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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2026-UP-275 (S.C. Ct. App. Filed June 3, 2026)
Court of Appeals Case No. 2023-001272

Sunset Lodge, LLC,Respondent,

v.

Town of Pawleys Island,Petitioner,

and

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

v.

Town of Pawleys Island,Petitioner,

and

M. Baron Stanton,Respondent,

v.

Town of Pawleys Island,Petitioner.

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

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CERTIFICATION OF COUNSEL

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

QUESTIONS PRESENTED

- I. Did the Court of Appeals err in making a statement that the easements sought by the Town are “extremely overbroad” where this statement is unsupported by the record and outside its scope of review?
- II. Did the Court of Appeals err in modifying the fee award?
 - A. Did the Court of Appeals err in finding that there was any error of law or abuse of discretion in the circuit court fee award?
 - B. Did the Court of Appeals err in modifying the fee award by awarding fees for additional time unsupported by the record?
 - C. Did the Court of Appeals err in modifying the fee award by awarding fees and costs related to Landowners’ unsuccessful opposition to the Town’s motion to dismiss?
 - D. Did the Court of Appeals err in increasing the award of fees to Landowner Stanton who, as a pro se litigant, was not entitled to any award of attorney fees?
 - E. Did the Court of Appeals err in increasing the award of fees and costs where Landowners’ untimely fee petition did not give rise to subject matter jurisdiction in any court?

¹ This appeal arises from three related, consolidated condemnation challenge action cases referred to by the parties as the “**Challenge 2**” cases (*Franklin D. Beattie v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0601; *Sunset Lodge, LLC v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0600; and *M. Baron Stanton v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0602). The Town is also filing a petition for writ of certiorari in the separate “**Challenge 1**” cases (Court of Appeals Appellate Case No. 2022-000291) arising out of a prior set of cases involving the same parties (*Franklin D. Beattie v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0601; *Sunset Lodge, LLC v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0600; and *M. Baron Stanton v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0602).

INTRODUCTION

This appeal concerns the dissatisfaction of Sunset Lodge, LLC, Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust, and M. Baron Stanton (“Landowners”) with an award of attorney fees they received following condemnation challenge actions filed pursuant to § 28-2-470 of the South Carolina Eminent Domain Procedure Act. S.C. Code Ann. § 28-2-10, et seq. The fee award was made after the Town abandoned the underlying Condemnation Notices a few weeks after the challenge actions were filed and before any determination on the merits. The Town requests a writ of certiorari not only to correct the errors of the Court of Appeals in partially modifying the fee award, but also to address an unsupported, unnecessary statement in the opinion of the Court of Appeals, outside of its scope of review of the fee award, that the easements sought by the Town were “**extremely overbroad.**” (Opinion, p.7). The Landowners will inevitably attempt to use that statement in anticipated future litigation to object to easements required for long-term, multi-million dollar federal support of the Town’s shore protection program.

The underlying dispute involves the Town’s efforts to secure “Perpetual Beach Storm Damage Reduction” easements required by the U.S. Army Corps of Engineers in order to secure long-term funding for beach renourishment and similar shore protection. The Town has obtained the necessary easements from 110 of the 113 property owners within the federal project area, with the three owners involved in this litigation being the only holdouts. After the Landowners obtained summary judgment in the separate Challenge 1 cases on essentially procedural grounds, the Town withdrew and abandoned the Condemnation Notices underlying these Challenge 2 cases to avoid the parties wasting time and resources litigating some of the same procedural issues. The parties exchanged pleadings but did not move forward with any discovery and certainly did not reach any disposition of the merits of any claim about the easements being purportedly “overbroad.” The

record was never developed on the merits of this issue, and it was far outside the scope of review of the Court of Appeals in reviewing the fee award.

