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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 20-CP-22-00930
CASE NO. 20-CP-22-00931
CASE NO. 20-CP-22-00932

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.

and

M. Baron Stanton,Appellant,

v.

Town of Pawleys Island,.....Respondent.

RECORD ON APPEAL
(Including Stipulation and Certificate of Counsel)
Vol. III of III

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October 21 2022 motion of Landowners for expenses, with
affidavit, four exhibits to affidavit, proposed order, and proposed
Form 4

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	Civil Action No. 2020-CP-22-00932
	)	<i>(Consolidation of below Civil Actions)</i>
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	2020-CP-22-00932
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
_____	)	
<i>and</i>	)	
	)	
Franklin D. Beattie, as trustee of	)	
The Franklin D. Beattie Preservation Trust,	)	
	)	
Plaintiff,	)	2020-CP-22-00931
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
_____	)	
<i>and</i>	)	
	)	
M. Baron Stanton,	)	
	)	
Plaintiff,	)	2020-CP-22-00930
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
_____	)	

**NOTICE OF MOTION AND MOTION FOR EXPENSES
INCLUDING ATTORNEY'S FEES**

Each Landowner-plaintiff hereby moves the Court pursuant to this Court's Order of April 22, 2021, S.C. Code Ann. §28-2-510, and S. C. Code Ann. §15-77-300, for an order granting judgment against the Defendant Town for expenses including reasonable attorney's fees.

Each Landowner requests at least \$8,990.57 as of November 15, 2022, as more fully set out in the Affidavit of M. Baron Stanton Re Reasonable Fees and Expenses in the Case, plus any fees and expenses incurred thereafter relative to this motion.

The grounds for this motion are as set forth in the referenced Affidavit.

S.C. Code Ann. §28-2-510(C) provides that the landowner “is entitled to reasonable attorney fees, litigation expenses, and costs as determined by the court” if the condemnor abandons or withdraws the condemnation action “in the manner authorized by this chapter.” The Town states that it has so abandoned or withdrawn the condemnation attempt by filing a document February 10, 2021, entitled “Notice of Abandonment of Condemnation Action.”

Further, and in the alternative, S. C. Code Ann. §15-77-300 provides that, upon a finding by the court of lack of substantial justification of a municipality in pressing its claim in a suit it has brought but in which it does not prevail, the court may award reasonable attorney’s fees to the opposing party. The Town brought a second condemnation action without substantial justification while the Town’s first action was still pending. Its first condemnation action was dismissed on summary judgment and the Town filed a statement that it was abandoning the second action.

The undersigned certifies that, given the time it may take to obtain court determination, and the details to be presented, and given the historical time consumed in and results of consultation on the subject of the motion, consultation with respect to this motion could not be timely held, 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 and promptly inform the court if same eventuates.

An affidavit with exhibits, a proposed order, and a proposed Form 4 “Form of Judgment” are also filed with this motion.

Respectfully submitted,

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)

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Franklin D. Beattie,

as trustee of The Franklin D.

Beattie Preservation Trust, and

pro se for M. Baron Stanton

October 21, 2022

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	Civil Action No. 2020-CP-22-00932_
	)	(Consolidation of below Civil Actions)
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	2020-CP-22-00932
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
_____	)	
and	)	
	)	
Franklin D. Beattie, as trustee of	)	
The Franklin D. Beattie Preservation Trust,	)	
	)	
Plaintiff,	)	2020-CP-22-00931
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
_____	)	
and	)	
	)	
M. Baron Stanton,	)	
	)	
Plaintiff,	)	2020-CP-22-00930
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
_____	)	

AFFIDAVIT OF M. BARON STANTON
RE REASONABLE FEES AND EXPENSES IN CASE
[TO 11/15/22]

Personally appears under oath or making affirmation as set forth below, M. Baron

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(“Barry”) Stanton, who being sworn and under penalty of perjury, states as follows:

Nature of the Case and the Matter Before the Court

1. Before the court are requests pursuant to two statutes and any other rule the Court finds appropriate, for fees and expenses in the second suite of six cases in which the Town of Pawleys Island tried unsuccessfully for a second time to condemn oceanfront land.

2. In commencing this second attempt in October 2020, the Town used the same falsely obtained authorization as in the first attempt the Town commence in June 2020, used the same falsely obtained appraisal, used similar false statements in the condemnation notice, and used a condemnation notice deceptively backdated June 9, 2020 to the time of the first attempt.

3. Preceding service of the October condemnation notices, in an additional false Town Council meeting in October 2020, the Town Council also made additional false recitations and created additional false background. In light of prior difficulties and delay with a request for fees for defending against the Town’s first unsuccessful attempt,¹ I am providing the Court with further information on these matters than might otherwise accompany a request for fees, and additionally supporting the fee application under the Equal Access to Justice Act.

4. In 2018, the Town was prepared to move forward with its already vetted project – not involving the Corps of Engineers -- to do a first-ever beach “nourishment” of much of Pawleys Island with offshore sand.

5. Pawleys is a relatively stable, historically low-erosional beach on the southern

¹ The fee petition for the Town’s first unsuccessful condemnation attempt was heard after about nine months, numerous motions or briefs, and about eleven affidavits, and the Circuit Court result is now on appeal.

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part of the Grand Strand a/k/a the Stable Strand a/k/a Long Bay, in South Carolina. The beach had been stricken 29 years earlier by Hurricane Hugo (Sept. 21-22, 1989, the worst event since H Hazel of 1954) and, in the four years just preceding 2019, its natural cyclical rebuilding had been hampered by an unusual spate of hurricanes or tropical storms (e.g., TS Ana in 2015 (succeeded by H Joaquin, which fed a biblical 1000-year, statewide rain and flooding event, the October 2015 North American Storm Complex, but was not an oceanfront wind or wave phenomenon), H Matthew in 2016 (preceded by cyclones Bonnie and Hermine), H Irma in 2017, and H Florence in 2018, followed by H Dorian in 2019 and H Isaias in 2020). Additionally, studies had indicated that in general, there was a loss of total sand in the larger Grand Strand “system” and that large amounts of sand were no longer dynamic and had become affixed to the south end of North Island over many decades. For decades, there had been virtually zero attention, however, directed to the jetties constructed by the Corps of Engineers at Murrells Inlet, about 13 miles to the north, and their actual detrimental effects on longshore sediment transport.

6. In 2019, the Town publicly and privately requested a proposed easement on the oceanfront part of the Landowner-plaintiff’s improved oceanfront property. The Town did so because the Town said it wanted to get into a late-offered arrangement with the Army Corps of Engineers.

7. The late-offered arrangement with the Corps was to get the Corps’s help putting sand only on the southern part of the beach nourishment project. The Town had already made non-Corps overall financial and engineering plans for this southern part.²

² The Town’s overall project already qualified for future help, if ever needed, from FEMA, in the form of 75% reimbursement for repair of certain possible future storm damage. The Stanton Law Offices, P.A., 1230 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

8. The potential Corps “help” was not a prospect for the mid-island part of the project, which was a slightly longer stretch of beach. The reason was that, unlike the south end, mid-island had no parking-friendly, “perpendicular” public access points and the Town had no plans to add any. The Town thus planned to spend Town money to allow the mid-island to remain comparatively insulated from such intrusions; the Town would nourish and, if necessary, renourish, the private mid-island with Town funds, regardless of how the south end was handled.

9. For Corps help, the south end was found to already have sufficient perpendicular, or “vertical,” public access points, essentially allowing the public to park and get over to the beach, which itself is considered public everywhere below the mean high water mark almost everywhere in South Carolina and is often laterally accessible for miles.³

potential Corps help had different terms, contingencies and conditions.

³ These south end access points consisted of two small street-ends and what used to be, not a parking lot, but a mere small turnaround at the south tip, which Buck and Suzie Ward (unless Buck had already passed) granted to Georgetown County somewhere in the course of laying out or selling off the Bird’s Nest subdivision, which extends south for the last 0.8 miles of the island. The mere turnaround of the 1960s had somehow evolved over the years to have over 80 parking spaces, over 40 signs, countless overflowing open trash receptacles, and a number of public toilets.

The public traffic the south end already shouldered relative to the rest of the island thus already disproportionately burdened the south end, although – unappreciated by Council -- it was also a net burden for the whole island.

The public traffic – no matter where the access points -- generally runs counter to the interests of the Town and the mid-island folks’ “selling points” for why the Town was incorporated in the mid-1980s. The Town was formed to preserve the island’s almost unique family-beach attractiveness by zoning virtually all of it as limited density residential, and not encouraging commercial or transient “public” use. The “mission statement” touted by mid-island incorporation-backers in the mid-1980s and afterwards, has been recast by the present Council with the aid of Survey Monkeys.

The Town was zoned to avoid additional public traffic and density and zoned to completely prohibit any commercial establishments. Aside from the aspect of qualifying for strings-attached grants and some government programs, encouraging free-of-charge parking and additional public traffic on the island provides zero financial benefit to the Town. The Town has

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10. Of all the over 500 owners on Pawleys, the Town Council thus requested an easement from only the relatively few, about 113, whose property was oceanfront on the south end. None of Town Council or its helpers fell in this category, and none have ever signed an easement.

11. In soliciting the free easement for its project, the Town pretended that the easement was limited to doing beach renourishment work and depositing sand. The Town stated so in writing. As explained further below, the Town started out by not telling the truth and never looked back.

12. It appears that the Corps of Engineers may have also been in on the coordinated deception hereinafter described. The Town was privy to Corps communications as early as July 16, 2018, in which the Corps stated, “I want to make sure we don't have the same issues here that we do in Edisto.”⁴

no commercial enterprises. Public traffic creates a net drain.

Bringing out more of the public does not enhance property values or rentals in any way. Because of the unique noncommercial aspect of the island, off-island public do not spend any money at all for parking or anything else on the island, and public traffic does not generate any taxable activities or other revenue production for the Town itself whatsoever. However, it hastens development of the mainland into a geometrically overpopulating haven for folks expecting to use the beach.

Bringing more of the public out onto the island does do these things: it generates extra expense for law enforcement, for waste collection, for emergency response, for bathrooms, for road maintenance, etc.; it burdens the environment; it burdens property owners and renters with litter on land and in water, noise, pet feces, traffic, trespass, crime, and congestion; it reduces resilience and smushes the road shoulders and entire roadways down with vehicular frequency and vehicular weight and contributes to roadway flooding; it burdens the other infrastructure; and it decreases the attractiveness of vacation homes on the island, and consequently threatens accommodations tax revenue derived from rental of those homes, which is the principal source of Town revenue.

⁴ At Edisto, the Corps early on proposed an easement with a blank for exceptions, to be filled in with an exemption for the fishing pier sitting right on the beach. Yet, no exceptions

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13. The Town requested the easement free of charge. In response to the Town's requests, each Landowner-plaintiff in this action ("Landowner" or collectively, the "Landowners") promptly offered an extensive easement for sand placement and associated work. It was not acceptable to the Town.

14. Contrary to the Town Council's representations, the actual language of the proposed easement document was much greater in scope.

15. The proposed excessive easement was perpetual, with no exceptions, no termination, and no reversion, regardless of whether nourishment was done, or, if done, ever done again if the sand washed away. The easement was placed right next to the house, and it took the highly valuable oceanfront part of the lot. As further described below, it was much more damaging than represented, by, among other things, allowing the public to use the owner's land including any improvements on it (e.g., decks, showers, steps, etc.), right up to the door of the house, forever.

16. Of all the over 500 owners on Pawleys, only the relatively few, about 113, whose property was oceanfront on the south end, were sent this actual proposed easement document. They were instructed to hurriedly sign and were informed that they could not make any changes.

were proposed for other beachfront properties and the proposed easements were "perpetual." For several years, the Town of Edisto rejected a project with the Corps of Engineers because of the obvious objections its constituents would have to the true terms of proposed easements, and by June 11, 2020, the Edisto Town Council voted simply to withdraw from discussions with the Corps. The Corps asked ETC to reconsider. On October 8, 2020, after getting the "unchangeable" language for a "perpetual" easement changed, the ETC voted to rescind the withdrawal while negotiating "issues." In 2021, Edisto determined to go forward with an arrangement with the Corps, but it is yet to be seen how the collecting of easements will progress.

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17. The rest of the owners on the island (e.g., mid-island, north end, and off-ocean south end) only “knew” what they were falsely told by Town Council about the easement. Only south-end owners had acute cause to be concerned with the ramifications of the document.

18. To those who were concerned, the Town applied various strategies of deception (e.g., outright misstatements of known fact), legally unenforceable written and verbal side assurances (e.g., mere letters only from the Administrator promising to fix any improvements damaged, or, 4/20/19, “It will only be used for this project,” and “It will never be used for anything else,” and “no one on this Council will ever do anything to harm your property”), intimidation (e.g., publishing of shaming lists with identifiers and making threats of condemnation), peer pressure (e.g., stop short of showing up at doorstep with “torches and pitchforks”), and defamation (e.g., “holdouts” jeopardizing ability to merely “put sand on the beach”).

19. One such strategy was simply insisting that the easement did not mean what it plainly said. Such insistence was supported by stating that this assertion was borne out by how many people either signed the document trustingly in a Town-fomented panic, or had never even seen it, believed what the Town publicly said about it, and believed it was a “good” thing.

20. Despite the fact that in response to the Town’s requests, each Landowner had promptly offered an extensive easement for sand placement, the Town repetitively recited publicly to the Landowners’ friends and neighbors and the rest of the Town that the Landowners had not signed easements. The Town then began to publicly threaten condemnation of a proposed easement without ever describing it accurately in public.

21. As this campaign of urgency and deception wore on, later in 2019, the Corps

vacillated on its offer of “help.” The Town’s representatives, exasperated,⁵ then publicly declared that the Town would do the south-end work without the Corps, just as the Town had already planned in 2018, and just as the Town was still planning to do on mid-island.

22. The Town Council publicly declared that, just as had always been the case for owners mid-island, no easement from south-end owners was necessary.⁶

⁵ E.g, July 2019: then-mayor Braswell, “[T]hey’re not holding up their end of the bargain ... They are leading us down the primrose path”; Councilman Holliday, “We can’t rely on them,” and “the question for council is, will they do it at all? That’s the biggest concern I have,” and “You have to weigh [the benefit] against the potential that they won’t do anything at all”; and Councilman Carter, “There’s so much uncertainty in trying to deal with the Corps.”

⁶ Around this same time, the Town opted to place the maximum amount of sand allowed by the project design (1.1. million cubic yards) and performed analyses to assure that doing so with existing Town funding sources was financially sound.

Some authorities recommend that nourishment be done in smaller quantities at intervals as frequent as two years apart. This cautious approach is said to both mitigate environmental impacts on and recovery times for surf-zone and inner-shelf organisms, and allow interim assessment of such impacts and related factors such as grain size actually delivered in nourishing. However, the Town determined that placing the maximum quantity of sand would allow the project to stand as one-time thing, make repeat nourishment potentially unnecessary for 15-20 years or more, and still receive some protection from FEMA as a backstop.

Seemingly higher creek tides -- or lower roads and land, or both -- and island roadway flooding with saltwater had begun to become a problem, but the Town’s focus was on the “separate” question of the oceanfront at this point.

Changing the original grades, camber and crossfall of the roads and installing previously nonexistent drop inlets after Hurricane Hugo had also contributed to pooling and flooding of the roads at some high tides, along with water intrusion into the surface and base, and road deterioration. Although elevations relative to humps at sewer manholes were previously corrected in some places with extra paving, the humps continued to protrude above the elevation of the road. For decades, there had been very little attention to the question of vehicular weight and vehicular frequency from “public” traffic smushing the road shoulders down and compacting the entire roadways down to a lower elevation. Additionally, Hurricane Hugo (1989) deposited beach sand in the creek, as did Hurrican Matthew (2016). These factors, as well as the long-term effects of the 1845-46 construction of the South Causeway, studied by Miles O. Hayes in the 1970s, likely play a role in creek capacity, dissipation rates, and consequent flooding.

After the 1.1-million-cubic-yard nourishment was complete, however, attention to frequent and sometimes profound roadway flooding with saltwater became more intense. Strangely, while there is much scholarly work on sea wave flanking caused by hard erosion

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23. The Town ceased the threat of condemnation, ceased easement requests, and proceeded to do the very work for which the excessive easement had been represented to be necessary. This would have been the end of a shameful, but shorter, episode of civic misbehavior, but new whole chapters of fraud would ensue.

24. The Town completed the work in late February 2020, and declared the project completed.

25. However, as the Town was finishing up on the beach to the north, the Town surprisingly requested an easement again, again with perfunctory written misrepresentation of the scope of the easement requested.

26. The early 2020 request was soon accompanied again by public misrepresentation of the scope of what was requested, and was soon accompanied by publicized threats of condemnation.⁷

control structures, there appears to be very little yet written on a sort of sea wave flanking effect caused on a macro scale by nourishment projects flanked by salt creek inlets. I.e., it is difficult to find whether anyone ever asks how much water is displaced by 1.1. million cubic yards of sand in the ocean and whether that displaced water is forced into the creeks.

⁷ The Town stated that although the project was completed, the Town wanted to enter into a possible arrangement with the Corps for the possibility of future projects, which the Town had recently proclaimed publicly would not likely be necessary. The Town explained that in order to enter into this arrangement, the Corps had to be able to claim that the Corps was part of the already completed project.

For the purpose of making this claim, the Town stated that the Corps would be allowed to do some followup work doing dune vegetation planting and sand fence installation. The Town had originally planned to do this work in 2020 and had budgeted \$40,000 to \$80,000 for it. The Town now stated that the easement would be necessary to enable this dune planting, sand fence installation, and future projects recently represented to be probably unnecessary.

It was discovered later that the prospective nature of a deal with the Corps was not true, either. Unreported to property owners was the fact that the Town and the Corps had already signed their deal on January 16, 2020, while the actual renourishment was going on at the expense of the Town and with the acquiescence of the owners, without easements from the three

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Landowners or a few others who had not yet succumbed.

I can find no record of the Town Council disclosing that the former Town Administrator, Mr. Fabbri, signed the actual January 16 contract, as opposed to a memorandum of understanding many months earlier. Nothing about the fact of signing the deal or its authorization is included in any Council meeting minutes. The February 14, 2020 e-mail letter of Mr. Henry to all property owners, including “Frequently Asked Questions,” says nothing about the Corps or about a Corps deal. The FAQ states that the sand should last for more than 15 years with a considerable amount left over. Mr. Henry says nothing about the Corps or about the Corps or anybody else renourishing every 9 years. The FAQ says nothing about the Corps or easements at all.

Two years later, in March 2022, about 50% of south-end owners had gone ahead in the Pawleys way of doing things, and planted their own dunes at private expense. It was in March 2022 that the Corps did eventually plant approximately half of the lots it had initially contemplated so that it could claim it participated in – or in fact, directed -- the project completed in 2020.

