 4.)

His sole response to the fact that Town Council did not publicly authorize condemnation of anything beyond an easement “basically, simply to put sand on the beach,” is to state over and over again, that the objective of the Town was “renourishment,” and that it was important, which begs all questions.

He never disputes that he hired an appraiser and did not tell the appraiser what the controversy was about.

He never disputes that he never gave the appraiser the terms of the easement Fabbri was secretly planning to condemn instead of an easement to put sand on the beach.

He never disputes that what he did tell the appraiser about the scope of the easement was incomplete and incorrect.

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.

VI. General Nature of the Allegations of the Amended Complaint and the Numerous Available Bases for Summary Judgment

Plaintiff's Amended Complaint details in accordance with Rule 9(b), SCRCP, the events and many more of the Town's falsehoods, missteps, misrepresentations and pretenses of over a

year in the context of contrasting truths and events and sets forth times, places, people and circumstances.

There can be no claim that the Amended Complaint is conclusory or hyperbolic: the vast majority of the source material is the Town's own announcements, solicitations, meeting minutes, appraisal report, condemnation papers, other writings and public records. All of the basic facts in the account are as of yet undisputed.

The only dispute, essentially, is Mr. Fabbri's statement that in his opinion, he disagrees that the underlying facts constitute fraud, rather than any dispute of the basic underlying facts.

The Amended Complaint sets forth numerous independent, but sometimes factually overlapping, reasons for invalidating the Town's condemnation attempt in whole or in part. The undisputed facts would support granting summary judgment on many of these reasons.

However, because of the length of time covered, the volume of material required for presentation, and the special legal landscape to be explained, Plaintiff presently focusses on only a few of the following reasons. Therefore, the facts supporting the other reasons are not fully recounted in the interest of brevity. This longer list of reasons to quash the condemnation papers served includes the following:

A. Vague, indeterminate, remote future "need" after possibly more than 22 years is beyond the pale. There is no present, concrete, project sufficiently defined in scope of need or timing of need to demonstrate any present need for renourishment, much less for an easement. When the Town itself officially characterizes the beach as nonerosional in professionally prepared and filed plans and officially estimates specifically with regard to the already completed project, that no more sand may be needed for over 22 years, the remoteness of

“need” is too great to constitute present need. (The Town should also be estopped by these statements and positions.)

This remoteness is not cured by hysterical speculations about what a hurricane might or might not do, particularly when it is unclear whether we are at the end of the Atlantic Multi-Decadal Oscillation which began in 1995, as alluded to in plainspeak by a former mayor who entertained the idea of a following extended period of calm. Even if there were a predictable definite need for renourishment 15 years from now – still too far out – whether an easement would be needed for such renourishment is still dubious in that, conclusively, no easement was needed for the first-ever renourishment just done, and by acclamation, the availability of the Corps, or its funding, or both, is undependable and entirely speculative.

Mr. Fabbri himself has admitted that a deal with the Corps assures nothing, except a place at the craps table. This does not constitute a present need authorizing condemnation.

There is no present nonspeculative need, any more than there is need or justification to condemn adjoining acreage along a small highway project after the small highway is built, on the mere grounds that the acreage might possibly be needed for the grassing of the median and shoulder of the present project in some presently unknown way and that it would be good to take a little “extra,” or any more than there is need to condemn five times the land needed for a new school and schoolyard on the grounds that someday in the remote future, there may or may not be some need to expand the school which would involve a fraction of that land. Condemnation is generally not authorized “just in case” the property may be helpful or advantageous. See, e.g., Krauter v. Lower Big Blue Nat. Resources Dist., 199 Neb. 431, 437, 259 N.W.2d 472, 475 (1977)(holding that the trial court had properly dismissed condemnor’s action to take fee title to 320 acres when only an easement over 140.68 acres was needed for the public use then planned,

and specifically rejecting an argument that condemnor could take property interests that “might be needed and used for a public purpose in the future”).

B. Excessive scope is proven by the completed project no matter when an easement might be needed in the remote future. Assuming the project is allowed to be defined as a future project of uncertain federal funding or timing, to place again, or restore, the sand that is already in place on the beach without such funding, the terms of the proposed easement are still not necessary in order to potentially place such possible future sand if ever needed. The sand which has already been placed was not placed two feet from the owner’s house; the owner’s deck or stairs were not destroyed or moved; the general public did not need to walk, picnic or demonstrate on the owner’s land two feet from the door -- nor look in the door -- in order for machinery to be used to place the sand; and the owner did not need to be restricted in perpetuity from all or part of the subject area for sand to be placed on part of it over the course of about three to four months.

C. Certain features in the condemnation papers have already been agreed to be unnecessary and in some cases have been removed for others as unnecessary. Although the Town has not removed all the objectionable features for any owner, nor, when altering items of objectionable scope, altered the full scope objected to in every case, the Town undeniably had already agreed with one or more landowners (which may include one of the three condemnees) that certain features or items of scope were not necessary to any stated or unstated purposes of the Town. And the Town had agreed to change them.

These items included: (1) moving the so-called “Perpetual Easement Line” or “PEL,” which is the landward boundary of the proposed easement, further seaward from Plaintiff’s

house¹⁶; (2) changing the written description of the easement area so as to not describe the easement as enveloping the entire lot (which description, at least at to Stanton, includes the whole lot in the second or third or fourth condemnation description sent by the Town, depending on how it is counted¹⁷); (3) excepting improvements on the owner's land from the ability to destroy them, although not excepting them from public access and use and other features of the easement, and not clarifying the right to maintain, repair or replace them; and (4) limiting the Town's right to exclude anyone from "dune areas" by making it a right only to exclude the public, and not the owner, from "dune areas," although never defining what a dune "area" is.

There is no justification whatsoever for disregarding in the condemnation papers, these or similar previous changes in scope and including items of unnecessary scope in the description of what the Town must show it is necessary to condemn. These items, now sought in the

¹⁶ In at least two cases, there was agreement to move the PEL several feet seaward – away from the house -- to avoid concrete improvements on the land. At the south end parking lot, not in front of a house, the actual construction line itself was moved over twenty feet seaward.

¹⁷ The Town sent a notice which had a description referencing a map, sent a separate granting document which had a description referencing a map, and sent only one map, showing an easement area two feet from the house. The notice contained a clarification that the entire lot was not subject to the easement, and also contained certain exceptions to tearing down owner improvements. The separate granting document contained a clarification as to the easement not enveloping the whole lot. The separate granting document had the exception as to tearing things down, but also contained a duplication of the entire subject paragraph, without the exception.

Then the Town sent a materially different map, showing an easement area six or seven feet from the house, saying this map was applicable to both the notice and the granting document.

Then the Town sent a materially different granting document, which contained no clarification as to the easement not enveloping the entire lot, which contained no exception to tearing things down, and which was accompanied by a map showing the easement area two feet from the house.

In all, the Town may have been trying to condemn four or more differently described easements, perhaps planning to decide still later, after the statutory waiting period was over, what the Town was going to condemn. As noted elsewhere in this brief, the Town has recently begun a whole new, additional condemnation action, with a different description of the easement.

condemnation papers served, are per se unnecessary, regardless of good faith or bad, although the latter is apparent.

D. The condemnation papers served by the Town exceed the authority granted by Town Council and are ultra vires and invalid. The Town Council authorized condemnation only of an easement, basically, simply to put sand on the beach, which is essentially the same thing the appraiser was then hired by the Town Administrator to appraise.

E. The Town Council acted in either fraud, bad faith or abuse of discretion or a combination of these concepts when it authorized condemnation. It matters not to invalidating Town Council's decision, what the state of the knowledge Town Council actually had; it only adds perspective on an already unsupportable manner of proceeding and the permanency of the remedy called for.

If Town Council did not know the background of the proposed easement terms or the reasons why the requested easement had not been obtained from Plaintiff, Town Council was induced through fraudulent acts to authorize condemnation, even if Town Council authorized condemnation of only an easement basically, simply to put sand on the beach. This is clear, for among other reasons, because Plaintiff had already offered an easement at no charge, without being threatened with condemnation. In this case, voting to condemn was still, at minimum, an abuse of discretion as that term is defined, because the discretion to which Plaintiff was entitled was thwarted by fraud of the Town Administrator and possible others.

If Town Council did not know the actual background of the proposed easement terms or the reasons why the requested easement had not been obtained from Plaintiff, but had vague suspicions or hearsay information about some of these matters, Town Council acted, if not fraudulently and in bad faith by Council itself, then, at minimum, in an abuse of discretion,

because Town Council made no further inquiry and per se abdicated its nondelegable responsibility as decision maker. Town Council did so by failing to go through a reasoned, public, decision making process in which Town Council was supposed to establish factors for decision and weigh the actual burdens on and harm to the landowner against the actual needs for purposes of the project. Where one of the factors is cost, for example, the Town could not have even considered the factor, because cost could only have been estimated based on a false notion of the interest in property the Town sought to acquire.

Another case fatal to condemnation is presented if Town Council¹⁸ did in fact know that three condemnees had actually provided signed liberal sand placement easements, had objections only to the profound encumbrances previously described herein -- e.g., public access, destruction of owner improvements, restriction of owner access, and unreasonable proximity -- and had endured less than diligent, if not dishonest, efforts by Mr. Fabbri.

Under this case, Town Council was, without question, complicit in the sham meeting, and, in order to publicly dodge its duties to duly consider the matter on the true facts and have those facts publicly known, falsely purported to agonize publicly over condemning, with Town funds, a mere sand placement easement Council did not disclose had already been offered, all the while, privately, secretly, illegally, intending to condemn something with features quite different, which features were never disclosed in the meeting or decision, much less, considered publicly and rationally.

¹⁸ Town Council, or some of Town Council. Under this case, if some knew the facts, it is still possible that others were misled by Mr. Fabbri's false account of the matter and the Town Attorney's advice, which was demonstrably incorrect if he was referring to the easement later described in the Condemnation Notice.

Under this case, Council conducted a scripted, fraudulent presentation of the matter, and made a fraudulent and bad faith decision to condemn, and abused its discretion for all the same reasons and more. Whether the case was the latter or not, Town Council abused its discretion under any case, requiring summary judgment quashing the Condemnation Notice and declaring the action commenced by it ended.

F. The Town failed to comply with the mandatory provisions of the state Eminent Domain Procedure Act and therefore has not established and cannot establish the power and authorization to condemn under the Act under the subject condemnation papers.¹⁹ These noncompliances include: (1) failing to have the appraiser, prior to commencing proceedings, put a value on what the Town actually seeks to condemn, rather than on some fictional interest in property which produces a different appraisal value; (2) failing to offer to pay the landowner the value of the correct interest in property so appraised, rather than the value of a fictional interest in property based on oral representations of the Town Administrator; (3) failing to provide the appraisal to the landowner before serving the notice which commenced the proceedings, as opposed to providing the appraisal only after serving the notice; and (4) failing to negotiate in good faith for purchase of the interest in property sought, at the price indicated by an appraisal of the correct interest in property, so that during the statutory time for offer and negotiation, the landowner would have an appraisal, at the condemnor's expense, of the correct thing, and could either knowingly and knowledgeably accept a fair price for the right thing, or knowingly and knowledgeably point out the defects, before being sued.

¹⁹ This basis for summary judgment is discussed in greater length with citation of authority in Section VII(A), below.

G. The Town's actions from beginning to present in soliciting the requested easement, attempting to coerce capitulation to shocking and poorly drafted terms, dealing with Plaintiff with respect to objections, seeking and authorizing condemnation, proceeding with condemnation, including appraisal, and in recently commencing an additional condemnation action are so tainted with fraudulent acts, bad faith and reckless abuse of discretion as to invalidate the whole attempt, by virtue of one or more of the above bases, or by two years of pervasive, casual, indifferent "mistakes and misunderstandings" alone. 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 explicit misinformation – confirming as officially rendered public legal opinion -- that the easements proposed to property owners (A) allowed no more than placing sand on the beach and (B) 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 writing 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. (Stanton Aff., e.g., ¶¶3(a), 59c0, 6-24, and 32-129.) More recently, (viii) the Town commenced an additional condemnation action. The Town authorized it with a resolution containing falsehoods and a map privately swapped out after the public version was aired by live streaming, and commenced an action with a falsely backdated condemnation notice and a changed easement description.

H. The Town is estopped to contend that easements are necessary by the Town's previous public announcement that the one-time renourishment would likely last 22 years or more, its announcement that easements were "not necessary," the Town's proceeding to do and complete the project without any easements, and Plaintiff's reliance on the Town's position. See Southern Dev. and Golf Co. v. South Carolina Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993)(observing and not disturbing lower appellate court's conclusion that the condemnation was flawed by failure to conduct a reasoned weighing of all factors, but estopping condemnor from condemning at all based on condemnor's prior statements that no expansion of power lines was planned which would affect condemnee's property).

I. An additional basis, not in the Amended Complaint because occurring recently, but one of which this Court may take judicial notice, is abandonment. The Town abandoned its subject condemnation papers and condemnation action. With the present motion already pending, the Town recently started an additional condemnation action on the same subject matter while the first condemnation action and this present challenge action remain pending, at great expense to Plaintiff.

Because, before condemnation, the Town must have a Council meeting and properly describe and authorize what it is that is to be condemned, and because the EDPA requires appraisal of the subject property interest prior to commencement of an action, prior offer to purchase based on that appraisal, and prior negotiation based on that appraisal, The EDPA necessarily makes no allowance for material amendment of a condemnation notice to change the property being condemned.

Further, while the present challenge action, based on the sufficiency and validity of the present condemnation papers, remains pending, everything in the underlying condemnation action is stayed and no amendment, swapping of property descriptions, or changing of facts is allowed.

So in October, the Town commenced another, separate, condemnation proceeding, after holding another Town Council meeting, and after changing the property description. In so doing, the Town abandoned the present condemnation action – the Town cannot pursue both. This required Plaintiff to file another challenge action for the additional condemnation proceeding. See Georgetown County Court of Common Pleas Case Nos. 2020CP2200930, 931 and 932. The Town’s subject condemnation proceeding and condemnation notice are abandoned by the Town and the Court should so declare, and Plaintiff should be awarded Plaintiff’s litigation costs, including attorney’s fees, to date.

VII. Selected Substantive Law and Argument

The Amended Complaint and this motion seek to invalidate, “in whole or in part,” the Town’s attempts to condemn the easement the Town presently seeks on Plaintiff’s land, and to have the condemnation action prohibited in its entirety.

A. Failure to Comply with Statutes Conferring the Power to Condemn

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

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

“[T]he power of eminent domain may be exercised only on the occasion, and in the mode or manner, prescribed by the Legislature and [] statutes conferring such power must be strictly construed.” Englehaupt v. Village of Butte, 248 Neb. 827, ___, 539 N.W.2d 430, ___ (1995)(holding, without necessity of finding of bad faith, that under statute limiting the taking to what is “necessary,” condemnation of 11.92 acres for expansion of present water system was more than was presently required, and enjoining the entire attempt).

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

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

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

This court said in an opinion by Brock, J.:

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

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

Similarly, South Carolina's other neighboring state, Georgia, requires strict compliance with eminent domain procedure statutes. Georgia does not simply allow a "do-over" when a condemning entity exercises its condemning authority casually, sloppily, or dishonestly, or takes unauthorized adversarial shortcuts, costing both the landowner and the public both money and confidence. Georgia has held that "before" in a statute means before.

In City of Marietta v. Summerour, 302 Ga. 645, 807 S.E.2d 324 (2017), the condemnation procedure required that the condemnor provide a summary of the appraisal "before" entering into negotiations. The city did not. Like the Town of Pawleys Island, the city did not do other things it was required to. The landowner nevertheless negotiated, negotiations were unsuccessful, the city condemned, and the landowner later appealed the condemnation.

The Georgia Court of Appeals held the condemnation invalid, based on the fact that the city's failure to follow the procedure of providing the appraisal summary before negotiating was

in bad faith.²⁰ On further appeal, the Georgia Supreme Court held that it was not even necessary that the noncompliance be bad faith. The Georgia Supreme Court held that the condemnation was ultra vires -- beyond the powers of the city to condemn -- simply for failure to follow the simple mandates of the act.

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

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

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

²⁰ As discussed hereinbelow, bad faith is also recognized in South Carolina as an independent basis for invalidating a condemnor's condemnation attempt.

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

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

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

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

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

The Town did not do any of this right, all to the prejudice of the owner.

For condemnation to occur, the Act requires the Town first to obtain an appraisal of the property interest to be taken and to provide that appraisal to the landowner before initiating a "condemnation action." This means the appraisal must be obtained and provided before serving a condemnation notice. To wit, Act §28-2-70(A) states: "(A) Before initiating a condemnation action, the condemnor shall cause the property [interest to be taken] to be appraised to determine the amount that would constitute just compensation and shall make the appraisal available to the

landowner”. (Emphases added.) Act §28-2-30(5) defines a “condemnation action” as follows: “(5) ‘Condemnation action’ includes all acts incident to the process of condemning property after service of a Condemnation Notice”. (Emphasis supplied.)

Thus, everything that follows service of the notice is an “action,” and the thing that commences the action is service.²¹ Everything that must be done “before” commencing an action must be done before serving a condemnation notice.²²

Under the mandatory procedure, service is preceded by first providing the landowner an accurate appraisal of the interest in property the condemnor is seeking and engaging in a period of good faith negotiation with respect to the appraisal.

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

²¹ The Town absurdly argues in its brief and affidavit that because everything following service of the condemnation notice constitutes a “condemnation action,” a condemnation action is not commenced by service, and, instead, commencement of a condemnation action does not occur until after other things in the condemnation action occur. Based on this absurdity alone, and ignoring the purpose of getting an accurate appraisal and giving it to the owner along with an accurate offer to pay before suing him, the Town contends it was not required to provide the appraisal before serving the notice.

Act §28-2-280(C)(4) states that the notice which is served must contain a statement that the condemnor “has complied” with §28-2-70(A), which requires making the appraisal described by §28-2-70(A) available. It would be impossible to truthfully affirm in the notice when serving it, that one “has complied” with a requirement one has not complied with and does not intend to comply with until later. As noted, the Town included the statement in its notice, but the Town’s statement was false.

²² In the action commenced by service of the notice, the Town is referred to as the “condemnor,” rather than as the plaintiff. Although the Town has served the Condemnation Notice, initiating the action, the Town has not yet filed the Condemnation Notice because the condemnation action has been stayed by statute. The condemnation papers in the pending, stayed action therefore are not on file with a file number as such.

Act §28-2-280(C)(7) requires that, if served, the condemnation notice must offer the amount of the appraisal of the property interest which was appraised prior to service pursuant to §28-2-70(A). Section 28-2-280(C)(3) requires that the notice must contain “an appropriate legal description of the interest to be taken.” Section 28-2-280(C)(4) requires that the notice must contain a statement of compliance with §28-2-70(A). That section, Section 28-2-70(A), requires that the pre-service appraisal described by §28-2-70(A) was obtained and made available pre-service.

These statutes are designed to assure that if the landowner confronted with uninvited government legal action does not have the money or the desire to hire an appraiser of his property and go to court, the landowner can do nothing, and at least receive for his property, an amount of money determined by the honest opinion of one professionally qualified third party based on an accurate description of precisely the thing the condemnor is trying to take.

These statutes would make no sense at all if the condemnor were allowed to appraise one interest in property, then seek to condemn another. For example, the condemnor could not have ten acres on the west side appraised, offer \$20,000 for it, and then serve a condemnation notice for 100 acres, offering in the notice to pay \$20,000, calling it “the amount of the appraisal.”

These statutes certainly would make no sense if the condemnation notice were allowed to offer the value of the interest which was appraised, instead of the value of a different interest described in the condemnation notice.

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

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

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

Service, if it occurs, is generally followed by either a challenge action, acceptance of payment in the amount of the appraisal, or a waiting and further negotiation period of at least 30 days before the condemnation notice may be filed.²³

²³ The statutory procedure specifically authorizes the instant separate action as an early response to the Town’s condemnation action. S.C. Code Ann. §28-2-470 and see id. §28-280(C)(7)(stating the that the condemnation notice must contain conspicuous notice of availability of challenge action).

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

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

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

Under the statutory framework, as opposed to the procedure in some other states and procedures of long ago, the condemnor’s right to take all or part of the interest in land described in the condemnation papers cannot be litigated in the “condemnation action” if it were to go forward. In order to have this issue adjudicated, Plaintiff therefore had no choice but to file a challenge action. Such a challenge therefore necessarily stays the “condemnation action” until these issues are resolved and the statute so provides. S.C. Code Ann. §28-2-470.

For condemnation to occur, the Act then – if the offer is not accepted, if no other negotiation is successful, and if no challenge action is timely filed – allows and requires the condemnor to file the condemnation notice.²⁴

The Town did not, as required by the Act, obtain an appraisal of the property interest the Town later described in the Condemnation Notice; the Town did not provide such an appraisal or any other appraisal before serving a condemnation notice; the Town did not, before serving a condemnation notice, offer to pay the amount determined by a fair appraisal of the property interest later described in the Condemnation Notice; and the Town did not, before serving a condemnation notice, and after providing such an appraisal, negotiate in good faith with respect to purchasing the interest in property later described in the Condemnation Notice. The list goes on.

Instead, the Town plotted to condemn an easement of greater scope than authorized by Town Council, and greater scope than appraised, and pay less for it.

²⁴ At this time, if ever reached, the condemnor is allowed to take possession of the same “interest to be taken” which was appraised, not a different interest. After this point, the parties may litigate the appropriate compensation for the interest that was appraised and taken. Act §28-2-230.

The mere filing of the condemnation notice does not then result in transfer of the interest in property to the condemnor. Act §§28-2-90, 28-2-110, 28-2-230, 28-2-280, 28-2-440 and 29-2-480 distinguish between taking “possession” and “vesting of title.” Transfer of the interest occurs only after certain specified events. Unless there is agreement or other action by the condemnee first, transfer of actual ownership of the interest would occur only after all challenges to the right to condemn have been resolved, the precise interest in property to be condemned, if any, has been identified and appropriately described, the appropriately described interest in property has been timely appraised at the expense of the condemnor and the appraisal has been timely provided to the condemnee, the condemnation action has fully run its course, the judge or jury has determined the price the condemnor must pay, and the condemnor pays it.

The Town proceeded by having only the simplistic “sand on the beach” easement authorized by Council appraised, but then seeking to condemn the more onerous and alarming easement.

Notably, the Town strategically delayed sharing of the appraisal. This delay was not only an act of bad faith as discussed further below, but also was a bright-line, fatal violation of the mandates of the Act. The Town delayed in this manner identically with all three condemnees.