Landowners will inevitably attempt to use this language in the opinion of the Court of Appeals to further object to the Town's future efforts to take necessary steps to secure this federal funding to protect the Pawleys Island shoreline for the public. The Town does still need and intend to acquire the outstanding easements as required by the Army Corps. For that reason, although the opinion in this appeal was unpublished, in the context of this ongoing dispute it is of significant public importance that this Court correct the unnecessary, unsupported statement in the Court of Appeals opinion. The Town and Landowners continue to be in disagreement about the proposed easements and, unfortunately, it is highly probable that there will be additional litigation. If the question of whether the proposed easements are "overbroad" need to be resolved, that should occur through proper legal proceedings beginning in the circuit court. **This issue is of critical importance to the Town, the beachgoing public it serves, and the 110 other beachfront owners who already signed Army Corps easements and are entitled to the significant benefit of federal partnership in Pawleys Island shore protection efforts.**

Additionally, the Town requests that this Court correct the error of the Court of Appeals in setting aside the deference due to the circuit court as the finder of fact in a fee award.² Although, again, this was an unpublished opinion, the Town respectfully contends that this case provides the Court an important opportunity to confirm and clarify the broad discretion of the circuit court in

² The Town recognizes that the increase in the modified fee award was relatively minor compared to what the Landowners requested, and that this Court's time is very valuable. However, given that the Town has need to petition for review of the Court of Appeals' statement that the proposed easements were "extremely overbroad," the Town also takes this opportunity to request review of the modification of the award. The Town was also wary of the possibility that a failure to request review of the fee award modification could give rise to an argument that the entire petition is moot.

fee proceedings and to address novel issues including shared fee awards and fee claims of pro se attorney-litigants.³

STATEMENT OF THE CASE

This appeal arises from attorney fee awards in three related, consolidated condemnation challenge actions. These “Challenge 2” cases are the second of two related sets of condemnation challenge actions involving properties owned separately by the three Landowners. Landowner Stanton, an attorney, represented both himself and the other two Landowners.

In or around June 2020, the Town served on each Landowner a Condemnation Notice through which it sought to acquire a beach renourishment easement. (R. p.160, ¶ 81). On July 21, 2020, each Landowner separately filed challenge actions objecting to the condemnations on various procedural and substantive grounds (collectively, these were the “Challenge 1” cases) (R. p.173, ¶ 180, et seq.). Subsequently, in or around October 2020 and while the Challenge 1 cases were still pending, the Town delivered to Landowners’ counsel a set of three new Condemnation Notices through which it sought to acquire similar beach renourishment easements on Landowners’ properties (referred to in the pleadings herein as the “New Notice[s]”) (R. p.203, ¶ 352, et seq.).

On November 12, 2020, each Landowner separately filed a second challenge action objecting to the second set of condemnation notices (collectively, these “Challenge 2” cases) (R. p.72). The Town filed Answers in the Challenge 2 cases on December 14, 2020, (R. p.145), and the Landowners then filed Amended Complaints on January 13, 2021 (R. p.149). Meanwhile, in the separate Challenge 1 cases, on January 20, 2021, Judge Michael Nettles issued summary

³ The Town’s Petition for Writ of Certiorari in the separate “Challenge 1” appeal (Court of Appeals Appellate Case No. 2023-001272) involves closely related questions. If the writ is granted in both appeals, the Town understands that the Court may choose to consolidate the matters for review.

judgment orders in favor of the Landowners, dismissing the first set of condemnation notices without prejudice based on what were determined to be certain procedural deficiencies. (R. p.12; See also R. p.731, Aff. Dillard ¶ 11; R. p.770, Aff. Durant ¶ 9).

On February 3, 2021, current appellate counsel for the Town entered an appearance in the Challenge 2 cases (R. p.731, ¶ 11). On February 5, 2021, counsel for the Town sent Landowners' counsel a letter requesting a pause in case activity and providing notice that the Town was considering abandonment of the second set of Condemnation Notices based on the potential impacts of the Challenge 1 summary judgment ruling. (R. p.732, ¶ 12 and Exh.B). As set forth in the affidavit of the Town Attorney, the Town recognized that “[t]he Challenge 1 summary judgment orders ruled in favor of the [Landowners] on at least some of the same procedural objections at issue in the Challenge 2 cases.” (R. p.770, ¶ 9). Shortly thereafter, on February 10, 2021, the Town filed a Notice of Abandonment of Condemnation Action in all three Challenge 2 cases (R. [Appx.], N. Abandonment).