Contrary to earlier threats and representations, the Corps did the installations without the necessity of easements from the three Landowners. The Landowners had already planted at private expense and were simply skipped. (The Landowners had long ago requested that they not be sued any more and that they also simply be skipped on the future deposit, if any, of upland sand, and that they or the Town could bear that expense, if any, in a negotiated way.)

The Corps spent over three-quarters of a million dollars to do probably a little over half the originally planned work at about 1250% of the planned cost of all the originally planned work. The Corps did so two years after the project was actually completed. Under the arrangement sought by the Town, it appears the Town would, one way or the other, share in this cost. (On September 30, 2022, Hurricane Ian washed away much of the sand fence and vegetation installed by the Corps, leaving debris on the beach and other private property, and owners and the Town began efforts to determine how to clean it up.)

In late May 2022, the unlikelihood and lack of concreteness of actual future renourishment projects continued to present themselves. Two multi-party lawsuits were filed by owners on Prince George, the beach immediately behind the southernmost part of Pawleys and stretching further south.

There, in numerous “counts” or “causes of action,” the plaintiffs included allegations that the Town of Pawleys was negligent in nourishing the beach in 2019-2020, that the negligence adversely affected Prince George properties, and that the permitting authority for beach nourishment, the South Carolina Department of Health and Environmental Control’s (SCDHEC’s) Office of Coastal Resource Management (OCRM – formerly the Coastal Council) had been negligent in granting a permit to nourish. The suits also named another state agency, a coastal engineering firm, and the dredge-pump-and-shape contractor as being parties involved in, and responsible for, the project, but not the Town’s new sometimes secret “partner,” the Corps, which spent money putting sand fence in the ocean in 2022 to claim that the February 2020 nourishment was a “completed Army project.”

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27. In May 2020, Town Council held a sham meeting. They unanimously voted to condemn, while not disclosing the full terms of the easement, explicitly falsely stating a limited scope of the easement (“simply to put sand on the beach”), and falsely implying publicly that the Landowners had simply refused any easement at all for no reasons or for reasons not worthy of consideration in light of the falsely stated scope of the easement.

28. Then, using false information described further below, the Town attempted condemnation the first time in June 2020.

29. The Town made this first attempt by serving a false condemnation notice on each Landowner herein in June 2020.

30. The Landowners then brought separate actions pursuant to statute challenging the right of the Town to condemn all or part of the proposed easement (the “Challenge I cases”).

31. The first three condemnation actions and the Challenge I cases constituted the first suite of six cases.⁸ (The Challenge I cases of the three Landowners were brought separately, but were consolidated in October 2021.) The Landowners’ complaints and amended complaints were extensive and factually detailed in setting forth their defense to the attempted condemnation, and this included, as required by the Rules of Civil Procedure, the falsities and other defects recounted herein. The Landowners’ papers opposing an early motion to dismiss by the Town, and the Landowners’ early motion for summary judgment, with supporting affidavit,

⁸ The Town’s condemnation actions are commenced (and a clock starts running on the Landowner to take action) when the Town serves the condemnation notices, but the condemnation notices do not get filed with the court – and no court file or file number is established – if the Landowner files a challenge action. Thus, it is the challenge action which has the case number and a case file at the courthouse. The Challenge I cases are 2020CP2200600, -601, and -602, which were later consolidated under -600.

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were similarly detailed. The Town Council was thus fully apprised of the objections to the proposed easement and objections to the conduct of the Town Council and its helpers in trying to obtain it and in attempting to condemn it.

32. Another chapter of fraud began when, while the Challenge I cases were pending, the Town commenced additional condemnation actions in October 2020.

33. The Town did so by serving another condemnation notice on each Landowner. This initiated the condemnation action and ensuing challenge for which fees are sought herein.

34. Again, the Town used false information. The Corps appears to have been complicit in, or aware of, the plan to inexplicably sue again while the first suits were still going on. However, almost no documents pertaining to the plan have been produced by the Corps in responses to requests under the Freedom of Information Act.⁹

35. In response to being sued again and having a continuing cloud on their titles and on their lives, the Landowners brought the instant separate actions pursuant to statute.

36. Each additional challenge action challenged the right of the Town to condemn – in the additional repetitive suit by the Town -- all or part of the proposed easement on the Landowner's property (the "Challenge II cases"). The second three condemnation actions and the instant Challenge II cases constituted the second suite of six cases. (The Challenge II cases were brought separately by the three Landowners, but in April 2021, the three Challenge II cases were consolidated in the manner shown in the caption of this affidavit.)

⁹ On 11-18-20, Nova Robbins (USACE Charleston) e-mailed Mr. Fabbri, then the Town Administrator (since resigned), checking to see if he was able to "re-initiate" condemnation of the remaining easements.

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37. After various arduous proceedings described in more detail below, summary judgment in the Challenge I cases was eventually granted against the Town on January 8, 2021.

38. The Court entered a detailed 24-page decision January 20, 2021, and the Town's motion to reconsider same was denied April 5, 2021. The order (Exhibit D) was not appealed and in May 2021, became res judicata, being binding on the Town for purposes of the instant cases and any others.

39. After other proceedings described in more detail below, and with discovery pending, on February 10, 2021, in the instant Challenge II cases, the Town filed a document entitled "Notice of Abandonment of Condemnation Action."

40. The Town subsequently moved the Court to dismiss the Landowner's Challenge II case and stop discovery.

41. The Town did so on the grounds that the Town's unilateral dismissal of its second condemnation action without prejudice rendered the entire Challenge II case moot. However, around this same time, the Town indicated that it intended to eventually sue the Landowners for a third time on the same allegedly moot subject.

42. Over the Landowners' objection, in April 2021, the Court (Judge Culbertson) granted the Town's motions, and acknowledged the right of the Landowners to apply for fees pursuant to statute as a result of the Town's abandonment. This is the subject of this affidavit. The Landowners moved to reconsider dismissal of their Challenge II cases, and the motion was denied in a short Form 4 order.

43. Other matters ensued between the denial of reconsideration of dismissal of the Challenge II cases and this fee application. The Town requested correction of a statement in the

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Form 4 order denying reconsideration, that the first condemnation attempt had been abandoned by the Town instead of being quashed by summary judgment. The Landowners proceeded to appeal the order which dismissed the Challenge II case as moot. The Town made a more formal motion to correct the Form 4 as described. In response to the Town's motion, the Court issued a second Form 4 order in 2022 declining to correct the first Form 4 on jurisdictional grounds. The Town filed what appeared to be a precautionary appeal. The Landowners then moved to correct the checking of a box ("ends the case") on the second Form 4 which was different from the box checked on the first Form 4 ("does not end the case").

44. The parties recently, in 2022, entered a stipulation of fact regarding the first Form 4, namely, that the Challenge I actions were ended by summary judgment in the Landowners' favor, and this stipulation allowed the Town to dismiss its precautionary appeal of the first Form 4. That appeal was recently dismissed. The Landowners' appeal of the dismissal of the Challenge II case as moot remains pending.

45. The costs and litigation expenses in the Challenge I cases were separately applied for in the Challenge I cases,¹⁰ and the costs and litigation expenses for the instant Challenge II cases have been separated so as not to duplicate anything requested in the Challenge I cases. In the instant cases, the Landowners seek only litigation expenses not sought in the Challenge I cases.

¹⁰ With regard to the Challenge I cases, S.C. Code Ann. §28-2-510(A) provides that the landowner's reasonable costs and litigation expenses incurred "must be awarded" if the court determines that the condemnor has "no right to take" all or part of the landowner's property the condemnor seeks to condemn. That is what Judge Nettles determined in his summary judgment order in the Challenge I cases, but the fees awarded were a fraction of the expense the Landowners incurred, and the fee decision is on appeal.

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46. With regard to the instant Challenge II cases, S.C. Code Ann. §28-2-510(C) (a part of the Eminent Domain Procedure Act) provides that the landowner “is entitled to reasonable attorney fees, litigation expenses, and costs as determined by the court” if the condemnor abandons or withdraws the condemnation action “in the manner authorized by this chapter.” The Town states that it has so abandoned or withdrawn the second condemnation attempt by filing a document February 10, 2021, entitled “Notice of Abandonment of Condemnation Action.”

47. S.C. Code Ann. §28-2-30(14) defines the “litigation expenses” to which the landowner is entitled to include “the reasonable fees and charges, disbursements and expenses necessarily incurred from and after service of the Condemnation Notice, including, but not limited to, reasonable attorney’s fees.”

48. In its April 22, 2021 order, the Court specifically authorized this application for fees as follows:

Any request for fees and/or costs should be presented by separate petition/motion in this action. For purposes of this Order and any ensuing petition for fees and/or costs, the Town has stipulated that:

(a) Delivery of the Condemnation Notice referenced as the “New Notice” in the Amended Complaint constituted service of the same and commencement of a condemnation action within the meaning of the Eminent Domain Procedure Act, and Town’s filing of the *Notice of Abandonment* constituted an abandonment and withdrawal of such Condemnation Notice and action; and

(b) Plaintiff may assert any claim it may have herein to reasonable attorney fees, litigation expenses, and costs as part of this action or, in the alternative and upon written notice to Town, in the separately pending “Existing Condemnation Action” referenced in the Amended Complaint.

(Order at 10.)

49. Additionally, in arguing against reconsideration of dismissal of the Challenge II cases as moot, the Town's counsel supported payment of the Landowners' fees as follows:

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

(Town's 6/2/21 memorandum opposing reconsideration of dismissal in Case 2020CP2200932, page 5.)

50. Additionally, upon a finding by the court of lack of substantial justification of a municipality in pressing its claim in a suit it has brought but in which it does not prevail, the court may award reasonable attorney's fees to the opposing party.¹¹

51. Thus, the EDPA provides for fees upon abandonment without any further requirements, while an alternative statute, S.C. Code Ann §15-77-300, additionally provides for

¹¹ To wit, S. C. Code Ann. §15-77-300 states:

(A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

(1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust.

The agency is presumed to be substantially justified in pressing its claim against the party if the agency follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction.

The second condemnation actions were brought by a political subdivision of the State and the Challenge II cases were actions contesting state action.

fees where, as here, the condemnor has proceeded without substantial justification. As discussed further herein, the Town not only has proceeded without substantial justification, but it has never attempted to explain its justification. There has never been any offered justification for commencing an additional condemnation action on the same subject as the first, while the first was still pending, and basing the additional action on the same dishonest and defective acts, as well as additional ones. In later proceedings, the Town stated obliquely through counsel, as if it were a matter of fact, that its purpose was to cure “procedural” defects. However, the Town has never stated what these defects were. Nor has the Town ever stated in what manner any defects were cured or even the subject of an attempted cure. Discovery requests (Exhibit C hereto) were sent to the Town on this subject, but they were never answered and the Town opposed being required to answer them.

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

52. I am the sole shareholder and designated director of Stanton Law Offices, P.A. and a member in good standing with the South Carolina Bar. I offer this Affidavit on my personal knowledge. I graduated from the University of South Carolina School of Law in 1986. I was admitted to the South Carolina Bar the same year. I have practiced law in South Carolina full-time and continuously since then.¹² I am familiar with standards and qualities of legal

¹² My present law office was established in 1994. I have a listed phone number. I established and have continued the professional practice of Stanton Law Offices, P.A. without maintaining a resume, advertising, having a substantial sign or having a 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

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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 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 (through the Bureau of Governmental Research and Service) and a summer in Washington, and exclusive of clerking with a firm throughout law school, I worked for two firms before opening my own office.

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

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

I have owned and run my own operation for the last twenty-eight years as of April of 2022.

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 sued for international and domestic financial fraud, opposed and navigated through FDIC superpower defenses, and dealt with construction and joint-venture disputes over large buildings.

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 and more recent work on an appeal dismissed upon payment of 100% of all fees awarded); injury and malpractice litigation; commercial lease negotiations and eviction litigation; closings of residential and commercial real estate sales; domestic and international distributorship structuring and

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negotiation; and 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; big and small wreck cases; ERISA-governed disability work; and things I, and often others, have never done before.

I have represented in litigation and otherwise, cow owners, dog owners, horse owners, car owners, Middle Eastern royalty, politicians, horse stables, server farms (a/k/a internet "clouds"), lawyers, banks, title insurance companies, engineers, musicians, accountants, 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 disabled, the convicted, the downtrodden, the disbarred, the depressed, the crazy, and the oppressed.

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

I have been a member of the Pawleys Island Civic Association for over 25 years. I served on the board of an entirely private specialized instruction/special needs school for the nine year maximum (at times, as 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

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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(C) and 28-2-30(14), cited above, which mandate an award of litigation expenses to each Landowner in this case. I am also familiar with the required procedures and approach prescribed by our state Supreme Court in Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008) and related cases, requiring a determination of a lodestar, before enhancement, based on (i) a reasonable hourly rate and (ii) the number of hours spent on the case.

53. 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.

54. 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

community work and modest philanthropic activity (including pro bono cases lasting years), however, is unreported if not anonymous.

rate, his associate's rate was about 1.4 times my rate, and his law clerks' and paralegals' rates approached 0.9 times my rate. I note that, of the Town's three (3) opposing counsel of record in this case, the hourly rate of each of the Town's two (2) primary counsel is \$250, which is about 1.3 times my rate. I have seen very little billed to the Town in the case at a lower rate.

55. 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.

56. 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 each Landowner are reasonable. Fees and out-of-pocket expenses of at least \$8,990.57 as of November 15, 2022, directly associated with the challenge action required by the Condemnation Notice served, should be awarded to each Landowner as the costs and expenses, including reasonable attorney's fees, of each Landowner for the hereinafter stated aspects and periods up to this point in the case.

57. Additional expenses of this nature should be awarded for work and outlays from November 15, 2022 to the time of award and expected conclusion of the case, and should be supplemented later in the event of any appeal.

58. With regard to expenses after February 10, 2021 (the filing of the "Notice of Stanton Law Offices, P.A., 1230 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

Abandonment”), I note that, after February 10, 2021, proceedings in the Circuit Court occurred until at least as late as the first and second weeks of September 2022.

59. At that time, the parties made a stipulation concerning certain facts mentioned in a Form 4 in the case, and the Town dismissed a precautionary appeal in the Court of Appeals. The various post-2/10/21 proceedings all required protection of the Landowner’s interests as a result of the Town commencing the condemnation which the Town stated it abandoned. These post-2/10/21, but pre-fee-petition, Circuit Court activities included matters relating to discovery, the Town’s motion to dismiss the Challenge II case as moot, the Landowner’s opposition to such dismissal, and various communications and papers pertaining to details of Form 4 orders entered.

60. The Landowner incurred substantial expense related to these activities. Further, the Landowner has appealed the April 22, 2021 order dismissing the Challenge II case as moot, and that appeal is still pending in the Court of Appeals. The work on these matters may well exceed the work for which fees are tentatively sought herein.

61. These matters have caused expenditure of time and money that has not been inconsequential. Given the breadth of S.C. Code Ann. §28-2-510(C) and S.C. Code Ann. §28-2-30(14) and pertinent court rules, the Court ought to award reimbursement of these expenses as reasonably “incurred from and after service of the Condemnation Notice” in order to protect the Landowner’s interests. The activities were necessary in my professional judgment in light of the Town’s commencement of this action as a second condemnation action and the Town’s stated intention, not to truly quit, but to start a third action. Further, if as a result of the pending appeal, this Challenge II case proceeds to a further determination against the Town’s ability to condemn, the post-2/10/21-pre-fee-petition expenses, and the appellate expenses, ought to be additionally

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reimbursable under the provisions of S.C. Code Ann. §28-2-510(A) pertaining to determinations against the condemnor in challenge actions.

62. However, it is the Landowner's desire at this time to simplify the matter. The Landowner therefore tentatively presents a request only for fees and other expenses up through the point just past the February 10, 2021 statement of abandonment, along with the post-2/10/21 fees and expenses attributable only to the instant fee petition. This request is without prejudice to presentation of a request for award the other described present and future incurred fees and other expenses, depending on the response of the Town to the instant application or the outcome of the pending appeal.

63. I set forth in the next section some of what the three Landowners and their counsel faced in the suits.

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

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

65. The instant case was one of three actions using one lawyer¹³ to stop the second three separate condemnation suits which were brought by the Town of Pawleys Island without any explanation. The Town used public funds – and eventually, three lawyers -- against the

¹³ One Landowner, the undersigned, a lawyer, represented himself, and represented the other two Landowners as well. Although he represented himself pro se, for convenience of plural construction, he is referred to as counsel for all three Landowners.

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Landowners, who were established property owners and constituents in the Town.

66. In these three Challenge II cases, which were generally handled in tandem, the three Landowners responded, during a pandemic, on a compressed timetable, to papers served by the Town with no explanation for why there were three more lawsuits by the Town.

67. The Landowners' counsel had to review and deconstruct the Town Council's put-on and utterly meaningless discussion in a spurious supplemental Town Council meeting held in October 2020. In that meeting, there was no mention of suing again, and the Landowners' lawyer had to analyze the Town Council's passing of a totally incomplete resolution, the Council's subsequent post-meeting "passing" of a different resolution containing false statements, and ensuing condemnation notices backdated to June 9. In the notice, the Town had changed the easement language by adding a nonsensical paragraph in a footnote to the easement language which the Town had repetitively told the public the Town could not change. The case was handled while having to coordinate and cross-check the defense and its differences and its duplications with the filings, strategy, discovery, procedural stage, and events in the already pending first suite of cases the Town initiated. Papers were often prepared, reviewed and filed in modified triplicate or, in the case of discovery, served in sextuplicate.

68. From the time of the first condemnation attempt by the Town, the Landowners' counsel had to search for, assimilate, reconcile, and periodically revisit, a large and varied amount of factual and legal information from widely ranging sources including videos of meetings, agendas, minutes, FOIA-obtained materials, news media publications, web-based material, and mass e-mails or other public communications of status reports, memos, project data, solicitations of easements, and threats of condemnation. It was sometimes difficult to get a

straight answer from the Town to a simple question or factual allegation, or to get a true answer, or to get any answer or information at all. Even as to the Corps, which was not a party to the proceedings, direct discussions were generally declined and decisions and plotting concerning the property not belonging to the plotters were secretive and unexplained. To give the flavor of the subject matter and the lack of transparency involved, attached is an appeal of the Corps's response to a request for government information, and the appeal is still pending at the time of this writing. (December 28, 2021 appeal of September 29, 2021 Corps response to Freedom of Information Act request dated July 19, 2021, assigned FOIA number FP-21-023185, attached as "Exhibit A".)