The Town never entered into pre-service negotiations in light of a furnished appraisal. This avoided what likely would have been the landowner’s obvious reaction and questions in negotiations after seeing the appraisal: “Is this all you want? This appraisal omits a lot of what we have expressed so much concern about, but that no one will acknowledge. I have already offered you something close to this. Let’s talk.”

Then the Town served a condemnation notice describing the interest in property differently than in the appraisal. It was different in adding the profound encumbrances previously described and of which the Town Administrator had been acutely aware since the beginning.

The Town served the time-sensitive condemnation notice still without providing the appraisal.

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

But this was not true and the Town knew it.

With one landowner, Stanton, the text of the notice itself contained an easement description reciting numerous onerous details of previous concern. However, with two other

landowners, the text of the notice contained only a description of the whole lot, followed by an additional description of only the location of the proposed easement. The interest in property was described only as an “easement” for the purpose of a certain “renourishment project.”

All three condemnation notices, however, were accompanied by a separate proposed easement document, which did recite numerous onerous details of previous concern. The text of the notice stated that a separate granting document was attached which should be signed and sent back within the 30-day deadline if the offer was accepted.²⁵ The Town apparently treated this document as separate, and as something the Town could spontaneously alter in order to spontaneously change the game and change the nature of what was being condemned.

With one landowner, Stanton, the Town did in fact subsequently write and change the additional document to one even more onerous than the previous one served, and more onerous than the description in the text of the notice itself. This fact did not make its way into the Stanton Affidavit, but is alleged at Am. Cmplt. ¶¶153 and 154; it is not expected to be disputed as it is documented.

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

The Town also thus cast into a state of continuous uncertainty, what interest the Town will want to condemn next, and what the Town intends to pay for, while none of the varying

²⁵ As the Town pointed out at an earlier stage, Plaintiff did not see this sentence and mistakenly stated in the Amended Complaint that the additional document was not referenced in the condemnation notice. It was. Plaintiff withdrew that part of that allegation and stated the need to amend.

descriptions have ever been supported by an appraisal based on that description.²⁶ This makes a fair condemnation proceeding impossible. The Town's condemnation action should therefore be declared ended and prohibited.

Whether described as jurisdictional defects or incurable failures to satisfy elements necessary to state a cause of action for condemnation, the defects in the way the Town went about initiating and pursuing its condemnation action require the action to be invalidated, dismissed, and prohibited. Therefore, based on the facts as to which there is no genuine dispute, summary judgment dismissing the Town's Condemnation Notice and the associated action must be granted.²⁷

²⁶ On October 12, 2020, during the still-extant stay in the Town's condemnation action, the Town Council held a meeting and eventually issued a putative resolution to change the easement descriptions again. On October 16, 2020, without obtaining an appraisal of the newly defined proposed easement, the Town Attorney presented Plaintiff with another Notice of Condemnation. On November 12, 2020, Plaintiff stopped what else plaintiff was doing and commenced a challenge action in response to the contents of that notice.

²⁷ The Act contains only one subsection the failure to comply with which is stated to not be fatal to the attempted condemnation action, Act §28-2-70(B)(requiring pre-service negotiation). The Town failed to comply with other requirements that are not part of subsection 28-2-70(B), and these incurable failures are fatal to the condemnation action, and include (1) failing to make the appraisal available pre-condemnation under subsection 28-2-70(A)(not (B)), (2) failing to give reasonable notice of request of the appraiser to enter onto the property under subsection 28-2-70(C), and (3) failing to describe in the condemnation notice, the same interest in property which was appraised.

This last failing also constitutes a fourth failing – failing to state in the notice an “appropriate description of the interest sought to be taken” under subsection 28-2-280(C)(3).

This failing has an additional dimension in the notices to the three landowners. For two, Beattie and Sunset, almost no interest at all is described in the notice beyond the desire for an easement and a specification of its location. With the other owner, Stanton, the Town described the interest – different from the appraised interest -- in the text of the notice, but attached a separate document which had a different description (doubled in length by repeated wording which was not identical in the repeating) and then served another separate document with a third different description, adding further onerous terms.

While, as noted, failure to conduct pre-service negotiation under Act§ 28-2-70(B) is stated by the same section to not be fatal to the condemnation action, the Town also certified “to the Court” in the notice that the Town had conducted such a negotiation. The Act contains no provision stating that failure to conduct pre-service negotiation or making false certifications

B. Necessity and Fraud, Bad Faith or Abuse of Discretion

1. Describing an easement requires identification of a group of attributes.

When acquisition of an easement is involved, as opposed to acquisition of a complete fee simple interest in the land, the condemnor's choice and definition of "the interest to be acquired" undeniably has additional dimensions.

One may choose to define an easement over real property, as opposed to a fee simple title, as a conveyed right or privilege over real property, which generally runs with the land on which the easement is imposed (the servient tenement) and, in the case of an easement appurtenant, the land in favor of which the easement exists (the dominant tenement), by which, by virtue of ownership of another benefitted specified parcel of property (the dominant tenement) or by virtue of being in a class or description of those designated to have an easement in gross, the owner against whose real property the right or privilege exists is obliged to suffer or not to do something on or in regard to his own real property for the advantage and benefit of him in whose land the privilege exists or him, such as in the case of an easement in gross, in whose favor the privilege otherwise exists.

about it may not be considered for purposes of assessing bad faith and other matters. Given the Town's incorrect assertion that the statute does not require the appraisal to be provided prior to service, it is likely the Town will state that what it was certifying was that it conducted pre-service negotiation, but just did so without giving the landowner anything at all to look at.

Nevertheless, false is false. The Town also failed to comply with Rule 11, SCRCP, which applies to the extent not inconsistent with the Act. Rule 11's requirements that statements in pleadings (e.g., stating the appraisal was made available before initiating the action or certifying pre-condemnation negotiation based on appraisal) shall not be without factual basis is consistent with the solemn and exclusive nature of the Act.

As also noted, after serving the condemnation notice, the Town sent Stanton another document contradicting the condemnation notice and stating all prior versions (which would include the condemnation notice) were "withdrawn." (Am. Cmplt. ¶¶153-156.) This leaves the notice without any description at all and would appear to be a written withdrawal of the Condemnation Notice itself.

An example is an easement to a power company to put overhead power lines across a farmer's corn field, under which power lines the farmer can still till the soil and grow corn, but perhaps not trees, where the power company can come onto the land and service the lines and poles, and in so doing, trample, if necessary, the corn under the lines and along the way which leads to them, but not the corn elsewhere.

The choice and definition of what the owner is obliged to suffer or not to do on or in regard to his own real property for the advantage of him in whose favor the privilege exists obviously requires definition of not only the geographical location of the easement (if it is an easement of fixed location on part of an overall parcel of the landowner), but also the depth and breadth and height of the activities and prohibitions which define the interest in land to be acquired. Namely, clearly stating the scope of the easement is essential to knowing what interest in property is being sought, how it would affect the title, how to value it, and whether to litigate over it.

For example, acquiring an "easement for sewer lines" in an urban or suburban setting requires more than stating that the easement is for "sewer lines." The value, and therefore the cost, of the easement could vary dramatically between a sewer line easement five feet wide and six feet deep for one four inch pipe, and an easement twenty-five feet wide and twelve feet deep for a ten inch pipe. The value and the cost for the latter would differ further if the easement allowed surface penetrations for venting, cleanout, lifting or grinding stations, manholes, etc. At its simplest, the latter would involve greater and deeper excavation on the landowner's property, more inversion of soils, more loss of topsoil, etc.

Every increase in scope or change in location changes the interest in property that is being acquired. Knowing that every increase in scope or change in location is potentially more

harmful to the landowner and takes more value from him requires exercise of discretion in deciding on how extensive the requested attributes really need to be, and where those “attributes” are located relative to the rest of the landowner’s land and improvements.

The determination of size and location obviously also requires more and different deliberation as a result of other attributes included. For example, a twenty-five foot wide sewer-line easement for which the condemnor also assumes no responsibility for destruction of present or future paving of the landowner requires more deliberation concerning the impact on the landowner’s present or future paving. A ten inch pipe carrying noxious materials and fumes, with vents and potential backup and overflow surface penetrations requires more consideration of the proximity of the easement to the landowner’s building, improvements, and possible uses and activities.²⁸

2. Necessity of the targeted easement to the purpose of the project should be distinguished from necessity of the project.

Insisting on a greater property interest than is necessary or a location that is not necessary is capricious at best and is abuse of discretion and beyond the scope of the condemnation power.

²⁸ The sewer authority adding additional provisions that the sewer-line easement may also be used by the public as a walking path and that the sewer authority may establish on the twenty-five-foot-wide strip, garbage cans, periodic vehicular garbage pickup, signage, public parking spaces, bigger and bigger four-wheeler public-safety patrols, federally required alarm stations, and antenna towers, would obviously change the deliberation, and the contemplated compensation values, further.

If such provisions were to be added to the easement, they would require thoughtful acknowledgement and consideration, despite any unenforceable, unrecorded statement on the side offered by the ditch digger for the sewer authority, that in his opinion, his present bosses would be around “for a long time,” would not publicize the availability of the walk path, and would never seek to put up antennas.

The need for consideration also would not be excused by an unjustified assumption that “public walking path,” while “felt” by the owner to mean the public could walk the path at any time for recreation and any other legal activity, really referred to members of the public appearing only on isolated occasions to help clear blockages in the sewer.

See Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 388-89, 175 S.E.2d 805, 810 (1970), and see, e.g., S.C. Code Ann. §28-2-60 (allowing the acquisition of an interest in any real property if “necessary”).

This is true with regard to insisting on more land than is necessary, insisting on additional other attributes that are not necessary, insisting on a location or route that is not necessary, or insisting on more harm than is necessary. Where the necessity or lack thereof is not objectively demonstrated or stipulated, the determination of necessity is entrusted to the discretion of the condemnor, provided the determination is not fraudulent, in bad faith or the result of an abuse of discretion.

Thus, “lack of necessity,” in most instances, stands for the proposition that the condemnation is not reasonably necessary to accomplish the purpose of the project, rather than that the project itself is not necessary. See Bookhart v. Central Elec. Power Co-op., 222 S.C. 289, 72 S.E.2d 576 (1952)(noting the readiness of the court to remedy attempted takings of excessive scope or inappropriate location for a stated project, but requiring fraud, bad faith or abuse of discretion when challenging the necessity of the project itself.)²⁹

²⁹ Thus, historically, “fraud, bad faith or abuse of discretion” has been applied as a standard to questions of necessity for a project as well as to questions of necessity of a project, but the Court has recognized a decidedly lighter standard in the question of the necessity for a project.

The Town may argue that “the project” itself is necessary. While this issue is another issue in this case as touched on in this brief above, it is beside the point where it comes to the issue of whether the easement is necessary for the project.

In this vein, the Town may argue that, despite the fact that all the sand is already in place, on the beach, an actual “project” still exists in that, depending on Congressional appropriations and other events, some other renourishment work may commence at indeterminate times in the possibly remote future. (Compare Stanton Aff. ¶37(k)(noting easement made no provision for reversion or termination upon failure of future project to materialize).) To do so would ignore the issue of the last year and a half – the necessity of the attributes of the interest in property the Town seeks to condemn.

The Town has sought to condemn an easement with attributes of scope and location that are not reasonably necessary to any “project” the Town has articulated. In that there is no

In a complaint that there is a lack of necessity, the condemnor is usually alleged to have committed an abuse of discretion or failed to engage in considerate reasoning in that the scope of the acquisition exceeds what is necessary for the purpose of the project in relation to the burden on or loss to the landowner.

In Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 388-89, 175 S.E.2d 805, 810 (1970), the Court stated:

In the law of eminent domain, it is well established that there must be a necessity for the taking, but this does not mean an absolute necessity, but rather a reasonable necessity. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1. Our Supreme Court said in White v. Johnson, 148 S.C. 488, 146 S.E. 411, 412: 'It is well established law that necessity, as well as public use, must always exist in order to warrant the taking of lands, through condemnation, by a grantee of the power of eminent domain. The delegation of the right to exercise that power carries with it the implied condition that it shall be exercised only to the extent found necessary. 'As to what is meant, in this connection, by the term 'necessity', we find the following in 80 C.J., at page 630: 'Necessity * * * does not mean an absolute but only a reasonable necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and the property owner consistent with each benefit * * *'.

Id.

As stated in Bookhart,

The delegation by the State of this great power of eminent domain does not mean that a condemnor is given a free rein, to run rough shod over the lands of the citizens of the State. The Courts will always jealously safeguard the right of landowners against a wrongful method in laying out the right-of-way across their particular tracts of land, but when it comes to the wisdom, or expediency, or reasonable public necessity of the entire project, the department of government through which the State speaks is its legislature, and if such power has been delegated, the condemnor must act in good faith and not in a capricious or wantonly injurious manner.

dispute that the Town has agreed, in writing, that some of the presently sought onerous attributes of scope or location were not necessary, it is clear as a matter of law that the easement sought, at the very least in part, is not necessary. (The contents of the new condemnation actions are proof positive of this.) Summary judgment must be granted. Therefore, Plaintiff will address only some of the facets of necessity which require the granting of summary judgment in favor of Plaintiff.

222 S.C. 289 at ___, 72 S.E.2d 576 at ___.

The Court in Bookhart thus recognized that a court readily will afford relief if a condemnor “attempts to make an unreasonably hurtful” location of a right of way or use of the property sought, or seeks an unnecessary degree of use or of geographical scope of the property sought, such as by “locating a power line on the landowner’s property so as to go through shade trees surrounding the residence, when that could be avoided,” or by taking a right of way that is “unnecessarily wide,” or locating a railway station “unreasonably on the landowner’s land” as opposed to on the land of others, or unreasonably locating a roadway where there was “already an adequate route.”

In the instant case, there are instances in which the Town has previously recognized in writing, the lack of necessity of some features it now seeks. (See, e.g., Am. Cmplt. ¶¶ 20, 44, 52, 56, 57, 61, 67, 86, 89, 90, 98, 103, 112, 113, 122, 123, 124, 135, 150, 153, and 173-177; Stanton Aff. ¶¶3(c) and 37(g)n.2.) There is no dispute of these facts. This, alone, is a “game-over” fact relative to the granting of summary judgment, being conclusive evidence the Town seeks more than it needs. Regardless of whether it now seeks these features out of spite or indifference to its own citizens, the Town has exceeded its power and its condemnation must be prohibited.

A responsible condemnor makes a reasoned and supported determination of what property must be acquired for the proposed project, i.e., what specific property or interest in property is necessary. Southern Dev. and Golf Co. v. South Carolina Pub. Serv. Auth., 305 S.C. 507, 409 S.E.2d 428, 514 (Ct.App. 1991), aff’d as modified, 311 S.C. 29, 426 S.E.2d 748 (1993)(holding that “a condemning authority must exercise its discretion by a rational decision making process which is supported by facts.”) However, an estoppel of the condemning authority, based on representations of its representatives, may supersede any such exercise and

permanently bar condemnation. Southern Dev. and Golf Co. v. South Carolina Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993).

Plaintiff alleges in the Amended Complaint that if the Town contends it did authorize what is in the Condemnation Notice, rather than a mere “sand” easement, the Town did not exercise its discretion by a rational decision-making process which is supported by facts. (See Am. Cmplt. ¶¶ 174 and 177, and see, e.g., ¶¶ 20, 44, 52, 56, 57, 61, 67, 86, 89, 90, 98, 103, 112, 113, 122, 123, 124, 130-147, 150, 153, 162, 173, 175, and 176; Stanton Aff. ¶¶3(c), 5(a), and 32-94.) These facts are undisputed.

This fact is not alleged or recounted conclusorily. The Amended Complaint alleges in extenso, and in vivid terms, some Town actors’ misrepresentation and obfuscation, to both Town Council and other landowners, of both the true nature of the easement the Town now seeks to condemn and the true circumstances of the Plaintiff’s willingness to grant some sort of reasonable easement. (See, e.g., Am. Cmplt. ¶¶ 126, 131-142 and 145; Stanton Aff., id.)

These instances are documented by public-record video³⁰, official minutes, or e-mails or other writings by the Town and are not disputed. There is no reason to have a trial to present them when they are undisputed and dispositive of the case. The Amended Complaint alleges in extenso, and in vivid terms, Town Council’s abdication of its ability and willingness to look into the matter when under this influence. (See, e.g., Am. Cmplt. ¶¶ 130, 135, 141, 143, 147, and 148; Stanton Aff., id.) Again, these matters are documented largely by public records and are not disputed.

³⁰ The Town has not produced the video in captured, portable form, and this is a subject of a motion to compel which the parties may work out, but the video is viewable on the web. It is cited with time-stamp references in some parts of the Amended Complaint.

Taking as established, these undisputed facts on which the Town cannot make a showing, Plaintiff is entitled to summary judgment and to have the condemnation ended.³¹ Therefore, the motion for summary judgment should be granted.

3. The condemnation must also be quashed on the basis of fraud, bad faith or abuse of discretion in general, particularly when any of these things bear on consideration of the issue of necessity, procedural and substantive fairness to the condemnee, or compliance with conditions necessary to invoke the power to condemn.

The Town has previously conceded that a landowner may bring a challenge action to enjoin a condemnation proceeding on a more generally stated basis of “fraud, bad faith, or clear abuse of discretion on the part of the condemnor.” (Town Mem. at 5, citing Sease v. City of Spartanburg, 242 S.C. 250 250, 131 S.E.2d 683 (1963); and Cameron v. City of Chester, 253 S.C. 574, 172 S.E.2d 306 (1970).) The Amended Complaint supports all three conditions, which can be overlapping concepts. The undisputed facts set forth in Sections IV and VI(G) of this brief evince conscious dishonesty, spite, ignorance, indifference, recklessness, or a failure of deliberation caused by abdication of responsibility, by knowingly false information or by erroneous legal conclusions, or a combination of many or all these conditions.

These are all conditions not present in Sease or Cameron. Sease involved a determination to condemn property for a roadway which would isolate the condemnee’s

³¹ Part of the condemnation process is a pre-service appraisal of the interest in property to be condemned, and not an appraisal of some other, different, interest. This is followed by required pre-service negotiation to purchase the same interest for at least the same price dictated by the appraisal, so as to possibly avoid court involvement and expense and appraisal expense for, among others, the landowner. An appraisal is a determination of value as of a specific point in time. There is no practicable remedy allowing the Town to keep changing the interest in property it seeks as the condemnation action proceeds, without consent of the landowner. The remedy is therefore dismissal of the as-yet unfiled condemnation action and permanent prohibition against filing it.

remaining property and reduce its access in various ways alleged to be very harmful, and was decided on demurrer, where the pleadings alleged no actual facts indicating conscious dishonesty, spite, ignorance, indifference, recklessness, or a failure of deliberation caused by abdication of responsibility, by knowingly false information or by erroneous legal conclusions, or a combination of many or all these conditions.

Cameron involved a contention that the acquisition of the property for off street parking was unnecessary solely because off-street parking was not needed and was decided after trial, in which there was no evidence adduced of conscious dishonesty, spite, ignorance, indifference, recklessness, or a failure of deliberation caused by abdication of responsibility, by knowingly false information or by erroneous legal conclusions, or a combination of many or all these conditions.

In legal terms, an abuse of discretion occurs, among other possible instances, when a decision is based upon an error of law or upon a factual conclusion that is without evidentiary support. Fields v. Regional Med. Ctr. Orangeburg, 363 S.C. 19, 609 S.E.2d 506 (2005) (See Thompson v. Hammond, 299 S.C. 116, 382 S.E.2d 900 (1989)). “‘Abuse of discretion’ does not mean any reflection upon the presiding Judge [or nonjudge], and it is a strict legal term, to indicate that the appellate [or other reviewing] Court is simply of the opinion that there was commission of an error of law in the circumstances.” State v. Gregory, 171 S.C. 535, 548, 171 S.E. 692, ____ (1934) (citing Barrett v. Broad River Power Co., 146 S.C. 85, 143 S.E. 650, 654 (1928)). Accord, Bishop v. Bishop, 164 S.C. 493, 162 S.E. 756 (1932).³²

³² When a court reviews the decision of another body for abuse of discretion, the court need not address the sufficiency of the putative evidence supporting the reviewed body’s findings, when the “findings are so tainted by errors of law as to require [reversal].” Callen v. Callen, 365 S.C. 618, 620 S.E.2d 59 (2005)(reviewing family court decision). Here, the Town Council made its decision to condemn based on conclusions of law that the easement it was considering was

The Town has previously conceded, as discussed briefly above, that a failure to establish legitimate criteria for a rational decision-making process and a valid exercise of discretion constitutes an abuse of discretion, that failure to have a factual basis for a choice of the interest in land to acquire is an abuse of discretion, and that failure to consider one of the decision-making criteria is one example of not having a factual basis for decision. (Town 8/28/20 Mem. at 17-18, citing Southern Dev. Land and Golf Co. v. S.C. Pub. Serv. Auth., 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991)³³(concluding power company with criteria of safety, reliability, aesthetics and cost had no factual basis for decision and abused its discretion in selecting route for power transmission lines when it did not consider cost criterion at all).)

Here, the undisputed facts are that Town Council, which is the sole decision-maker under the council form of municipal government, had no criteria at all for a rational decision-making

“basically, simply to put sand on the beach,” and that the owners “would have all the same rights after the taking that they had before the taking” (to paraphrase). These were heavily weighted legal conclusions with which the condemnation notices absolutely conflict.

“An abuse of discretion occurs when the decision is controlled by some error of law or is based on findings of fact that are without evidentiary support.” Lewis v. Lewis, 392 S.C. 381, 390, 709, S.E.2d. 650, ____ (2011) (citing Eason v. Eason, 384 S.C. at 479, 682 S.E.2d at 807 (2009)). Accord, State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017) (citing State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)), and State v. Hatcher 392 S.C. 86, 708 S.E. 2d 750 (2011).

Perhaps as bad as any instance is one in which the body or tribunal vested with discretion does not exercise discretion because, under an error of law, the body or tribunal did not know it had the discretion to exercise. An abuse of discretion occurs when the body appealed from is vested with discretion to grant relief to the appealing party, but its ruling reveals no discretion was, in fact, exercised. Fontaine v. Peitz, 291 S.C. 536 at 538-39, 354 S.E.2d 565 at ____ (1987)(reversing because trial judge’s belief he could not permit additional testimony was erroneous). A body deprived of the ability to properly exercise discretion or prevented from exercising it at all, commits such an abuse of discretion. A body can be deprived of the ability or opportunity to exercise discretion because of being misled legally or because of being totally in the dark as to the true facts. A body fraudulently misstating the facts and issues of the case before it for decision would also be abusing its discretion by intentionally refusing to exercise its discretion on the actual case before it.