The Town filed its Answers to the Amended Complaints on March 3, 2021, with a copy of the Notice of Abandonment attached as an exhibit. (R. [Appx.] Ans. Am.Complaint). This pleading included a defense that, on the basis of the Notice of Abandonment, the Challenge 2 actions were now moot. (R. p.292, ¶ 8). On March 5, 2021, with the Landowners having declined to consent to dismissal, (R. p.734, ¶ 29 fn.4), the Town filed its Motion to Dismiss and Motion for Protective Order relating to Landowners' ongoing attempt to pursue discovery notwithstanding the abandonment. (R. p. 365; R. p.351).

The Honorable Benjamin H. Culbertson, Circuit Court Judge, held a hearing on the Motion to Dismiss on April 1, 2021, and, on April 22, 2021, entered an Order of Dismissal without prejudice. (R. p. 11). The dismissal order provided that “[a]ny request for fees and/or costs should

be presented by separate petition/motion in this action.” (R. p. 20). The Landowners filed a Motion to Reconsider on April 28, 2021, (R. p.529). Judge Culbertson held a hearing on the motion to reconsider on June 3, 2021, and denied the motion in a Form 4 Order issued the same day (R. p. 24). With the consent of the parties, the June 3, 2021, order also consolidated the cases under a single civil action number. The Landowners filed a notice of appeal of the dismissal on July 2, 2021.⁴ (R. [Appx.], 7/2/21 N. Appeal).

On October 21, 2022, more than 16 months after the circuit court’s denial of Landowners’ motion to reconsider dismissal of the Challenge 2 cases, they filed a fee petition⁵ and supporting attorney affidavit of Landowners’ counsel M. Baron Stanton. (R. p. 595). The 67-page, 223-paragraph fee affidavit requested combined fees of **\$26,220** based on 138 hours of claimed attorney time, comprising 64.9 hours for the case-in-chief and 79.3 hours for the fee petition itself. (R. p. 649, ¶ 190). Landowners did not submit any fee agreements, legal invoices, or daily or itemized time descriptions.

On December 13, 2022, the Town filed a *Memorandum in Opposition* to the fee petition (R. p.775) and supporting affidavits of Town Attorney N. David Durant, Sr. (R. p.768) and counsel of record William C. Dillard, Jr. (R. p.729) with exhibits. The Town materials included, as Exhibit C to the Dillard affidavit, a chronological “Case Events” table that identified significant case events alongside a listing of attorney hours the Landowners were claiming on specific days. (R. p.748). The Dillard affidavit opined that a combined reasonable attorney fee award would be \$3,800 based on 20 hours of attorney time. (R. p.738, ¶ 33-34).

⁴ Two other motions seeking to correct collateral, clerical issues followed from the June 3, 2021, order denying reconsideration of the dismissal, but Landowners did not seek an award of fees for the associated time.

⁵ The petition was made pursuant to S.C. Code Ann. § 28-2-510(C), which provides for landowner recovery of reasonable attorney fees when the condemnor abandons a condemnation notice.

On March 8, 2023, Landowners filed a 39-page *Reply* memorandum and an amended fee affidavit. (R. p.793). The amended fee affidavit requested fees of **\$36,214** based on 190.6 hours of attorney time. (R. p. 787, ¶ 190). Judge Culbertson held a virtual hearing on the fee petition via Webex on April 14, 2023, and took the matter under advisement. On June 8, 2023, upon their own initiative and without request or leave from the circuit court, Landowners filed a second amended fee affidavit now requesting combined fees of **\$53,694** based on 282.6 attorney hours, comprising 64.9 hours for the case-in-chief and 217.7 hours for the fee petition. (R. p.887, ¶ 190). The same day, June 8, 2023, Judge Culbertson issued an order awarding Landowners combined attorney fees of \$12,445 based on 65.5 hours of attorney time (including 8 hours for pursuit of the fee petition), plus costs, all to be divided in equal, one-third shares by the three Landowners. (R. p. 52). Landowners filed a motion to reconsider the fee award on June 20, 2023, which Judge Culbertson denied on June 28, 2023. (R. p. 894; R. p. 65). The fees and costs as awarded by the circuit court have been paid and discharged as to each Landowner. (R. p.943).