69. From service of the second round of condemnation notices October 16, 2020 to the February 10, 2021 statement of abandonment, the Town continued to resist the discovery necessary for the Landowners to be prepared for a lengthy and complicated merits hearing on multiple issues relating to the lack of bona fides of the condemnation attempts. For example, as late as January 2021, the Landowners were still trying to get something as simple as a straightforward answer under oath that would establish how many months or years the then Town Administrator, Mr. Fabbri (since resigned), had the noxious easement language in hand before lying to the appraiser that Fabbri did not have it.¹⁴ The Landowner's counsel had to follow up to the following effect after a motion to compel was heard by Judge Price¹⁵: "Again,

¹⁴ He had it at least a year and a half. This is based on Fabbri's receipt of the language from the Corps on November 15, 2018, and lying to the appraiser (for the second time) sometime after May 18, 2020, that the written terms of the easement were unavailable.

All of Fabbri's actions were ratified by the Council, who were well aware of the issues when they met in October 2020.

¹⁵ Various motions and other filings and events are set forth in a more detailed procedural Stanton Law Offices, P.A., 1230 Richland Street, P.O. Box 245, Columbia SC 29202 803-929-1484

after five months of pursuing the answer, we are not merely curious in the abstract about the general answer to the question or how we might surmise it by reviewing all other answers or documents produced at some other time.”

70. At stake in the cases was the Town’s attempt to permanently ruin and devalue the titles to three improved oceanfront properties worth millions of dollars. These properties were also of extreme family value to the Landowners.

71. All the while, the three Landowners and their counsel were the subject of a public misinformation campaign. The Town Council persistently and consciously falsely characterized the controversy – to neighbors, fellow citizens, the legal community and the general public -- as a refusal of the plaintiffs merely to allow sand to be put on the beach or as an attempt to stop a project or future beach protection. The project had already occurred with no easement.

72. The Town’s reprehensible handling of the matter was a continuation of the dishonest approach taken from the very beginning. From the beginning in 2019, the Town falsely stated that the easements the Town actually seeks are only to allow nourishment activity and deposit of sand. The Town did not publicly disclose the terms of the easements the Town actually seeks, which were only sent to the select subset consisting of south-end oceanfront owners. These terms include permanent public recreational and other access to within a few feet of the owner’s door, the ability of the public to use owner improvements and of the Town or

history hereinbelow for reference and to provide framework and context. The virtual hearing before Judge Price occurred, for example, on January 20, 2021. Prior affiants for the Town miscounted or omitted the number of motions or other items in the Challenge I cases, perhaps from unfamiliarity with the case. The complete substance of each item in the chronology cannot feasibly be recounted and nor can the number of pages, number of exhibits, time consumed, etc.

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Corps to destroy them, and ability of the Town to restrict the owner's use and access to the ocean.

73. To all other island owners and the general public, the Town stated that three owners "had not signed easements." The Town has repeated this defamatory generalized misinformation as late as September 3, 2022 at a large Civic Association gathering. The Landowners did sign easements for present and future sand placement in 2019, and offered them, signed, to the Town, without being threatened.

74. The Town similarly simplistically lied to the appraiser about the scope of these easements when obtaining 109 appraisals of south end properties in 2019. At that time, the Town did not provide the appraiser the written terms, and never mentioned "public access and use" or such terms as allowing the Town to "operate a public beach" on the owner's private property. The Town then lied about the scope of these easements in its cover letter and public statements when soliciting the easements from south-end owners in 2019.

75. The Town then publicly stated it was proceeding without the Corps in 2019. The Town thereupon publicly abandoned request for the easements. The Town then proceeded with the project for which it had requested the easements.

76. However, while pumping sand onto the beach, the Town then secretly, and likely with insufficient authorization, signed what has been described as a "club" agreement with the Corps on January 16, 2020. As noted in a previous footnote, I can find no record of the Town Council disclosing that the former Town Administrator, Mr. Fabbri, signed the actual contract, as opposed to a memorandum of understanding many months earlier, and nothing about the fact of signing or its authorization is included in any Council meeting minutes. The February 14, 2020

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e-mail letter of Mr. Henry to all property owners, including “Frequently Asked Questions,” says nothing of a Corps deal. The FAQ says nothing about the Corps renourishing every 9 years and instead states the sand should last for more than 15 years. The FAQ says nothing about the Corps or easements at all. The Town had already joined the “club” January 16, 2020, but in September 2022 at the PICA meeting was still telling folks that the Town wants to join.

77. While completing the sand placement in late February 2020, the Town publicly lied about the status of relations with the Corps in soliciting the noxious easements again from stragglers and “holdouts.” The Town again misrepresented in writing the scope of the easements requested when soliciting them directly.

78. The Town Council then publicly lied again about the scope of the easements it wanted in its May 2020 meeting. There, the Council (still the same Henry, Carter, Zimmerman, Green and Holliday as of this writing) authorized condemnation only of easements to “put sand on the beach.” Council’s staged production misrepresented that the condemnation was necessary because the owners, “for whatever reason, did not sign an easement.” The Council both falsely represented that the three had not signed any easement and falsely implied that the reasons, if any, pertained only to such utter refusal or failure to allow any sort of easement and were not known and not relevant to a decision.

79. The Town then materially lied again about the scope of the easements when, for purposes of condemnation, the Town obtained four appraisals of south end properties again¹⁶ in 2020.

¹⁶ The Town had already obtained 109 appraisals in 2019 and in that instance had also withheld the easement language and misinformed the appraiser of the scope.

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80. Once again, the Town withheld the noxious terms from the appraiser, falsely telling the appraiser that the written terms were unavailable, telling him that owner improvements were unaffected, and never disclosing the terms for public access and Town operation of a public beach on privately owned land. This of course resulted in a grossly deficient, if not meaningless, appraisal, and a grossly deficient, fraudulent, condemnation “price” for the Town to use as an offer in the condemnation, and a fraudulent amount for the Town to post as security if the condemnation proceeded to a valuation hearing.

81. The Town then lied again about the deficient scope of the 2020 appraisals in the condemnation papers the Town served on the three Landowners in June 2020, stating falsely that the easement described in the condemnation papers (the onerous version) was the thing which had been appraised and which had resulted in the values stated in the notice. The Town also lied in the condemnation papers that the Town had made the false appraisals available to the owners.

82. The Town had many of these matters called to its attention in increasing levels of detail when the Landowners filed for summary judgment in the Challenge I cases in August 2020 and when the Town unsuccessfully argued for dismissal of the Landowners’ Challenge I cases in September 2020. The Town did nothing to acknowledge and correct the false and substantially unjustified basis on which it was proceeding.

83. Persisting, the Town commenced the additional condemnation attempts in October 2020, relying on the same put-up May 2020 Council meeting, relying on the same false appraisals, and backdating the condemnation notices to June 9. The Landowners again had to undertake the considerable expense of defending.

84. Persisting, in December 2020, when opposing the Landowners’ August summary

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judgment motion in the Challenge I cases, the Town inaccurately argued to the court through counsel that the easements were only construction easements to provide safe access for placement of sand and related activities.

85. Persisting, when arguing for dismissal of the Challenge II cases as moot, the Town stated through counsel that its two failed condemnation attempts based on over a year of such lies were “procedural.”

86. The stop-at-nothing approach of the Town apparent early in the litigation was explicitly approved internally by the mayor, Mr. Henry, in a later discovered August 11, 2020 e-mail. There, confirming an interest in pursuing scorched-earth measures against the interests of these three truth-minded constituents, he inquired to the Army Corps of Engineers as to whether the Corps knew of a “nuclear option” to pursue against the Landowners. (August 11, 2020 e-mail of B. Henry to J. Hinely (USACE) and D. Steinbeiser (USACE), attached as “Exhibit B”.)

87. Following is an extraordinarily simplified procedural history of the twelve cases. The purpose of this account is to provide this Court with an adequate record. These matters occupy two sets of courthouse files. This account sets forth additional information which would be helpful to the Court in apprehending the context of the foregoing statements in this affidavit, the task of counsel for the three Landowners, and the nature and quantity of only some of the work involved. Following this history in a separate section is a sworn account of the time spent in tenths of hours, along with related calculations and explanations, and a requested amount of award.

Abbreviated Procedural History of the Twelve Cases

88. It was in 2019 that the Town began requesting free easements from about 113 of 220 or more oceanfront landowners. The stated purpose was putting additional sand on the beach all the way up the island under the Town's announced "beach renourishment" project. In response, the Landowners herein each separately agreed to grant oceanfront easements on their land for sand work and related work. The offered easements were unacceptable to the Town. The Town rejected them.

89. The Town later declared all easements to be unnecessary. The Town proceeded with the project in late 2019. In February 2020, the Town completed the sand supplementation. As the Town was doing so, the Town began requesting easements again.

90. On May 18, 2020, the Town Council held a meeting. There, they made their only decision of a formal resolution to authorize condemnation of easements to put sand on the beach on the Landowners' property.

91. In June 2020, by serving condemnation notices under the Eminent Domain Procedure Act ("EDPA"), the Town commenced the first three of six condemnation suits. Each suit by the Town was against a different homeowner-Landowner.

92. Rather than seek a limited construction and sand-deposit easement, the Town presented a permanent easement grant virtually calling for a fee simple deed of the oceanfront portion of the landowner's oceanfront property, with the Landowner retaining a handful of limited rights to be taxed, pick up litter, defend premises suits, etc. That is, the owner had no private right to exclude others and could himself be excluded. None on the Town Council had such south end property and none signed an easement.

93. The Town sought to impose easements for the perpetual “right of public use and access” with respect to the oceanfront portion of the Landowners’ property. The Town also included a perpetual right of the Town or its assigns to perform “beach renourishment” on the Landowners’ property,¹⁷ including the right to destroy owner improvements, a perpetual right to engage in additional activities, including “operation of a public beach” on the private property, and a perpetual right to impose certain additional restrictions on the use of the private property.

94. The Town attempted to take these easements for zero compensation, based on an appraisal obtained for purposes of the condemnation.

95. The condemnation notices served by the Town each referred to an appraisal. Each certified that the appraisal had been made available. No appraisal had been made available.

96. No appraisals accompanied the papers. The results of the referenced appraisals, however, had been put in the newspaper. The condemnation notices warned of a 30-day window in which the Landowners must commence a challenge action or else waive all challenge to the right to take.¹⁸

97. Each Landowner subsequently obtained the 60-page appraisal the Town had commissioned for purposes of condemning that Landowner’s property.

¹⁷ The Town itself owns no part of the beach whatsoever. The Landowners own the upper beach. The Landowners own to the mean high water mark of the Atlantic Ocean, and the State of Carolina claims to own the land below the mean high water mark in trust for the public of South Carolina under the “Public Trust Doctrine.”

¹⁸ Under S.C. Code Ann. §28-2-470, “[n]o issues involving the condemnor's right to condemn may be heard in the trial upon the issue of just compensation.”

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98. In July 2020, each of the Landowners sued pursuant to S.C. Code Ann. §28-2-470 (part of the EDPA) to stop the attempted condemnation. They each used Stanton, a lawyer, as counsel. They contracted to split the fees for the three cases three ways.

99. These were the first three “challenge suits” (the Challenge I cases). Under the EDPA, each challenge suit stayed the respective condemnation attempt.

100. On July 23, 2020,¹⁹ the Landowners served discovery, that is, requests for production. The Landowners thus made requests that the Town produce documents or other things for the Landowners or their counsel to examine, including all instructions and information that were given to the appraiser.

101. On July 31, 2020, the Landowners each filed an approximately 177-paragraph Amended Complaint in their respective Challenge I case.²⁰

102. On August 3, 2020, the Town filed motions pursuant to Rule 12(b)(6), SCRCPP, to dismiss the three Challenge I cases for failure, on the face of the Amended Complaint, to allege facts sufficient to state any cause of action.²¹

¹⁹ The discovery was served in one case July 23 and identical discovery was served in the other two cases July 27.

²⁰ As this Court knows, under Rule 9, in all averments of fraud or mistake, the circumstances shall be stated with particularity, and this includes averments of time and place.

²¹ As this Court knows, a 12(b)(6) motion is confined to examination of the pleading which is attacked. The motion admits, only for the purposes of the motion, all allegations of the pleading attacked, and asserts that the admitted facts would not support relief on any legal theory, regardless of whether mentioned in the pleading. The motion does not include or allow submission of affidavits, testimony, exhibits or other outside materials.

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103. The Town also obtained an expedited hearing of the Town's motions. The Town asserted that the challenges were brought in bad faith and requested that attorney's fees be assessed against the Landowners.

104. The Town also filed a motion to require each Landowner to post a ten-million-dollar bond.

105. The bond was to serve as recourse for liability to be imposed against the Landowner for stopping the condemnation suit brought by the Town against the Landowner.

106. The Town also moved to expedite the case overall.

107. On August 12 and 13, 2020, the Landowners served discovery, that is, interrogatories and notice of deposition of the appraiser. The Landowners thus propounded questions for the Town to answer under oath within 30 days in accordance with court rules and gave notice of intent to interrogate the appraiser under oath before a reporter who could produce a verbatim transcript.

108. On August 17, 2021, the Court issued a roster notice of September 11, 2021 hearing.

109. On August 21, 2020, the Landowners filed a motion for summary judgment and supporting affidavit. They thus asserted that among the many facts, there were numerous facts which were undisputed. They asserted that under Rule 56, unless these facts were genuinely disputed by the Town, the facts should be established, and relief could be ordered and supported based on those facts without a trial. That is, relief could be granted without having a trial of other facts or nuances that supported the same relief or further relief. They requested that the

attempted condemnation be quashed on multiple grounds stated in detail. They presented in the affidavit in detail, the undisputed facts.

110. On August 25, 2020, the Town filed a motion to halt discovery against the Town.

111. On August 27, 2020, the Landowners filed a motion for an order compelling the Town to respond to July 23, 2020 requests for production.

112. On August 28, 2011, the Town filed an affidavit²² of then Town Administrator Fabbri in support of the Town's August 3²³ 12(b)(6) motion.

113. On September 11, 2020, Judge Culbertson held a hearing in Georgetown on the Town's motion to dismiss. Both parties had briefed the motion. After a lengthy hearing, Judge Culbertson denied the motion. He denied the Town's motion to expedite the case overall. He denied the Town's motions to require \$30,000,000 in bonds.

114. Judge Culbertson did not hear the Landowners' August 21 motion for summary judgment, did not hear the Town's motion to prohibit the Landowners from obtaining discovery, and did not hear the Landowners' pending motion to compel the Town to respond to the first request for production.

²² As this Court knows, a 12(b)(6) motion is confined to examination of the pleading which is attacked. The motion admits, only for the purposes of the motion, all allegations of the pleading attacked, and asserts that the admitted facts would not support relief on any legal theory, regardless of whether mentioned in the pleading. The motion does not allow submission of affidavits, testimony, exhibits or other outside materials.

²³ As this Court knows, under Rule 6, when a motion is supported with an affidavit, the affidavit is to be served at the time the motion is served, rather than 25 days later or at some other time.

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115. On September 18, 2020, the Town answered the Amended Complaint. The Town denied over 173 of the 177 paragraphs.²⁴

116. On September 28, 2020, the Court put the August 21 motion for summary judgment on the roster for hearing October 30, 2020.

117. On or around October 6, 2020, the Town served interrogatories and requests for production. The Landowners' counsel, after attempts to consult opposing counsel, later filed a motion for enlargement of time to respond, and subsequently fully responded.

118. On October 12, 2020, the Town Council held another meeting. They decided on another formal resolution but did not actually finish stating what was actually resolved and left it to be completed outside the meeting by the then Administrator Fabbri and one Council member, Henry. The resolution related to the existing condemnation attempt and the easement sought. The resolution did not reference additional condemnation actions.

119. On October 12, 2020, the Court sent a reminder notice for the October 30 consideration of summary judgment, indicating a preference for, and the availability of, oral argument.

120. On October 14, 2021, the Town moved to continue the hearing of the motion. The Town asserted that discovery was not complete and stated certain personal conflicts as reasons for continuance.

²⁴ As this Court knows, under Rule 8, when a party answers a complaint, denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder.

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121. On October 14, 2021, the Landowners filed an affidavit with a detailed response to the request for continuance.

122. Friday, October 16, 2020 was the day previously agreed for the Town's appraiser's deposition. On the first day of the deposition, October 16, 2020, while the motion of the Town to put off the Landowners' summary judgment motion was pending, the Town, without notice or explanation, sued each of the three Landowners again.

123. The Landowners took the deposition, completing it on a day the following week. The deponent expert's work papers had not been previously produced and were not at the deposition. The one deposition of a deponent operating under a disability, for the three cases, with three separate 60-page reports, took approximately eight hours. This was later publicly misrepresented twice by the Town as 17 hours.

124. In the additional three condemnation actions, the Town again sought to take easements for perpetual public access to and use of the oceanfront portion of the Landowners' property. The Town again sought the right to perform "beach renourishment," including destruction of owner improvements. The Town again sought perpetual ability to engage in additional activities, including "operation of a public beach" on private property, and the perpetual ability to later impose certain additional restrictions on the use of the property. The Town again sought to do so for zero compensation.

125. Again, no appraisal accompanied the papers served. No additional appraisal was provided previously. The Town relied on the same dishonestly obtained appraisal of deficient scope and deficient price conclusion.

126. In the three additional condemnation suits, the Town did not appear to have cured a single one of the defects in the first three suits and the Town has never articulated what defects these suits corrected. The Town never informed the Landowners or their counsel of the purpose, impetus, or justification for the three additional suits. The Landowners had to defend against these additional suits nevertheless.

127. On October 21, 2020, the Court continued the October 30 summary judgment hearing.

128. On October 30, 2020, Ryan Fabbri, then Town Administrator, signed an affidavit for the Town. It was not at that time served on or provided to the Landowners.

129. On November 5, 2020, the Landowners filed a motion to compel with respect to answers to August 13, 2020 first interrogatories.

130. On November 12, 2020, each of the three Landowners commenced a challenge suit to stop each of the three additional condemnation suits and disallow condemnation. These were the instant second three²⁵ challenge suits (the Challenge II cases).

131. On November 20, 2020, the Town filed the October 30 affidavit of Ryan Fabbri in the Challenge I cases.

²⁵ Unless a difference is noted, the pleadings, motions, discovery, orders and other papers in the Challenge I cases were handled similarly to each other, and the pleadings, motions, discovery, orders and other papers in the Challenge II cases were also handled similarly to each other. Reference to an item in the record herein or otherwise, is generally a reference to a paper in in the Sunset case, 2020-CP-22-00932, and is intended to include a reference to the corresponding item in each of the three corresponding challenge suits.

The Challenge I cases were consolidated at the trial level, but only at the end.

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132. On December 4, 2020, Judge Nettles heard the Landowners' summary judgment motions in the Challenge I cases.

133. Also pending were the Town's motion for protection from discovery and the Landowners' request to compel the Town to swear, pursuant to Rule 33, SCRPC, to October 26, 2020 answers to August 12, 2020 interrogatories, and to either answer, or answer fully, certain interrogatories.