³³ Aff’d as modified, 311 S.C. 29, 426 S.E.2d 748 (1993).

process. That is, they clearly had none, other than perhaps to listen to the Town Administrator and Town Attorney, neither of whom is a member of Town Council. Neither of those actors covered any criteria either, other than in cited instances of falsely stating the situation or inaccurately stating the law as applied to the situation.

It is also undisputed that Town Council had no factual basis for its choice of the interest in land the Town now seeks to condemn, because, it is undisputed that the Council authorized condemnation of a different interest in land than what the Town presently seeks to condemn.

If Town Council secretly meant for the Town Administrator to pursue the more onerous interest the Town presently seeks to condemn, the more than disappointing conclusion is not only that there is no disclosed factual basis for the determination, but also that the whole process was a fraud and a sham. If cost was a factor, the Council could not have considered it with any factual basis, because it is undisputed that the thing the Council was considering costs far less than what the Town ultimately attempted to condemn. Accordingly, summary judgment should be granted.

VII. Conclusion

For any one of the foregoing reasons, Plaintiff's motion for summary judgment should be granted. There are others as well. The Town's Condemnation Notice should be quashed and the action commenced by it should be declared ended.

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

12/3/20

December 6, 2020 Landowner Stanton aff., referencing as included Exhibits A, B, and C, first condemnation papers that were served on Sunset, Beattie, and Stanton to start condemnations. [To avoid duplication, Exhibits A, B, and C are included in “Pleadings,” above, but not again here.]

| | | |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GEORGETOWN |) | CIVIL ACTION NO. 2020-CP-22-00600 |
| Sunset Lodge, LLC, |) | |
| Plaintiff, |) | STANTON AFFIDAVIT OF |
| v. |) | CONDEMNATION NOTICE AND |
| Town of Pawleys Island, |) | ASSOCIATED PAPERS FIRST |
| Defendant. |) | SERVED |
| |) | |

1. I believe the following facts to be without genuine dispute by the Town.
2. I represent Sunset Lodge, LLC, in the case with file number ending in “600,” which is a challenge action to the Town’s attempted condemnation, and am familiar with the papers served in the matter and the papers served in the matter giving rise to the challenge action, i.e., the condemnation notice and associated papers not yet filed, but served, commencing a condemnation action against Sunset Lodge, LLC.
3. I represent Franklin D. Beattie, as trustee, in the case with file number ending in “601,” which is a challenge action to the Town’s attempted condemnation, and am familiar with the papers served in the matter and the papers served in the matter giving rise to the challenge action, i.e., the condemnation notice and associated papers not yet filed, but served, commencing a condemnation action against Franklin D. Beattie, as trustee.
4. I represent myself in the case with file number ending in “602,” which is a challenge action to the Town’s attempted condemnation, and am familiar with the papers served in the matter and the papers served in the matter giving rise to the action, i.e., the condemnation notice and associated papers not yet filed, but served, commencing a condemnation action against me.

5. Of my own knowledge, the following facts are true in all material respects.

6. Attached as Exhibit A are the first condemnation notice and associated papers the Town served on Sunset.

7. Attached as Exhibit B are the first condemnation notice and associated papers the Town served on Beattie.

8. Attached as Exhibit C are the first condemnation notice and associated papers the Town served on me.

Pursuant to S.C. Sup. Ct. Order 2020-04-22-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify the foregoing and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

s/M. Baron Stanton
M. Baron Stanton

Date: 12-6-20

December 10, 2020 Landowner response to Town first interrogatories [not included here, but included once as attachment to Town January 14, 2021 motion to disqualify].

January 7, 2021 e-mail notice of January 20, 2021 hearing of Landowner motion to compel.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Thursday, January 7, 2021 10:21 AM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MCOMPL-Motion/Compel and Expenses/Stanton" for Case "2020CP2200600-Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 1/20/2021 at 1:30 PM

Judge B. Price will be hearing motions via VIRTUAL Courtroom. See Motion Roster News for Link.
The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.
Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator at jlawrence@gtcounty.org or Lucinda LeSane, Common Pleas Supervisor @ llesane@gtcounty.org ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

January 7, 2021 e-mail notice of January 20, 2021 hearing of Landowner motion to enlarge time.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Thursday, January 7, 2021 10:21 AM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MENLGT-Motion/Enlarge Time/Stanton" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 1/20/2021 at 1:30 PM

Judge B. Price will be hearing motions via VIRTUAL Courtroom. See Motion Roster News for Link.

The case referenced in this email is scheduled on the Docket. The Docket is available at

<http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator at jlawrence@gtcounty.org or Lucinda LeSane, Common Pleas Supervisor @ llesane@gtcounty.org ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

January 14, 2021 Town motion to disqualify Landowners' counsel, with attached exhibits.

| | | |
|-------------------------|---|------------------------------------|
| 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 MOTION FOR |
| Plaintiff, |) | DISQUALIFICATION OF COUNSEL |
| v. |) | FOR THE PLAINTIFF |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

TO: PLAINTIFF ABOVE NAMED AND HIS ATTORNEY, M. BARON STANTON, ESQ.

YOU WILL PLEASE TAKE notice that the Defendant, Town of Pawleys Island (the “Town”), by and through its undersigned attorneys, N. David DuRant, Sr., and Norwood D. DuRant, Jr., will within ten (10) days after service hereof or as soon thereafter as counsel may be heard, or within a shorter time period, if the Court so allows, move the Court to issue an Order to disqualify M. Baron Stanton from continuing to represent the Plaintiff in this case, and such other reliefs and remedies that the Court may deem just and proper under the circumstances.

The Plaintiff has named its counsel of record, M. Baron Stanton, as a witness in this case (See: Exhibit “A”, Plaintiff’s Response to First Interrogatories, pp. 1-2). Rule 3.7 of the Rules of Professional Conduct, Rule 407, SCACR, provides:

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
- (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or
 - (3) disqualification of the lawyer would work substantial hardship on the client.

“The roles of an advocate and of a witness are inconsistent; the function of an advocate is to

advance or argue the cause of another, while that of a witness is to state facts objectively.” Collins Entertainment, Inc. v. White, 363 S.C. 546 (2005).

Based on the foregoing, the Defendant respectfully requests that M. Baron Stanton be disqualified from continuing to represent the Plaintiff in this case.

This motion may be supported by a memorandum of law, as well as the South Carolina Rules of Civil Procedure, oral arguments by counsel, affidavits, and/or any other evidence properly submitted prior to the time of the motion hearing.

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

s/N. David DuRant, Sr.

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

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: ddurant@lawofficesofdurant.com

Attorney for Defendant

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

s/Norwood D. DuRant, Jr.

Norwood D. DuRant, Jr. (SCB #101723)

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: norwooddurant@lawofficesofdurant.com

Attorney for Defendant

January 14, 2021

| | | |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GEORGETOWN |) | CIVIL ACTION NO. 2020-CP-22-00600 |
| |) | |
| Sunset lodge, LLC, |) | |
| |) | PLAINTIFF'S RESPONSES TO |
| Plaintiff, |) | FIRST INTERROGATORIES |
| |) | |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

Plaintiff responds to first interrogatories as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: A broad number of people may have observed or may know facts pertaining to the case, as it involves many people and properties, and the Town has made it a very public matter. For example, 113 people or more may have received false solicitations from Mr. Fabbri that the requested easement was essentially limited to doing renourishment work and thereafter received proposed easement documents with terms of greater scope and continued to receive and hear similar representations, a greater number may have followed Town meetings or Town Council meetings, at which matters were presented falsely or decided summarily, a greater number may have read newspaper articles about the Town's assertions of some of the issues or facts, etc.

In terms or persons most likely to be potential witnesses in a trial or other proceeding, that question depends upon whether summary judgment is granted for Plaintiff, and upon, regardless of whether summary judgment is granted or the case is tried, whether the Town

disputes any of the facts alleged in the Amended Complaint. To date, there has been no dispute of material facts and Plaintiff has contended that Plaintiff is entitled to judgment as a matter of law, ending the condemnation. The facts have been adduced by the 130 paragraphs of the affidavit of M. Baron Stanton, which is on file and which has been provided, and through the admissions of the Town in its own writings and public records.

In terms of people who have the most perceived close-up involvement in the facts which afford relief to Plaintiff or matters, if any, disputed by the Town or contended to afford the Town any defense, those currently appear to be the following; again, it is difficult to know whom to include in those with respect to whom to reserve the right to call as a witness if the facts are not controverted and until additional or enhanced bases for recovery are discovered from the Town or others: Nick Franchina; Frank Beattie; Barry Stanton; possible other Pawley's Island property owners to whom Mr. Fabbri or others associated with the Town made representations and sent documents and correspondence, and from whom were received documents and correspondence; Bill Otis; Ryan Fabbri; John Hinely; Dorothy Steinbeiser; possible other USACE personnel; Steve Traynum; Sarah Zimmerman; Rocky Holliday; Guerry Green; Ashley Carter; Brian Henry; David Durant; possibly Woody Durant; Jimmy Braswell, Diane Allen, Brian Donovan; and Charles Swenson. The addresses of these people other than Franchina, Beattie, and Stanton – all of whom can be contacted through Stanton – are not known by Plaintiff without looking them up, and upon information and belief, these people are familiar to the Town and the Town has equal or better information as to address. No statements as such have been taken from any of the foregoing except that Mr. Donovan has been deposed, Mr. Fabbri has provided one or more Affidavits, and Mr. Stanton has provided an Affidavit.

2. Set forth a list of photographs, videotapes, plats, sketches, correspondence, notes, memoranda, agendas, logs, studies, minutes, press releases, resolutions, reports, charts, other writings and recordings, e-mails, texts, IMs, blogs, other electronically stored information, or other prepared documents in possession of the party that relate to the instant lawsuit, Plaintiff's claims or Defendant's defenses. (By "electronically stored information," this party means to include all information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software, including, but not limited to the following: accounting or bookkeeping information stored or accessed with QuickBooks or similar software; e-mail of any type, category, or -status, including incoming, outgoing, draft, or deleted e-mail; social networking website postings or commentary; chat room logs, transcripts, archives, or commentary; instant messaging logs, archives, or history files; internet browser temporary files, cache files, cookies, or history information; online discussion group files; blog text, postings, or commentary; and any data stored on a computer network, servers, pop drives, disks, snap drives, flash drives, thumb drives, USB hard drive, cell phone, PDA, or other electronic device capable of storing data.)

RESPONSE: There is potentially an extraordinarily broad number of things that relate to the lawsuit in one way or another, depending on whether any factual issues are controverted and which legal issues are raised or necessary. As it currently stands, the things that relate most closely to the lawsuit, claims and defenses include the documents produced by the Town in response to Requests for Production, any documents still being sought by Plaintiff from the Town, and documents received from USACE in response to FOIA requests, much of which is e-mail traffic with the Town. It is assumed that the Town already has all these; if the Town does not have the latter, Plaintiff will arrange to have them reproduced and provide them. These two sources appear to have most of the plats, sketches, proposed easements, and e-mails relevant to the case. Additionally, if not in the aforementioned Town and USACE responses, relevant items would also include the various proposed easements and offered easements between the condemnees and the Town, the various condemnation notices, and possible other e-mails between the condemnees and Town officials. As a smaller and tangential matter, there are a couple of photographs pertaining to matters already beginning to take place, before the Town's institutional knowledge of its false promises have even faded into the blank slate of a

replacement Town Council seeking to chalk up its own “accomplishments”; to wit, there are photos of tire tracks on the beach and a Town vehicle trying to drive out on the beach on which motorized traffic is prohibited by Town ordinance except in the case of emergencies, and there may be a news article and some minutes of a fall 2020 Town Council meeting discussing a request for an even bigger (and likely louder, faster, and more comfortable) four wheeler for the Town to ride up and down the beach, now that it can drive right over the areas where groins used to be exposed. No photos have yet been identified of the proliferation of signage springing up on the beach, and no added trash receptacles have yet been spotted or photographed in the less than ten months since the completion of the project. Among the foregoing Town-produced, USACE-produced, or otherwise relevant items are the following:

1. Video of Mr. Fabbri in early 2019, explaining purpose and scope of easements;
2. The first version of “Standard Estate 26” sent to Mr. Fabbri if and when the document is identified and produced by the Town, and the version sent to the Town Attorney, if and when the Town produces same (i.e., not in Plaintiff’s possession, but subject of motion to compel);
3. Proposed easements sent to Sunset, Beattie and Stanton in early 2019;
4. March 2019 e-mail letter of Mr. Fabbri explaining the limited purpose and scope of easements which would be requested;
5. April 8, 2019 e-mail of Stanton to Mr. Fabbri with fully executed, recordable signed grant of easement.
6. April 20, 2019 video of Mr. Fabbri at Town meeting explaining the limited purposes of the proposed easements and making assurances as to intentions of present Town Council with regard to the easements which last forever;
7. April 25, 2019 bona fide signed grant of easement by Beattie;

8. Different easement, not intended by Beattie, dated April 25, 2019 bearing Beattie signature on signature page, recorded by Town Administrator April 29, 2019 affecting Beattie property;
9. c. April 2019 e-mails of Stanton to Mssrs. Fabbri and Otis and vice versa and any continuation of same re deadlines, assertions by Otis and Fabbri of inability to revise, assertions of Otis and Fabbri of inability of owner to talk to USACE, etc.;
10. April 30, 2019 e-mail of Mr. Fabbri to Stanton stating that the purpose of the e-mail was to clarify the purpose of the requested perpetual easement;
11. April 2019 e-mail of Mr. Fabbri rejecting fully executed and recordable signed April 8, 2019 easement from Stanton;
12. c. April/May 2019 Coastal Observer article with information from Mr. Fabbri about upcoming talk USACE was going to have with owner “who declined to sign easement”;
13. E-mail of Stanton to Ms. Steinbeiser (USACE Savannah) in early 2019 c. April;
14. E-mail of Stanton to Mr. Hinely (USACE Savannah) in early 2019 c. April;
15. May 1, 2019 notes or memoranda of Mr. Hinely, if any, of or concerning telephone call with Stanton;
16. May 2019 Coastal Observer article with Mr. Fabbri’s announcing threats of condemnation against those who do not comply with the Town’s requests;
17. E-mail from Mr. Fabbri June 18, 2019, following Stanton May1 talk with USACE, along with revised proposed easement, deleting, revising, excluding or excepting some terms or burdens in earlier version, which changes were agreed by Town in this version not to be necessary;
18. 2019 cancellation of Beattie easement by Town;

19. 2019 cancellation of Beattie easement by Beattie;
20. June 2019 e-mail of Stanton to Mr. Fabbri with revisions to June 18, 2019 revised easement requested by Town;
21. June 2019 easement grant of Sunset Lodge, LLC recorded with plat July 26, 2019;
22. July 29, 2019 article in Coastal Observer re Mr. Fabbri claims all 113 easements have been obtained and comments of Mr. Fabbri and others on recent decision of USACE to pause and reassess cost-benefit features of the project;
23. Town Council minutes for meeting preceding July 29, 2019;
24. July 29, 2019 minutes of Town Council meeting, re easements are not necessary;
25. August 1, 2019 Coastal Observer article re Mr. Fabbri on forgoing federal project, i.e., Corps involvement;
26. Town of Pawleys Island Local Comprehensive Beach Management Plan, August 2011;
27. August 27, 2019 minutes of Town Council meeting and verbatim video of same and ensuing Coastal Observer article re same;
28. Graph presented by Mr. Holliday at August 27, 2019 Town Council meeting showing 22 years or more before elective trigger point may be reached to renourish again, if trigger point with higher sand volume than present state of beach is selected;
29. February 2020 e-mail of Mr. Henry re renourishment completion and long expected duration of sand in place;
30. February 2020 e-mail of Mr. Fabbri stating project is completed and requesting easement from Stanton, addressed "Dear Howard";
31. Similar solicitations to Beattie and Sunset Lodge;

- 32. February 24, 2020 e-mail of Stanton to Mr. Fabbri with update, i.e., additional revision, of easement offered by Stanton in June 2019, to which the Town had never responded;
- 33. February 28, 2020 e-mails of Mr. Fabbri to Franchina et al. of Sunset, and to Beattie transmitting proposed easement making an exception for owner improvements such as decks and walkways to the power to remove obstructions, obstacles and structures;
- 34. March 31, 2020 e-mail of Mr. Fabbri to Stanton rejecting all previously unresponded-to revisions offered by Stanton in June 2019, but agreeing to change one word requested to be changed in February 24, 2020 Stanton revision, and agreeing to move the PEL, stating that the move would “remove all structures,” but transmitting a proposed document that did neither;
- 35. April 8, 2020 e-mail of Stanton to Mr. Fabbri explaining the issues yet again;
- 36. April 21 and 24, 2020 e-mails of Stanton to Mr. Henry;
- 37. Henry e-mail c. April 24, 2020 to USACE (“I do not claim to understand the legalese”);
- 38. May 7, 2020 e-mail of Mr. Henry to Stanton;
- 39. May 18, 2020 official video and minutes of Town Council meeting voting to condemn easements “basically, simply to put sand on the beach” from owners who, according to Fabbri, “for whatever reason,” would not sign an easement, confirmed by on-the-record legal advice that condemnation of the easements basically simply to put sand on the beach would leave the owners with all the same rights they had before the condemnation;
- 40. May 18, 2020 written resolution of Town Council not containing the written terms of the easements to be condemned;
- 41. May 21, 2020 e-mail of Stanton to Mr. Henry;
- 42. May 27, 2020 e-mail of Stanton to Mr. Fabbri;
- 43. June 4, 2020 e-mail of Stanton to Mr. Fabbri;

44. Condemnation notice dated June 9, 2020 served later on Sunset, together with one map labelled Exhibit A, showing PEL two feet from main pilings, and one proposed granting document with no additional map;

45. Condemnation notice dated June 9, 2020 served later on Beattie, together with one map labelled Exhibit A, showing PEL two feet from main pilings, and one proposed granting document with no additional map.

46. Condemnation notice dated June 9, 2020 served later on Stanton, together with one map labelled Exhibit A, showing PEL two feet from main pilings and encumbering concrete, and one proposed granting document with no additional map.

47. June 23, 2020 e-mail of C.E. Howard on behalf of Sunset to Mr. Durant asking for the Appraisal Report referenced in the Condemnation Notice date June 9, 2020 as having already been provided although the Town admits the Appraisal Report was not provided before the Condemnation Notice was served or an attempt was made to serve it;

48. June 23, 2020 e-mail of Stanton to Mr. Durant asking for the Appraisal Report referenced in the Condemnation Notice date June 9, 2020 as having already been provided although the Town admits the Appraisal Report was not provided before the Condemnation Notice was served or an attempt was made to serve it;

49. June 30, 2020 e-mail of C.E. Howard on behalf of Sunset to Mr. Durant asking again for the Appraisal Report referenced in the Condemnation Notice date June 9, 2020 as having already been provided although the Town admits the Appraisal Report was not provided before the Condemnation Notice was served or an attempt was made to serve it;

50. Town's briefs opposing summary judgment and exhibits showing envelopes for unsworn putative attempted mailings of something to non-permanent addresses of all three condemnees

which did not have mail receptacles, showing only part of a putative June 9, 2020 Condemnation Notice, omitting the referenced map and accompanying proposed granting document describing the specific interest in property sought, and showing a putative October 12, 2020 do-over resolution of Town Council containing false recitations.

51. June 30, 2020 e-mail of Ms. Oranga providing Stanton Appraisal Report;
52. July 1, 2020 e-mail of Ms. Oranga providing Sunset Appraisal Report;
53. July 1, 2020 e-mail of Beattie to Mr. Durant, asking for the Appraisal Report referenced in the Condemnation Notice date June 9, 2020 as having already been provided although the Town admits the Condemnation Notice was not provided before the Condemnation Notice was served or an attempt was made to serve it;
54. Appraisal Report dated June 3, 2020 on 746 Springs (Sunset), stating at page 44 that the written terms of the easement were not provided and stating assumptions based on verbal information that the easement is only used when access is needed to do work and that structures are unaffected;
55. Appraisal Report dated June 3, 2020 on 748 Springs (Beattie) stating at page 44 that the written terms of the easement were not provided and stating assumptions based on verbal information that the easement is only used when access is needed to do work and that structures are unaffected;
56. Appraisal Report dated June 3, 2020 on 756 Springs (Stanton) stating at page 44 that the written terms of the easement were not provided and stating assumptions based on verbal information that the easement is only used when access is needed to do work and that structures are unaffected;

57. July 2020 subsequent proposed attachment to Condemnation Notice to Stanton, being a map with PEL moved several feet seaward, with e-mail of Ms. Oranga sending same;
58. Stanton e-mail to Ms. Oranga around the date of the foregoing;
59. Ms. Oranga's e-mail to Stanton around the date of the foregoing, in one of which the Town changed the proposed easement description materially again, "withdrawing" all previous agreed changes over the preceding year and a quarter, now describing the whole lot and house as subject to the easement, moving the PEL again to two feet from the door, deleting the exception of decks, walkways, etc. from being torn down, broadening the ability of the Town to limit access to dune "areas" to again include limiting the owner's access, etc.;
60. c. July 2020 photo showing tire tracks on the dry sand beach on which driving is illegal;
61. 2020 photo of Town SUV attempting to enter the beach;
62. October 12, 2020 putative Town Council resolution with false recitations that documents referenced therein were previously sent to owners, and verbatim video of Town Council meeting ("needed for litigation"; "needs tweaking");
63. Revised followup resolution of unknown actual date, also dated October 12, 2020;
64. New, additional, condemnation notice starting new condemnation action for Sunset property with 9-line footnote inserted in accompanying property description which was the subject of October 12, 2020 false Town Council resolution, said notice being prepared in October and presented to Stanton to receive for Sunset October 16, 2020 but being dated June 9, 2020;
65. New, additional, condemnation notice starting new condemnation action for Beattie property with 9-line footnote inserted in accompanying property description which was the subject of October 12, 2020 false Town Council resolution, said notice being prepared in

October and presented to Stanton to receive for Beattie October 16, 2020 but being dated June 9, 2020; and

66. New, additional, condemnation notice starting new condemnation action for Stanton property with 9-line footnote inserted in accompanying property description which was the subject of October 12, 2020 false Town Council resolution, said notice being prepared in October and presented to Stanton to receive for Stanton October 16, 2020 but being dated June 9, 2020; and

67. October 30, 2020 Fabbri Affidavit.

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE: None at this time.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness, and provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

- Franchina: Received Fabbri solicitations for easement. When he received the actual proposed document, saw the divergence between the solicitation and the actual proposed description and was concerned with the proposed terms, including unnecessarily granting public access in an easement to do renourishment work. Had Sunset's own easement prepared and had Sunset's own plat prepared. When the plat was ready, had the easement recorded. Was contacted by Mr. Fabbri after the renourishment was complete, asking for an easement. Provided the one already recorded. Was told in writing by Mr. Fabbri that "the right of public use and access" had to be in the easement. Was sent a proposed easement by Mr. Fabbri that contained an exception to destruction of owner

improvements. Was served with a condemnation notice, but was not provided an appraisal beforehand or with the notice. The condemnation notice was more burdensome than the last easement proposed by Mr. Fabbri in, at least, not having an exception to destruction of parts of the house or other owner improvements in the easement area. Upon Franchina's information and belief, the notice was also more burdensome than versions of proposed easements previously proposed to or accepted from other owners. The appraisal does not appraise the same easement that is in the condemnation notice. No one negotiated to purchase an easement by showing an appraisal at any time before serving a condemnation notice.