On July 28, 2023, Landowners filed a notice of appeal. (R. p. 938). Oral arguments were held on March 4, 2025, and the Court of Appeals issued an unpublished opinion on June 3, 2026, affirming as modified the circuit court’s fee award. Specifically, the Court of Appeals (1) increased the overall award of attorney fees from \$13,017.70 to \$15,181 by awarding “post-abandonment” attorney hours and additional attorney hours for the fee petition and (2) increased the award of costs from \$572.70 to \$751.71 by awarding costs related to Landowners’ unsuccessful opposition to the Town’s motion to dismiss. With regard to allocation, the Court of Appeals noted that “the award is to be shared among Landowners pursuant to their fee sharing agreement.” (Opinion, p.8). The Town filed a Petition for Rehearing and, on August 3, 2026, the Court of Appeals issued an

order denying the petition. Petitioner seeks a writ of certiorari to review the decision of the Court of Appeals.

ARGUMENT

I. The Court of Appeals erred in making a statement that the easements sought by the Town are “extremely overbroad” where this statement is unsupported by the record and outside its scope of review.

In modifying the attorney fee award, the Court of Appeals made a statement critical of the scope of the easements the Town sought to acquire. Specifically, page 7 of the order states that “the Town refused to rule out pursuit of the challenged – ***and extremely overbroad*** – easements.” (emphasis added). The Town respectfully contends that this statement that the easements are “extremely overbroad” is mistaken and is not supported by the record. The Town requests that, even if the Court declines to change the Court of Appeals’ holding on the amount of the fee award, the opinion be modified to remove the statement. The Town still needs to acquire the easements in order to secure long-term federal funding for beach renourishment and other shore protection (as discussed below, the easement language sought to be condemned is in fact specifically required by the Army Corps). The former Town Administrator estimated that, if these three easements are acquired, the portion of future construction costs that would be the responsibility of the Army Corps, to the benefit of the Town and the public it serves, would be nearly **sixty-five million (\$65,000,000) dollars** (See “Challenge 1” R. p.672).⁶ Federal funding would also cover post-hurricane restoration to protect the nearly \$15,000,000 investment that the Town already made to renourish the beach (See “Challenge 1” R. p.672-673).

⁶ To the extent that the Court of Appeals’ statement that the easements are “extremely overbroad” may possibly be based on consideration of the Challenge 1 (Appellate Case No. 2022-000291) summary judgment order and record on appeal, the Town has no option but to refer to the Challenge 1 record. The Town contends, however, that the review here should instead be limited to the record in this Challenge 2 appeal, and that the record on appeal here certainly does not include anything supporting a statement that the easements are overly broad.

The Landowners will inevitably attempt to use this language in the Court of Appeals' opinion to further object to the Town's future efforts to take necessary steps to secure this federal funding to protect the Pawleys Island shoreline for the public. The Town urges the Court to grant certiorari to avoid this unintended consequence of the Court of Appeals' fee review. The Court of Appeals determined that, in order to review the reasonableness of Landowners' attorney time, further consideration should be given to how Landowners' concerns over the scope of the easements influenced the time spent on this litigation. The circuit court never determined or even considered on the merits any issue regarding the scope of the easements, and the litigation never proceeded past early abandonment of the condemnation notices and dismissal of the Challenge 2 actions as moot.⁷ A statement about this issue, sua sponte, was outside the scope of review of the Court of Appeals. However, to the extent that it was relevant to consideration in the fee review, all that was needed was for the Court of Appeals to note that Landowners asserted the theory and had the right to devote the reasonably necessary time to litigate their claims.

As a prerequisite to federal funding of beach renourishment and other shore protection work, the Army Corps of Engineers requires these easements and the specific easement language included in the condemnation notices (excluding the footnote language appearing on R. p.269, fn.1, which does not seem to be the source of the Court of Appeals' statement about the scope of the easement). The central factual premise underlying all of this litigation is that the Army Corps requires this easement language in order to move forward with a long-term shore protection project

⁷ The fact that the cases were dismissed before discovery should not be held against the Town in the fee review. The dismissal was upheld as proper by the Court of Appeals, which ruled in rejecting Landowners' separate appeal that (1) the Town properly abandoned the notices, (2) the challenge actions to those notices were therefore moot (capable of repetition, but not evading review), and (3) Landowners' claims for prospective relief regarding future attempts were not ripe for judicial review. See Appellate Case No. 2021-000757, Unpublished Op. No. 2023-UP-055 (filed February 8, 2023).

with the Town, and that the Landowners do not want to sign off on easements with the language required by the Corps. In plain terms, the Town would have absolutely no reason to go to all this trouble if the Corps did not specifically require it.