134. The parties confirmed to Judge Nettles at oral argument that for purposes of all three Challenge I cases, the Landowners had deposed the appraiser.

135. The Town acknowledged at oral argument that the Town had served additional condemnation notices on the Landowners, with respect to which the Landowners had filed actions 2020CP2200930, -931 and -932 (the Challenge II cases).

136. On December 14, 2020, the Town answered the Complaint in the Challenge II cases. The Town denied virtually 90% or more of the allegations,²⁶ alleged that the Corps would spend \$300,000 planting sea oats and installing sand fence,²⁷ alleged circumstances under which the Corps would renourish "the Town's beach"²⁸ or repair "all beach damage,"²⁹ and sought attorney's fees from the Landowners.

²⁶ As this Court knows, under Rule 8, when a party answers a complaint, denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder.

²⁷ The Town had initially budgeted \$40,000-80,000. In March 2022, the Corps spent over \$750,000 to do a little more than half the lots originally contemplated.

²⁸ The Town owns no beach whatsoever, above or below the mean high water mark.

²⁹ The Corps "benefits" were confined to the 1.2 miles on the south end of the island, while Town funds would be used for beach along the 1.5 miles mid-island and northward.

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137. On January 8, 2021, Judge Nettles preliminarily granted summary judgment on a “Form 4.”

138. On January 10, 2021, the Landowners served interrogatories in the Challenge II cases. Among the questions were seven related to the nature, intended status, and purpose of the second set of suits, such as requests to explain the purpose of the second set of actions, and why the condemnation notices were backdated to June 9, 2020. Also among the questions were three seeking the basis in law or fact of the wild statements added as a footnote to the proposed easement. The interrogatories, never answered, are attached as “Exhibit C.”

139. On January 13, 2021, the Landowners filed a 375-paragraph amended complaint in the Challenge II cases, along with extensive exhibits.

140. This pleading continued to incorporate the Challenge I Amended Complaint by reference. It also detailed in each copy, the allegations pertaining to the Landowner in that case, as well as the allegations pertaining to the other two Landowners. Further, in light of there being more than one version of “resolution” when the Town passed a resolution, various document swapping between resolution versions and in service and reservice of condemnation notices or parts thereof, the unrelenting misrepresentations of the Town, the Town never properly answering even a fraction of the Amended Complaint in the Challenge I cases, or the Complaint in the Challenge II cases, the condemnation notices not being required to be filed with the court, the Town’s backdating of the October condemnation notices to June 9, the false recitations in the Town Council’s October resolution concerning things being previously proposed to and sent to the Landowners (which were known not to have been), and various other considerations, the Challenge II Amended Complaint broke facts down to granules -- into baby steps. The Amended

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Complaint delineated what was served or sent by the Town (or not) in which instances and at what actual times.

141. On January 14, 2021, the Town filed a motion to disqualify the Landowners' counsel. The motion asserted disqualification from representing Sunset and Beattie in the Challenge I cases. At 11:05 p.m., the Landowners filed a motion to strike the Town's motion for failure to consult between counsel as required before filing the motion.³⁰

142. On January 15, 2021, the Landowners served notice that the Landowners would take a deposition in all six cases of the then Town Administrator (Fabbri), on February 19, 2021.

143. On January 20, 2021, Judge Price heard the Landowners' November 5, 2020 motion to compel certain discovery from the Town.

144. On January 20, 2021, Judge Nettles entered a detailed 24-page decision of the summary judgment motion ("Summary Judgment Order," sometimes "Summary Judgment"), quashing and dismissing the condemnation attempt.

145. The Summary Judgment Order pursuant to Rule 56 ruled that approximately 50 facts germane to the motion were undisputed. After other proceedings, this order was re-entered April 5, 2021 in the Challenge I cases and was not appealed. It is attached as "Exhibit D." It is res judicata in the Challenge II cases, and is binding on the Town in the instant proceedings.

146. These undisputed facts, in extenso, were as follows:

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 affected part of the owner's land to "public use and access." (See, e.g., Stanton Aff. ¶¶33 and 37.)

³⁰ As this Court knows, under Rule 11, SCRCP, with limited exceptions such as motions to dismiss or time sensitive matters, there is a duty to consult before filing a motion.

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

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

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

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

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

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

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

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

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

Similar easements were sought in this manner for only about half of the Town’s overall renourishment project. The easements were sought only for the limited part on

the south end of the island, on which the Town had engaged in discussions and conditional agreements to get present and future assistance from the U.S. Army Corps of Engineers. (Stanton Aff. ¶¶16 and 17.) The rest of the project did not involve financial contribution by the Corps or any request for easements.

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

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

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

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

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

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

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

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

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

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

There is a full, official recording of the meeting, and before the condemnation action was served, there was no public record of Town Council considering the specific objections of the proposed condemnees to the easement requested. (Compare Fabbri Aff., devoid of any evidence of any such consideration.) There is also no public record of

Town Council discussing, mentioning, or acknowledging that the three condemnees had provided the Town with signed easements providing the things in A-D, above, and more. (Compare Fabbri Aff., devoid of any evidence of any such discussion by Town Council.) For purposes of the thus approved condemnation of a “renourishment easement,” the Town then procured an appraisal report without describing these objected-to encumbrances to the appraiser. (Stanton Aff. ¶¶105, 106, 107, 111, 112, 113, 114, 115, 116, 128, and 129.) The appraiser was not given a copy of the language of the proposed easement that fully disclosed the scope of the easement. (Stanton Aff. ¶¶105, 106, 107, 111, 112, 113, 114, 115, 116, 128, and 129.)

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

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

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

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

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

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

(4/5/21 Summary Judgment Order in Challenge I cases, pp. 6-12 (omitting substantial footnotes regarding terms of federal programs, scientific studies and terminology).)

147. The Summary Judgment Order ruled that the Landowners had presented “about nine sometimes factually overlapping reasons for granting summary judgment.” (Summary Judgment Order, p. 13 (setting forth reasons).)

148. Judge Nettles's discussion included ruling that the Town Council's affirmative misstatement of the scope and consequences of the requested easement in authorizing condemnation, and failure of the Town Council to identify, acknowledge the reality of, and weigh the consequences and necessity of the objected-to features in authorizing condemnation were fatal to the condemnation attempt. His discussion included ruling that the failure of the Town to provide and identify the objected-to features to the appraiser and inform him of them, was independently fatal to the condemnation attempt.

149. On January 25, 2021, the Landowners filed a fee petition in the Challenge I cases. In about 26 pages, it included a motion for award of attorney's fees and expenses, an affidavit of fees and expenses, a proposed order, and a proposed Form 4A. (Collectively, including later updates, the "Challenge I fee petition.") Despite the thoroughness of the petition and the conservative award requested, the Town objected four days later, but provided no details of the basis for objection.

150. The Challenge I fee petition included background on the lawyer, the case, and the work, and a specification of the sworn hours worked on the cases in tenths of hours. The petition requested that the contractual hourly rate of \$190 be applied to a specified reduced number of the sworn hours, and did not request that the result be enhanced by a multiplier. The petition requested that the overall result be divided by three, that one-third be allotted to each Landowner, and that Sunset and Beattie each receive a third, while Stanton waived the one-third allotted to him.

151. The minimum number of hours sworn to have been devoted to all six challenge cases through January 24, 2021 was stated to be over 686.9 hours. A rate of \$190 per hour and

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686.9 hours represented \$130,511 in fees actually incurred by the Landowners overall through January 24, 2011, of which Sunset and Beattie each incurred and requested approximately \$43,503.66 and Stanton incurred and waived \$43,503.66.

152. This filing of the Challenge I fee petition included time spent on the Challenge II cases. Subsequent update in April 2021 backed out about 54.9 hours of time for the Challenge II cases for separate submission.

153. At 9:59 p.m. on January 26, 2021, the Landowners filed a brief opposing the Town's January 14, 2020 motion to disqualify their counsel. It tracked and expounded upon the discussion Stanton had had with DuRant around Wednesday, October 21, 2020 about the involvement of both counsel, at which time Stanton offered to discuss the matter again with DuRant or his representative at any time, and to in all instances, alert DuRant tactfully and with ample notice if Stanton detected any obstacle for either lawyer. The brief also supported Landowners' separately filed January 14 motion to strike for failure to consult.

154. On January 27, 2021, Judge Price entered an order granting the Landowners' motion to compel certain discovery from the Town, which motion had been heard January 20, 2021.

155. On January 29, 2021, the Town withdrew its motion to disqualify Landowners' counsel.

156. On January 29, 2021, the Town filed a motion to reconsider Summary Judgment. The Town's contentions included an assertion that "[f]urther 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 that the Court should enter an order "directing the parties to complete pretrial matters."

157. Contained in the same January 29 document was a request by the Town for an evidentiary hearing, with live witnesses, on the fee petition. The Town requested delay of at least 120 days to engage in discovery on fee matters.

158. On February 2, 2021, with input from counsel, Judge Price amended his January 27, 2021 order granting the Landowners' motion to compel certain discovery from the Town, which motion had been heard by Judge Price January 20, 2021.

159. On February 3, 2021, the Landowners responded to the Town's January 29 motion to reconsider in which the Town also included requests for four-month delay and other matters.

160. On February 3, 2020, a third lawyer hired by the Town, Mr. Dillard, entered appearance.³¹

161. On February 4, 2021, the Landowners separately filed a brief replying to the fee-trial requests made in the Town's January 29, 2021 motion to reconsider Summary Judgment.

162. On February 4, 2021, the Landowners supplemented the Challenge I fee petition.

163. On February 5, 2021, the Town filed a brief opposing the Challenge I fee petition, modifying the requests made in the Town's January 29 paper.

164. On February 9, 2021, the Landowners filed a reply.

³¹ It is undisputed that this lawyer, an affiant in the later proceedings on the Challenge I fee petition, had not been involved in or responsible for the cases until shortly prior to entering his appearance.

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165. On February 10, 2021, the Town filed a notice in the instant Challenge II cases that the Town was abandoning its second three condemnation attempts.

166. Almost simultaneously, even though the 1.1 million cubic yards of sand had long ago been placed on the beach, the mayor (then Henry) announced steadfast determination to continue pursuing “the easements.” The Town later declared in papers and arguments that its abandonment was without prejudice to suing the Landowners for condemnation a third time and acknowledged it intended to do so.

167. On March 1, 2020, the Town filed a motion related to the Challenge I fee proceedings and proposed that the motion be heard March 3, which was a day already scheduled for appearance before the Court relative to the fee proceedings. The Town modified the requests made in its January 29 motion to reconsider, as modified by its February 5 brief.

168. On March 2, 2021, the Landowners filed a brief relative to the evolving requests made by the Town in its January 29 motion to reconsider, its February 5 brief, and its March 1 motion, and objected to hearing the Town’s March 1 motion on March 3.

169. On March 3, 2021, the Town answered the Amended Complaint in the Challenge II cases, denying at least 90% of the 375 paragraphs.³²

170. On March 3, 2021, in the Challenge II cases, the Town filed motions for protection from then pending discovery sought by the Landowners. The discovery included the January 10, 2021 interrogatories (Exhibit C hereto) asking about the purposes of the second

³² As this Court knows, under Rule 8, when a party answers a complaint, denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder.

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condemnation attempt and other matters, and the deposition of the then Town Administrator (Fabbri – since resigned), for which notice had been served on January 15, 2021, for a proposed deposition date of February 19, 2021. The deposition had been continued by consent, without prejudice to the right of the Town to object to the deposition.

171. On March 5, 2021, in each of the Challenge II cases, the Town filed a motion to dismiss the challenge suit on the grounds that the suits were moot. The contention was that the challenges were mooted by the Town's withdrawal of its condemnation notices without prejudice.

172. On March 17, 2021, the Landowners filed a brief in the fee-related proceedings in the Challenge I cases. The Landowners briefed their contention that South Carolina law concerning fee applications does not require routine disclosure of private bills to an active adversary or routine disregard, waiver or breach of Rule 1.6 of the South Carolina Rules of Professional Conduct as a condition of requesting fees provided for by statute.

173. On March 17, 2021, The Town filed a brief in support of its motion to reconsider Summary Judgment in the Challenge I cases.

174. On March 18, 2021, the Landowners filed a brief opposing the Town's motion to reconsider.

175. On March 19, 2022, Judge Nettles heard the Town's January 29 motion to reconsider in the Challenge I cases.

176. He also heard requests the Town had made regarding Challenge I fees in the January 29 motion paper, as later modified in the Town's February 5 brief, as later modified in the Town's March 1 motion.

177. On April 1, 2021, in Georgetown, Judge Culbertson heard the Town's March 3 motion for protective order and March 5 motion to dismiss in the Challenge II cases.

178. On April 5, 2021, in the Challenge I cases, Judge Nettles entered the final formal Summary Judgment Order against the Town (Exhibit D).

179. On April 5, 2021, Judge Nettles entered a protective order providing for production of selected confidential billing materials in redacted form to the Town, and production of the selected billing materials, under seal, in redacted and unredacted form, to the Court for in camera review and determination of whether any redacted items should be unredacted.

170. On April 22, 2021, the Landowners updated the Challenge I fee petition. Among other things, they backed out about 54.9 hours of their counsel's previously stated Challenge II time for separate submission in the instant cases, and did not add subsequent time allocated to the Challenge II cases, which has been subsequently separately tracked.

171. On April 22, 2021, Judge Culbertson granted the Town's March 3 and March 5 motions in the Challenge II cases to stop general discovery and to dismiss as moot.

172. On April 28, 2021, the Landowners each filed a motion to reconsider the Circuit Court's granting of the Town's March 3 and March 5 motions in the Challenge II cases. Among the Landowners' contentions were that they sought permanent relief in addition to the permanent res judicata relief which would be established by the Summary Judgment Order and that in light of the Town's expressed intention to sue the Landowners a third time, the actions were not moot.

173. The Landowners also contended they should not be denied the opportunity to timely obtain the deposition of the then Town Administrator (Fabbri) and other discovery.

Approximately a year later, in May 2022, the then Town Administrator resigned.

174. On May 5, 2021, the April 5, 2021 final Summary Judgment Order (Exhibit D) became final by nonappeal by the Town within 30 days.

175. On June 3, 2021, in Georgetown, Judge Culbertson heard and, in a Form 4 order, denied, the Landowners' motions to reconsider his April 22, 2021 order granting the March 3 and March 5 motions of the Town in the Challenge II cases to preclude discovery and dismiss.

176. On July 2, 2021, the Landowners served notice of appeal of the Circuit Court's granting of the Town's March 3 and March 5 motions in the Challenge II cases. The previously mentioned other proceedings or exchanges concerning the first Form 4 order and the subsequent Form 4 order began around this time as well and were mostly concluded by September 2022.

177. On September 10, 2021, in the Challenge I cases, the Landowners filed the last of three updates (e.g., 2/4/21 and 4/22/21 updates) to the January 25, 2021 Challenge I fee petition.

178. In the September 10, 2021 update, Sunset and Beattie each requested an award of actually incurred attorney's fees of \$60,198.33 in the Challenge I case, on the basis earlier described, but exclusive of Challenge II fees and other expenses. That is, essentially, for the three cases overall, request was made for fees based on two-thirds of a reduced account of the total time sworn to have been spent for all three Challenge I cases. No enhancement was requested.

179. On September 20, 2021, the Town filed approximately 104 pages of additional materials. These included a Memorandum in Opposition to the Landowners' January 25, 2021

motion for fees and expenses, an Opposing Affidavit of Pagliarini, an Opposing Affidavit of DuRant, an Opposing Affidavit of Henry, and an Opposing Affidavit of Dillard.

180. Subsequently, the Town also filed “Pre-hearing motions.”

181. On October 4, 2021, the Landowners replied. They filed a brief, an affidavit of Beattie, who is a retired lawyer, an affidavit of another attorney, Howard (a principal of the other party, Sunset), and other counteraffidavits by Stanton. The Beattie and Howard affidavits stated the experience of the affiants, stated that the affiants had observed the progress of the case from the beginning, stated that they were satisfied with the fees charged, and commented on the quality of the work.

182. On October 6, 2021, in Florence, Judge Nettles heard the Landowners’ January 25, 2021 application for Challenge I fees.

183. At the hearing, the Town’s counsel stated for the record that the Town did not contend that the 1000.5 hours stated by the Landowners’ counsel were not spent.

184. On November 23, 2021, Judge Nettles awarded Sunset and Beattie each \$8,000 for attorney’s fees, plus other nonfee expenses.

185. This represented 125 total hours overall for the three cases, multiplied by \$190 per hour, for a total of \$24,000 overall, with no multiplier, of which one-third was awarded to Sunset, one-third was awarded to Beattie, and nothing was awarded to Stanton, who had waived a claim to fees.

186. On December 2, 2021, Sunset and Beattie served a motion to reconsider, asserting that the award was erroneous, contrary to statute, and grossly inadequate.

187. On January 28, 2022, the Circuit Court denied the motion without hearing in an order of the same date.

188. On Monday, February 28, 2022, Sunset and Beattie served notice of appeal.

189. After the aforementioned September 2022 stipulation regarding Judge Culbertson's Form 4 order and the September 2022 dismissal of the Town's precautionary appeal, now come the Landowners and move pursuant to Judge Culbertson's April 22, 2021 order in the Challenge II cases for an award of their litigation expenses in the Challenge II cases, including attorney's fees.

The Time Devoted to the Matter, and Expenses Incurred

190. Following is a statement of time spent and expenses incurred in Challenge II which were not included in the time and expenses submitted in the last Challenge I fee petition.³³ Time spent and expenses incurred in the stated aspects of the matter for the approximately two years from 10/16/20 to 11/15/22 are as follows:

11/18/20 statement³⁴

11/11/20	M. Baron Stanton	0.5	hours
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³³ As noted hereinabove, this is far from all time spent on Challenge II. For the time being, it omits substantial time following the February 10, 2021 statement of abandonment if the time is not relative to this fee petition. E.g., substantial time on opposing dismissal of Challenge II in the Circuit Court and vying for an opportunity to enjoin the Town from suing the Landowners again, and appealing the dismissal are not included.

³⁴ The November 2020 and January 2021 statements were statements in which early work on the Challenge II cases was billed along with the challenge work for the initial condemnation attempt. The early time for Challenge II was later allocated and backed out of the Challenge I fee request, and later time was separately billed, starting with a March 2021 statement.