- Beattie: Received Fabbri solicitations for easement. When he received the actual proposed document, saw the divergence between the solicitation and the actual proposed description and was concerned with the proposed terms, including unnecessarily granting public access in an easement to do renourishment work. Prepared his own easement and had his own plat prepared. When the plat was ready, took the easement to Fabbri. Fabbri asked that he re-execute the signature page. He did. Fabbri recorded a different easement including a different map/plat. He wrote to Fabbri and asked for an explanation in writing. The Town recorded a release of easement which he considered insufficient in the manner of indexing. He recorded his own. Was contacted by Mr. Fabbri after the renourishment was complete, asking for an easement. Was sent a proposed easement by Mr. Fabbri that contained an exception to destruction of owner improvements. Was served with a condemnation notice, but was not provided an appraisal beforehand or with the notice. The condemnation notice was more burdensome than the last easement proposed by Mr. Fabbri in, at least, not having an exception to destruction of parts of the

house or other owner improvements in the easement area. Upon Beattie's information and belief, the notice was also more burdensome than versions of proposed easements previously proposed to or accepted from other owners. The appraisal does not appraise the same easement that is in the condemnation notice. No one negotiated to purchase an easement by showing an appraisal at any time before serving a condemnation notice.

- Stanton: His 130 paragraph affidavit has already been provided. In short outline, however, he received Fabbri solicitations for easement. When he received the actual proposed document, saw the divergence between the solicitation and the actual proposed description and was concerned with the proposed terms, including unnecessarily granting public access in an easement to do renourishment work. Prepared his own easement. Sent it to Fabbri in early to mid-April 2020. Fabbri rejected it. He consulted with USACE. After great delay, received a changed proposed version, which was still defective and harmful. Proposed revisions again in June 2020. No response was provided. Town announced easements were unnecessary, that the project would be done without the Corps and that the Town was going to put so much sand on the beach that it wouldn't be needed again for 22 years or more. By acclamation, the decision was described as just do the existing project now worry about anything further, if anything, later. The work was done. Was contacted by Mr. Fabbri after the renourishment was complete, asking for an easement. Provided added revisions to the June 2019 revisions the Town had never responded to. The Town agreed to one additional change beyond its June 18, 2019 proposal and confirmed its earlier 2019 agreement to move the PEL. Contacted Mr. Henry, the mayor. Spoke and at Henry's request sent comprehensive synopsis, with solutions. Then the Town backtracked on every change previously agreed

to reasonably change things that were not necessary. Was served with a condemnation notice, but was not provided an appraisal beforehand or with the notice. The condemnation notice was more burdensome than the last easement proposed by Mr. Fabbri in many respects, including, not restricting the limitation of access to limiting public access, as opposed to owner access, and including not moving the PEL. The Town subsequently “withdrew” every previously agreed change ever made to remove unnecessary burdens. The appraisal does not appraise the same easement that is in the condemnation notice. No one negotiated to purchase an easement by showing an appraisal at any time before serving a condemnation notice.

- Fabbri: Is expected to admit the statements, writings and actions attributed to him in the Amended Complaint, including but not limited to: representing that that the easement was solely for work on the renourishment project; including in the easement document, the right of public use and access and the other terms described in detail in the Amended Complaint; omitting to tell Town Council the details of the condemnee’s offering easements but having very specific objections to the easement proposed; and hiring of the appraiser, but not telling the appraiser the terms objected to or providing the appraiser the terms in writing.
- Henry: Stanton provided Henry with written explanation of the problems, along with proposed solutions. It appears Henry forwarded it without endorsement to the Corps and stated he did not understand all of it, and did not mention any of the issues in the May 18, 2020 Town Council meeting concerning whether to pursue condemnation and what would be condemned

- Donovan: He has been deposed. He was not furnished the written terms of the easement when asked to put a value on it.
- Council Members: It is not known everything they may know or may have observed. Council members have publicly categorically exhibited no knowledge or discussion of particular objections to the proposed easement or the fact that condemnees had actually offered easements fitting the description of the easement Town Council authorized Mr. Fabbri to condemn. Council did rely on advice from others for their information at the May 18, 2020 meeting. With regard to their later meeting October 12, 2020 after the Town was deep in litigation, they all know, or did not read what they were signing off on and should have known, that recitations in the putative October 12, 2020 resolution they agreed to were false. That is, Council states in the written public record they were creating that attached documents were previously furnished to the owners, but knew or should have known this to be impossible because in the public meeting, they authorized counsel to tweak the documents for Henry and Fabbri to approve them later.
- USACE personnel: It is not know everything they may know or may have observed but Steinbeiser and Hinely were the first and almost only contact of Stanton. They and others appear to have had much more contact with Fabbri and some others associated with the Town. Stanton spoke with Hinely and a Corps lawyer about issues with the proposed easement.

5. For each person whom the party may call as an expert or opinion witness at the trial, identify the person in complete detail and provide the following information:

- a Name, occupation, title; business address, area of specialization, if any, and professional relationship to the responding party;
- b. The manner in which such person became familiar with the facts of the case;
- c. The subject matter on which the person is expected to testify;
- d. Substance of the facts and opinions to which the person is expected to testify;

- e. A summary of the grounds for each opinion;
- f. The person's area of expertise;
- g. The person's educational background and experience qualifying the person as an expert in that area;
- h. Identification of all documents, materials, reports, articles, treatises or other information the expert will rely upon in forming opinions; and
- i. A summary of the expert's prior history of consultation and/or testimony in legal matters.

RESPONSE: No experts have been retained to testify as of yet. It is not yet known whether any other opinion testimony will be required.

6. Please identify any documents or things (as broadly defined), regardless of whether or not favorable to you, which you believe relevant to this case, or which you intend to use as a demonstrative exhibit at trial, or which you intend to introduce into evidence at trial, or which you intend to use for cross examination or refresher of recollection.

RESPONSE: As the case currently appears to be based on uncontested, if not uncontested, facts and public records and filings, and also that the case may be resolved on summary judgment or otherwise without a trial, no further documents than those described in response to Item 2 come to mind at this time. As stated there, some of the more highly relevant documents and things include: e-mails and video recordings of Ryan Fabbri; USACE correspondence with Mr. Fabbri; the various proposed condemnation notices; the videotapes and minutes of Town Council meetings; the appraisal reports and deposition of Mr. Donovan; e-mails to and from Mr. Henry; the Town resolutions regarding condemnation; and possibly some pictures on tangential matters. Among the foregoing are the following: [list from item 2]

7. State the detailed factual basis for each of the claims you assert in your pleadings.

RESPONSE:

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.

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

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.

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.

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.

Since the 1960s or before, Plaintiff's land has been taxed on the basis of an area extending approximately fifty feet or more oceanward of the current oceanwardmost (easternmost) main pilings of Plaintiff's home (as opposed to parts of the home or other appurtenances closer to the ocean) on the premises, which home was constructed in the many decades ago, before there was an incorporated Town of Pawleys Island.

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

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.)

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

Complaints also include an altered foreshore, resulting in a steeper, if not cliff-like, descent of the beach and surf bottom into the water at the immediate shore, resulting in waves breaking immediately at shore and slamming into the steeply rising bottom just a few feet from the end of water, strong undertows and rip currents. These features have generated observations and complaints in North Carolina and other places ranging from making surf walking and “beach sitting” less convenient, less scenic and less pleasant (“We were like cows on a hillside [(like mythic Sidehill Dodgers)]”), to causing increased cervical injuries to surfers, creating drowning hazards for toddlers and others, causing poorer surfing and swimming conditions, creating an impediment to sea turtle reproduction, and posing a danger to already living sea turtles. Despite these detractions, Plaintiff attempted to cooperate in the desire and decision of the Town to renourish.

Complaints also include “sand” deposits exterminating entire existing populations of coquina clams and molecrabs (“sand fleas,” but not the type that fly) in the shallow surf, which provide food to some shorebirds and marine organisms.

Larger complaints include obstruction of view, in the case of construction of artificial dunes. Also included are physical limitation of beach access and a longer distance to the water

from beachfront homes, and large scale geological and ecological consequences (e.g., silting and clogging of inlets and creeks) from removing large volumes of “sand” from one place, and putting it in another where it has not previously existed, only to find out later the magnitude of the unintended consequences of its removal, deposit, or later migration or overwash elsewhere. Other projects which can be performed without renourishment, but which are sometimes performed after a renourishment project, may include planting of vegetation and installation of structures such as sand fence, and these projects, too, are not without drawbacks or cause for weighing, if not apprehension. Complaints or problems may include installed sand fence being of low utility or completely ineffectual based on contraindicated site conditions, while endangering nesting animals such as sea turtles, becoming debris on the beach or in the water when dislodged, presenting injurious sharp features (e.g., cut wire and nails) for humans and animals, altering bird and other animal habitat or blocking use or access. Complaints or problems with unthinking – or thinking --introduction of invasive non-native species of plants include those pertaining to *Vitex rotundiflora* (“beach vitex”) which was heavily promoted by coastal authorities in South Carolina in the 1980s, but which has become the subject of a complete eradication campaign by the same authorities after the plant choked out other dune-building plants, failed to contribute to significant dune building or preservation, and contributed to the entanglement and deaths of hatchling sea turtles. The high-dune-building propensities of non-native *Ammophila arenaria* (European beach grass) have been known to result in high, steep, brushy-topped and brush-filled, and brush-choked, dunes, unnatural for the area, at the expense of view and indigenous plant scenery, sand volume and natural protective low dunes on the adjacent beach, and sand volume to areas behind the primary dune, as well as habitat for native plants and animals such as arthropods (e.g., ghost crabs). Non-native *Ammophila*

breviligulata, (American beach grass) with intermediate-height dune-building propensities, is nevertheless invasive in some applications, and has created unforeseen monoculture and morphological changes with attendant loss of native plants and alteration of physical animal habitat, such as where introduced on northwestern beaches where it is being eradicated with bulldozers, herbicides and other means in an attempt to restore the plover habitat it destroyed.

As of July 9, 2020, scores of owners on the south end of Litchfield, the immediately neighboring beach to the north of Pawleys, apparently filed objections to a proposed renourishment on the south end of Litchfield using offshore “sand,” because, among other reasons, their property was governed by a homeowner’s association which could assess them hundreds of thousands of dollars to primarily benefit others. One concern raised by owners opposing use of offshore sand was the quality of sand placed on Pawleys Island in the course of the completed renourishment eventually described below. It contained mud and shell. The proposed Litchfield project has been revised to use trucked-in sand from an inland source.

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.

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.

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!”

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.

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.

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.

The Town decided to wait on the Corps.

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.

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.

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."

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.

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.

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.

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.

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."

In March, the Town, through Fabbri, sent a proposed easement grant document to Plaintiff, not offering to pay anything for the grant of partial interest in Plaintiff's 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."

However, the proposed document sent by Fabbri in 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.

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 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.

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 set about preparing an easement grant which was responsive to the Town's previously publicly explained needs. Plaintiff tried to send 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 provided 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.

Plaintiff signed and provided such an easement grant, to the Town.

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.

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.

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.”

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.”

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; 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 either acted in complete ignorance of the facts and law, or has 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.

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, 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.

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.

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.)

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."

Neither the easement the Town sought in March 2019 nor the one later sought in the Condemnation Notice sent in June 2020 is limited to the Town. 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.

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."

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.)

On or about April 25, 2019, Fabbri received from the Beattie trust, a revised easement document intended to correct many of the abovedescribed defects in the proposed Public Access Easement, and for which Beattie had included and recorded his own plat, prepared for him.

However, Fabbri requested a correction to a matter of form occurring on the signature page, and Beattie executed another page, authorizing it to be attached only to the easement grant Beattie had submitted. Fabbri thereafter recorded a different easement and filed it in the title records for Georgetown County. When Beattie weeks later discovered these actions, he was in touch with both Fabbri and Durant, and eventually had the inauthentic document cancelled.

On April 30, 2019, speaking for the Town, Fabbri wrote an e-mail:

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.

Many parts of the statement in Fabbri's April 30, 2019 e-mail letter are patently false, and the Town has not agreed to put any of them in writing in the requested easement grant itself.

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.

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.

The document does convey property to the Town. It is a proposed "grant." It proposes to grant 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.

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.

Fabbri, who is not a lawyer, and who 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.

The easement grant or the easement condemnation must explicitly say within the operative document – not in a “side letter” -- what the document means and does not mean. Otherwise, a purchaser, title insurance company, appraiser, or present owner, must assume the worst, and must at least assume what the document plainly says. This is the only basis for assessing whether to make the grant, and in a condemnation action, is the only basis on which to assess the value of what is taken and the damage done by the taking.

The Town’s hereinbelowdescribed repeated and continuous insistence on including sloppiness and deliberate ambiguity, if not express overreaching, permanently in Plaintiff’s chain of title, is in bad faith and is an abuse of discretion.

Under the proposed Public Access Easement, Plaintiff will not, as stated by lay fiat of Fabbri alone, “still maintain private access to the beach,” when in fact the document expressly grants to others, rights to engage in sweeping activities on Plaintiff’s land and improvements, “together with the right of public use and access.”

Some time after Plaintiff sent a an easement grant document to the Town responsive to the actual stated needs of the proposed project, the Town rejected it.

Having consistently publicly misrepresented the scope of the easements sought by the Town to be minimal short-term authorizations to simply bring in equipment and deposit sand for a few months, Fabbri thereafter publicly (in the newspaper and Town published communications) represented in virtually every reference to Plaintiff, that Plaintiff had not sent Fabbri an easement or had not signed an easement, implying outright refusal rather than diligent cooperation. Fabbri did so rather than risk publicizing the inaccuracies of his own prior public statements and the problems with the excessive, overreaching, and in many ways, reckless or sloppy, proposed document.

The Town has represented that the Town had never worked with an attorney at USACE and that USACE would not allow the Town to alter the defective draft document the Town had prepared and proposed, which included incomplete sentences, punctuation errors affecting intelligibility and meaning, misspellings, and typographical errors in addition to the other defects recounted herein. The Town represented that the wording and format of the document was “standard” and not susceptible to any exception.

Cursory research and a facial inspection of the document, however, reveals that the Corps has on other projects, employed similar language in only one block of text of the overall easement grant document, which the Corps refers to as “Standard Estate 26,” which is a further identification and description of the scope and nature of easement interest being conveyed. The remaining components of the document, such as the premises (identification of parties, the consideration, the granting clause), the description of the property subjected to the easement conveyed, the habendum clause, any reddendum clause, the execution and the probate or modernized acknowledgement or proof of execution, and attributes of any attached map or plat, are clearly and necessarily left to the document assembler. Standard Estate 26 accounts for

many, but not all, serious problems presented by the proposed Public Access Easements, including the sneaked-in grant of public access.

Further, Standard Estate 26 is anything but standard, or legitimate.

Standard Estate 26 has not been established by statute.

Upon information and belief, Standard Estate 26, as opposed to some other USACE Standard Estates, has never been adopted as, or in, a regulation in accordance with the federal Administrative Procedures Act.

Upon information and belief, Standard Estate 26 does not have the status of actually adopted written policy by USACE. There is no readily accessible record of who came up with its contents, or why, or who approved them. Further, other versions of this nonstandard “estate” contain blanks for insertions of exceptions, making it, per se, not standard.

Continuing to try to resolve the matter, Stanton, against constant dissuasion attempts by the Town, insisted on contacting the parties at USACE in Savannah perceived to be involved in the proposed project, D. Steinbeiser and J. Hinely. Stanton provided them information about nonstandard, nonrequired Standard Estate 26, including a different version used elsewhere, and set up a phone call with one of them and a USACE lawyer.

In the May 1, 2019 call, the excessive and injurious nature of the proposed document was discussed, as were the public shaming and misinformation tactics employed by the Town to try to stampede remaining owners (under a falsely stated deadline) into signing the damaging document. USACE resolved to look into changing some of the more injurious aspects of the document, likely by employing an exceptions clause in the different version found by Plaintiff.

Meanwhile and subsequently, the Town publicly falsely represented that Stanton was among a few of an inaccurately stated number, who “had not signed an easement,” or from

whom the Town “had not received an easement” (e.g., “Lawyers with the Army Corps of Engineers were scheduled to talk Wednesday with one of two property owners who declined to sign easements to allow the federally-funded beach renourishment project on the south end”), attempting to defame and shame Stanton and others and intimidate them into signing the sloppily drafted, defective, excessive, overreaching, permanent easement grant described hereinabove. Why Sunset and Beattie were not included in these shamings in April 2020 is not completely known. By early May, the Town, through Fabbri, was also already publicly threatening condemnation in statements to the newspaper.

After the May 1, 2019 telephone conference, the Corps ignored Stanton’s request to work with him on the revision before sending anything to the Town. Instead, after the Corps had some communication with the Town, in which Stanton was not included, the Corps had the Town draft something to send Stanton. It took the Town and USACE until around June 18, 2019 to respond, although Fabbri had previously represented April 30 as a drop dead date for owners to provide easements. Then USACE responded, not to Stanton, the owner, but to the Town, who would in turn send a draft a document with no record of whose drafting was involved or whose decisions went into what was presented.

Meanwhile, Stanton worked with the Town to alter other portions of the document, presumably not requiring Corps input, or otherwise being approved by USACE in communications not including Stanton. One of these changes, agreed and proposed by the Town in writing around June 18, 2019, was to move the western easement boundary line (PEL) on the proposed attached map a few feet.

The changes the Town drafted to other parts of the proposed document were inadequate. For example, they excepted Stanton’s deck from destruction, but not from all aspects of the

easement, such as public access, and also made no other effort to preserve Stanton's rights to maintain, repair, replace or relocate the deck or other improvements. (This same exception was later to be proposed by Fabbri to Sunset and Beattie in early 2020.) Stanton promptly sent the Town a suggested further revision in June 2019.

Despite the urgency for which the request for an easement was first presented, for weeks and months, Stanton never got a response.

It would be eight months before Stanton or Sunset or Beattie would hear anything further about a request for an easement, and about nine and a half months before Stanton would hear anything further about the agreed substance of any proposed easement for him.

Around June 2019, Sunset Lodge, by Franchina, had its own plat prepared and prepared its own revised easement document intended to correct many of the same abovedescribed defects, and on July 26, 2019, recorded it in the Georgetown County title records.

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.

By early July 2019, the Town, through Fabbri, was publicly claiming in statements to the paper that the Town had acquired all 113 easements sought. He also stated that the entire initial decision to let the Corps do the south end project was based on a waiver, in writing, stating that a new cost-benefit analysis would not be needed and that the Town was exempt from it.

Then-mayor Braswell said, "[T]hey're not holding up their end of the bargain ... They are leading us down the primrose path." Holliday said, "We can't rely on them." Holliday later stated, "the question for council is, will they do it at all? That's the biggest concern I have." Carter stated, "There's so much uncertainty in trying to deal with the Corps." And again,

Holliday stated that although he thought the benefits of Corps involvement were huge, “You have to weigh that against the potential that they won’t do anything at all.”

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.

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.”

Town Council decided to go with Marinex. As Fabbri, stated it August 1, 2019, “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.”

The Town's “Town of Pawleys Island South Carolina Local Comprehensive Beach Management Plan August 2011” is adopted by Town ordinance but is absent from the codified ordinance itself and is there said to be available at Town Hall. It is also available at <https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/beach-management/local-comprehensive-beach>. There, the Town claimed at page 47, that while the beach in the vicinities of some of the properties of the 2020 Town Council members had relatively stable beach and a low or negative long term erosion rate (measured in feet of shoreline change per year), the beach in the vicinity of Plaintiff’s property (at Monument 4200C) had a long term erosion rate which was actually a positive accretion rate (presented as a positive number) of one and forty-one one hundredths (1.41) feet of positive beach accretion per year. These rates are shown in the Plan at Table 3 and in Figure 17, which is mislabeled as “Figure 4.”

In August 2019, the Town continued to consider the various amounts of sand it could include in the Town project, which would be done without involvement of the Corps. On August

27, 2019 Rocky Holliday stated in the Town Council meeting that the Town now understood and acknowledged that they were not thinking about the timing of future projects correctly.

Originally, he explained, the Town was looking at doing a project every ten 10 years. Now, in working with the Town's engineers and discussing it among Council members and Town "staff," there was another scenario reviewed with a much longer time span between projects. Holliday presented a graph showing that if the project added one million, one hundred thousand (1,100,000 c.y.) cubic yards of sand to the beach, it would be twenty-two (22) years before the additional sand eroded down to four hundred thousand (400,000 c.y.) cubic yards of sand more than was presently on the beach. According to Holliday and the engineers and Council and Town "staff," four hundred thousand (400,000 c.y.) cubic yards more than was then on the beach would be a "trigger point" for another renourishment project. I.e., it might be twenty-two (22) years before another renourishment project, assuming one were done even then.

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.

With no easement at all from Stanton or Beattie and with the one recorded by Sunset in July, 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 the subject property.

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.

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.

The executed, engineer-designed-and-supervised project bent the berm around Stanton's deck to avoid the deck and other features, and avoided Sunset's deck and Beattie's deck. The berm, full of rocky material, shells, mud balls, rocks, and blackish-grey dirty sand, was high enough to completely block the view of the ocean from the under the house, and required the building of an apparatus or apparatuses to get up over it to get to the ocean.

The spoil material of the completed renourishment also built the beach up to where the high tide in early April 2020 generally did not rise or encroach closer over than about ninety-three yards from the eastern edge of Plaintiff's main pilings.

About a block south of Plaintiff's property, the engineer-designed-and-supervised project also moved the berm about thirty (30') feet seaward from its originally designed location. Upon information and belief, this was done simply to have the berm further from the public parking area already existing at that location.