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

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

These federal requirements give rise to a determination of necessity under South Carolina law. “A condemnor may comply with any federal statute, regulation, or policy prescribing a condition precedent to the availability or payment of federal financial assistance for any program

or project for which the condemnor is authorized to exercise the power of eminent domain.” S.C. Code Ann. § 28-2-50. A determination of necessity is a legislative question and presumed valid. Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 396, 175 S.E.2d 805, 814 (1970).

The purpose of pursuing the easements was and is to become eligible for long-term federal assistance. With regard to the easements as sought in the Challenge 1 cases, the affidavit of former Town Administrator Ryan Fabbri states that “the easement sought and the proposed easement grant document are a requirement by the Corps The scope of the easement, pursuant to the requirements that were established by the Corps, is what has been determined to be necessary to achieve the public purpose of a 50-year beach renourishment undertaking.” (See “Challenge 1” R. p.613). If there was evidence to the contrary and it was relevant to the fee award, the burden of proof was on the Landowners as the parties requesting fees to present it in the record.

With regard to the specific issue of the scope of the easements, also not addressed by the circuit court or raised as an issue on appeal, some element of public use is always part of a proper exercise of eminent domain. Karesh v. City Council of Charleston, 271 S.C. 339, 342, 247 S.E.2d 342, 344 (1978). While the right of individual members of the public to literally, physically use property is not always part of a condemnation (as, for example, in the case of a sewer line easement), it very often is (as in the case of a road right-of-way, a public park, or a multi-use path). Inclusion of a public right to use and access does not render a condemnation overly broad, and condemning authorities instead have significant discretion to determine the scope and nature of property interests condemned. Eldridge v. City of Greenwood, 331 S.C. 398, 425, 503 S.E.2d 191, 205 (Ct. App. 1998). While the scope of a given easement can certainly increase the impact on the market value of the property, that is an entirely separate issue that must be determined not as the basis for a challenge, but instead in the just compensation phase of the condemnation proceedings,

and compensation paid accordingly.

Again, this “overly broad” issue was not considered or determined by the circuit and, because the cases were dismissed as moot as affirmed by the Court of Appeals in separate Appellate Case No. 2021-000757, the parties did not complete litigation of this issue on the merits. It would be one thing for the Court of Appeals to state that the Landowners’ *concerns* about the scope of the easements justified increased attorney time in the challenge litigation. It was a very different thing to state that the scope of the easements was “extremely overbroad” when that question was not reached by the circuit court and was not an issue on appeal before the Court of Appeals.

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

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

The circuit court committed no error of law or abuse of discretion justifying modification of the fee award by the Court of Appeals. “The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion.” S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 8, 766 S.E.2d 700, 703 (2014). “An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.” Id. “Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” Id. “Decisions as to the amount of attorneys' fees should ordinarily be made by trial courts. When a trial court's decision is made on a sound evidentiary basis and is adequately explained with specific findings—as the law requires—we defer to the trial court's discretion.” Horton v. Jasper Cnty. Sch. Dist., 423 S.C. 325, 331, 815 S.E.2d 442, 445 (2018). Where analysis of the six factors identified under Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997), is applied, “an award for attorney's fees will be affirmed so long

as sufficient evidence in the record supports each factor.” Id. at 308, 486 S.E.2d at 760. The award should be upheld on appeal “if the findings of fact are supported by *any* competent evidence.” Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989).

The Court of Appeals modified the circuit court award by (1) awarding fees for 7.4 hours claimed in the days immediately subsequent to the abandonment of the condemnation notices and (2) increasing the hours for the fee petition from 8 hours to 15 hours. Respectfully, while the Town understands and appreciates that this does not result in a major increase in the award, it does still arise from an analysis that sets aside the properly exercised discretion of the circuit court in favor of a de novo factual review. The circuit court received conflicting evidence on these issues and had discretion to weigh it (see, e.g., R. p.734, ¶ 28-29), and the fee award order included appropriate findings of fact. Even if the Court of Appeals disagreed with the circuit court’s factual conclusion on these two issues, there is no deficiency in the order that justifies setting aside the required deference to the finder of fact or undertaking de novo factual review of what was reasonable. Landowners were given every possible opportunity to explain how and why attorney time had been spent, and had the burden to do so in a manner that persuaded the finder of fact. Sunrise Sav. & Loan Ass’n v. Mariner’s Cay Dev. Corp., 295 S.C. 208, 211, 367 S.E.2d 696, 698 (1988).