11/12/20	“	6.4	hours
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11/13/20	“	1.9	hours
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11/16/20	“	1.0	hours
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1/22/21 statement

12/15/20	“	1.7	hours
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1/5/21	“	6.8	hours
--------	---	-----	-------

1/6/21	“	2.9	hours
--------	---	-----	-------

1/7/21	“	4.0	hours
--------	---	-----	-------

1/8/21	“	1.0	hours
--------	---	-----	-------

1/9/21	“	5.6	hours
--------	---	-----	-------

1/10/21	“	7.0	hours
---------	---	-----	-------

1/11/21	“	3.0	hours
---------	---	-----	-------

1/12/21	“	7.7	hours
---------	---	-----	-------

1/13/21	“	5.4	hours
---------	---	-----	-------

3/12/21 statement

2/7/21	“	2.2	hours
--------	---	-----	-------

2/10/21	“	0.4	hours
---------	---	-----	-------

2/11/21	“	1.5	hours
---------	---	-----	-------

2/12/21	“	3.1	hours
---------	---	-----	-------

2/15/21	“	1.9	hours
---------	---	-----	-------

5/21/21 statement

3/12/21	“	0.9	hours
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Time not yet in billing system

9/15/21	“	1.6	hours
9/16/21	“	6.0	hours
9/20/22	“	1.8	hours
9/21/22	“	6.2	hours
9/22/22	“	6.2	hours
9/23/22	“	3.9	hours
9/24/22	“	4.5	hours
9/25/22	“	4.0	hours
9/26/22	“	2.9	hours

Future underestimated MBS time to conclusion of fee matter and circuit court proceedings, to 11/15/22	42.2	hours
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Total of time for period	138.0	hours	x \$190 =	\$26,220
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Expenses advanced (e.g., filing fees, service of process, photocopies, postage, courier, court reporter, mileage at lower than federal reimbursement rate, mediator fee, etc. through 11/15/22)	\$751.71 ³⁵
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191. As noted above, I estimate that an additional 42.4 hours from 9/27/22 to 11/15/22, at a charge of \$8,056, will be required to conclude this case, but based on past experience and the

³⁵ Filing fees (\$180.32 x 3) for challenge actions; mileage one way (\$52.05) for motion to dismiss; filing fees (\$31.74 x 3) for motions to reconsider; filing fee (\$31.74) for motion to correct Form 4; and filing fee (\$31.74) for fee petition.

fact that I have no present notice of the nature of the Town's opposition, if any, this may be way under. This estimate is with a reservation of right to amend or supplement and assumes no surprise "witnesses," only one, timely, brief from the Town, only one hearing, no further delay, and no appeal of the fee matter by the Town or any Landowner.

192. Subject to these assumptions, and reserving the right to amend or supplement, each Landowner hereby requests \$8,990.57 as the award of fees and expenses for the stated aspects and periods, through November 15, 2022.

193. The foregoing time and expenses do not include some things. Time spent on both Challenge I and Challenge II was not attributed in total to both, but was divided between them in a reasonable allocation. As already noted, the foregoing time also omits substantial time after February 10, 2021 not directly related to this fee petition.

194. In addition, to my recollection, there was also pre-2/10/21 time necessarily spent directly on the case from time to time, which I simply did not record. I offer no estimate of this time over the time the case has been pending, except to say that it has been substantial. 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.

195. 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 any time or mileage from Columbia for any trips to the area, nor do they include any overnight accommodations or meals charges. They also do not

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include service of process by personal delivery of three summonses and complaints for the challenges to the new notices delivered by the Town while the first condemnation attempt was stayed. They also do not include flash drives for producing voluminous records electronically, the discovery of which was handled in the Challenge I cases, but without charge there for the flash drives either.

196. The time and expense charges also do not include a mediator's fee or associated charges, as no mediation occurred, we resolved the Challenge I cases on summary judgment, and the Town stated that it abandoned the condemnation action which was included in the subject of the instant cases. The charges do not include the court reporter's charges for the one approximately 8-9 hour deposition of the appraiser commenced October 16, 2020, as it was handled under the Challenge I cases even though the Town used the same falsely obtained appraisals for the second condemnation attempt.

197. There are no unrelated expenses to separate. The legal expense all relates to this suit to quash the condemnation and the work in the suit was all directed to that effort, although the Amended Complaint does advert to the defamation, trespass, slander-of-title, and Section 1983 implications of the Town's actions.

198. 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.

199. The time includes time to adjust the same work to apply to all three Challenge II 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 the Landowner for the case would

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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 (see Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008)(making award based on all time spent on multiple cases, even though the same time was spent on cases which were not the subject of the fee award)), and then to subtract a reasonable amount for the extra time required to consult with and inform more than one client and adjust small peripheral differences from case to case. Such differences include the captions and signature blocks, the case numbers, the property descriptions, and additional paragraphs of allegation for peculiar features such as: the Town's unauthorized filing of a different easement in the Beattie matter; or the Town's vacillation on the features of the scope of the easement in the Stanton case including attempting to make extra changes to the condemnation notice after service; or Sunset Lodge actually not only having an easement and plat prepared at its own expense, but also attending to having it recorded at the Register of Deeds.

200. However, instead, by agreement, we divided the fees by three. This produced a lower total fee for each party.

201. 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 a second time, had hired a separate law firm.

202. Under this arrangement, one third of the fees was for representation of myself, pro se. I prepared and sent myself a bill, as an attorney whose firm has been used to represent him in litigation he did not ask for.

203. Under other circumstances, the Town could well have been charged with fees of over \$26,220.00 for the subject services in each of three cases handled by different firms, for a

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total of \$78,660.00 for three cases.³⁶ Instead, as a consequence of three parties using one lawyer and dividing the fees, the Town is being charged for \$26,220.00 for all three cases³⁷ before out-of-pocket expenses.

204. For 10/16/20 to 11/15/22, the actual billing records of my office reflecting the legal services and actual expenses incurred and agreed by each Landowner-plaintiff in connection with this action will consist of over the presently existing approximately fifty-four pages.

205. As noted, work on the instant fee petition and other aspects of the case will necessarily continue after 9/26/22, but we are mindful that the Town is also liable for some or all of the continuing legal expense. We have attempted to be practical with this fee application and minimize these expenses while being sufficiently thorough and accurate, particularly in light of the protracted experience with the Challenge I fee petition, which, as previously noted, was heard after about nine months, numerous motions or briefs, and about eleven affidavits, and is now on appeal.

206. Our billing records in this case span a significant length of time, are lengthy, and particularly in light of the existence of the still pending litigation and the Town's explicit threat as late as September 3, 2022 of new or further litigation, our private billing records are not

³⁶ The \$26,220.00 and \$78,660.00 fee figures, of course, also assume that the three firms would all be providing successful representation with the same level of competency, local familiarity, and local resources, and at no more than my relatively low hourly rate.

³⁷ To clarify again, the expenses the Town would be tentatively charged under this application does not approach what the action has actually cost the Landowners, in that an attempt has been made to cut the submitted charges shortly following statement of "abandonment" February 10, 2021, and much work continued afterwards in the Challenge II cases which is not submitted at this time.

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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, as well as simply private information.

207. The statement in this Affidavit of hours expended and expenses incurred complies with the lodestar procedure described by Layman v. State and related cases.

208. 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 the Landowner-plaintiff, and all time and expense was for pursuing the quashing of the condemnation attempts which are the subject of this action, and seeking to be made whole for the fees and other expense incurred in the stated aspects and periods of case.

209. Although the Town started its condemnation attempt and sued the Landowner-plaintiff during a worldwide pandemic, time was of the essence in the case, and still is, and thoroughness was required, and still is. Initially, we were presented with a complex case, with a prior fact pattern extending for over a year, and continuing while the case was pending. We were presented with a case in a peculiar³⁸ area of law in which the Town was moving rapidly, and improperly. The impropriety included the Town conducting a spurious Town Council meeting not on the subject of suing again, in which the Council created additional false history of the matter and introduced obscuring subterfuges. From the beginning, the Town had exhibited persistent, purposefully ignorant, gross “misunderstanding” of pertinent real-property law, proper

³⁸ Condemnation or eminent domain is not a recognized “specialty” for purposes of certification by the South Carolina Bar Commission on CLE and Specialization.

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legal drafting and basic features of the English language itself.³⁹

³⁹ For example, when the easements were first proposed in 2019, owners were informed the document could not be changed. Owners were told to sign it and were given a deadline. It was changed. Among other things, the easements were recklessly written to subject the entire lot to the easement terms. The document was changed only in response to objections by people with an actual interest in the land that was being affected. To my knowledge, the Town did nothing to change the whole-lot easements already signed by numerous owners.

We later discovered a document, which we much later obtained from the Corps under the Freedom of Information Act, in which the Corps stated to the Town that it was agreeable to change the proposed easement to except owner improvements from public access and use. The owner, however, was not part of this conversation or exchange. This intent was not expressed to the Landowner, then, previously, or later. The owner was excluded from any drafting or review.

The document referred to an attachment.

The accompanying draft – at least the one we received -- was written in such a manner as only to except the improvements from destruction, but not except them from public access. Namely, the exception of improvements was appended to a clause which was separated by a semicolon from numerous other clauses, and which only pertained to destruction.

Whether the reckless or purposeful “mistake” in the proposed perpetual conveyancing document was that of the Corps, or the Town, or a cooperative effort, is unknown. Other documents arising from a 2019 question of another owner displayed an awareness of the Corps and the Town of the effect of something as small as a semicolon on a proposed permanent alteration of a land title.

However, in the instance at hand, it appears that neither the Corps bureaugarchs nor the Town Council or its helpers did anything to see that the change made to the document effected the intent the Corps had stated to the Town. Whether they purposefully misdrafted the change is another matter. The Landowner to whom the draft was belatedly sent was excluded from communication with the Corps and was not told by the Town, the intent behind the change made, but was simply sent the botched document and was told, no matter the intent, that no other changes would be made. Later still, all changes were retracted.

In other obtuse matters difficult to believe, the Town Council was publicly “advised” in the live-streamed May 2020 Council meeting that the owners essentially would have all the same property rights the day after the easement was imposed as the day before. The whole of the five-member Town Council nodding to accept a statement that contradicts itself on its face is simply astounding.

In another display of activities too incompetent not to be deliberate deception, the Town Council stated in the October 2020 Council meeting that “public access and use,” in the document then being considered, was limited to the use stated in the document, but the document stated nothing other than unlimited general public access and use. This was after over a year and a half of controversy over specifically the terms written in the document.

The Town Council also added a footnote to the document misstating the law of South Carolina and simply making absolutely no sense.

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210. 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.

211. 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 the Landowners 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,⁴⁰ a statement to a judge that a discovery response for which an ordinary extension had been timely sought was overdue by some large inaccurate number of days, and a motion to “disqualify” counsel from representing his clients in the Challenge I cases after the Court had already ruled based on undisputed facts that there would likely be no trial.

212. We served a FOIA request on the Town early in the Challenge I case, but had to duplicate the effort in discovery and were delayed in receiving the information.⁴¹ Much of the

In another fraudulent complete “misunderstanding” of the difference among the past, present and future, the Town Council also passed an October 2020 resolution stating that a document which was only then being created had been previously provided to the Landowners.

⁴⁰ I.e., “17 hours” stated in a public, live-streamed broadcast, as opposed to closer to eight or nine hours under special circumstances.

⁴¹ 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

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discovery was billed under the Challenge I cases and generally remained allocated to them for billing purposes because it started under them.

213. After the Town delivered a new, backdated, condemnation notice in October 2020 while the June condemnation was stayed, we asked what the purpose and procedural status of the new notice was. The Town, having recently moved to continue the hearing of our summary judgment motion in Challenge I, did not respond. This required us to file an additional challenge action to maintain the status quo.⁴²

214. All of these are miscellaneous, illustrative, comments, not a comprehensive summary, and are meant to illustrate, not just that that commencing and pressing the second condemnation was not substantially justified, but also that work we did and had to do was necessarily influenced by what the opponent did, and did not do.

215. Having had little early indication from the Town's noncompliant answer in the

address. The Town, including the specific employees involved, had and used the correct e-mail address for years.

⁴² The initial Challenge I case has a separate case number from the Challenge II case, but the new condemnation notice was on the same subject matter as the condemnation notice challenged in the Challenge I case and the Town would not respond to inquiry as to whether the new notice was somehow intended as part of the initial condemnation case or as a commencement of a new, duplicative, condemnation case, with a timetable of new deadlines for the Landowners set in motion upon delivery of the new notice. Everything done with respect to the new notice was initially done to advance and preserve the Challenge I case and get a ruling on the defects complained of, and initially the billings were not separate. I went back and estimated that 54.9 hours were spent on the Challenge II case up to 1/24/21. Each Landowner also incurred a \$180.32 filing fee. As stated above, the 54.9 hours and the filing fee were backed out of the application in the Challenge I case, to be sought separately in the Challenge II case. Although we accepted delivery of the new condemnation notices and stipulated that the delivery was the equivalent of personal delivery, the Town did not respond to a request for the Town to accept service of the summonses and complaints in the Challenge II cases. We arranged for personal service with no assistance from the Town, but did so without incurring a process server's fee.

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Challenge I cases, of the full factual or legal nature of its defense, we continued to be unsure from the Town's later motions and communications in the Challenge I cases, of the nature of the defense to our challenge. This remained the case, right up to and beyond the October 2020 service of the second set of condemnation actions and the December 4, 2020 hearing of our summary judgment motion and motion to compel in Challenge I. The Town did not indicate a dispute of many of the public or otherwise documented facts upon which we based our challenges, but avoided discovery for some time, and to this day still avoids acknowledging many facts, as if to wish them away.

216. We continued to pursue discovery, including additional discovery directed to the peculiarities of the second condemnation attempt. An example is the previously referenced Exhibit C to this affidavit, our 1/10/21 interrogatories, to which we never received an answer. They ask, for example, in question (2), why the Town backdated the condemnation notices to June 9, 2020.

217. Until January 2021, the Town had, not one, but two, able, learned counsel with good reputations, and in late January 2021, added a third, with whom we covered many matters again, or differently, and who made such arguments to the Court as that he "was not aware" that certain matters had been pled, implying that the matters had not indeed been pled, when indeed, he had not read all the allegations.

218. Closer to the December 4, 2020 summary judgment hearing in the Challenge I case, we received a lengthy single-spaced affidavit and a briefing presented by the Town as issues. We continued to spend many hours in both sets of challenge cases marshalling and comparing facts and contradictions and researching issues and potential issues pertaining to an

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ever-peculiar, but seemingly undisputable, 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.

219. After the Town served the first and second condemnation notices, no part of the dispute or easement terms was resolved⁴³ and no part of the condemnation case was resolved without a hearing of the motion for summary judgment and a ruling, or statement of abandonment by the Town. The results of the case were beneficial to the Landowners, as the statement of abandonment marked the second time that the title to the Landowner's property was not ruined for zero consideration.

220. We attended all hearings. There were two to my recollection in Challenge II. Both were in person in Georgetown, which is a six hour round trip from my office and my residence. These two, however are not included in the time tentatively submitted for reimbursement herein.

221. We, as Landowner's counsel, never, to my recollection, sought for our own benefit, nor caused, any delay of hearing, delay of discovery (other than a 30-day extension to respond to interrogatories and request for production), or continuance.

222. 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. I

⁴³ There was vacillation, at different times, as to whether the Stanton public easement was proposed to be two feet from the door or the house or approximately seven, and these vacillations have been tracked.

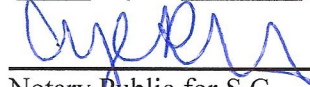
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submit that they are reasonable fees to be charged to the Town in accordance with the statute mandating the award of reasonable fees and other litigation expenses to the Landowner, and reasonable fees for my office, accordingly, to charge the Landowner.

223. In my opinion, the total fees and out-of-pocket expenses of \$6,317.90 recorded by my office for counsel services through 9/26/22 in connection with the case were reasonable, necessary and required, and the estimate of an additional \$2,672.66 in fees and expenses through 11/15/22, subject to the assumptions stated, is also a reasonable estimate of what will be necessary and required, and \$8,990.57⁴⁴ or more as of 11/15/22 should be an expense borne by the Defendant Town as required by statute, rather than by the Landowner.

Sworn to me this

21st day of October, 2022



Notary Public for S.C.

My comm'n exp. 8/11/2031



s/M. Baron Stanton
M. Baron Stanton

Date: October 21, 2022

⁴⁴Namely, a figure which includes one-third of the \$26,971.71 in recorded and estimated future time charges and includes one-third of the expenses incurred (\$751.71), but does not include any estimated unrecorded time.

Exhibits

The exhibits to this affidavit are as follows:

Exh A - 12-28-21 Appeal of USACE Charleston FOIA Response FP-21-023185

Exh B - MAYOR EMAIL (8-11-2020) UPDATED

Exh C - Sunset First INT to TOP 1-10-21 in Challenge2

Exh D - 4-5-21 Revised Order Granting MSJ

M. Baron Stanton
P.O. Box 245
Columbia, SC 29202

cell 803 530 2642
bstanton@stantonlaw.com

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FREEDOM OF INFORMATION ACT APPEAL

By e-mail to Jonathan.m.jellema@usace.army.mil , and
Paula.j.pate@usace.army.mil

By mail:
Department of the Army
U.S. Army Corps of Engineers
Charleston District
69 A Hagood Avenue
Charleston, SC 29403-5107

Attn.: Jonathan M. Jellema, Esquire
Initial Denial Authority to the Army General Counsel, and

Ms. Paula J. Pate
FOIA Coordinator

Re: Ms. Pate's September 29, 2021 response to my Freedom of Information Act
(FOIA) request dated July 19, 2021, and assigned FOIA number FP-21-023185

Dear Mr. Jellema:

I respectfully appeal your letter of September 29, 2021 and the Savannah office's substantive response that your letter accompanied.

I am sending this as well by e-mail and asking for a return e-mail acknowledging receipt.

The purpose of the Freedom of Information Act is transparency in government, rather than secrecy. It was enacted so that those who are entrusted with government work are answerable those their work affects, not vice versa.

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The Act serves the purpose of assuring that most government actions and activities are done above board and in broad daylight. It therefore brings undisclosed or simply unpublicized or otherwise inaccessible actions, decisions, standards, procedures, data and communications to light. This assures due process, and averts secret mischief, unauthorized or legally incorrect actions, and poor performance.

As you know, there are exemptions, but the chips are generally supposed to fall where they may.

No exemption is per se based on a generalized wish to obscure or not disclose a matter. Nor is an exemption available simply on the basis that a government agency wants “the upper hand” or wishes to keep secret from a citizen, the basis for its actions to which it has subjected that citizen. Nor is there an exemption based sheerly on whether a disclosure may get someone in trouble, show someone in a bad light, or provide advantageous information to a citizen frustrated with government action, government refusal to communicate, or government performance. As explained in the FOIA request I sent, we have suffered for many months from a lack of transparency, lack of direct communication, and noncooperation by tax-paid people relating to efforts to effectually and practically seize our property, give it to the public, and subject it to Town development and administration – all done falsely in the name of “renourishment.”