In late February 2020, after all renourishment under the Town's project was complete on Plaintiff's end of the beach and for miles to the north, Fabbri contacted Plaintiff to discuss obtaining an easement because the Town wanted the Corps possibly to be available to do future renourishment projects and money swapping under a contrivance characterizing the Corps as a

participant in the already completed project costing over fourteen million (\$14,000,000) dollars, on which the Corps had done nothing.

The contrivance was to let the Corps do as much as, upon information and belief, \$40,000 to \$80,000 worth of work erecting sand fence and planting “beach grass” on the already completed spoil berm and be “deemed” to have done the project.

Although there has been mention of sea oats and beach grass interchangeably, the former is generally southern and the latter is generally more northern. “Beach grass” mentioned for the matter is now assumed to NOT refer to the iconic, southern, native, dune-building grass, *Uniola paniculata* (sea oats), a food producer for the red-winged blackbird, but rather, to either *Ammophila breviligulata* (“American beach grass,” with a range from Maine to North Carolina) or *Ammophila arenaria* (“European beach grass,” with a wide northern range), both of which are non-native and can be invasive.)

Fabbri admitted that if the Town obtained “the easements” and had the Corps enter the contrived relationship, given the Corps’s and Congress’s track records, there was absolutely no guarantee the Corps would ever do anything. However, he pointed out that if the Town did not get the Corps into such a relationship, there was a 100% chance the Corps would never do anything. This is the same principle which prevents one from winning a dollar in poker if one never sits at the table to take a chance, and dictates that one might not catch any fish at all in a boat, but one certainly won’t if one is sitting on the couch.

After this discussion, Stanton, on February 24, 2020, yet again sent the Town a proposed easement grant, updating Plaintiff’s prior unresponded-to, June 18, 2019 revisions to correct previously unnoticed broad language allowing the Town or its assigns to exclude an owner from his own property, and clarifying, in light of adverse experiences in other jurisdictions suffered

years after similar easements were signed, that the scope and nature of the Town's activities in the subject part of Plaintiff's land were not to broaden or change, and that the owner's access to and use of the beach would not be hindered or changed. Sunset sent Fabbri a copy of the easement Sunset had granted, recorded in July 2019.

Around March 31, 2020, Fabbri contacted Stanton with what was represented to be the Corps's response to the revisions requested by Stanton about nine and a half months earlier, around June 18, 2019, before the Corps project was rejected. According to Fabbri, with one exception, the Corps refused any changes beyond those the Town had sent Plaintiff in June 2019 back before the Town elected not to involve the Corps and completed the renourishment project on its own. According to Fabbri, the Corps did now agree to adding one word, "public," requested by Plaintiff in the easement Plaintiff offered February 24, 2020. However, Fabbri represented that Fabbri himself cleaned up the document in some particulars and also had the map/plat changed to move the western boundary line (the so-called "Perpetual Easement Line") itself. In his e-mail, Fabbri stated that he had "incorporated an alternate perpetual easement line that removes all structures."

Fabbri attached an updated proposed easement grant, but inadvertently failed to add the agreed added word, "public," in what he sent. Who Fabbri copied on this written communication is unknown, but the map/plat in document he e-mailed also certainly did not move the PEL to remove all structures. It did move the PEL off the concrete foundation system, but it left the deck and stairs fully enveloped.

On April 8, 2020, now, like the rest of the populace, fully submerged in the COVID-19 pandemic crisis and widespread quarantining-lockdown issues, Stanton wrote to Fabbri again.

In the April 8, 2020 e-mail, Stanton explained specifically and at length, again, what was unreasonable, excessive, and injurious about the documents the Town had sent and kept sending.

In the April 8, 2020 e-mail, Stanton explained in eight items, that the document Stanton sent February 24, 2020 was properly expressed and would have granted more than was actually or reasonably needed, but that the March 31, 2020 proposed grant prepared by Fabbri unreasonably sought far more.

Subsequently, Stanton again explicitly reminded Fabbri, that he had not “failed to get an easement” from Stanton, but had, rather failed to get an unreasonable easement from Stanton. Stanton reminded Fabbri, the Town Administrator of Pawleys Island, who reported to Town Council, in writing:

Those unreasonable features include encumbering our improvements in a manner which might prevent their repair and might remove our ability to exclude others from them, lack of clarity that our rights to access the ocean from our property are not affected, granting the public an easement across our property which is not legally necessary for renourishment, not explicitly limiting the scope and nature of the Town's future use of the easement area to renourishment-related activities, and requiring permission to build access structures to be obtained by whomever the Town designates without requiring the person to be appointed by law and to apply standards applicable to all owners.

Later in April 2020, Stanton contacted Henry directly, explained the situation, and offered Henry and the rest of Town Council an opportunity to understand, directly, what had been going on and do the right thing. At Henry’s suggestion, on April 21 and 24, 2020 Stanton sent Henry a history of the matter and a specification of the repeated unreasonableness and excessiveness of the Town’s requests along with corrective revisions.

Henry forwarded it to the Corps, not advocating for Plaintiff in the least. Henry stated to the Corps that he “[did]’nt claim to fully understand the legalese associated with some of the language in question,” and asked if the Corps could have a conversation with Stanton.

The Corps had no conversation with Plaintiff.

On May 7, 2020, Henry reported to Stanton that Fabbri, not Henry, had spoken to the Corps “again” and that Fabbri advised that the Corps had advised that the Corps was not in agreement with any changes, including any previously agreed.

The changes to which the Corps allegedly retracted its agreement, to add ambiguity, were allegedly called “minor” by the Corps, according to Henry, according to Fabbri.

However the changes were verified later to be all those that were previously agreed in writing to be unnecessary to the earlier, moot, Corps project, and to be unnecessary to any speculative possible future project. The retracted changes included, upon information and belief, some which were made for other owners, thus confirming they were per se unnecessary to exact from Plaintiff, and spiteful, at least as to Stanton, or for purposes of some misguided notion that indifference to public duty and due process may be used for negotiating pressure, which is bad faith.

These previously agreed changes for Stanton, but which were now being retracted, changes included:

- a. those agreed to by the Town preceding Stanton’s June 18, 2019 requested revisions, which included an insufficient, but very material, not “minor,” statement that the owner’s improvements in the shaded area on the proposed map would not be subject to destruction or removal by the easement holder;
- b. the “cleanup” in the March 31, 2020 proposed grant Fabbri sent Stanton, which included the very material, not “minor,” clarification that the easement – with all its attributes, including public access – did not run over the owner’s entire lot;
- c. the very material, not “minor,” moving of the PEL in the map attached to that same document, four to five feet further away from the main pilings of the house; and

d. the very material, but not “minor,” addition of the word “public” as a qualifier of the type of access the Town or later owners of the easement would be able to limit from accessing the property. That is, a change removing the ability of the holder of the easement to keep the owner off his own property.

Including in any proposed easement, the following attributes in favor of the grantee, if not absolutely required for the purpose of the proposed project, is unnecessary as a matter of law; doing so is also, if not fraudulent, then spiteful and in bad faith, or capricious, or arbitrary, or done out of such indifference, ignorance or lack of training as to be an “abuse of discretion” on multiple levels of the definition of that term:

- a. the right to destroy owner improvements in the shaded area;
- b. an implication or statement that the attributes of the easement apply to the entire lot;
- c. showing a shaded area for work, sand piling, and public access two (2’) feet from the main body of the house, if not also enveloping foundation elements; and
- d. an ability to exclude the owner from the owner’s own land in dune “areas” under an overbroad power to “facilitate preservation” of “dunes” or “vegetation,” which could be just about anything.

Upon information and belief, neither Henry, nor Fabbri, nor anyone on Town Council, despite having a Town Attorney available and involved, despite Fabbri’s reports to Council, despite having Stanton’s explanation of the matter numerous times in writing, despite having received Beattie’s and Sunset’s easements directed to many of the same issues, despite being fully aware of Stanton’s concerns with the very real, legal and real-life consequences of the unreasonable, overreaching, overbroad and intentionally sloppy and ambiguous granting

document the Town kept proposing, did anything to advocate for their constituents and their property.

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."

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/>).

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."

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.

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.

Fabbri assures the Council on the record that he has worked diligently on the matter for "a year and a half."

Despite knowing that Plaintiff had actually sent a proper executed easement to him in the previous year and that after sending such an easement, Stanton had followed numerous times, in

writing, with exactly the reasons certain aspects of the easement sought by the Town were unnecessary and unreasonable, 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.

Durant, the lawyer advising the Town, simply states and advises Council that the owners "would still have all the same rights they had before granting the easement."

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.”

Town Lawyer, Durant, of Surfside, adds: “property owners will still have title to the property.”

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."

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.

No mention is made that Beattie actually gave Fabbri/The Town an easement to deposit spoil/sand in front of his house, in person, on or about [April 25, 2019](#), at Fabbri's office, and that what happened after that was that Fabbri requested and was provided a corrective signature page, and then filed a different, unauthorized document, and recorded it in the title records of Georgetown County.

No mention is made of the owner's later discovery of the more-than-a-little- inauthentic document, letter to Fabbri, and efforts to get his title corrected.

No mention is made of Stanton's extensive, if not exhaustive, efforts to accommodate the Town, give it every chance to do the right thing, and do the job it should have done or at least should have backed.

No mention is made that Sunset had long ago, at its own expense, actually signed and directly recorded an easement responsive to the publicly professed needs of the Town for an "easement basically simply to put sand on the beach."

Upon information and belief, contrary to the implication of Town Council at the May 18, 2020 meeting, and contrary to statements and implication of those reporting to Council, three of the owners referenced had been willing, since the previous year, to grant the Town the right to renourish in front of their homes, and indeed, do more than "simply to put sand on the beach."

No mention is made that for months, the Town abandoned any effort to obtain, or iron out any questions about, the remainder of the previously sought 113 easements, because the Town determined to not get easements. The Town determined to do the project on its own, which it did and completed.

After plunging itself into a huge, long term debt, the Town then sought an angle to possibly get some money. After the actual renourishment was already done, the Town began a last-minute resumed courtship with the Corps and now, under the bad faith pretense that there was a project yet to be done.

Once again, the Town Council presented the matter as if suddenly it were one of great urgency.

The Town also presented this matter of needlessly condemning the property of its own citizens as if it were the citizens who had had plenty of time to get this done, when in truth the matter was presented by the Town, both the first time and a second time, as an emergency under falsely stated deadlines.

Also not emphasized in the Town Council's comments on the subject, as the present council purports to agonize over condemnation of its citizens' properties, is that easements are only sought from roughly the last mile of property owners on the south end.

Neither the mayor, the other council members, the town attorney, nor the town administrator have signed such an easement.

The Council do not even publicly claim to have read or understood the Public Access Easement, although they are charged with understanding Town affairs, are educated people, are reported to by Fabbri, are advised by a Town attorney, and condemning their own neighbors' property is certainly a grave and drastic matter.

The renourishment which is also already done for the roughly two miles to the north will be paid for by the Town with whatever different help the Town can get, but with no help from the Corps.

What the Town may or may not get back from the Corps someday perhaps twenty-two (22) years hence with respect to the south end, and whether, if so, the Town would re-allocate the benefit to all, are speculative matters.

If the Town had not begun courting the unreliable Corps again, the south end would simply be in the same situation the two miles to the north is in -- with beach renourishment, already completed, and paid for by the Town of Pawleys Island with long term debt and whatever non-Corps help it can come up with.

In the May 18, 2020 meeting Durant states: "Property owners will still have 'title' to the property," no mention is made of the fact that Durant, with Fabbri's approval, drafted an easement unequivocally granting "public access" up to within a few feet of all the owners' houses, as indicated by the PEL

This public access includes decks, stairs, and other improvements shown as being on the owners' land, some being original appurtenances to houses built over 50 yrs. ago.

In its pretended thoroughness, the Council does inquire far enough to know or does not acknowledge that the Town's proposed easements also include the ability of the Town, or others coming to control and use the easement, to "limit access" to dune "areas" (whatever that is) in the easement area - without any qualification as to whose access may be limited. In plain English, this means the Town would have power to exclude people, including the owner, from the property.

Nor does the Council acknowledge in its pretended careful deliberation, that the proposed easements do not provide or reserve any right to the owner to repair, rebuild, or maintain any improvements of the owner's, located now or in the future, within the area the Town wants.

Nor does the Council inquire far enough to know or does not acknowledge and disclose to the public, that the proposed easements include the affirmative right of the Town to remove "obstructions" -- in plain English this means tear down the owner's improvements, in the area the Town wants.

Instead, in an abuse of discretion, the Council votes on something it professes not to have read and not to understand. Shockingly, Carter states in the May 18, 2020 meeting, simply, "I can't understand it."

On May 21, 2020, Stanton asked Henry, directly, whether Henry himself had ever gotten a written a response from the Corps to Henry's own e-mail in which Henry forwarded the Corps the details provided by Stanton, of the serious issues presented and solutions for them. When Henry did not respond, Stanton asked again by e-mail on June 4, 2020. Henry did not respond in any way.

On May 27, 2020, Stanton asked Fabbri, directly, since the only information Stanton had received as to the Corps's response was third hand from Henry, whether Henry got it right in describing the Corps's communication with Fabbri on the subject, whether there was any more detail or reasoning given by the Corps, and whether there was anything in writing as to what the Corps meant.

Fabbri did not respond. Stanton followed up on June 4. Fabbri did not respond.

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 described the attributes of the easement it sought to condemn from Beattie and Sunset with approximately the same language used in the proposed Public Access Easement proposed by the Town in March, 2019 (in which the written description subjects the entire lot and house to the easement, including public access, and in which no exception is made on any basis for decks and other items); the Town described the attributes of the easement it sought to condemn from Stanton with approximately the same language used in the proposed Public Access Easement proposed by the Town around June 17, 2019 (excepting the deck from destruction, but not from public access and other aspects, etc.), and referenced the map that had been attached to the March 2019 Public Access Easement. Showing, like in the Beattie and Sunset notices, the PEL two feet from the door.

Referenced in the Condemnation Notice itself was another partial proposed Public Access Easement document which was included in the envelope with the mailed Condemnation

Notice. The additional document was not referenced in any transmittal letter. The partial Public Access Easement document was missing the map which was referred to in it as being attached.

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.

Subsequently to Plaintiff's receipt of the Condemnation Notice, Oranga sent to Stanton, another map, this time with the PEL moved seaward several feet. Subsequently, Oranga sent to Stanton another separate Public Access Easement document, this time complete with attached map, the document being the one proposed by Fabbri March 6, 2019 (the one with maximum defects, before any of the changes of the past year had been made, and with a map showing the easement area two feet from the door again).

Stanton asked Oranga why this separate document was sent and what its purpose was, and Oranga responded in writing on behalf of the Town that this was the original version of the proposed easement grant document and to please consider all other versions withdrawn "at this time."

Yet the document conflicted materially with the easement described by the Stanton Condemnation Notice.

No amendment of the Condemnation Notice or its exhibit was sent, however, nor was any extension or reset of time mentioned.

In October 2020, the Town commenced an additional condemnation action, which is described in the challenge action Plaintiff filed in response.

8. If you claim this inquiring party made any verbal or written statement about the incident or transaction complained of which was contrary to this party's pleading or against the interest of this party, please state the name and address of the person to whom the statement was made, the substance of the statement, whether the statement was written or oral, and the circumstances of the making of the statement.

RESPONSE: The Town's pleadings provides very little information about its position and it therefore cannot be ascertained what might be contrary to it, other than the things in the Amended Complaint which the Town denies or denies knowledge of. Statements against the interest of the Town made by the Town about the incidents and transactions involved are set forth in detail in the Amended Complaint, which recounts ongoing instances of fraud, bad faith, or abuse of discretion, the latter involving factually and legally incorrect advice as the basis for town decisions, or else complicity in falsehoods and whitewashing of profoundly poor decisions. It is truly difficult to enumerate and describe all the things the Town has done which are against its interest. It is felt that most are stated or alluded to in the Amended Complaint.

9. Give the telephone number and e-mail address of each person known to you or counsel to be a witness concerning the facts of the case.

RESPONSE: Barry Stanton, 803-530-2642. E-mail is known to the Town and not stated again here. Mr. Franchima and Mr. Beattie are represented and may be reached through Stanton. The other numbers are either not known or are already known to Defendant.

10. Please identify any and all instances in which you, your attorney, or the agent of either of you has spoken with or otherwise communicated with any of the following in connection with any of the claims in your pleadings and state the date or dates when the communication transpired as well as the actual substance of what was communicated: Any employee or member or officer of or person serving in the U.S. Army Corps of Engineers.

RESPONSE:

- Beattie – none;
- Franchina – none;

- Stanton – April 30 or May 1, 2019, with e-mails preceding and possibly following; e-mail to Hinely to ask the same question asked of Mr. Fabbri and Mr. Henry, which neither answered or responded to at all; FOIA request to USACE and responses and updates received.

11. Please identify with specificity as to authors, dates, signatories, addressees, and all persons to whom copies were disseminated, any and all of the following documents within your possession, custody or control and set forth briefly the substance of any document so identified: Any document setting forth, responding to, commenting on, analyzing or summarizing any person's objections to or proposed changes to any proposed oceanfront easement on Pawley's Island.

RESPONSE: None other than those already produced by the Town; Technically, one or more newspaper articles may also purport to do this. The pleadings and various papers in the Court file also do this; If the Town has not produced minutes and recordings of its Council meetings, and “Town Hall” type meetings, some of these do this, too.

12. Do you know of the existence (or former existence) of any documents that fit the foregoing descriptions, but which no longer exist, or which you cannot find, or which you do not have? If so, identify them with the same specificity and summary of substance requested in the foregoing interrogatory.

RESPONSE: No.

13. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons who, to your knowledge, objected to or proposed changes to any proposed oceanfront easement on Pawley's Island.

RESPONSE: Plaintiff relies primarily on the Town’s response for this knowledge, if same are true and complete. Those stated in the Town’s response to this same question asked of the Town by Plaintiff, except, if the answer was incomplete, any more which would be determined by looking at the documents produced by the Town previously or with the response.

14. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom, to your knowledge, agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the

change involved clarification that the easement did not run over and across the entire lot.

RESPONSE: Plaintiff relies primarily on the Town's response for this knowledge, if same are true and complete. Those stated in the Town's response to this same question asked of the Town by Plaintiff, except, if the answer was incomplete, any more which would be determined by looking at the documents produced by the Town previously or with the response. If the question includes agreement to do so, regardless of whether later purposefully proposing or seeking something different, the answer includes Stanton, Beattie, and Sunset.

15. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom, to your knowledge, agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved moving the "perpetual easement line" (the western boundary of the geographical area of the easement depicted on the proposed attached map/plat), eastward.

RESPONSE: Plaintiff relies primarily on the Town's response for this knowledge, if same are true and complete. Those stated in the Town's response to this same question asked of the Town by Plaintiff, except, if the answer was incomplete, any more which would be determined by looking at the documents produced by the Town previously or with the response. If the question includes agreement to do so, regardless of whether later purposefully proposing or seeking something different, the answer includes Stanton. The PEL appears to have been actually moved for Wiggins, Thompson and Bond.

16. Give the ' full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom, to your knowledge, agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved adding a modifying word or phrase with respect to, inserting, or removing, the word "'public."

RESPONSE: Plaintiff relies primarily on the Town's response for this knowledge, if same are true and complete. Those stated in the Town's response to this same question asked of the Town by Plaintiff, except, if the answer was incomplete, any more which would be

determined by looking at the documents produced by the Town previously or with the response. If the question includes agreement to do so, regardless of whether later purposefully proposing or seeking something different, the answer includes Stanton. The change appears to have been actually made for Bond.

17. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons for whom, to your knowledge, agreed changes were made to the initial proposed oceanfront easement on Pawley's Island, where the change involved stating any exception to the easement with respect to any portions of the house or other improvements which were in, or shown as being in, the geographical area of the easement depicted on the proposed attached map/plat.

RESPONSE: Plaintiff relies primarily on the Town's response for this knowledge, if same are true and complete. Those stated in the Town's response to this same question asked of the Town by Plaintiff, except, if the answer was incomplete, any more which would be determined by looking at the documents produced by the Town previously or with the response. If the question includes agreement to do so, regardless of whether later purposefully proposing or seeking something different, the answer includes Stanton, Beattie and Sunset. The Town's response indicates at least one owner for whom the change was actually made.

18. Give the full names and addresses and phone numbers and e-mail addresses, and Pawleys lot number and street address, of all persons who, to your knowledge, granted an easement which was recorded by Defendant but which Defendant later contended was unacceptable.

RESPONSE: Plaintiff relies primarily on the Town's response for this knowledge, if same are true and complete. Those stated in the Town's response to this same question asked of the Town by Plaintiff, except, if the answer was incomplete, any more which would be determined by looking at the documents produced by the Town previously or with the response. The answer includes Beattie. Sunset, rather than Defendant, recorded Sunset's easement. The Town lists others.

19. For each of the foregoing, state, if known, (a) whether Defendant later received an easement which Defendant accepted, and (b) whether Defendant recorded the later easement.

RESPONSE: Plaintiff relies primarily on the Town's response for this knowledge, if same are true and complete. Those stated in the Town's response to this same question asked of the Town by Plaintiff, except, if the answer was incomplete, any more which would be determined by looking at the documents produced by the Town previously or with the response.

20. Please fully identify any documents, logs, information storage systems or files in which the information requested in the foregoing interrogatory would be reflected if it exists, including the location and custodian of such documents, logs, information systems, or files.

RESPONSE: None in Plaintiff's possession, except the Town's responses, unless some are duplicated in USACE responses to the FOIA request.

21. Give the full names and addresses and phone numbers and email addresses of each person who had rendered to you an opinion as to the market value of or severance damage to the property.

RESPONSE: Objection: Not relevant as to Plaintiff in the instant challenge action, nor reasonably calculated to lead to admissible evidence in it.

22. Have you withheld production or description of any documents you claim are privileged, and, if so, please identify those documents.

RESPONSE: Yes. All correspondence back and forth between Plaintiff and his attorney where the correspondence does not involve another party other than a co-represented party in litigation with a common interest or a consultant for litigation support. Also, all legal research or factual analysis and attorney-impressions, notes not disseminated outside the privileged relationship described above.

23. Have you obtained any appraisals or preliminary or partial appraisals or opinions Of value of the subject property? If so, for each such appraisal or opinion, please identify the person or entity who performed the appraisal or assessment, the date it was performed, the address and phone number of each person or entity performing said appraisal or assessment, and the value of the subject property according to the appraisal or assessment.

RESPONSE: Objection: Not relevant as to Plaintiff in the instant challenge action, nor reasonably calculated to lead to admissible evidence in it.