Specifically with regard to the award of an additional 7.4 attorney hours following the filing of the notice of abandonment, the Court of Appeals misapprehended what the record shows regarding this time. The abandonment was filed on February 10, 2021, and the 7.4 hours at issue were claimed for February 11, 12 and 15 and March 12, 2021. (R. p. 748). The opinion states that, “[i]n the affidavit supporting his fee petitions, Stanton indicated this time was devoted to discovery matters, the Town’s motions to dismiss, Landowner’s opposition to dismissal on the ground of

mootness, and communications regarding the erroneous Form 4 order.” (Opinion, p.7) Initially, it is important to note that virtually all of this is chronologically impossible. There was no discovery to work on during this period (Landowners had previously served discovery requests and deposition notices, but nothing was happening during this period), almost all of this time was before the motion to dismiss was even filed (except for the 0.9 hours claimed on March 12, 2021, about a week after the motion was filed), and the referenced Form 4 order was not even filed until nearly a year and a half later on July 12, 2022. (R. p.748; R. p.28).

Furthermore, the Landowner’s affidavits do not in fact claim that the time was spent in this manner. The affidavits and other submission to the circuit court provide no explanation of how the time during this period time was spent (See R. p.644, ¶ 165 – p.645, ¶ 171; p.649, ¶190 – p.652, ¶ 194). Landowners offered no explanation of this time until making a claim in their Appellants’ Brief that the time was spent “in reasonable followup to the putative ‘abandonment’”. (App. Brief p.34). The claim in that brief that a prior affidavit offered this explanation is patently incorrect, as the relevant explanatory language in the affidavits very clearly relates only to mileage for the motion to dismiss hearing and filing fees for the motion to reconsider dismissal. (See R. p.790, 3/8/23 Stanton Aff. ¶ 190 fn.3; R. p.890, 6/8/23 Stanton Aff. ¶ 190 fn.3). Landowners never provided the circuit court any basis to award this time, and the circuit court committed no abuse or discretion or error of law in declining to do so. Likewise, there was no basis in the record, and no legal basis, for the Court of Appeals to modify the award by adding fees for this 7.4 hours. The Court of Appeals’ characterization of its reason for adding this time – that it found “the circuit court misapprehended or overlooked evidence in the record in declining to award Landowners attorney’s fees for the time worked on the cases following the Town’s notices of abandonment” – seems to make clear that it merely identified a factual disagreement with the circuit court, and not any abuse of discretion.

Finally, the circuit court decision to award 8 hours for the fee petition, as opposed to the 15 awarded by the Court of Appeals, was also supported by evidence in the record. The record showed that little occurred in the case during the few weeks leading up to the Town's abandonment (See R. p.748 [Case Events Table listing Landowner's claimed attorney hours]; R. p.769, ¶8 [Affidavit of Town Attorney David Durant]). Documenting and submitting a petition for these attorney hours, and then appearing at a virtual hearing to explain it, should have been a fairly simple and straightforward task. The Dillard affidavit offered that a comparable 9 hours was a reasonable estimated amount of time to devote to the fee petition (R. p.739). There was no basis for the Court of Appeals to disregard the necessary deference to the circuit court as the finder of fact on this issue.

B. The Court of Appeals erred in modifying the fee award by awarding fees for additional time unsupported by the record.

Even if the circuit court had committed some abuse of discretion, the Court of Appeals' interpretation of the record does not support an increase in the fee award. As discussed above, the record does not provide any factual basis for an award of the additional 7.4 hours of attorney time. Horton, 423 S.C. at 331, 815 S.E.2d at 445 (fee award must be "adequately explained" by the factual findings). Likewise, nothing in the record justifies or supports an increase of the fee petition time from 8 hours to 15 hours. The Court of Appeals simply disagreed with the circuit court on the factual question of which number of hours was reasonably necessary.

C. The Court of Appeals erred in modifying the fee award by awarding fees and costs related to Landowners' unsuccessful opposition to the Town's motion to dismiss.