My grounds for appeal generally relate to (1) the incompleteness of the FOIA response, (2) improper of redaction of names and other identifiers of government actors and other people in documents directly related to the matters inquired about, and (3) inapplicability of, and failure to demonstrate, the deliberative process privilege and any other privilege invoked to obscure or withhold certain documents.

1. I sent a request for 24 categories of documents, some expected to overlap in subject matter, and some not. The response characterizes the request as being for documents on five related areas of subject matter. At the outset, this incorrect and underinclusive statement of search criteria creates an implication of incompleteness in the result. The difficulty of determining that incompleteness is multiplied by then obscuring the nature, substance, authors or recipients of some documents and completely withholding others without identifying the subject matter and participants. Additionally, materials in the response I was provided as well as materials in my possession indicate that the response is incomplete. There is a large volume of material produced that I already had and that was outside of the date range I requested. What is noticeably lacking or redacted are some things most acutely responsive to the specific requests made.

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My followup in this regard is not limited to the examples I may give, as these examples create doubt with respect to the entire response. I think the entire response should be re-examined and the completeness of a supplemental response, specifically affirmed.

There is cause for concern that matters which are responsive, not privileged or exempt, and not known about by me, are not produced. In the actual FOIA request, I previously provided an outline of the matters of the last couple of years so as to provide chronological and substantive context for the matters inquired about. I will assume you have read it, but you may want to re-read the story, which I respectfully incorporate herein by reference.

It involves the Corps operating under veritable secrecy, inaccessibility and noncommunication with citizens acutely affected, while the Town of Pawleys Island made specious attempts to condemn excessive and unnecessary interests in three pieces of oceanfront land, while publicly misrepresenting the nature of the matter and violating the Corps's own rules as to appraisals. The Town did so while in contact and on-and-off "partnership" with the Corps.

The events include litigation with the Town beginning in June, 2020 after the Town Council voted May 18, 2020 to serve three suits for condemnation against its own constituents, with whom the Council never even bothered to meet. The objections to what the Town sought and to the Town's manner of proceeding were copiously set forth in three countersuits. The events include a second batch of suits instituted by the Town in October 2020 while the first batch were still pending and were supposed to be stayed by statute and common sense. The second batch was done with full knowledge of the false and improper matters in the first batch but did not correct any of them, and, to boot, added another dishonest Town Council meeting and false resolution and inserted at preposterous footnote in the proposed easement which violated the language the Corps periodically claims it can't change. The events further include the Town's losing the first batch of litigation, attempting to dismiss the second batch, and threatening a third, further batch of litigation, while the owners have had legal expense and a cloud on their titles now for over two years and continuing. They did not go looking for any of this and yet have had to endure it while the Town acts as if it has been victimized by having a light shone on it.

I will highlight a few instances of apparent incompleteness in the responses.

A. On 7-27-20, Mr. Ryan Fabbri of the Town of Pawleys Island e-mailed D. Steinbeiser (USACE Savannah) to update her on the condemnation filings, informing her the owners had filed countersuits and that it was all BS (Barry Stanton?). This was in the documents you produced, but curiously, not in the documents produced by the office in which Ms. Steinbeiser works, in Savannah. But no copies of the suits were produced by you, even though Ms. Steinbeiser

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took great interest, along with other Corps personnel, in the status of the requested easements and the suits concerning them.

Importantly, related communications after 8-15-20 would have been expected and very little subsequent material on this subject of this sudden update at the time was produced. In our Request Items 1, 2 and 11, we requested:

1. [After 8-15-20] **All** communications with the Town of Pawleys Island or any people associated therewith.
2. [After 8-15-20] **All** communications other than with the Town of Pawleys Island or any people associated therewith, about or regarding communications with the Town of Pawleys Island.
11. Any records of any communications pertaining to the so-called procedural **defects in the first round of condemnation attempts** on three properties on the south end of Pawleys Island (commenced in June 2020), including but **not limited** to records pertaining to **what the so-called procedural defects were** and **what would be done to fix them**. The period covered by this request is from September 1, 2020 to three days before actual production of information requested.

It seems reasonable to assume there are materials missing, since the 7-27-20 e-mail, while falling before the date range requested, was produced, and nothing shortly following it – within the requested date range -- was. The Savannah office was concerned with “Real Estate Acquisitions” and had been following the attempt to obtain easements closely, with followups. Here was litigation on the matter. Was there no information requested or provided concerning what the litigation was about? It is hard to believe there was nothing.

B. On 7-27-20, D. Steinbeiser e-mailed Mr. Fabbri and referenced setting up a meeting with Division of Real Estate policy and legal team. Surely, such setting up, right after the Town got sued, would have created documents “about or regarding communications with the Town of Pawleys Island,” and the meeting itself would also have created post-8-15-20 documents, but I do not believe the existence of such documents has been disclosed, even in conjunction with claims of privilege which I also address in this appeal letter.

C. On 8-11-20, Brian Henry, writing as mayor of the Town of Pawleys Island, sent an e-mail, but sent it from his private business e-mail address, brian@pimentocheese.com, and sent it to J. Hinely (USACE Savannah) and Ms.

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Steinbeiser, inquiring about, among other things, whether there was a “nuclear option” available to use against his three constituents being sued by the Town, who had in turn, sued the Town.

Again, while this e-mail was not after 8-15-21, this 8-11-21 e-mail was not produced with the raft of boring other materials which were outside of the date range requested, which were produced, and no materials pertaining to it appear to have been produced or even identified in connection with a claim of privilege.

D. On 8-14-20, Mr. Fabbri wrote to Mr. Hinely and Ms. Steinbeiser in Savannah to ask whether the nuclear option e-mail from Mr. Henry, to which there had been no response, had been received. This 8-14-20 e-mail was not produced or identified, I don’t believe. Yet, you have produced e-mails authored by Ms. Steinbeiser, some of which were not in the requested date range.

E. On 8-21-20, D. Steinbeiser e-mailed Mr. Fabbri in response to a followup inquiry of his about Brian Henry’s nuclear option query, and responded that she could not comment on ongoing litigation. This, even though the litigation does not involve the Corps as a party.

On the subject of completeness, what internal documents exist on the subject of Mr. Henry’s inquiry and on the subject of what response to make? He is asking for known or existing options, or maybe advice, not for a policy decision of USACE. There is no privilege. And because none was timely raised (and no document was specifically identified as withheld, stating the reason), none can be. Whatever documents there may be on this subject have not even been identified, that I know of, unless they are among those that are so obscured with improper redaction that I cannot even tell what they relate to, who is involved, or the merits of any claimed privilege.

E. On 11-18-20, Nova Robbins (USACE Charleston) e-mailed Mr. Fabbri checking to see if he was able to “re-initiate” condemnation of the remaining easements. She did not show the usual USACE Savannah “real estate acquisition” copyholders on this “Pawleys Crediting” thread.

I don’t think you produced this document, and therefore can only wonder what other documents you did not produce.

If you have it, or any related to it, they are responsive to our requests 11, 12 and 13. Since this document involving Ms. Robbins is responsive to all three of these requests, can you verify you don’t have it or any related to it?

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There are obviously communications preceding Ms. Robbins's inquiry about "re-initiation," for she knew of plans to "re-initiate" well enough to ask about the status. Were these plans withheld from the Savannah office?

There also ought to be communications of Mr. Fabbri responsive to her inquiry. There ought to be communication at least by her, if not also by Mr. Fabbri with the real estate acquisition people in Savannah. There ought to be internal communications pertaining to the plan to "re-initiate," at least in terms of sharing status and matters reported by the Town of Pawleys Island. Yet, responsive documents of these sorts have been neither produced nor identified.

Our requests¹¹, 12 and 13 requested the following:

11. Any records of any communications pertaining to the so-called procedural defects in the first round of condemnation attempts on three properties on the south end of Pawleys Island (commenced in June 2020), including but not limited to records pertaining to what the so-called procedural defects were and what would be done to fix them. The period covered by this request is from September 1, 2020 to three days before actual production of information requested.

12. Any records of any communications pertaining to the actual purpose and supposed potential results of the Town of Pawleys Island commencing three additional condemnation actions in October 2020 on the same subject matter as the three previous and then still pending condemnation actions which were the subject of court actions by owners at their own expense challenging the first attempted condemnations. The period covered by this request is from September 1, 2020 to three days before actual production of information requested.

13. Any record of communication of plans by Pawleys Island Town Council to commence three additional condemnation actions in October 2020 on the same subject matter as the three previous and then still pending condemnation actions which were the subject of court actions challenging them.

F. On 12-3-20, N. Robbins (USACE Charleston) e-mailed Mr. Fabbri to touch base on, among other things, the current status of the condemnation litigation, and noted that her commander (then Lt. Col. Rachel Honderd (USACE Charleston), who was succeeded July 16, 2021 by Lt. Col. Andrew Johannes) was wanting to give a call to the Pawleys Island mayor (then Mr. Henry) in mid-

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December 2020. Ms. Robbins noted, “[W]e must report up to our Division pretty regularly and I want to make sure I am briefing the most up to date information.”

She did not show copy to the USACE real estate acquisition people in Savannah who report up to the same Division and I do not know who she may have also included in the referenced regular briefings to the Corps’s South Atlantic Region.

I don’t think that this e-mail was produced or that any of the documents it must have engendered were either. Could you assure that you do not have any? It is hard to believe that there are no communications with or about the Town of Pawleys Island in this period, particularly since the state-court judge in the case announced, the next day after Ms. Robbins’ inquiry about re-initiating condemnation, 12-4-21, that he was granting summary judgment to the landowners in the first three condemnation attempts initiated by the Town. I haven’t seen a single copy of his order in anything produced by any Corps office. Does no one there have any interest in reading what a judge says the Town did wrong? One of your people wrote a memo to another about finding out the details of a hearing mentioned in a newspaper article so that you would not have to rely on newspaper articles or reports from the Nonfederal Sponsor (Town). Yet, there are no court papers produced at all while you produce dozens of documents outside the requested date range, many on banal subjects.

G. On 12-15-20, Mr. Fabbri wrote a letter to Ms. Robbins affirming the completion of the project and discussing various things regarding in-kind contributions under the MOU.

He included a summary of project expenditures affirming the following, among other things:

CONSTRUCTION START: OCTOBER 2019
CONSTRUCTION COMPLETION: MARCH 2020
PROJECT SIZE: 2.7 MILES OF PAWLEYS ISLAND BEACHFRONT
PROJECT VOLUME: 1,100,000 CUBIC YARDS OF BEACH COMPATIBLE SAND

You understand, of course, that although the project was “completed” March 2020, the Town sued the landowners in late June 2020, and again in October 2020, for easements allegedly necessary for the project.

Mr. Fabbri’s letter was addressed only to Ms. Robbins in Charleston, and I don’t think it was produced. But can you verify that you have neither it nor anything related to it? The request was for among other things, the following:

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1. [After 8-15-20] All communications with the Town of Pawleys Island or any people associated therewith.
2. [After 8-15-20] All communications other than with the Town of Pawleys Island or any people associated therewith, about or regarding communications with the Town of Pawleys Island.
11. Any records of any communications pertaining to the so-called procedural defects in the first round of condemnation attempts on three properties on the south end of Pawleys Island (commenced in June 2020), including but not limited to records pertaining to what the so-called procedural defects were and what would be done to fix them. The period covered by this request is from September 1, 2020 to three days before actual production of information requested.

I am concerned that there may be responsive documents which were neither produced nor identified. The question is how many.

H. There are numerous undated documents which have the appearance of an e-mail header, but seem to be an “invitation” to or remnant of completion of a “webex” meeting. One such meeting for 2-2-21 between at least a CESAC and a CESAS appears to have started at 2:30 and ended at 3:30.

To the question of completeness of the response, are there downloaded and preserved or otherwise accessible recordings of the Cisco Webex video meetings? If so, I don’t think any videos were produced or identified as withheld.

I. On 2-3-21, N. Robbins e-mailed Mr. Fabbri informing him that “the team” did meet and that among other things, the Corps will not be able to participate in any condemnation mediation. However, she showed copy only to Jeff Livasy (USACE Charleston).

She further offered to set up a time to discuss alternative approaches such as excluding the three properties from the footprint of the federal project.

This was an approach she characterized not as impossible, but as “not ideal” and that it “may be worth talking through.” (Apparently, it would be less trouble for the governments involved, and more “ideal” in their estimation to unnecessarily subject a private landowner’s property to permanent public use and overrun, and

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call that a “benefit.”) She offered to put together a meeting for a “larger discussion.” (There has of course never been any meeting with the landowners.)

This e-mail was of course directly responsive to Request Item 17 and any related to it would be very likely responsive to, among possible others, Request Item 2. Item 17 was a request for the following:

17. Any records of consideration within the Corps of, or of inquiry from inside or outside the Corps about, offering to the Town of Pawleys Island, S.C., the option or alternative to skip renourishment of, rather than condemn an easement over, property the owner of which declines to grant an easement of the scope requested by the Corps or the Town.

I can imagine it is a tedious and imprecise task to look for and ask about a large amount of information of various descriptions, and I do not know what your internal procedure is for looking for things. But one would think it would be the acutely responsive documents that would be the easiest to ask about and find, and that they would not be the precise ones to be missed.

The concept inquired about is also not an unfamiliar one, and is referenced in USACE-based materials that have been published on the web at <https://www.saj.usace.army.mil> for Florida projects. There, the PUBLIC information has been as follows in the past:

What happens if I don’t approve an easement over my property?

Current Federal policy states that in the case of those properties for which an easement is not provided, the Federal government will not share in the cost of sand placed on the beach fronting that property. The local sponsor could choose to (1) ask the Federal government to skip, not fill, that section of the beach; (2) condemn by eminent domain.... (3) absorb the additional local costs or (4) assess the applicable property owner for the amount not funded by the Federal government.

Where are the internal Corps policy statements or even recycled ad hoc memos or project manuals that touch on these concepts?

Of course I can’t resist stating that you must take “with a grain of sand,” any claim that “Current Federal policy states” anything.

You cannot find an actual statement of actual policy – only blacked out memos or e-mails of people getting together ad hoc and deciding what to not agree to

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regarding property which is not theirs and not even property in their own community.

There is certainly nothing stating the basis for any alleged policy, or any statement of when it changed from former to “current.” There is – here and there -- loose vague information about the Corps recently “reinterpreting” previous statutes, but no detail. I assume somewhere at the root of the incongruity is

someone’s unreported, incorrect, and unsupported assumption about one or two words in a former version of the Water Resources Management Act. But that is beside the point at present.

As you may know, there have also been discussions in other communities about simply letting wind and water cause sand to fill in sections of beach skipped on Corps projects. You can see why the subject is of interest in a matter where presently only three 60-front-foot lots out of 1.2-1.3 miles of beach are an issue, and could be treated identically to the other 1.5 miles of beach which has been renourished at Town expense, but which not subjected to the unreasonable demands at hand. Some of that 1.5 miles at the northern end is actually near public accesses, but for some reason is not subject to Corps involvement and the unreasonable confiscation of property attempted at the south end.

Returning to the likely missing documents, I have asked what information has been provided to or discussed with the Town, among other things, and it is clear there has been inquiry and discussion. What documents are there?

J. On 2-3-21, Mr. Fabbri e-mailed Ms. Robbins (USACE Charleston), and copied Mr. Livasy (USACE Charleston) and stated that Mr. Fabbri would indeed like to learn more about alternative approaches. Mr. Fabbri obviously was referencing the “skipping” approach mentioned in her e-mail. Again, directly responsive, would be any related documents.

If the Town has an option to “skip” the subject properties, then regardless of whether “ideal,” this option could probably have been pursued long ago, and the Town could have even funded the renourishment of the relatively small proposed easement areas three properties separately if it wanted to, with the Corps still funding renourishment of the larger volume of sand below the high water mark seaward of these properties. This is a pittance relative to the Town always planning to completely fund renourishment for the entire mid-island, both below and above the high water mark. There, no easements are sought from folks

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including a number of those on the Town Council. This is important and responsive information.

K. On 2-9-20, Ms. Robbins e-mailed Mr. Fabbri, copying Mr. Livasy, and informed Mr. Fabbri she would work to set up a meeting “with the larger group” to identify options and alternatives “if the easements are not condemned.”

To interject here, you should realize that by the time of this 2-9-21 communication, the judge had already granted summary judgment to the landowners in the first actions challenging the first condemnation attempts.

Among other things, the judge determined that the public meeting held by the Town did not describe the same thing the Town later sought to condemn nor even discuss the landowners’ objections, that the appraisal did not contain the easement language and did not appraise the same thing the Town later sought to condemn, and that recitations in the condemnation papers were not true.

On 2-10-21, the Town filed a notice of “abandonment,” attempting to withdraw its second three condemnation attempts.

The Town’s motion for reconsideration of the motion granting summary judgment and prohibiting condemnation was subsequently denied and the final revised summary judgment order was entered 4-5-21, and was not appealed by the Town.

Since “the larger group” was going to meet on the subject “if the easements are not condemned,” one would think they would have done so or created documents on the subject sometime before your September 29, 2021 response.

Again, anything related to Ms. Robbins’s 2-9-21 e-mail would be responsive to our request, but there is little if anything produced or even identified. “The larger group” and “the team” seem to usually include more than Ms. Robbins and Mr. Livasy. Where are the documents which must surely exist, which pertain to Ms. Robbins’s working to set up a meeting and pertaining to the meeting itself or to communications in lieu of a meeting?

I trust that the limited examples set forth above illustrate more than reasonable concern that the response to the FOIA request is grossly incomplete.

2. The excessive redaction of names of people, including those employed by USACE itself (who are not “third parties”), who are involved in e-mail exchanges on matters

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December 28, 2021
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directly of interest in the FOIA request is not warranted by Exemption (b)(6), which you cite as the only basis for obscuring the names.

5 U.S. Code § 552 (b)(6) provides “(b) This section does not apply to matters that are—
...(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

The matters from which you redacted the names of the government actors directly involved in the government activities are not “personnel or medical files” with “personal information” in them involving “personal privacy.” It’s government business done while on the job.

The names and addresses blacked out don’t have the people’s cholesterol levels or salaries or terms of employment, and the people are not third parties unrelated to the main subject matter who are incidentally listed in exchanges by others. They are participants and government employees.

The e-mails of USACE and Town officials are a far cry from the type of document described by Exemption (b)(6). Improperly redacting these names also compounds my inability to assess the nature of other things being withheld in the same documents. Please produce all these documents and any previously unproduced documents without these unauthorized redactions.