24. Identify all exhibits you plan to introduce at the trial of this matter.

RESPONSE: As the case currently appears to be based on uncontested, if not uncontested, facts and public records and filings, and also that the case may be resolved on summary judgment or otherwise without a trial, no further documents than those described in response to Item 2 come to mind at this time. Some of the more highly relevant documents and things include: e-mails and video recordings of Ryan Fabbri; USACE correspondence with Mr. Fabbri; the various proposed condemnation notices; the videotapes and minutes of Town Council meetings; the appraisal reports and deposition of Mr. Donovan; e-mails to and from Mr. Henry; and the Town resolutions regarding condemnation. Among the foregoing are the following:

1. Video of Mr. Fabbri in early 2019, explaining purpose and scope of easements;
2. The first version of "Standard Estate 26" sent to Mr. Fabbri if and when the document is identified and produced by the Town, and the version sent to the Town Attorney, if and when the Town produces same (i.e., not in Plaintiff's possession, but subject of motion to compel);
3. Proposed easements sent to Sunset, Beattie and Stanton in early 2019;
4. March 2019 e-mail letter of Mr. Fabbri explaining the limited purpose and scope of easements which would be requested;
5. April 8, 2019 e-mail of Stanton to Mr. Fabbri with fully executed, recordable signed grant of easement.

6. April 20, 2019 video of Mr. Fabbri at Town meeting explaining the limited purposes of the proposed easements and making assurances as to intentions of present Town Council with regard to the easements which last forever;
7. April 25, 2019 bona fide signed grant of easement by Beattie;
8. Different easement, not intended by Beattie, dated April 25, 2019 bearing Beattie signature on signature page, recorded by Town Administrator April 29, 2019 affecting Beattie property;
9. c. April 2019 e-mails of Stanton to Mssrs. Fabbri and Otis and vice versa and any continuation of same re deadlines, assertions by Otis and Fabbri of inability to revise, assertions of Otis and Fabbri of inability of owner to talk to USACE, etc.;
10. April 30, 2019 e-mail of Mr. Fabbri to Stanton stating that the purpose of the e-mail was to clarify the purpose of the requested perpetual easement;
11. April 2019 e-mail of Mr. Fabbri rejecting fully executed and recordable signed April 8, 2019 easement from Stanton;
12. c. April/May 2019 Coastal Observer article with information from Mr. Fabbri about upcoming talk USACE was going to have with owner “who declined to sign easement”;
13. E-mail of Stanton to Ms. Steinbeiser (USACE Savannah) in early 2019 c. April;
14. E-mail of Stanton to Mr. Hinely (USACE Savannah) in early 2019 c. April;
15. May 1, 2019 notes or memoranda of Mr. Hinely, if any, of or concerning telephone call with Stanton;
16. May 2019 Coastal Observer article with Mr. Fabbri’s announcing threats of condemnation against those who do not comply with the Town’s requests;

17. E-mail from Mr. Fabbri June 18, 2019, following Stanton May1 talk with USACE, along with revised proposed easement, deleting, revising, excluding or excepting some terms or burdens in earlier version, which changes were agreed by Town in this version not to be necessary;
18. 2019 cancellation of Beattie easement by Town;
19. 2019 cancellation of Beattie easement by Beattie;
20. June 2019 e-mail of Stanton to Mr. Fabbri with revisions to June 18, 2019 revised easement requested by Town;
21. June 2019 easement grant of Sunset Lodge, LLC recorded with plat July 26, 2019;
22. July 29, 2019 article in Coastal Observer re Mr. Fabbri claims all 113 easements have been obtained and comments of Mr. Fabbri and others on recent decision of USACE to pause and reassess cost-benefit features of the project;
23. Town Council minutes for meeting preceding July 29, 2019;
24. July 29, 2019 minutes of Town Council meeting, re easements are not necessary;
25. August 1, 2019 Coastal Observer article re Mr. Fabbri on forgoing federal project, i.e., Corps involvement;
26. Town of Pawleys Island Local Comprehensive Beach Management Plan, August 2011;
27. August 27, 2019 minutes of Town Council meeting and verbatim video of same and ensuing Coastal Observer article re same;
28. Graph presented by Mr. Holliday at August 27, 2019 Town Council meeting showing 22 years or more before elective trigger point may be reached to renourish again, if trigger point with higher sand volume than present state of beach is selected;

29. February 2020 e-mail of Mr. Henry re renourishment completion and long expected duration of sand in place;
30. February 2020 e-mail of Mr. Fabbri stating project is completed and requesting easement from Stanton, addressed “Dear Howard”;
31. Similar solicitations to Beattie and Sunset Lodge;
32. February 24, 2020 e-mail of Stanton to Mr. Fabbri with update, i.e., additional revision, of easement offered by Stanton in June 2019, to which the Town had never responded;
33. February 28, 2020 e-mails of Mr. Fabbri to Franchina et al. of Sunset, and to Beattie transmitting proposed easement making an exception for owner improvements such as decks and walkways to the power to remove obstructions, obstacles and structures;
34. March 31, 2020 e-mail of Mr. Fabbri to Stanton rejecting all previously unresponded-to revisions offered by Stanton in June 2019, but agreeing to change one word requested to be changed in February 24, 2020 Stanton revision, and agreeing to move the PEL, stating that the move would “remove all structures,” but transmitting a proposed document that did neither;
35. April 8, 2020 e-mail of Stanton to Mr. Fabbri explaining the issues yet again;
36. April 21 and 24, 2020 e-mails of Stanton to Mr. Henry;
37. Henry e-mail c. April 24, 2020 to USACE (“I do not claim to understand the legalese”);
38. May 7, 2020 e-mail of Mr. Henry to Stanton;
39. May 18, 2020 official video and minutes of Town Council meeting voting to condemn easements “basically, simply to put sand on the beach” from owners who, according to Fabbri, “for whatever reason,” would not sign an easement, confirmed by on-the-record legal advice that condemnation of the easements basically simply to put sand on the beach would leave the owners with all the same rights they had before the condemnation;

40. May 18, 2020 written resolution of Town Council not containing the written terms of the easements to be condemned;
41. May 21, 2020 e-mail of Stanton to Mr. Henry;
42. May 27, 2020 e-mail of Stanton to Mr. Fabbri;
43. June 4, 2020 e-mail of Stanton to Mr. Fabbri;
44. Condemnation notice dated June 9, 2020 served later on Sunset, together with one map labelled Exhibit A, showing PEL two feet from main pilings, and one proposed granting document with no additional map;
45. Condemnation notice dated June 9, 2020 served later on Beattie, together with one map labelled Exhibit A, showing PEL two feet from main pilings, and one proposed granting document with no additional map.
46. Condemnation notice dated June 9, 2020 served later on Stanton, together with one map labelled Exhibit A, showing PEL two feet from main pilings and encumbering concrete, and one proposed granting document with no additional map.
47. June 23, 2020 e-mail of C.E. Howard on behalf of Sunset to Mr. Durant asking for the Appraisal Report referenced in the Condemnation Notice date June 9, 2020 as having already been provided although the Town admits the Appraisal Report was not provided before the Condemnation Notice was served or an attempt was made to serve it;
48. June 23, 2020 e-mail of Stanton to Mr. Durant asking for the Appraisal Report referenced in the Condemnation Notice date June 9, 2020 as having already been provided although the Town admits the Appraisal Report was not provided before the Condemnation Notice was served or an attempt was made to serve it;

49. June 30, 2020 e-mail of C.E. Howard on behalf of Sunset to Mr. Durant asking again for the Appraisal Report referenced in the Condemnation Notice date June 9, 2020 as having already been provided although the Town admits the Appraisal Report was not provided before the Condemnation Notice was served or an attempt was made to serve it;

50. Town's briefs opposing summary judgment and exhibits showing envelopes for unsworn putative attempted mailings of something to non-permanent addresses of all three condemnees which did not have mail receptacles, showing only part of a putative June 9, 2020 Condemnation Notice, omitting the referenced map and accompanying proposed granting document describing the specific interest in property sought, and showing a putative October 12, 2020 do-over resolution of Town Council containing false recitations.

51. June 30, 2020 e-mail of Ms. Oranga providing Stanton Appraisal Report;

52. July 1, 2020 e-mail of Ms. Oranga providing Sunset Appraisal Report;

53. July 1, 2020 e-mail of Beattie to Mr. Durant, asking for the Appraisal Report referenced in the Condemnation Notice date June 9, 2020 as having already been provided although the Town admits the Condemnation Notice was not provided before the Condemnation Notice was served or an attempt was made to serve it;

54. Appraisal Report dated June 3, 2020 on 746 Springs (Sunset), stating at page 44 that the written terms of the easement were not provided and stating assumptions based on verbal information that the easement is only used when access is needed to do work and that structures are unaffected;

55. Appraisal Report dated June 3, 2020 on 748 Springs (Beattie) stating at page 44 that the written terms of the easement were not provided and stating assumptions based on verbal

information that the easement is only used when access is needed to do work and that structures are unaffected;

56. Appraisal Report dated June 3, 2020 on 756 Springs (Stanton) stating at page 44 that the written terms of the easement were not provided and stating assumptions based on verbal information that the easement is only used when access is needed to do work and that structures are unaffected;

57. July 2020 subsequent proposed attachment to Condemnation Notice to Stanton, being a map with PEL moved several feet seaward, with e-mail of Ms. Oranga sending same;

58. Stanton e-mail to Ms. Oranga around the date of the foregoing;

59. Ms. Oranga's e-mail to Stanton around the date of the foregoing, in one of which the Town changed the proposed easement description materially again, "withdrawing" all previous agreed changes over the preceding year and a quarter, now describing the whole lot and house as subject to the easement, moving the PEL again to two feet from the door, deleting the exception of decks, walkways, etc. from being torn down, broadening the ability of the Town to limit access to dune "areas" to again include limiting the owner's access, etc.;

60. c. July 2020 photo showing tire tracks on the dry sand beach on which driving is illegal;

61. 2020 photo of Town SUV attempting to enter the beach;

62. October 12, 2020 putative Town Council resolution with false recitations that documents referenced therein were previously sent to owners, and verbatim video of Town Council meeting ("needed for litigation"; "needs tweaking");

63. Revised followup resolution of unknown actual date, also dated October 12, 2020;

64. New, additional, condemnation notice starting new condemnation action for Sunset property with 9-line footnote inserted in accompanying property description which was the

subject of October 12, 2020 false Town Council resolution, said notice being prepared in October and presented to Stanton to receive for Sunset October 16, 2020 but being dated June 9, 2020;

65. New, additional, condemnation notice starting new condemnation action for Beattie property with 9-line footnote inserted in accompanying property description which was the subject of October 12, 2020 false Town Council resolution, said notice being prepared in October and presented to Stanton to receive for Beattie October 16, 2020 but being dated June 9, 2020; and

66. New, additional, condemnation notice starting new condemnation action for Stanton property with 9-line footnote inserted in accompanying property description which was the subject of October 12, 2020 false Town Council resolution, said notice being prepared in October and presented to Stanton to receive for Stanton October 16, 2020 but being dated June 9, 2020; and

67. October 30, 2020 Fabbri Affidavit.

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)
STANTON LAW OFFICES, P.A.
(1230 Richland Street (29201))
P.O. Box 245
Columbia, SC 29202
Tel: (803) 929-1484
bstanton@stantonlaw.com

Attorney for Sunset Lodge, LLC

11/20/20

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

The undersigned does hereby certify that the undersigned has this date served the foregoing by causing a copy thereof to be e-mailed as indicated in the attached e-mail copy pursuant to S.C. Sup. Ct. Ord. 2020-04-22-01, to the address indicated below:

ddurant@lawofficesofdurant.com
(N. David DuRant, Sr., Esquire)

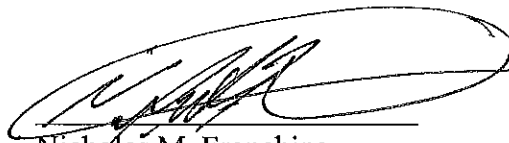
s/M. Baron Stanton
M. Baron Stanton

Date: 12/10/20

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

The undersigned certifies that he has read the foregoing responses to interrogatories and that the answers given which are stated as the facts known to or observed by him are true of his own knowledge, as are the existence of any writings stated to have been sent to him or received by him, as are any other matters specifically stated to involve him, and any matters which are stated on information and belief, or which recite matters determined from public record or writings of others, or which identify documents obtained from third parties or obtained by counsel on his behalf, or which state legal principles or status, or which state the pertinence, relevance or significance of any document or potential witness, or which are otherwise stated, as to those matters, he believes them true.

Pursuant to S.C. Sup. Ct. Order 2020-04-22-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify the foregoing and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



Nicholas M. Franchina

Date: 12-10-20

January 14, 2021 Landowner motion to strike Town motion to disqualify.

| | | |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GEORGETOWN |) | CIVIL ACTION NO. 2020-CP-22-00600 |
| |) | |
| Sunset Lodge, LLC, |) | |
| |) | NOTICE OF MOTION |
| Plaintiff, |) | AND MOTION |
| |) | TO STRIKE TOWN'S MOTION |
| v. |) | TO DISQUALIFY PLAINTIFF'S |
| |) | COUNSEL FOR FAILURE OF TOWN |
| Town of Pawleys Island, |) | TO COMPLY WITH |
| |) | RULE 11, SCRPC |
| Defendant. |) | |
| |) | |

Plaintiff hereby moves the Court pursuant to Rule 11, SCRPC, for an order striking Defendant Town's 1-14-21 motion to disqualify Plaintiff's counsel.

The grounds for this motion are as follows:

1. Rule 11, SCRPC states that, with a few exceptions, "all motions shall contain an affirmation" that counsel, before filing a motion, communicated with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose, or could not timely be held.
2. None of the exceptions apply to Defendant Town's motion to disqualify counsel.
3. Defendant Town's motion to disqualify Plaintiff's counsel was not accompanied by such affirmation or certification.
4. This is not the first time. See Town's motion for protection for discovery.
5. This is not the first time it has been brought to the Town's attention. See Plaintiff's response to the Town's motion for protection from discovery.
6. If a motion does not comply with this rule, when the noncompliance is a failure to sign, "it shall be stricken unless it is signed promptly" after the defect is raised. When the noncompliance is, as here, signing in violation of the rule, the court may impose "an appropriate sanction." (See Rule 11.)

7. This is a nonjury case.

8. The Court recently entered a Form 4 order stating that Plaintiff's motion for summary judgment against the Town was granted.

9. The Form 4 order stated that a formal order granting summary judgment would follow.

10. The usual purpose of summary judgment is to avoid a trial of facts when the court can apply the law to undisputed facts no trial of facts is necessary.

11. The usual basis for summary judgment is that there is no genuine dispute of facts material to the motion and the court can provide relief as a matter of law. (See Rule 56 (c), SCRCP.)

12. These were the bases for Plaintiff's motion for summary judgment.

13. In discovery responses, Plaintiff generally made clear that most of the operative facts in the case, whether favorable or unfavorable to a given party, were established by public records or other written or recorded statements of the Town or the matters set forth in the papers prepared by the Town or its counsel.

14. Only after it was apparent that there was no dispute of material facts, and summary judgment was granted, and it was apparent that a trial may not occur at all, Defendant Town filed the subject motion to disqualify Plaintiff's counsel.

15. The sole factual grounds for the Town's motion to disqualify Plaintiff's counsel are the contents of pages 1-2 of an interrogatory response of Plaintiff which is an exhibit to the Town's motion.

16. The response mentions Plaintiff's attorney among scores of people listed who, as asked about in the interrogatory, "are witnesses to the facts of the case."

17. The response does not even state there is an intention to testify and explicitly explains why trial testimony may be unnecessary and that affidavit testimony is thus far uncontested.

18. The same interrogatory response includes among the scores of such people, both of the Town's counsel who signed the motion. They did not move to disqualify themselves or otherwise move to withdraw their appearances as counsel for the Town in accordance with their own asserted grounds.

19. The same interrogatory response referenced by the Town clarifies that most of the facts appear to be undisputed, that a trial may not be necessary, that summary judgment may be granted, and that many people, including Town actors know and could testify to many of the facts or the documents and recordings that establish them.

20 To wit, the response states:

A broad number of people may have observed or may know facts pertaining to the case, as it involves many people and properties, and the Town has made it a very public matter. For example, 113 people or more may have received false solicitations from Mr. Fabbri that the requested easement was essentially limited to doing renourishment work and thereafter received proposed easement documents with terms of greater scope and continued to receive and hear similar representations, a greater number may have followed Town meetings or Town Council meetings, at which matters were presented falsely or decided summarily, a greater number may have read newspaper articles about the Town's assertions of some of the issues or facts, etc.

In terms or persons most likely to be potential witnesses in a trial or other proceeding, that question depends upon whether summary judgment is granted for Plaintiff, and upon, regardless of whether summary judgment is granted or the case is tried, whether the Town disputes any of the facts alleged in the Amended Complaint. To date, there has been no dispute of material facts and Plaintiff has contended that Plaintiff is entitled to judgment as a matter of law, ending the condemnation. The facts have been adduced by the 130 paragraphs of the affidavit of M. Baron Stanton, which is on file and which has been provided, and through the admissions of the Town in its own writings and public records.

In terms of people who have the most perceived close-up involvement in the facts which afford relief to Plaintiff or matters, if any, disputed by the Town or contended to afford the Town any defense, those currently appear to be the following; again, it is difficult to know whom to include in those with respect to whom to reserve the right to call as a witness if the facts are not controverted and until additional or enhanced bases for recovery are discovered from the Town or others:

11. In October 2020, in the Town's counsel's office in Surfside Beach, counsel for Plaintiff and counsel for the Town discussed the fact that both knew or observed facts which may be pertinent

to the case and that at some point, it was possible one party or the other might be asked about disqualification of counsel based on counsel being a witness or potential witness.

12. Undersigned Plaintiff's counsel explained that he was very familiar with the area of professional responsibility, and had done a fair amount of work for other lawyers in that area in general and was familiar with the particular rule in question, and explained the gist of the applicable rule to the Town's counsel and stated the undersigned would be glad to explain it further or discuss it at any time.

13. Undersigned Plaintiff's counsel probably explained these things in the presence of the court reporter and the deposition witness during a break, but certainly not on the deposition record.

14. Undersigned counsel explained briefly that the rule was misunderstood by many practitioners who confused it with conflicts of interest rules, and that the rule was rooted primarily in avoiding confusion of the factfinder in a trial, rather than in a conflict of interest. Accordingly, explained the undersigned, the rule does not ordinarily disqualify a lawyer from representing a party altogether as does a conflicts rule, nor does the rule impute a conflict to other members of the lawyer's firm.

15. Undersigned counsel further explained to the Town's counsel that the rule, because rooted in avoiding confusion of the factfinder, was primarily addressed to avoiding confusing a jury in a jury trial, rather than a judge at a bench trial or motions hearing, because most judges are not unable to discern the difference between assertions of fact by a lawyer when speaking as a witness, and arguments of a lawyer when acting as an advocate.

16. Accordingly, explained the undersigned to the Town's counsel, the rule is usually not applied to bench (nonjury) trials, motions hearings, and affidavits, and does not usually prevent a lawyer from representing a party up to the time of a jury trial or throughout a nonjury trial, particularly when the facts are undisputed, or are undisputable and provable through other witnesses.

17. Additionally, explained the undersigned to the Town's counsel in October 2020, the application of the rule has to be raised, usually by an adverse party, and the rule does not generally apply backwards to invalidate things that occurred before its definite application was ascertained, raised and acted upon.

18. Undersigned counsel informed the Town's counsel the undersigned would inform the Town's counsel well before trial if the undersigned believed the Town's counsel should be disqualified by the rule.

19. While this case indeed has placed a hardship on Plaintiff, particularly, but not without limitation, in finding on the short notice provided by the Town's condemnation notice with no prior furnishing of an appraisal, counsel familiar with the overlapping bodies of law involved and local facts, and while losing such counsel of Plaintiff's choice would be an additional hardship, the undersigned did not apprise the Town's counsel of the hardship exception to the rule.

20. There was no known exigency for the Town's counsel to file the motion without consulting, and even if there was, the Town's counsel was required to certify that there was and did not, violating Rule 11. What the exigency is after the Town has apparently lost most or all of the case is not apparent.

21. Even if undersigned counsel had been unavailable for consultation before filing the motion, the Town's counsel was required by Rule 11 to certify lack of time and did not, violating Rule 11.

22. Further, Plaintiff's counsel was not unavailable and had last been in touch on January 12, 2021 to explain to the Town's counsel that the remedy for the Town's counsel's falsely and defamatorily stating in the January 11, 2021 publicly live-streamed and recorded Pawleys Island Town Council meeting (sometimes available on Town of Pawleys Facebook page) that Plaintiff's counsel "took it upon himself to depose the appraiser for 17 hours," when the Town's counsel had already

misrepresented to the hearing judge in December that undersigned counsel deposed the appraiser for 10, was not, as the Town's counsel directed, that the minutes of the meeting be falsified to state that the Town's counsel said 10 instead of 17.

23. As an aside, what the undersigned stated to the Town's counsel when in first touch with him on January 11 was as follows:

David, you need to immediately publicly correct your broadcasted statement today that "Mr. Stanton took it upon himself to depose the appraiser for 17 hours." You need to copy Council and me.

As you know, this is false.

Your earlier statement to the judge on December 4 that I deposed the appraiser for 10 hours was also false. I mostly let it go.

As you know, at your request, we started the depo later than I wanted -- at about 10 or 10:30. You announced you needed to leave at 4:30. When I arrived, you wanted to talk first about something other than the deposition -- including the "addendum to resolution" and a request that I accept service of a new condemnation notice.

The appraiser was legally blind and we agreed that although it was going to make the handling of documents cumbersome and potentially more time consuming, we would work with his use of his tablet and not unnecessarily mention it on the record.

We had lunch.

We adjourned at 4:30, consuming part of our time establishing when to finish.

I returned to your office the next Wednesday and finished in a reasonable time.

In order to expedite, we did all three cases in only one deposition.

Your false statement on the record today was defamatory. False.

24. As noted, counsel were in touch further afterwards and there was ample time to consult and no known reason to hurry, particularly with a frivolous motion, as explained above.

FURTHER DISCUSSION

For the foregoing reasons and grounds, Plaintiff suggests that, whether viewed as a sanction or viewed as a rejection of the filing of a noncompliant paper, the appropriate remedy is to strike the Town's motion and consider it no further.

For the convenience of the Court, Plaintiff hereinafter provides further discussion of some of the principles of Rule 3.7 of the Rules of Professional Conduct, Rule 407, SCACR, and corresponding rules in other jurisdictions.