The Landowners are not entitled to recovery of fees and costs related to their unsuccessful opposition to the Town's motion to dismiss, and the Court of Appeals erred in modifying the circuit court award on this basis. As discussed above, the motion to dismiss was granted and affirmed by the Court of Appeals in separate Appellate Case No. 2021-000757. Even where statutory recovery

of attorney fees is triggered, a party is not entitled to fees associated with motions on which it was not successful. Hardaway Concrete Co. v. Hall Contracting Corp., 374 S.C. 216, 232–33, 647 S.E.2d 488, 496 (Ct. App. 2007). Notably, the Landowners generally did not even attempt to claim fees related to opposition to the motion. (R. p.619, ¶ 62; p.649, fn.33). Furthermore, this work was performed after the abandonment, when the challenged condemnation notices were no longer in play, in an attempt by Landowners to continue litigating against the Town on some other, unspecified potential claims. (R. p. 373, 3/31/21 Mem. Opp. M. Dismiss, p.5-6). By the plain language of the eminent domain fee statute, this is clearly beyond the scope of recoverable fees based on an abandonment. S.C. Code Ann. § 28-2-510(C). The circuit court committed no abuse of discretion or error of law in declining to award fees or costs related to opposition to the affirmed dismissal, and the record does not support any modification of the award on this basis.

D. The Court of Appeals erred in increasing the award of fees to Landowner Stanton who, as a pro se litigant, was not entitled to any award of attorney fees.

Because Stanton, as a pro se litigant, was never entitled to an award of attorney fees to begin with, the award should not have been modified in a manner that awarded him any additional fees. Stanton represented himself pro se in this matter. (R. p.299, Transcript p.4:21-22). Under South Carolina law, a pro se litigant who is an attorney is not entitled to receive attorney fees under a statute providing for recovery of fees “incurred”. Calhoun v. Calhoun, 339 S.C. 96, 100, 529 S.E.2d 14, 17 (2000) (“A *pro se* litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney.”). Under the Eminent Domain Procedures Act, recoverable litigation expenses must be “necessarily incurred”. S.C. Code Ann. § 28-2-30(14). At the hearing on the fee petition in this matter, the Town argued that Calhoun precluded Stanton from recovering litigation expenses. (R. p.327, Transcript p.32:14-33:8; See also R. p.780). Stanton conceded that while he (through his solo practice law firm) claims to have “sent” himself legal invoices, he had not actually

paid himself back for those invoices. (R. p.310, Transcript p.15:21-17:14). Accordingly, as was raised by the Town as an alternate sustaining ground before the Court of Appeals (Respondent's Brief, p.26), as a matter of law the award should not have been modified on appeal to increase the award of fees to Stanton. The Court of Appeals erred in doing so.

Likewise, there is no factual or legal basis for the Court of Appeals to treat Stanton's 1/3 portion of the fees as part of a "combined" total fee award to the other two Landowners. These were three separate challenge actions, and each Landowner had its own separate fee claim. Nonetheless, the Court of Appeals awarded a combined modified fee and stated that "the award is to be shared among Landowners pursuant to their fee sharing agreement." (Opinion, p.8). Awarding 100% of fees based on the calculated reasonable hours when only two of the three Landowners are entitled to recover fees means that the Town is being required to pay more than the reasonable fees actually incurred by those two parties. Landowners Sunset Lodge and Beattie were not jointly *obligated* to pay the full hourly fees to Stanton, and so it cannot be said that the full fee was jointly "incurred" as required for an award pursuant to S.C. Code Ann. § 28-2-510(C). See also § 28-2-30(14).

The Town is not aware of any legal authority requiring or even permitting a joint award of 100% of the divided fee in these circumstances. An award of 1/3 to both of the non-pro se Landowners is consistent with the reality of their agreement and the handling of "customary legal fees for similar services." See Jackson at 308, 486 S.E.2d at 760. The circuit court certainly acted within its discretion in finding that any fee awarded should be based on a 1/3 division instead of a combined, joint award. (R. p.57). Accordingly, whatever is determined to be the increase, if any, in reasonable overall time and associated fees for the litigation should be divided into equal thirds, and the increase in the fee award should be limited to 1/3 each to the Beattie and Sunset Lodge.