3. The liberal redaction of matters under a claim of “deliberative process privilege” is unwarranted, as the matters which are the subject of the redaction:

a. Are not matters of agency rulemaking or policymaking, as none of the district-level participants at CESAC and CESAS (who could be discerned even more clearly if their identities were not redacted) functions at a policy-making level for the overall Corps of Engineers.

b. If matters of decision at all, are only matters of decision according to already established secret standards or unapproved policy. That is, unless there actually is no secret standard or unapproved policy at all, in which they are matters of purely ad hoc or even arbitrary or vacillating decision on discrete case-by-case matters. That is, they are not in fact “predecisional,” but rather, appear to be either decisional, or a discussion of established decisions.

c. More accurately, are likely simply requests for and exchanges of information on existing options. Or are requests for edicts from on high, or are requests for standards, procedures, discretion, or authorization and are not deliberative at all. If these matters

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Page 13

are truly asserted to not be policy, but, rather, to all be “pre-decisional,” please state that this is the basis, rather than that they might be one thing or another. I need a way to evaluate the merits of the claim of exemption.

d. Where involving people from Pawleys Island or others who are not part of USACE, are not intra-agency or inter-agency.

e. To the extent any of the redacted material is “pre-decisional,” the overall response appears to withhold, without disclosing the withheld documents, those documents containing the final decision and the reasoning for it. Where is the decision and a statement of its basis?

That is, if the redacted or withheld material leads up to something, even what it leads up to and concludes with is withheld. The matters to which the FOIA request relates have been pending for years and decisions appear to have been made. What were the decisions?

f. As the U.S. Supreme Court held in United States Fish & Wildlife Service v. Sierra Club in March of this year (2021), a document is not privileged if it communicates a policy on which an agency has settled; a document is not deliberative, and must be disclosed when it is the agency’s final view on the matter.

g. We have had to shoot in the dark with the specifications above, because you have partially explained why the claimed privilege or exemption exists and described in general, instances in which it applies, but have not explained why the particular documents withheld or redacted fall within the privilege in a manner sufficiently detailed to permit me to assess whether the documents are actually covered by the asserted privilege. The burden is on the government to establish the validity of the claimed privilege. That burden not having been met, please produce all the withheld material.

With kind regards,

Yours very truly,

s/Barry Stanton

M. Baron Stanton
U.S. Dist. Ct. (D.S.C.) ID #4279

MBS:dmy

Subject: RE: Pawleys Island - Easements
Date: Thursday, August 19, 2021 at 10:11:49 AM Eastern Daylight Time
From: brian@pimentocheese.com
To: 'Ryan Fabbri'
Attachments: image003.jpg, image004.jpg, image005.jpg

That is it.

Brian Henry

Pawleys Island Specialty Foods
843-240-1564
brian@pimentocheese.com
www.pimentocheese.com



From: Ryan Fabbri <rfabbri@townofpi.com>
Sent: Thursday, August 19, 2021 10:07 AM
To: brian@pimentocheese.com
Subject: Re: Pawleys Island - Easements

This appears to be the one. Please confirm that you haven't sent any other emails to USACE other than this one and a couple back in May of 2020. If there are more I'll need to provide copies of them to Barry.

Thanks,

Ryan Fabbri

Town Administrator

Town of Pawleys Island

T: (843) 237-1698

C: (843) 424-5065

F: (843) 237-7083

E: rfabbri@townofpi.com

W: www.townofpawleysisland.com

From: brian@pimentocheese.com <brian@pimentocheese.com>
Date: Thursday, August 19, 2021 at 9:55 AM
To: 'Ryan Fabbri' <rfabbri@townofpi.com>

Subject: FW: Pawleys Island - Easements

This one?

Brian Henry

Pawleys Island Specialty Foods

843-240-1564

brian@pimentocheese.com

www.pimentocheese.com



From: brian@pimentocheese.com <brian@pimentocheese.com>

Sent: Tuesday, August 11, 2020 12:59 PM

To: 'Hinely, John S CIV USARMY CESAS (USA)' <John.S.Hinely@usace.army.mil>; 'Steinbeiser, Dorothy M CIV USARMY CESAS (USA)' <Dorothy.M.Steinbeiser@usace.army.mil>

Cc: 'Ryan Fabbri' <ryfab77@gmail.com>; 'David Durant' <ddurant@lawofficesofdurant.com>

Subject: Pawleys Island - Easements

John and Dorothy,

As we continue to pursue the 3 outstanding easements, I have 2 questions:

1. I understand why the easements are perpetual in nature. As a Town, we prefer not to have to go back and acquire 113 easements each time we have to do a re-nourishment or beach repair. But since the Town "owns" the easements, if there was a circumstance where 1 of the 113 property owners needed to be released from the easement (selling their property or some other hardship), the Town reserves the right to release the easement, correct? We also recognize that before a subsequent project could be undertaken, we would need to reacquire any and all easements that had been released.
2. As you are aware, we were in the midst of condemnation when the lawsuit was filed. This certainly has the potential to prolong the process, and ultimately delay the work that the USACE has offered to perform (while we stare down the barrel of an active hurricane season). Are there any other options we could be considering to expedite this situation based on your past experiences with these circumstances? **A nuclear option or another path?** We are certainly willing to think outside-the-box if you have any suggestions.

Happy to discuss either of these real time as well. As you can understand, time is of the essence.

Brian Henry

Mayor
[Town of Pawleys Island](#)
843-240-1564



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
Sunset Lodge, LLC,	)	
Plaintiff,	)	PLAINTIFF'S
v.	)	FIRST INTERROGATORIES
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. What was the purpose of, with no prior notice, delivering to Plaintiff's counsel on October 16, 2020, the Condemnation Notice and Tender of Payment (including referenced map and proposed Beach Renourishment Easement) incorrectly dated June 9, 2020 (collectively, "the New Notice"), along with a proposed Acceptance of Service document and asking him to accept service?

2. Please explain why you dated the New Notice June 9, 2020.

3. Identify any and all appraisals, supplemental appraisals, amended or modified appraisals, substituted appraisals or additional appraisals relating to the subject property or the easement you seek in the New Notice, which you obtained before serving the New Notice.

4. Do you contend that the New Notice was a valid notice, which, as stated to the condemnee named in the Notice, if not responded to, would give you the right to file it and certify taking possession of the easement it sought? If not, do you contend that the New Notice was a valid amendment of the Condemnation Notice and Tender of Payment (including referenced map and proposed Beach Renourishment Easement) dated June 9, 2020 and served in June 2020 (collectively, “The Existing Notice”) in spite of the statutory stay?

5. On what basis do you contend that the stay did not prohibit an amendment of the Existing Notice without the consent of the condemnee and without leave of court?

6. Do you contend that the Existing Notice is no longer in effect as a result of issuance of the New Notice? If not, do you contend that the Existing Notice and the New Notice may exist at the same time and that you may condemn both the easement described in the Existing Notice and the easement with different terms in the New Notice at the same time? If so, do you contend that if the condemnee does not agree to the efficacy or legitimacy of either notice or does not agree to the proposed compensation in either notice, the condemnee must defend two condemnation proceedings at once?

7. Please explain why you did not respond to condemnee’s counsel’s e-mail of November 8, 2020, which stated and asked: “David, following up on the changed condemnation notices which you provided to me October 16 with a proposed acceptance of service, what is their purpose procedurally? Are they intended to be part of the same condemnation proceedings

which are already pending? If not, do you intend for these October 16 documents to be something else or some new proceeding? Please clarify what these documents are supposed to be procedurally.”

8. What is the source and any supporting court opinion, statute, ordinance, code, regulation, written legal opinion or covenant, restriction, easement or other title document for the assertion in the 9-line footnote in the Beach Renourishment Easement comprising part of the New Notice that under the conditions stated in the footnote, the Town or the public acquires an easement or right of use?

9. Has the Town ever “retained,” or does the Town purport or claim “retain,” an easement over any part of the beach by virtue of continuous use by the public? If so, state what portion of beach and identify what public records, if any, there are relating to, establishing or asserting the same, e.g., lawsuits, court orders, resolutions, ordinances, letters, assertions in writing by town constabulary, tickets or charges filed or issued by same, etc.

10. Identify any expert or other witness from whom you received input on the contents of the 9-line footnote in the Beach Renourishment Easement comprising part of the New Notice, and identify any witness you expect to testify concerning the contents or validity of anything stated in the 9-line footnote.

11. Which council member or members introduced the resolution October 12, 2020?

12. Please describe any and all efforts you (the Town or its counsel) made before January 9, 2021 to ascertain whether “Standard Estate 26” or any other verbiage sent to you by the Corps for inclusion in the permanent easement to you from over a hundred Pawleys Island property owners had been approved pursuant to the Federal Administrative Procedures Act,

published in the Federal Register, included in the Code of Federal Regulations, or otherwise had the force of law, and identify all correspondence or other documents reflecting such attempt and identify all documents reflecting the conclusion you reached or the result or response to the attempt.

13. If the Corps had stated to you (the Town or its counsel) that in order to have federal assistance with the southern portion of the renourishment project, you would need to include in all easements, a provision perpetually allowing one public parking space in each owner's driveway and allowing you or the Corps to kill all family dogs found in the easement area, would you have included these provisions in the easement document as well, still described it as solely permission to do the work of putting sand on the beach, and still informed owners that no change whatsoever could be made to the easement?

14. 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.

15. 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.)

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

17. 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.

18. 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.

19. 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.

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

21. 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.

22. State and describe in detail, in what document or by what means you were first provided with specific the wording the Corps of Engineers wanted you to include in easements from south end property owners and who provided that wording. (This interrogatory calls for identification of the first document you received stating such specific wording, not simply identification of any and all documents containing such wording or similar wording.)

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.

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

1/10/21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
	)	
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: 1/10/21

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
Sunset Lodge, LLC,)
Plaintiff,)
v.)
Town of Pawleys Island,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2020-CP-22-00600

ORDER

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

I. THE MATTER BEFORE THE COURT

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

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

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

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

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

II. NATURE OF THE ACTION

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

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

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

III. THE STANDARD FOR SUMMARY JUDGMENT

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

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

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

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

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

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

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

IV. PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

V. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The renourishment is done.² (Stanton Aff. ¶28.) The Town did this without any easement from two condemnees³ and other owners from whom the Town had not obtained easements or whose easements the Town rejected. (Stanton Aff. ¶¶35, 25-28.) The Town rejected the easements after publicly determining easements were “not necessary.” (Stanton Aff. ¶27.)⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. CLAIMS FOR RELIEF AND REASONS ADVANCED FOR SUMMARY

JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

VII. RULINGS, FURTHER APPLICABLE LAW, AND ANALYSIS

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

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

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

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

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

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

Nor is there evidence that the Town was allowed to delegate⁸, or attempted to delegate, this responsibility to a Town employee, a federal employee, or anyone else, as the Town Council held a meeting and at least purported to consider and decide upon the matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Georgia Court of Appeals held the condemnation invalid, based on the fact that the city's failure to follow the procedure of providing the appraisal summary before negotiating was in bad faith.⁹ 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:

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

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

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

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

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

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

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

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

The Town did not follow this procedure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VIII CONCLUSION

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

And it is so ordered.

Michael G. Nettles
Circuit Judge

Date [or see ensuing page for electronic signature]: _____



Georgetown Common Pleas

Case Caption: Sunset Lodge Llc VS Pawleys Island Town Of

Case Number: 2020CP2200600

Type: Order/Judgment Amended and Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

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STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	Civil Action No. 2020-CP-22-00932_
	)	(Consolidation of below Civil Actions)
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	2020-CP-22-00932
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
_____	)	
and	)	
	)	
Franklin D. Beattie, as trustee of	)	
The Franklin D. Beattie Preservation Trust,	)	
	)	
Plaintiff,	)	2020-CP-22-00931
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
_____	)	
and	)	
	)	
M. Baron Stanton,	)	
	)	
Plaintiff,	)	2020-CP-22-00930
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
_____	)	

**ORDER TAXING STATUTORY EXPENSES INCLUDING REASONABLE
ATTORNEY’S FEES, TO BE ENTERED AS A MONEY JUDGMENT,
ENDING CASE**

PRESIDING JUDGE: The Honorable Benjamin H. Culbertson
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., Norwood D. DuRant, Jr., and William C. Dillard, Jr.

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 April 22, 2021 Order dismissing the case as moot following the Town's abandonment without prejudice of the Town's condemnation action, this court finds as follows:

1. The expenses of \$8,990.57 as of November 15, 2022 submitted by each above-named Landowner-plaintiff 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 expended for the stated portions of the case up to the time shortly past the February 10, 2021 Notice of Abandonment and for the time afterwards relative only to the fee petition.

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 simultaneous consideration and coordination of related litigation at the same stage and at a different stage, 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. Beyond that, each Landowner-plaintiff has allocated roughly two thirds of the time devoted to the other two plaintiff parties.

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 fee application herein arises from the second condemnation action commenced by the Town. The Town withdrew this second action after the Landowners brought an action challenging the attempt and after another judge of this Court granted summary judgment against the Town in the challenge to the previous action it commenced. There, the order quashed the challenged condemnation notice and declared the action commenced by it to be ended.

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 \$8,990.57 is a reasonable award of the litigation expenses incurred by each Landowner-plaintiff, including reasonable attorney's fees, that it is a reasonable amount for the Landowner-plaintiff's counsel to charge each Landowner-plaintiff, and that \$8,990.57 shall be the award up to November 15, 2022, for the stated aspects and time periods in the case, without prejudice to supplementation for such expenses after

November 15, 2022 or for other aspects or time periods of the case, if called into play. I conclude that this award is consistent with S.C. Code Ann. §28-2-510(C), but also find that for purposes of S. C. Code Ann. §15-77-300, the condemnor acted without substantial justification in pressing its claim and that there are no special circumstances that would make the award of attorney's fees unjust.

The clerk of court is directed to tax these costs to Defendant within ten days of entry of this order. For clarity of indexing, the award to each Landowner-plaintiff shall be docketed in each Plaintiff's respective case of the three consolidated cases, the case numbers of which appear in the caption.

AND IT IS SO ORDERED.

Benjamin H. Culbertson
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-22-00932

Sunset Lodge, LLC,

Town of Pawleys Island,

PLAINTIFF(S), v.

DEFENDANT(S) (Case 20CP2200932),
and

Franklin D. Beattie, as trustee of The
Franklin D. Beattie Preservation Trust,

Town of Pawleys Island,

PLAINTIFF(S), v.

DEFENDANT(S) (Case 20CP2200931),
and

M. Baron Stanton,

Town of Pawleys Island,

PLAINTIFF(S), v.

DEFENDANT(S) (Case 20CP2200930).

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

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

☐ STAYED DUE TO BANKRUPTCY

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

Enter money judgment. This order ends the case 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	\$8,990.57 (Case 20CP2200932)
Franklin D. Beattie, as trustee of the Franklin D. Beattie Preservation Trust	Town of Pawleys Island	\$8,990.57 (Case 20CP2200931)
M. Baron Stanton	Town of Pawleys Island	\$8,990.57 (Case 20CP2200930)
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-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. Judgment declaring condemnation notice withdrawn or abandoned and the underlying condemnation action ended, and dismissing the action including the challenge to the condemnation, was granted on April 22, 2021, as detailed in an order accompanying the earlier Form 4 of similar date. As detailed in the accompanying subsequent order taxing expenses including reasonable attorney's fees pursuant to statute, through October 15, 2022, judgment is entered for each Plaintiff in his/its respective case as shown. These cases were consolidated late in their progress and each still has a separate file and case number for purposes of indexing.

November 21, 2022 notice of Dec. 15 hearing

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Monday, November 21, 2022 3:02 PM
To: Barry Stanton
Cc: ckinder@gtcounty.org
Subject: Motion "MAMNMO-Motion/Alter/Amend/Correct/Reconsider Form 4/Stanton" for Case "2020CP2200932- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 12/15/2022 at 9:30 AM

"WEBEX Hearings" See Motion Roster News for Important Information and 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, or your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any other communication regarding this case, please CONTACT Cindy Kinder, Motion Docket Clerk at ckinder@gtcounty.org or Lucinda LeSane, CP Supervisor at 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

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**From:** Courtmail22\_DoNotReply@sccourts.org  
**Sent:** Monday, November 21, 2022 3:02 PM  
**To:** Barry Stanton  
**Cc:** ckinder@gtcounty.org  
**Subject:** Motion "MATFEE-Motion/Attorney Fees/Stanton" for Case "2020CP2200932- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 12/15/2022 at 9:30 AM

"WEBEX Hearings" See Motion Roster News for Important Information and instructions.  
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~~~ 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.

December 6, 2022 notice of Dec. 15 hearing

Barry Stanton

From: Courtmail22_DoNotReply@sccourts.org
Sent: Tuesday, December 6, 2022 10:33 AM
To: Barry Stanton
Cc: ckinder@gtcounty.org
Subject: Motion "MAMNMO-Motion/Alter/Amend/Correct/Reconsider Form 4/Stanton" for Case "2020CP2200932- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 12/15/2022 at 9:30 AM

"REMINDER REMINDER" See Motion Roster News for Important Information and 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, or your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any other communication regarding this case, please CONTACT Cindy Kinder, Motion Docket Clerk at ckinder@gtcounty.org or Lucinda LeSane, CP Supervisor at llesane@gtcounty.org
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## Barry Stanton

---

**From:** Courtmail22\_DoNotReply@sccourts.org  
**Sent:** Tuesday, December 6, 2022 10:33 AM  
**To:** Barry Stanton  
**Cc:** ckinder@gtcounty.org  
**Subject:** Motion "MATFEE-Motion/Attorney Fees/Stanton" for Case "2020CP2200932- Sunset Lodge Llc VS Pawleys Island Town Of" was added to a Motions Roster for 12/15/2022 at 9:30 AM

"REMINDER REMINDER" See Motion Roster News for Important Information and instructions. The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/georgetown/courtrosters/>.

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~~~ 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.

December 12, 2022 affidavit of Dillard in opposition to
Landowner fee petition, with exhibits A-F

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Sunset Lodge, LLC,

Plaintiff,

v.

Town of Pawleys Island,

Defendant.

and

Franklin D. Beattie, as trustee of
The Franklin D. Beattie Preservation Trust,

Plaintiff,

v.

Town of Pawleys Island,

Defendant.

and

M. Baron Stanton,

Plaintiff,

v.

Town of Pawleys Island,

Defendant.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No. 2020-CP-22-00932

Consolidation of Civil Actions:

2020-CP-22-00932

2020-CP-22-00931

2020-CP-22-00930

**AFFIDAVIT
OF
WILLIAM C. DILLARD, JR.**

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

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

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

3. I graduated from the University of South Carolina School of Law in December 2009 with joint Juris Doctor and Master of Public Administration degrees. I was admitted to the South Carolina Bar in 2010 and since that time have been engaged in private practice with Belser & Belser, P.A., with a focus on civil litigation. I devote a substantial amount of my practice to eminent domain litigation throughout the state of South Carolina, including representation of both state and local governmental entities and private landowners. I also have experience in various aspects of municipal law and serve as City Attorney for a South Carolina municipality with a population of more than 10,000. Although I represent and advise state and local government entities in a range of matters, I also have significant experience in representing property owners against governmental entities in inverse condemnation actions and similar claims. I have been called upon with regularity to make presentations to other attorneys on eminent domain, zoning, and other related legal areas, including by the South Carolina Bar, the South Carolina Association of Counties, and the Municipal Association of South Carolina. I also engage in litigation involving construction disputes, real estate title, business matters, personal injury, and other areas.