The Court of Appeals has recognized that motions to disqualify should be approached with healthy skepticism that a party could call opposing counsel as a necessary witness, requiring his or her disqualification, purely for tactical or strategic reasons. Brooks v. Commission on Indigent Defense, 419 S.C. 319, 797 S.E.2d 402 (Ct. App. 2017)(citing Beller v. Crow, 274 Neb. 603, 742 N.W.2d 230, 234 (2007) and Smithson v. U.S. Fid. & Guar. Co., 186 W.Va. 195, 411 S.E.2d 850, 855 (1991)).

South Carolina appellate courts have tended to recognize that under Rule 3.7, an attorney is one "likely to be a necessary witness" when the "attorney's testimony is relevant to disputed, material questions of fact" and "there is no other evidence available to prove those facts." Brooks v. Commission on Indigent Defense (citing Clough v. Richelo, 274 Ga.App. 129, 616 S.E.2d 888, 891-92 (2005)). These observations strike "a reasonable balance between the potential for abuse and those instances where the attorney's testimony may be truly necessary." Smithson, 411 S.E.2d at 856.

The rule generally does not apply where the testimony is made to a judge, as opposed to a jury. Greenebaum-Mtn. Mortg. Co. v. Pioneer Nat'l Title Ins. Co., 421 F. Supp. 1348, 1354 (D. Colo. 1976). In most jurisdictions the rule has been applied only to the actual trial, and not to pretrial proceedings, including motions practice. See, e.g., Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell, 239 F. Supp. 2d 1170, 1174 (D. Colo. 2003).

An attorney's affidavit can be used in connection with a summary judgment motion. See, e.g., United States v. Letscher, 83 F. Supp. 2d 367, 381 (S.D.N.Y. 1999) ("[I]t is usual for counsel to put documents before the Court on summary judgment motions as enclosures to counsel's affidavit."); Bank One Lima, N.A. v. Altenburger, 84 Ohio App. 3d 250, 253, 616 N.E.2d 954, 955 (1992).

It is not appropriate to apply the attorney testimony rule to an affidavit relating to summary judgment. Douglas R. Richmond, Lawyers as Witnesses, 36 N.M. L. Rev. 47, 50 (Winter 2006)("In addition to its clear language, there is no policy reason commending the rule's application to lawyers' affidavit testimony at summary judgment. Because it is the judge who reads motions, there is no chance that the lawyer's dual roles will be confusing. It is equally unlikely that a judge, as compared to a jury, will be unfairly influenced by the lawyer's dual roles.").

For the foregoing reasons and grounds, Plaintiff suggests that, whether viewed as a sanction or viewed as a rejection of the filing of a noncompliant paper, the appropriate remedy is to strike the Town's motion and consider it no further. As an additional measure, it would be appropriate to grant Plaintiff the ability to use 400 requests for admission of fact in any continuation of this case or any subsequent related case.

The undersigned certifies that consultation with respect to this motion could not be timely held so that this motion to strike the Town's motion can be scheduled at or before the hearing of the Town's motion, but that the undersigned nevertheless affirms he attempted to reach and allow movant's counsel to explain or consult over this motion to strike. The undersigned certifies the foregoing is true.

Pursuant to S.C. Sup. Ct. Order 2020-04-22-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of separate affidavit and having the affidavit notarized, I certify the foregoing numbered grounds as my affidavit testimony and I am aware that if any of the foregoing numbered statements made by me are willfully false, I am subject to punishment by contempt.

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

1/14/21

January 15, 2021 Town attorney certification.

| | | |
|-------------------------|---|-----------------------------------|
| 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, |) | ATTORNEY CERTIFICATION |
| |) | PURSUANT TO RULE 11, SCRPC |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

CERTIFICATION

The undersigned counsel hereby certifies that, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, movant's counsel has discussed the issue of disqualification with Plaintiff's counsel sometime in October, 2020, and that consultation prior to Defendant's filing of the Motion for Disqualification of Plaintiff's Counsel dated January 14, 2021 would serve no useful purpose.

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

s/N. David DuRant, Sr.

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

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: ddurant@lawofficesofdurant.com

Attorney for Defendant

January 15, 2021

January 15, 2021 Landowner notice of deposition of then Town Administrator (Fabbri)
[not included here, but only once as attachment to Town 3/3/21 motion for protection].

January 21, 2021 e-mail notices of February 4, 2021 hearing of Town motion to disqualify and Landowner motion to strike.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Thursday, January 21, 2021 4:10 PM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MDQLFY-Motion/Disqualification of Counsel for the Plt/DuRant" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 2/4/2021 at 9:30 AM

VIRTUAL COURTROOM. See Motion Roster News for instructions.

The case referenced in this email is scheduled on the Docket. The Docket is available at

<http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator at jlawrence@gtcounty.org or Lucinda LeSane, Common Pleas Supervisor @ llesane@gtcounty.org ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Thursday, January 21, 2021 4:10 PM
To: Barry Stanton
Cc: jlawrence@gtcounty.org
Subject: Motion "MSTRIK-Motion/Strike/Stanton" for Case "2020CP2200600- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 2/4/2021 at 9:30 AM

VIRTUAL COURTROOM. See Motion Roster News for instructions.

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.

Please VIEW Roster IMPORTANT INFORMATION located on the MOTIONS ROSTER NEWS TAB.

If your case is settled, your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any communication regarding this case, please contact Jennifer Lawrence, Common Pleas Court Coordinator at jlawrence@gtcounty.org or Lucinda LeSane, Common Pleas Supervisor @ llesane@gtcounty.org ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

January 25, 2021 Landowner fee petition (including motion, affidavit, proposed order and proposed Form 4A).

| | | |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GEORGETOWN |) | CIVIL ACTION NO. 2020-CP-22-00600 |
| |) | |
| Sunset Lodge, LLC, |) | |
| |) | NOTICE OF MOTION |
| Plaintiff, |) | AND MOTION |
| |) | FOR EXPENSES |
| v. |) | INCLUDING ATTORNEY'S FEES |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Plaintiff hereby moves the Court pursuant to this Court's Order of January 20, 2021 and S.C. Code Ann. §28-2-510, for an order charging and granting judgment against the Defendant Town for expenses including reasonable attorney's fees of \$44,618.06 as more fully set out in the Affidavit of M. Baron Stanton Re Reasonable Fees and Expenses in the Case to 1/24/21.

The grounds for this motion are as set forth in the referenced Affidavit.

S.C. Code Ann. §28-2-510 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.

The undersigned certifies that consultation with respect to this motion could not be timely held so that this motion for expenses including attorney's fees can be timely acted upon at or before the hearing of the Town's motion to disqualify and any other motion the Town may file which may increase the amount sought herein, but that the undersigned nevertheless affirms he will attempt to reach opposing counsel to consult over any possible consent or other resolution of this motion.

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

1/25/21

| | | |
|-------------------------|---|-----------------------------------|
| 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. |) | |

AFFIDAVIT OF M. BARON STANTON
RE REASONABLE FEES AND EXPENSES IN CASE TO 1/24/21

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:

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 motion, proposed order and proposed Form 4 accompany this affidavit.

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

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

2020 by service of a condemnation notice, S.C. Code Ann. §28-2-510 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

¹My 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

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

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

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

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.

"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 23 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.

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 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 opposing counsel 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 \$44,618.06, as of 1/24/21, directly associated with the challenge to the Condemnation Notice served, should be awarded as the costs and expenses, including reasonable attorney's fees, of

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

Plaintiff up to this point in the case. Additional expenses of this nature should be awarded for work and outlays following 1/24/21 to the award and final conclusion of the 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 1/24/21 and the conclusion of the case, upon which we have not yet expended efforts.

8. Time spent and expenses incurred in the matter for the approximately six months (7/2/20 to 1/15/21) represented by the 8/5/20 through 1/22/21 statements of my office are as follows:

| | | |
|------------------|------------------|--------------------------|
| 8/5/20 statement | M. Baron Stanton | 166.8 hours ² |
|------------------|------------------|--------------------------|

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.

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

| | | | | |
|-------------------------------------|---|--------------------------|--------------|---------------------|
| 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 | <u>209.7</u> | <u>hours</u> | |
| Subsubtotal of time from statements | | 655.6 hours ³ | x \$190 = | \$124,564.00 |
| Expenses advanced | (e.g., filing fees, service of process photocopies, postage, courier, court reporter, mileage at lower than federal reimbursement rate, mediator fee, etc.) | | | <u>\$582.66</u> |
| TOTAL (to 1/22/21 statement) | | | | <u>\$125,146.40</u> |

9. Time spent and expenses incurred in the matter since the 1/22/21 statement, not yet in the billing system, for the time from 1/15/21 to 1/24/21 are as follows:

| | | | | |
|---------------------------------------|------------------|------------|-----------|------------|
| | M. Baron Stanton | 31.3 | hours | |
| Subsubtotal of time not yet in system | | 31.3 hours | x \$190 = | \$5,947.00 |

Expenses advanced (e.g., filing fees, service of process

³This 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.

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

| | |
|---|-----------------------------|
| photocopies, postage, courier,
court reporter, mileage at lower
than federal reimbursement rate,
mediator fee, etc.) | <u>\$531.74⁴</u> |
|---|-----------------------------|

| | |
|--|-------------------|
| TOTAL (post-1/22/21 statement time and expense to 1/24/21) | <u>\$6,478.74</u> |
|--|-------------------|

10. The total recorded time and expenses to 1/24/21, not including work after that, and subject to the comments below, is as follows:

| | |
|---|---------------------|
| TOTAL (to 1/24/21, not including work after that,
and subject to the comments below) | <u>\$131,625.14</u> |
|---|---------------------|

11. 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.

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

⁴The \$531.74 is the \$31.74 filing fee for the instant motion, plus one third of what the court reporter estimates as “just under \$1500” for the deposition described hereinbelow.

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

recollection, there was also time necessarily spent directly on the case from time to time, which I simply did not record. My estimate is fifteen to as much as twenty-five 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.

13. The time included in statements also only includes travel time one-way for the six hour round trip from Columbia to Georgetown for an in-person hearing and one-way to the Pawleys area for the deposition of the appraiser at the office of opposing counsel.

14. 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 three hearings in the case.

15. 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

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

flash drives for producing voluminous records electronically.

16. The time and expense charges do not include a mediator's fee or associated charges, as we resolved the case on summary judgment. The charges do, however, include an estimate for 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 with approximately 180 pages of exhibits has not yet been received, but those charges have been incurred. The court reporter recently estimates that the charges will be just under fifteen hundred thousand dollars.

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

18. 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.

19. 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

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

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.

20. 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.⁵ 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 \$130,511.00 in each of three cases handled by different firms,⁶ for a total of \$391,533.00 for three cases, the Town is being charged for two-thirds of \$130,511.00 for three cases, for a total of \$86,998.63, before out-of-pocket expenses, for all three cases.

⁵ I am petitioning for \$1,082.66 in expenses, which is \$31.74 less than the expenses of the other two property owners, because of one less motion filing fee.

⁶ The \$130,511.00 fee figure, of course, also assumes that the three firms would all be providing successful representation with the same level of competency, and at no more than my hourly rate.

21. The actual billing records of my office reflecting the legal services and actual expenses incurred and agreed by Plaintiff in connection with quashing the condemnation action consist of about thirty-two pages over approximately six (6) months from the 8/5/20 bill to the 1/22/21 bill.

22. As noted, work on the case has necessarily continued since the 1/22/21 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 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 has filed a post-ruling motion, 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.

23. 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.

24. Although the Town started its condemnation attempt and sued Plaintiff during a

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

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 or years, 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.

25. 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,⁷ 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

⁷ I.e., "17 hours" stated in a public, live-streamed broadcast, as opposed to closer to eight or nine hours under special circumstances.

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.

26. 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.⁸

27. Although the Town filed at least five motions in the case, only one was a motion to dismiss and the Town did not consult in an attempt to resolve any of the motions before filing. When we followed up on a 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.

28. 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.

29. 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

⁸ 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.

public or otherwise documented facts upon which we based our challenges, but avoided discovery for some time, requiring us to engage in motions practice.

30. 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 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.

31. The Town had, not one, but two, able, learned counsel with good reputations. We continued to pursue discovery, including followups and motions to compel.

32. 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

Stanton Law Offices, P.A., 1430 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

delivering new condemnation notices while the condemnation action was stayed.⁹

33. 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.

34. 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.

35. We attended all hearings. There have been three so far. One was in person in Georgetown, which is a six hour round trip from my office and my residence. Two were by teleconference.

36. We, as Plaintiff's counsel, never, to my recollection, sought for our own benefit,

⁹ 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 the billings were not separate. I estimate that 49.5 hours were spent on the second challenge action up to 1/24/21. Each owner also incurred a \$180.32 filing fee. The Town did not respond to a request for the Town to accept service of the summonses and complaints. We arranged for personal service, but did so without incurring a process server's fee.

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.

37. 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.

38. 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.

39. 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.

40. In my opinion, the total fees and out-of-pocket expenses of \$131,625.14 recorded by my office for counsel services through 1/24/21 in connection with the case were reasonable, necessary and required, and \$44,618.06¹⁰ or more as of 1/24/21 should be an expense borne by the Defendant Town as required by statute, rather than by Plaintiff.

Pursuant to S.C. Sup. Ct. Order 2020-04-22-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify the foregoing and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

s/M. Baron Stanton

M. Baron Stanton

Date: 1-24-21

¹⁰Namely, a figure which includes one-third of the \$130,511 in time charges recorded and includes \$1,114.40 in expenses incurred, but does not include an increase of our rates by up to one-third for actual in-court or hearing time before 1-24-21, and does not include any of the 45 hours or more of estimated unrecorded time in May or June 2020 and at other times during the ensuing six months.

| | | |
|-------------------------|---|-----------------------------------|
| 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. |) | |
| |) | |

**ORDER TAXING STATUTORY EXPENSES INCLUDING REASONABLE
ATTORNEY’S FEES, TO BE ADDED TO JUDGMENT AS A MONEY
JUDGMENT, ENDING CASE**

PRESIDING JUDGE: The Honorable Michael G. Nettles
DATE OF HEARING: On papers
TIME OF HEARING: On papers
PLACE OF HEARING: On papers
PLAINTIFF’S ATTORNEY: M. Baron Stanton
DEFENDANTS’ ATTORNEY: N. David DuRant, Sr.
COURT REPORTER: On papers

TO THE CLERK OF COURT OF THE GEORGETOWN COUNTY COURT OF
COMMON PLEAS:

Having considered the circumstances of the case, as well as the affidavit and
motion submitted pursuant to this Court’s January 20, 2021 Order ruling on
Plaintiff’s summary judgment motion, this court finds as follows:

1. The expenses of \$44,618.06 as of 1/24/21 submitted by the plaintiff
Sunset lodge, LLC are reasonable, taking into account numerous factors, the chief
ones of which are that the rate is reasonable and the expenses are based on no more

than the actual time and expenses required.

2. Additionally, the legal services were complicated by the nature of the case, the length of time over which the services were rendered, and the issues or potential factual and legal issues involved, e.g., what present disagreement there was, if any, with the indications of the public records of the Town or writings generated by the Town, the law of condemnation and challenge actions as applied to the dealings of the parties, the terms and drafting of proposed easement documents, multiple asserted bases for invalidating the condemnation attempt, etc.

3. The time devoted was considerable and was all accounted for, and was reasonably spent; in fact, some has actually not been charged, and a potential agreed increase in rate has not been applied. Beyond that, roughly two thirds of the time devoted has been allocated by Plaintiff and counsel to other parties and excluded from the fee petition.

4. Counsel has professional standing justifying the fees charged. The fees are no more than those customarily charged by him in the locality for similar services, and the fees charged by others in the locality vary according to the nature of the matter and the lawyers hired, and I take note that the fees in the instant case are within that range, if not substantially exceeded by fees of others.

5. The case ended in an order quashing the challenged condemnation

notice and declaring the action commenced by it to be ended, which was a beneficial result for the plaintiff.

6. Having carefully considered the nature, extent and difficulty of the legal services rendered, the time and labor devoted to the case, the professional standing of counsel, the contingency of compensation, the fee customarily charged in the locality for similar services, and the beneficial results obtained, I therefore conclude that \$44,618.06 is a reasonable award of the litigation expenses incurred by Plaintiff, including reasonable attorney's fees, that it is a reasonable amount for Plaintiff's counsel to charge Plaintiff, and that \$44,618.06 shall be the award up to 1/24/21, without prejudice to supplementation for such expenses after 1/24/21 if proceedings continue.

The clerk of court is directed to tax these costs to Defendant within ten days of entry of this order.

AND IT IS SO ORDERED.

Michael G. Nettles
Presiding Circuit Court Judge

Date: _____[or see electronic signature page]

FORM 4**STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS****JUDGMENT IN A CIVIL CASE****CASE NO. 20-CP-22-00600**Sunset Lodge, LLC,Town of Pawleys Island,PLAINTIFF(S)DEFENDANT(S)

Submitted by: M. Baron Stanton

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

Disposition Type (Check One)

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

☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 (here, 5-6) for additional information.

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

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

☐ STAYED DUE TO BANKRUPTCY

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: :

Enter AMENDED judgment. This order ends the case, and amends the prior judgment 1/20/21 by adding an award of expenses including attorney's fees pursuant to the attached order.

INFORMATION FOR THE JUDGMENT INDEX

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

| Judgment in Favor of
(List name(s) below) | Judgment Against
(List name(s) below) | Judgment Amount To be Enrolled
(List amount(s) below) |
|---|--|--|
| Sunset Lodge, LLC | Town of Pawleys Island | \$44,618.06 |
| | | |
| | | |
| If applicable, describe the property, including tax map information and address, referenced in the order: | | |

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

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

FOR ELECTRONIC SIGNATURE

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

M. Baron Stanton, Esquire

P.O. Box 245

Columbia, SC 29202

N. David Durant, Sr., Esquire

1801 Glens Bay Road

Surfside Beach, SC 29587

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File

Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

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

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. Judgment declaring condemnation notice quashed and underlying condemnation action ended was granted on summary judgment January 20, 2021, as detailed in an order accompanying the judgment Form 4, and the judgment is amended as detailed in the accompanying subsequent order taxing expenses including reasonable attorney's fees pursuant to statute, through 1/24/21.

[illegible]

January 26, 2021 Landowner amendment to 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. |) | |
| _____ |) | |

AMENDMENT TO AFFIDAVIT OF M. BARON STANTON
RE REASONABLE FEES AND EXPENSES IN CASE TO 1/24/21

There is a typo in the affidavit filed 1/25/21. Paragraph 16 refers to an estimate for the cost of a deposition as “fifteen hundred thousand dollars.” It should be “fifteen hundred dollars.”

Pursuant to S.C. Sup. Ct. Order 2020-04-22-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify the foregoing and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

s/M. Baron Stanton
M. Baron Stanton

Date: 1-26-21

January 26, 2021 Landowner brief opposing Town January 14, 2020 T motion to disqualify.

| | | |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GEORGETOWN |) | CIVIL ACTION NO. 2020-CP-22-00600 |
| |) | |
| Sunset Lodge, LLC, |) | |
| |) | MEMORANDUM OF PLAINTIFF |
| Plaintiff, |) | IN OPPOSITION |
| |) | TO TOWN'S MOTION |
| v. |) | TO DISQUALIFY PLAINTIFF'S COUNSEL |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Plaintiff hereby provides Plaintiff's return in opposition to the motion of the Town to "disqualify" Plaintiff's undersigned counsel.

The motion, among many other deficiencies and incorrect applications of law, improperly seeks to disqualify undersigned counsel from any representation of Plaintiff at any stage in this case, rather than only at trial.

The rule is directed to offering argument at trial, not to all representation. The rule does not even necessarily preclude nonargumentative participation in a jury trial or argumentative participation in a bench trial. The rule is also dependent on there being a necessity for testimony on disputed facts by the lawyer. The rule also does not apply when testimony, if any, is on uncontested issues. The rule also does not apply and is not enforced in cases of undue hardship, particularly when the rule is invoked for tactical, rather than ethical, reasons.

The motion, even if taken as directed only toward undersigned counsel's being allowed to argue the case at trial, is completely without merit. Had the Town's counsel consulted before filing the motion, undersigned counsel could have reminded the Town's counsel of these facts and principles.

Plaintiff has filed a motion to strike because of failure of the Town's counsel to consult before filing the motion. The motion to strike, with its account of the facts and citation of authorities, is

respectfully incorporated herein. Therein, Plaintiff requests that the motion be stricken with no further consideration. However, if the motion to “disqualify” is considered at all, it should be denied.

FURTHER DISCUSSION

On August 21, 2020, Plaintiff filed a motion for summary judgment.

On October 14, 2021 the Defendant Town moved to continue the hearing of the motion.

On December 4, 2020, Plaintiff’s motion for summary judgment was heard.

On January 8, 2021, this Court issued an order stating that summary judgment was granted.

On January 14, 2021, the Town, without prior consultation over the relief requested in the motion,¹ filed, not a motion requesting that undersigned counsel be disqualified “from acting as an advocate at trial,” but, rather, a motion twice requesting that undersigned counsel be “disqualified from continuing to represent the Plaintiff in this case.”

In support of its motion to “disqualify” undersigned counsel “from continuing to represent the Plaintiff in this case,” the Town cites Rule 3.7(a), SCRProf.Cond., Rule 407, SCACR. The rule provides that “(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a

¹ This was a violation of the prior consultation and certification requirement of Rule 11, SCRCP. After Plaintiff moved to strike the motion because of noncompliance, the Town filed a certification that the Town’s counsel consulted some three months earlier.

The certification is still not only noncompliant, because not made prior to filing, but false, because when both counsel discussed the general subject of lawyers as potential witnesses in October 2020, the Town took no position, made no request whatsoever of Plaintiff’s counsel, and adverted to no imminent motion whatsoever.

The discussion is recounted, under penalty of contempt (in lieu of affidavit), in Plaintiff’s motion to strike the Town’s motion. There, Plaintiff explains that counsel touched base on the fact that both the Town’s counsel and Plaintiff’s counsel had some knowledge and involvement in the facts of the case. However, Plaintiff’s counsel explained the general tenor of the rule, and the limits of its applicability and reach. Plaintiff’s counsel informed the Town’s counsel that the Town’s counsel was certainly in charge of his own ethical housekeeping, but that as far as Plaintiff’s counsel was concerned, Plaintiff’s counsel would give the Town’s counsel plenty of notice if Plaintiff’s counsel planned to assert the rule’s applicability to the Town’s counsel. Plaintiff’s counsel further offered to discuss any aspect of the matter further at any time. The Town’s counsel never asked about it again prior to filing the motion.

necessary witness unless” any of certain exceptions apply. Rule 3.7(a), SCRProf.Cond., Rule 407, SCACR (emphasis added).