E. The Court of Appeals erred in increasing the award of fees and costs where Landowners' untimely fee petition did not give rise to subject matter jurisdiction in any court.

Landowners' fee petition was not timely submitted and, therefore, the circuit court lacked subject matter jurisdiction and should have denied it outright. While the Town did not appeal the circuit court award and has already satisfied it, the lack of jurisdiction should have barred any increase in the award on appeal. An appellate court has the power to affirm a lower court ruling based on alternate sustaining grounds appearing in the record. Rule 220(c), SCACR; I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 417, 526 S.E.2d 716, 722 (2000). Additionally, defects in subject matter jurisdiction may not be waived and can be raised even if not preserved or be invoked *sua sponte*. In re Bluffton Town Council Election, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009).⁸

The Rules of Civil Procedure in effect at the time of the fee petition provided that “[a] motion for costs, supported by an affidavit that the costs are correct and were necessarily incurred in the action, may be filed by the prevailing party within 10 days of the receipt of written notice of the entry of final judgment.” SCRCP 54(d) (subsequently amended). Where an attorney fee statute does not provide for a period of time for submission of a fee petition, the petition is only timely and within the subject matter jurisdiction of the Court if it is filed within the time specified for Rule 59(e) post-trial motions. Pitman v. Republic Leasing Co., 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct. App. 2002) (citing Rule 59(e), SCRCP (subsequently amended)) (applying Frivolous Proceedings Sanctions Act fee provision). Fee requests are subject to the limitation that, pursuant to Rule 59, SCRCP, “a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.” Id at 433, 570 S.E.2d at 190. The implausible alternative, as noted by the

⁸ Respondent did in fact raise this argument to the circuit court in its opposition to the fee petition (R. p. 780) and to the Court of Appeals as an alternate sustaining ground (Respondent's Brief, p.23).

Court in Pitman, would be that the trial court would retain, in perpetuity, unlimited jurisdiction to consider a fee petition, subject only to the defenses of laches and estoppel. Id. at 432, 570 S.E.2d at 189.

In this litigation, following the Town’s abandonment of the subject condemnation notices, Judge Culbertson entered Orders of Dismissal confirming the abandonment on April 22, 2021, and subsequently denied Landowners’ Motions to Reconsider on June 3, 2021. (R. p. 24, 6/3/21 Form 4). Landowners filed a Notice of Appeal of those orders on July 2, 2021, (R. [Appx.], 7/2/21 N. Appeal), thereby necessarily taking the position that the orders were final, but they did not file their fee petition until more than a year later on October 21, 2022. The circuit court did not have subject matter jurisdiction over this late filed petition. Extension of time for post-trial motions generally cannot be granted by the circuit court, and even if a fee petition were arguably eligible for post-expiration extensions the Landowners cannot show any “good cause” for such an extension in this matter. Rule 6(b), SCRCF. To the extent that the circuit court still retained jurisdiction over other post-dismissal clerical motions, it was based on the status of those motions as “matters not affected by the appeal.” Rule 241(a), SCACR.

It is true that the Court of Appeals has held that a trial court may retain jurisdiction over fees through an order that “specifically invite[s] future proceedings on the issue of fees.” Brawley v. Richland Cty., 445 S.C. 80, 101, 911 S.E.2d 156, 167 (Ct. App. 2024). However, Brawley is distinguishable because, in that case, the circuit court’s merits order “addressed attorney’s fees by ruling that Brawley was entitled to fees but leaving the amount of fees open.” Id. at 89, 911 S.E.2d at 161. In other words, the circuit court had already determined that the fee claimant was *entitled* to an award of fees, and simply retained jurisdiction over proceedings to determine the *amount*. Here, by contrast, the circuit court’s order of dismissal merely states that each Landowner “may

assert any claim it may have herein to reasonable attorney fees, litigation expenses, and costs[.]” (R. p.20). The court did not actually rule that Landowners were entitled to fees until the fee award order was issued many months later. The Town asserts that the jurisdictional question in this matter is therefore distinguishable from the holding in Brawley.

Because Landowners’ untimely fee petition did not give rise to subject matter jurisdiction in the circuit court or any other court, the award of fees and costs should not have been increased on appeal.

CONCLUSION

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

Respectfully submitted,

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September 2, 2026