The rule does not state that a lawyer “shall not act as attorney in a case” or that a lawyer “shall not continue to represent his client in a case,” and has never been so construed. By its plain text, when it applies, the rule applies at trial.

Even if the Town’s motion were reformed to request disqualification, some time in the future, from advocating at trial some time in the future, the motion would still be meritless, and at best, premature, and would need to be disallowed.

This is a nonjury case. Even if taken as a motion to “disqualify” counsel from arguing at a mere bench trial, the motion fails because the Court had already ruled, based on undisputed facts, that Plaintiff has prevailed and there will be no trial.

This fatal deficiency in the motion is apparent before even considering the exceptions stated squarely in the text of the rule, which the Town ignores and on which the Town completely fails to make any showing of facts in support of the motion.

Rule 3.7(a), SCRProf.Cond., Rule 407, SCACR also only applies to a trial in which the lawyer “is likely to be” a “necessary” witness. The Town has done absolutely nothing to demonstrate or identify any issue of fact which is disputed and on which the undersigned is likely to be the only witness through which the fact can be presented.

Disqualification does not result from a motion not supported by anything but the moving, opposing, party’s say-so.² The rule does not state, “a lawyer shall not continue to represent his client in a case in

² In discovery responses, Plaintiff generally made clear that most of the operative facts in the case, whether favorable or unfavorable to a given party, were established by public records or other written or recorded statements of the Town or the matters set forth in the papers prepared by the Town or its counsel.

Only after it was apparent that there was no dispute of material facts, and summary judgment was granted, and it was apparent that a trial may not occur at all, Defendant Town filed the subject motion to disqualify Plaintiff’s counsel.

The sole factual grounds for the Town's motion to disqualify Plaintiff's counsel are the contents of pages 1-2 of an interrogatory response of Plaintiff which is an exhibit to the Town's motion.

The response mentions Plaintiff's attorney among scores of people listed who, as asked about in the interrogatory, "are witnesses to the facts of the case."

The response does not even state there is an intention to testify and explicitly explains why trial testimony may be unnecessary and that affidavit testimony is thus far uncontested.

The same interrogatory response includes among the scores of such people, both of the Town's counsel who signed the motion. They did not move to disqualify themselves or otherwise move to withdraw their appearances as counsel for the Town in accordance with their own asserted grounds.

The same interrogatory response referenced by the Town clarifies that most of the facts appear to be undisputed, that a trial may not be necessary, that summary judgment may be granted, and that many people, including Town actors know and could testify to many of the facts or the documents and recordings that establish them.

To wit, the response states:

A broad number of people may have observed or may know facts pertaining to the case, as it involves many people and properties, and the Town has made it a very public matter. For example, 113 people or more may have received false solicitations from Mr. Fabbri that the requested easement was essentially limited to doing renourishment work and thereafter received proposed easement documents with terms of greater scope and continued to receive and hear similar representations, a greater number may have followed Town meetings or Town Council meetings, at which matters were presented falsely or decided summarily, a greater number may have read newspaper articles about the Town's assertions of some of the issues or facts, etc.

In terms or persons most likely to be potential witnesses in a trial or other proceeding, that question depends upon whether summary judgment is granted for Plaintiff, and upon, regardless of whether summary judgment is granted or the case is tried, whether the Town disputes any of the facts alleged in the Amended Complaint. To date, there has been no dispute of material facts and Plaintiff has contended that Plaintiff is entitled to judgment as a matter of law, ending the condemnation. The facts have been adduced by the 130 paragraphs of the affidavit of M. Baron Stanton, which is on file and which has been provided, and through the admissions of the Town in its own writings and public records.

In terms of people who have the most perceived close-up involvement in the facts which afford relief to Plaintiff or matters, if any, disputed by the Town or contended to afford the Town any defense, those currently appear to be the following; again, it is difficult to know whom to include in those with respect to whom to reserve the right to call as a witness if the facts are not controverted and until additional or enhanced bases for recovery are discovered from the Town or others:

which the lawyer is listed among people who know or have observed facts pertinent to the claim or defense.” The rule is directed to “necessary witnesses,” an issue upon which the Town has made no showing whatsoever in support of its motion,³ and that is before considering further exceptions.

One exception is “unless ... the testimony relates to an uncontested issue.” Rule 3.7(a)(1), SCRProf.Cond., Rule 407, SCACR. This exception refers to the lack of contest of a fact, i.e., undisputed facts. Six days before the Town filed the motion, this Court ruled, based on undisputed facts, that Plaintiff was entitled to summary judgment. “Uncontested issue” does not refer to the opposing party’s mere wish that the facts were not as they are.

Another exception is “unless ... disqualification of the lawyer would work substantial hardship on the client.” Rule 3.7(a)(3), SCRProf.Cond., Rule 407, SCACR. The Town has certainly done nothing to negate the existence of a hardship on Plaintiff which would result from losing the advocacy of Plaintiff’s counsel. Plaintiff’s counsel has particular and specific familiarity with the facts and the law in this area, has represented Plaintiff on a case with highly arcane facts and law for six months, and the actions of the Town have required Plaintiff to spend money to prepare present counsel to protect Plaintiff’s property from the Town.

In balancing hardships against the purposes of the rule – primarily to prevent jury confusion (if the other requirements of the rule are met and no other exceptions apply) – it is also highly significant that the present case is nonjury. There is very little possibility of jury confusion, and therefore very little to outweigh, on the one hand, and there is, or would be, profound hardship on the other hand.

As demonstrative of the hardship already imposed on Plaintiff and the greater hardship which would result in the event Plaintiff’s counsel were disqualified “from continuing to represent the Plaintiff in this case,” Plaintiff refers the Court to the recently filed Affidavit of M. Baron Stanton Re

³ Plaintiff objects in advance, now, to any later filing of affidavits to support the unsupported motion by the Town, in violation of Rule 6(d), SCRCP (requiring that affidavits be filed contemporaneously with a motion), as has been the Town’s practice.

Reasonable Fees and Expenses in the Case to 1/24/21. There, it is explained that other possible qualified counsel may be, and may have been, much more expensive and hard to find, and that as a result of Plaintiff's present counsel also handling two similar cases, the total cost was reduced even further, which, now that there is a petition to shift fees to the Town pursuant to statute, also reduces the costs for which the Town is answerable. The Town's motion has the peculiar effect of requesting that the Town's exposure to liability for attorney's fees of opposing parties be increased two-fold, three-fold, or more. Unfortunately, such increases first have to affect Plaintiff, who does not have coffers of public money from which to fund litigation.

For the foregoing reasons, the Town's motion should be stricken, and, if not stricken, denied.

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

1/26/21

January 29, 2021 Town notice of withdrawal of Town motion to disqualify.

| | | |
|-------------------------|---|-----------------------------------|
| 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 NOTICE OF |
| Plaintiff, |) | WITHDRAWAL OF MOTION |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

TO: PLAINTIFF ABOVE NAMED AND HIS ATTORNEY, M. BARON STANTON, ESQ.

YOU WILL PLEASE TAKE NOTICE that, Defendant, by and through the undersigned Attorney, respectfully hereby withdraws its Motion for Disqualification of Counsel for the Plaintiff.

WHEREFORE, Defendant respectfully requests that this Court mark Defendant's said motion withdrawn.

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

s/N. David DuRant, Sr.
N. David DuRant, Sr., Esquire (SCB# 1803)
P.O. Box 14722
Surfside Beach, SC 29587
Telephone: (843) 650-7800
Facsimile: (843) 650-8090
Email: ddurant@lawofficesofdurant.com
ATTORNEY FOR PLAINTIFF

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

s/Norwood D. DuRant, Jr.
Norwood D. DuRant, Jr. (SCB #101723)
P.O. Box 14722
Surfside Beach, SC 29587
Telephone: (843) 650-7800
Facsimile: (843) 650-8090
Email: norwooddurant@lawofficesofdurant.com
Attorney for Defendant

January 29, 2021

January 29, 2021 Town motion to reconsider summary judgment.

| | | |
|-------------------------|---|-----------------------------------|
| 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 MOTION TO |
| Plaintiff, |) | ALTER OR AMEND JUDGMENT |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

TO: PLAINTIFF ABOVE NAMED AND ITS ATTORNEY, M. BARON STANTON, ESQ.

YOU WILL PLEASE TAKE notice that the Defendant, Town of Pawleys Island, by and through its undersigned attorneys, N. David DuRant, Sr., and Norwood D. DuRant, Jr., will within ten (10) days after service hereof or as soon thereafter as counsel may be heard, or within a shorter time period, if the Court so allows, move the Court pursuant to Rule 59(e), SCRCF to reconsider, alter and/or amend the Order dated January 20, 2021 granting the Plaintiff’s Motion for Summary Judgment. In support thereof, the Defendant states as follows:

- 1. The Defendant respectfully submits that the Order dated January 20, 2021 is ambiguous as to the award of attorney’s fees and costs. The Court should clarify that the issue of fees and costs is not considered, heard, nor granted, and that a separate evidentiary hearing needs to be set as to that issue.**

At oral argument on December 4, 2020, both sides presented arguments before the Court with respect to the Plaintiff’s motion for summary judgment. At the conclusion of the motion hearing, the Court instructed both parties to submit proposed orders for its consideration. Counsel for the Plaintiff raised the issue of fees and costs, and the Court indicated it was not going to rule on that matter. The Form 4 order issued on January 8, 2021 also it did not address fees or costs (see: Exhibit “A”).

However, the Order dated January 20, 2021 contains the following language in its “CONCLUSION” section: Any request for fees should be presented by separate petition/motion in this action.

The Plaintiff has filed a Motion for Expenses together with a proposed Order, and an Attorney’s Affidavit claiming \$44,618.06 in fees and costs. The Defendant respectfully submits that the issue of

awarding attorney's fees or expenses cannot be resolved by motion and would require an evidentiary hearing as well as presentation of detailed billing records, time sheets, witnesses, affidavits, invoices, and receipts. The Order dated January 20, 2021 is ambiguous as to the award of attorney's fees and costs, and Defendant requests that it be amended to indicate that the Court has not considered the Plaintiff's Motion for Fees and Costs and is permitting discovery on the issue as well as a separate evidentiary hearing. The Defendant respectfully submits that the Plaintiff bears the burden of establishing any entitlement to fees and costs and documenting the appropriate billable hours.

2. The Plaintiff is not entitled to the summary judgment ruling in this case.

"[S]ummary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law." Folkens v. Hunt, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986). "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Nelson v. Charleston County Parks & Recreation Comm., 262 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). The Plaintiff is not entitled to summary judgment under this standard, in that:

- a. The Defendant's submissions provide at least a scintilla of evidence, and indeed more, to support the Defendant's authority to condemn the easement sought to be acquired;
- b. Further inquiry into the facts is necessary to determine, among other things, the Plaintiff's allegations in support of Plaintiff's challenge against the Defendant's authority to condemn; and,
- c. Inferences arising from the evidence presented by the parties were not construed strongly against the Plaintiff, as they were required to be.

Based on the foregoing, the Defendant respectfully requests the Court to reconsider, alter and/or amend its Order dated January 20, 2021 to clarify the issue of fees and costs; deny the Plaintiff's Motion for Summary Judgment and directing the parties to complete pretrial matters; 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; and, for such other relief and remedies that the Court may deem just and proper under the circumstances.

This motion may be supported by a memorandum of law, as well as the South Carolina Rules of Civil Procedure, oral arguments by counsel, affidavits, and/or any other evidence properly submitted prior to the time of the motion hearing.

Pursuant to Rule 11, SCRPC, there is no duty of consultation prior to this motion, as this is a motion to reconsider and, further, consultation in advance about the substance of this motion would have served no useful purpose.

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

s/N. David DuRant, Sr.

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

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: ddurant@lawofficesofdurant.com

Attorney for Defendant

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

s/Norwood D. DuRant, Jr.

Norwood D. DuRant, Jr. (SCB #101723)

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: (843) 650-7800

Facsimile: (843) 650-8090

Email: norwooddurant@lawofficesofdurant.com

Attorney for Defendant

January 29, 2021

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200600

Sunset Lodge Llc
PLAINTIFF(S)Pawleys Island Town Of
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Georgetown Common Pleas

Case Caption: Sunset Lodge Llc VS Pawleys Island Town Of

Case Number: 2020CP2200600

Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

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

February 3, 2021 Landowner brief opposing Town January 29 motion to reconsider and partially replying to Town included arguments opposing fee request.

| | | |
|-------------------------|---|-----------------------------------|
| 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. |) | |
| |) | |

PLAINTIFF’S REPLY AND RETURN IN OPPOSITION TO COMBINED MEMORANDUM OF
TOWN OPPOSING PLAINTIFF’S SEPARATE PENDING MOTION TO TAX FEES AND OTHER
COSTS TO TOWN, AND TO MOTION OF TOWN TO RECONSIDER SUMMARY JUDGMENT
ORDER

Plaintiff hereby necessarily provides a response to the Town’s ostensible “motion to reconsider,” in which the Town combines its arguments that the Court reconsider granting summary judgment, with arguments on the separate and collateral matter of fees. Fees are not the subject of the Order granting summary judgment.

Plaintiff first submits herein, a partial reply to the 1/29/21 memorandum of the Town, set forth within the Town’s “motion to reconsider,” in which the Town opposes Plaintiff’s completely separately filed and pending 1/25/21 motion to tax fees and other costs. The remainder of Plaintiff’s opposition to the Town’s memorandum regarding fees and other costs will be properly set forth in a separate Memorandum in Reply to Town’s Opposition to Plaintiff’s Motion for Fees and Other Costs.

Plaintiff also herein opposes the actual part of the Town’s “motion to reconsider” which is directed to any alleged deficiencies in this Court’s 1/20/21 Order granting summary judgment.

The entire application and argument of the Town should be denied on the papers without hearing.

1. The Town's argument re fees and other costs is in the wrong document.

The Town includes an argument on fees and other costs (hereinafter sometimes just “fees,” for short) in its motion “to reconsider” an order which is on the subject of granting summary judgment, and which is not on the subject of fees.

The Town does so on the premise that this Court's sole mention of fees in the summary judgment order “is ambiguous” and needs “clarification.”

The sentence needs no clarification. The Court stated on the last page of the order at 24, “Any request for fees should be presented by separate petition/motion in this action.”

This clearly means that if there is any request for fees, the fees should be asked for in a separate motion, which can be separately considered. The Town's argument about fees is not properly included in the motion to reconsider the decision of summary judgment, has the effect of introducing confusion, expense and delay into the resolution of the case, and should simply be rejected as such.

The remainder of the Town's argument to “reconsider” regarding fees has nothing to do with “ambiguity” in the Court's 1/20/21 Order and similarly relates to nothing the Court has yet ruled on.

Incorrectly including its argument in the putative motion to reconsider, the Town makes requests and announces plans having nothing to do with whether or not the Court should have granted summary judgment. Here, the Town outlines excessive plans having nothing to do with summary judgment and which will delay both the conclusion of the Town's objection, if any, to the actual summary judgment order, and resolution of Plaintiff's separate and duly filed motion for fees.¹

¹ The Town proposes the extraordinary measure of delaying rulings or hearings on post-summary judgment wrap-up in the case. This, the Town proposes by requesting an entire trial on fees.

Asserting the legally incorrect proposition that “awarding attorney's fees or expenses cannot be resolved by motion,” the Town proposes that, before the elaborate fee trial the Town proposes, the Town engage in discovery and other matters for a period approaching the entire time the overall case – with all its previous delays by the Town -- has been pending. This proposition comes from the very party who apparently wishes to mount arguments that the time Plaintiff's counsel was forced to spend on this case up to this point was in some way not necessary.

While the Town's argument that "file a separate motion" is ambiguous and unclear will be addressed further in a separate proper filing by Plaintiff, the Town's mischaracterization of the summary judgment hearing and circumstances of the preparation of the Court's Order are, of necessity, addressed briefly here as well.

As ostensible background for how the Court's Order came to contain an allegedly "ambiguous" directive about fees, the Town mischaracterizes and misstates the colloquy at the December 4, 2020 summary judgment hearing.

Contrary to the Town's recital of this background, the Judge, not Plaintiff, brought up the question of fees. Fees are provided for by statute in an action of this nature, and are requested in the Amended Complaint. The Judge, not Plaintiff, brought up the issue and said he would like to not address fees in the ruling on summary judgment. He directed that any proposed order granting summary judgment state that a fee application would be handled separately.

That is exactly what Plaintiff put in Plaintiff's proposed order of over 50 pages, and that is exactly what the Judge put in his 24-page Order.

The Judge did not state he would not consider fees, but stated that fees would be considered separately. This is what is stated in the order.

Defendant Town is incorrect on the law and procedure for award of attorney's fees as part of court costs in South Carolina. This aspect will be handled in a properly separate brief responding to the Town's contentions regarding fees.

The Town asserts that awarding attorney's fees or expenses would require "an evidentiary hearing" and "presentation of detailed billing records, time sheets, witnesses, affidavits, invoices, and receipts." The Town further proposes "permitting discovery on the issue," so that the fee trial, as well as final ruling on the summary judgment motion, can be delayed for "no less than 120 days, for the parties to conduct discovery relevant to that issue." This unabashed request for further delay should be rejected.

2. This Court has not overlooked any significant issue of fact or law presented to it and has made no error in its rulings in the Court's Order granting summary judgment; indeed, the Town calls none to the Court's attention; and accordingly, the Town's motion to reconsider should be denied.

After carefully considering the Defendant's purely abstract and fact-deficient arguments as to whether summary judgment should be granted, this Court will see that no material fact or significant principle of law or issue presented has been overlooked and should deny the motion for reconsideration.

First, however, the Court will see that the Town's request to "reconsider" – even as directed to the issue of summary judgment -- is not proper.

Rule 7(b)(1), SCRCP requires that grounds of motions be set forth and not be left as a matter for later surprise, stating:

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

Rule 7(b)(1), SCRCP (emphasis added).

The only three putative grounds stated by the Town are purely skeletal.

First, the Town asserts, "a. The Defendant's submissions provide at least a scintilla of evidence, and indeed more, to support the Defendant's authority to condemn the easement sought to be acquired." However, the Town does not set forth or identify a single such submission or a single such alleged scintilla of evidence as grounds for its motion.

Next, the Town asserts, "b. Further inquiry into the facts is necessary to determine, among other things, the Plaintiff's allegations in support of Plaintiff's challenge against the Defendant's authority to condemn." However, the Town does not set forth or identify a single such allegation the Town needs to inquire into.

In fact, the Court directed both parties on December 4, 2020 on the record to address in their proposed orders whether any further discovery was necessary with respect to the undisputed facts on which Plaintiff moved for summary judgment or any other fact asserted by the Town to be necessary to defeat the motion. The Town adduced nothing. This putative ground as stated also makes no sense. “[T]o determine” “the Plaintiff’s allegations in support of Plaintiff’s challenge against the Defendant’s authority to condemn,” the Town need only read the Amended Complaint to see the allegations of the Amended Complaint, and need only read Plaintiff’s motion for summary judgment, affidavit in support, and brief to see the undisputed facts on which Plaintiff moved for summary judgment. These included, but were not limited to, the wholly sufficient admitted fact that the Town did not provide an appraisal before serving the condemnation notice and the wholly sufficient undisputed fact that the Town did not provide the appraiser of the interest in property the Town sought to condemn – i.e., the proposed easement – the written terms of the easement.

As its final putative grounds, the Town asserts, “c. Inferences arising from the evidence presented by the parties were not construed strongly against the Plaintiff, as they were required to be.” However, the Town does not set forth or identify a single such inference asserted to have been wrongly made or to have been wrongly not made.

As an example only, with respect to the failure of the Town to timely provide an appraisal, there is no inference that changes the fact. As an example only, with respect to the failure of the Town to obtain an appraisal of the interest in property the Town actually sought to condemn as described in the condemnation notice, no inference changes the fact.

The Town’s motion thus states no grounds that Plaintiff can respond to now, and no grounds the Court can apprehend now, without searching the record in an attempt to guess what grounds the Town may later argue. This is highly prejudicial and a violation of Rule 7(b)(1).

The Town announces a possible intention to supply its actual particular grounds for its putative motion later, by brief, oral argument or affidavit, stating:

This motion may be supported by a memorandum of law, as well as the South Carolina Rules of Civil Procedure, oral arguments by counsel, affidavits, and/or any other evidence properly submitted prior to the time of the motion hearing.

However, surprising the Court or Plaintiff with grounds adduced later is not allowed by Rule 7(b)(1), SCRCP. Affidavits in support of a motion are also required to be provided contemporaneously with the motion. Rule 6(d), SCRCP.

Motions are required to state their grounds and the Circuit Court may hold a hearing on a motion, but is not in all instances required to do so. The South Carolina Supreme Court's order for disposing of motions during the current worldwide pandemic disease recognizes this tradition. The Supreme Court's order and prior state practice presuppose compliance with the above discussed basic rules which have applied for generations anyway. Order Re Operation of the Trial Courts During the Coronavirus Emergency, No. 2020-12-16-01 states:

(4) Minimizing Hearings on Motions. While the practice has been to conduct hearings on virtually all motions, this may not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above.

Order Re Operation of the Trial Courts During the Coronavirus Emergency, No. 2020-12-16-01, Para.

(c)(4)(S.C. S.Ct. dated December 16, 2020)(page 5 of 21).

For the foregoing reasons, the Town's motion to reconsider should be denied in its entirety. Pursuant to Order Re Operation of the Trial Courts During the Coronavirus Emergency, No. 2020-12-16-01, Para. (c)(4)(S.C. S.Ct. dated December 16, 2020), the Town's motion to reconsider should be determined on the papers, now, without hearing and further expense to the parties.

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

2/3/21

February 3, 2021 Town notice of Dillard appearance.

Certificate of Electronic Notification

Recipients

M. Stanton - Notification transmitted on 02-03-2021 10:26:34 AM.

Norwood DuRant - Notification transmitted on 02-03-2021 10:26:34 AM.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2020CP2200600

Official File Stamp: 02-03-2021 10:26:21 AM

Court: CIRCUIT COURT

Common Pleas

Georgetown

Case Caption: Sunset Lodge Llc VS Pawleys Island Town Of

Event(s):

Notice/Notice of Appearance

Filed by or on behalf of:

William Clayton Dillard, Jr.

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Norwood David DuRant, Sr. for Pawleys Island
Town Of

M. Baron Stanton for Sunset Lodge Llc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

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