4. I am familiar with the rates charged and the time necessarily devoted by attorneys in South Carolina practicing in eminent domain litigation and, more broadly, litigation by landowners challenging government action.

5. I am familiar with the following factors that the Supreme Court of South Carolina has identified in determining a reasonable attorney fee: “(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

6. In the case at hand, in addition to my firsthand experience as counsel of record since February 3, 2021, I have reviewed the October 21, 2022 fee affidavit of Plaintiffs’ counsel and the December 12, 2022, affidavit of Town Attorney David Durant. In addition to all of the case filings that have occurred since I appeared in the case, I have also reviewed the other filings prior to that time (Summons and Complaint, Answer, and Amended Complaint). I have also reviewed the Plaintiffs’ interrogatories and 30(b)(6) deposition notices.

7. For general reference, a copy of the online case index is attached as Exhibit A. Although these three cases were not consolidated until June 3, 2021, the filings in the three cases prior to that time were substantively identical and the attached index accurately represents the case activity in all three cases.

8. These consolidated cases were statutory condemnation challenge actions arising from the Town's delivery to Plaintiffs' counsel of what was a second set of condemnation notices related to efforts to condemn beach renourishment easements. The Plaintiffs' sole request for relief, set forth in their identical pleadings, was that "[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff." (Amended Complaint ¶ 372).

9. I am also familiar with the separate but related litigation referred to by the parties as the "Challenge 1" cases,¹ as distinguished from the "Challenge 2" cases at issue here. I have also served as lead counsel in the Challenge 1 cases since February 3, 2021. In representing the Town in Challenge 1 in pursuing reconsideration of summary judgment and throughout several months of Circuit Court litigation over the fee petitions in that matter, I have gained significant familiarity with what occurred in those cases even prior to my involvement.

10. It is true that the broader dispute between the Plaintiffs and the Town has given rise to some procedural complexity, with six civil actions filed (Challenge 1 and Challenge 2) and two appeals currently pending.² However, the three consolidated cases at issue in this fee petition were not in any way complex, lengthy, or time-consuming.

11. When I appeared in these cases on February 3, 2021, Judge Nettles had recently issued his January 20, 2021, summary judgment orders in the Challenge 1 cases quashing the first set of condemnation notices underlying those cases, and two of the Plaintiffs had also filed significant fee requests. Judge Nettles' reasons for quashing the Challenge 1 condemnation attempt

¹ *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.

² Specifically, in these Challenge 2 cases the three Plaintiffs have appealed the order dismissing the challenge actions as moot. In Challenge 1, two of the Plaintiffs (Beattie and Sunset Lodge) have appealed the fee award issued by the Honorable Michael G. Nettles, which reduced their combined fee claim of more than \$120,000 to \$16,000.

included grounds that were also at issue in these Challenge 2 cases, including findings about the contents of the Town's pre-condemnation appraisal report.

12. Based on the posture of the overall dispute when I entered an appearance, in the context of these Challenge 2 cases I promptly reached out to Plaintiffs' counsel in an attempt to avoid unnecessary additional legal expenses. On February 5, 2021, I emailed and mailed Mr. Stanton the letter attached as **Exhibit B** proposing a brief "pause" on incurring litigation expense while the Town determined whether it would abandon the second set of condemnation notices. To the best of my recollection, I also communicated much the same message to Mr. Stanton during telephone calls on January 29 and February 3, 2021.

13. On February 10, 2021, we filed the Town's Notice of Abandonment formally withdrawing the second set of condemnation notices in each of the three Challenge 2 cases.

14. Subsequently, and over the Plaintiffs' objections, the Honorable Benjamin H. Culbertson entered orders dismissing the now moot Challenge 2 cases. As was expressly stipulated in the Town's motion to dismiss, the dismissal was specifically without prejudice to the right of the Plaintiffs to assert any claim they may have to recovery of attorney fees and expenses.

15. Attached as **Exhibit C** is a table I prepared showing the notable events that occurred in the cases at issue in this fee petition. The table also provides, in chronological order alongside the "Case Events," a listing of the attorney hours Plaintiffs are claiming on specific days ("Hours Claimed" column) and during periods of the case I found could be identified as relevant groupings of time for purposes of the fee petition analysis. ("Combined Hours" column). This table accurately sets forth the timing and nature of the major events that occurred in these cases.

16. As illustrated in the **Exhibit C** "Case Events" table, the only tasks performed that were reasonably required for Plaintiff counsel's representation in this case were (a) researching and drafting the Complaint, (b) drafting interrogatories, (c) engaging in miscellaneous review and communications as is incident to any representation, and (d) submitting a reasonable fee petition and attending a hearing on the same.

17. Importantly, other than the Plaintiffs' service of interrogatories and one set of deposition notices, the parties did not engage in any formal discovery. References in the fee affidavit to Stanton conducting an appraiser deposition (§ 122), having "spent many hours responding to the Town's discovery requests" (§ 218), and having "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” (§ 210), and other similar references to discovery, **refer to discovery work in the prior “Challenge 1” action and not to these cases.**

18. Likewise, prior to the Town’s successful motions for dismissal and protection from discovery after filing the Notices of Abandonment, there were no motions filed by either side.

19. There was no reasonable need for the Plaintiffs to amend their Complaints. The original pleadings extensively detailed their allegations and theories, including allegations previously included in the separate “Challenge 1” actions, over 11 pages and 50 paragraphs.

20. There was certainly no reasonable need for Plaintiffs’ counsel to devote whatever time was used to prepare the 59-page, 375-paragraph Amended Complaints. The S.C. Rules of Civil Procedure provide that a pleading setting forth a claim “shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends . . . (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled.” SCRCP 8.

21. The Amended Complaints were not “short and plain statements” of the Plaintiffs’ claims but were instead excessively lengthy and far beyond anything plausibly necessary to set forth even a detailed statement of the Plaintiffs’ allegations and theories.

22. Under South Carolina law, “[t]he purpose of a pleading is fair notice to the opponent and the court.’ In this state, Rule 8, SCRCP, mandates that a pleading contain ‘ultimate facts’ rather than ‘evidentiary facts’ to state a cause of action. Ultimate facts fall somewhere between the verbosity of ‘evidentiary facts’ and the sparsity of ‘legal conclusions.’” *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) (citing and quoting James F. Flanagan, *South Carolina Civil Procedure* 59 (2d ed.1996).

23. In my opinion, the length of the Amended Complaints and to an extent even the original Complaints was excessive, unnecessary, and inconsistent with that of pleadings typically filed by South Carolina attorneys in cases of this limited scope and complexity. The Plaintiffs’ single request for relief and the underlying “ultimate facts” could have been fully set forth in a much more economical manner, and would furthermore have been made more comprehensible by that more customary approach.

24. Furthermore, even it had been necessary to plead in such excessive length and detail, the Plaintiffs had already drafted and filed similarly lengthy pleadings alleging largely the

same facts in the Challenge 1 cases. There was no need for any time-consuming redrafting of the same allegations, if that is what the Plaintiffs contend occurred.

25. Much of the Plaintiff's factual and legal position came directly from the separate "Challenge 1" cases that were already pending at the time these cases were filed. Although the Plaintiffs elected to file 59-page, 375-paragraph Amended Complaints, the significant majority of those theories and allegations reflected legal work that had already been performed in the separate Challenge 1 cases. Accordingly, the necessary work for Plaintiffs' counsel in the relevant "Challenge 2" cases, although it did include some new facts involving delivery of the second set of condemnation notices, was greatly reduced because of work that had already been performed in "Challenge 1."

26. The Challenge 1 cases were subject to a separate fee petition, which was already ruled upon by the Honorable Michael G. Nettles in an order entered November 23, 2021 (attached as **Exhibit D**). The attorney time in those separate cases and the subsequent appeal does not give the Plaintiffs any right to additional fees here.

27. Nonetheless, significant portions of the Plaintiffs' fee affidavit relate exclusively to the Challenge 1 cases,³ and does not present information actually bearing on this fee petition.

28. Likewise, the Plaintiffs' fee affidavit discusses matters that occurred after the Town filed Notices of Abandonment of the condemnation notices on February 10, 2021. Other than what should have been very modest time after that point to consent to dismissal of the cases and submit a reasonable fee petition supported by itemized fee statements, this "post-abandonment" attorney time does not represent fees reasonably and necessarily incurred in this litigation and the relevant discussion in the Plaintiffs' fee affidavit does not present information actually bearing on this fee petition.

29. While it appears that Plaintiffs are not claiming fees for all "post-abandonment" matters, and that detailed discussion of the relevant context and procedural history may not ultimately be needed, the case events following the filing of the Notices of Abandonment are categorized and described in a footnote to this paragraph in case reference is needed.⁴

³ See Stanton Affidavit ¶ 31, 38, 100-117, 119-121, 123, 127-129, 131-134, 141, 143, 145-150, 153-159, 161-164, 167-168, 172-176, 178-179, 170* (p.50), 174* (p.51), 177-179* (p.51), 180-188, 210-212, 215, 217-218.

⁴ (a) Town's motion to dismiss and motion for protective order. After the Notices of Abandonment were filed on February 10, 2021, the Plaintiffs declined to consent to dismissal of

30. The “Case Events Table” attached as **Exhibit C**, and in particular the chronological comparison of major case events with daily “block bill” attorney time claims from the Stanton affidavit, demonstrates the following:

- a. From the delivery of the Condemnation Notices (approx. 10/15/20) to the filing of the Complaints (11/12/20), Plaintiffs claim **6.9 hours**. It appears this claimed time relates to initial case review and drafting the pleadings.

the cases. After an April 1, 2021 hearing, the Honorable Benjamin H. Culbertson subsequently entered orders granting the Town’s motions and, specifically, dismissing the Challenge 2 cases based on a finding that the abandonment rendered the challenge moot. Plaintiffs filed a motion to reconsider the dismissal, which Judge Culbertson denied after a hearing on June 3, 2021, and their appeal of the dismissal is now pending in the Court of Appeals. **All of the attorney time on these motions and the ensuing appeal were based on the Plaintiffs’ unsuccessful effort to avoid dismissal and continue discovery.**

(b) Town’s motion to correct clerical error and subsequent initiation of appeal. The June 3, 2021, Form 4 order denying Plaintiffs’ motion to reconsider the dismissal mistakenly stated that the “existing” [i.e., Challenge 1] condemnation notices had also been “abandoned.” In fact, those condemnation notices were not abandoned but were instead quashed by Judge Nettles’s January 20, 2021, summary judgment orders in those cases. In order to avoid any subsequent claim by Plaintiffs’ that the Town should be bound by that inaccurate finding and its future exercise of eminent domain should be somehow limited as a result, the Town filed a motion to correct the error. When that motion was subsequently denied on jurisdictional grounds, the Town reluctantly filed and served a notice of appeal seeking to correct the error on August 11, 2022. On September 7, 2022, after discussion between counsel of the most efficient way to resolve the error, the parties filed a joint “Stipulation Regarding June 3, 2021 Form 4 Orders” acknowledging the procedural history. On September 8, 2022, the parties also filed a Stipulation of Dismissal with the Court of Appeals (attached as **Exhibit E**) which provided “that each party be responsible for its own costs, if any, in this appeal, and that no costs shall be assessed in this appeal.” **All of the attorney time on these issues ultimately arose from the Plaintiffs’ unsuccessful effort to avoid dismissal, and would have been avoided if the Plaintiffs had simply consented to dismissal after the Notices of Abandonment were filed. Furthermore, these issues required very little attorney time, and not a single direct filing, from Plaintiffs’ counsel.**

(c) Plaintiffs’ motion to amend July 12, 2022 Form 4 Order. On July 22, 2022, the Plaintiffs filed a motion to amend the July 12, 2022, Form 4 Order asserting that the box indicating “This order ends the case” should not have been checked because the Plaintiffs had not yet asserted a claim for attorney fees. The motion does not contain a Rule 11 consultation certification and, to the best of my recollection, I was not consulted prior to its filing. The motion is currently scheduled to be heard at the same virtual hearing as the fee petition. **All of the attorney time on this issue ultimately arose from the Plaintiffs’ unsuccessful effort to avoid dismissal, and would have been avoided if the Plaintiffs had simply consented to dismissal after the Notices of Abandonment were filed. Furthermore, this issue has required very little attorney time, and only a single short filing, from Plaintiffs’ counsel.**

- b. After the filing of the Complaint (11/12/20) and up through service of the Plaintiffs' notice of deposition of the Town Administrator, Plaintiffs claim **48 hours**. During this period, the Answer was filed, the Plaintiffs' interrogatories were served, and the Amended Complaint was filed. Because no time entries or other time descriptions have been provided, it is not possible to determine exactly how all of this time is claimed to have been spent. However, this is clearly a significant and, in my opinion, excessive amount of time given the limited complexity of the case and the limited case activity during this period.
- c. Between my submission of a letter to Mr. Stanton requesting a pause in case activity (2/5/20) and the entry of orders dismissing the cases (4/22/20), Plaintiffs claim **10 hours**. Notably, only 2.2 of these hours are claimed prior to the date the Notices of Abandonment were filed, meaning that the vast majority of the time is claimed after that filing and related to the Plaintiffs' unnecessary, unsuccessful attempts to avoid dismissal and continue discovery. In my opinion, this represents an excessive and unnecessary amount of attorney time given the limited case activity and, especially, the very limited needs of the case at that time.
- d. Plaintiffs claim **37.1 hours** from 9/15/21 through the filing of their fee petitions on 10/21/22. The only known case activity during this period corresponding with the identified dates is the preparation and submission of the fee affidavit.⁵ The 66-page, 223-paragraph fee affidavit provides extensive detail about work in separate litigation matters, alleged failings by the Town and Army Corps of Engineers, and other tangential issues, but does not provide any kind of specific breakdown of how this or any other attorney time was actually spent. Likewise, no itemized fee statements have been produced to demonstrate how the time is claimed to have been spent. In my opinion, this represents an excessive and unnecessary amount of time to prepare a fee affidavit in a case that effectively ended, with very limited case

⁵ I acknowledge that two of the dates identified during this period in the Stanton affidavit, September 15 and 16, 2021 (accounting for a claimed 7.6 hours) were prior to conclusion of the Town's efforts to have an error in the June 3, 2021, Form 4 order corrected. However, at that time the motion had been pending for 3 months and would not be ruled upon for another 10 months. In other words, there was nothing going on in this case at that time that would explain the claimed 7.6 hours in September 2021 other than initial work on the fee petition.

activity, after less than four months when the Notices of Abandonment were filed. That would also be true of even a more substantive and informative fee affidavit that included, among other things, copies of itemized fee statements such as are routinely submitted with fee requests.

- e. Notably, the Plaintiffs also claim an additional **42.2 “prospective hours”**. This is described in Paragraph 190 of the affidavit as “[f]uture underestimated [Stanton] time to conclusion of fee matter and circuit court proceedings, to 11/15/22.” This claim is highly excessive and highly speculative. The hearing on the fee petition is expected to take place by WebEx on December 15, 2022, after submission of materials by the parties and with no other case activity. No efforts that Plaintiffs’ counsel could reasonably be expected to undertake would justify this amount of time, and nothing the Town has done would give him reason to do so.

31. In my opinion there is no valid basis for the Plaintiffs’ contention that the Town’s conduct in litigation somehow forced their attorney to work an excessive number of hours. Mr. Stanton’s claims regarding an email sent by the Town’s Mayor, Brian Henry, were previously rebutted in an affidavit signed by Mayor Henry and filed in the Challenge 1 cases. A copy of the affidavit is attached as **Exhibit F**.

32. My consideration of the factors set forth in *Jackson v. Speed* is summarized as follows:

- a. (1) *The nature, extent, and difficulty of the case*: As discussed in more detail above, this case was brief, straightforward, and involved limited case activity. Particularly given that relevant discovery and legal and factual research had already been performed in the Challenge 1 cases (as discussed in detail in the Stanton affidavit), this was a case of limited scope and complexity. The case involved a single claim for relief and, although it was based on several theories, most of the theories were previously developed and incorporated verbatim from the Challenge 1 pleadings. Condemnation challenge actions are by nature limited in scope and subject to a limited amount of statutory and case law. The Plaintiffs’ challenge was based on allegations of (1) fraud, bad faith and abuse of discretion and (2) violations of the S.C. Eminent Domain Procedure Act. The case effectively ended (or should have notwithstanding the Plaintiffs’ unsuccessful efforts to avoid dismissal and continue

discovery) when the Notices of Abandonment were filed less than four months after the relevant condemnation notices were delivered.

- b. (2) *The time necessarily devoted to the case*: As discussed above, the Plaintiffs' claimed attorney time is excessive and significantly out of proportion to the actual needs and activity of the cases. Although this fee petition does include three distinct civil actions, the issues, theories, pleadings, and other filings were effectively identical other than being submitted under different case captions (see, e.g., Aff. Stanton p.38, fn.25), and the cases were handled simultaneously. My opinion of a reasonable amount of attorney time to handle these three matters simultaneously is set forth below.
- c. (3) *Professional standing of counsel*: I do not dispute that Mr. Stanton has lengthy experience in diverse areas of practice, and make no aspersions on his professional standing. I do note that he does not claim any particular practice focus on eminent domain matters.
- d. (4) *Contingency of compensation*: Plaintiffs' counsel avers that he has worked on an hourly basis and, therefore, this factor does not appear to be relevant here.
- e. (5) *Beneficial results obtained*: The Plaintiffs' sole request for relief was that "[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff." (Amended Complaint ¶ 372). The Notices of Abandonment had the effect of withdrawing the "New" condemnation notices which, although without prejudice to future attempts, was a beneficial result for the Plaintiffs.
- f. (6) *Customary legal fees for similar services*: Mr. Stanton's hourly rate of \$190 is fair and quite reasonable (Aff. Stanton ¶ 54). Likewise, the agreements to split fees in equal 1/3 shares (Aff. Stanton ¶ 200) was fair, reasonable and, under the circumstances, likely the only fair and reasonable arrangement. However, the claimed fees are not "customary" based on the number of attorney hours involved, which in my view are significantly out of proportion to the limited case activity involved in these matters.

33. Based on my review of the case records and attorney affidavits, my firsthand knowledge of the case, application of the six factors identified in *Jackson v. Speed* for

determination of a reasonable attorney fee, my experience as an attorney and the analysis above, in my opinion the following itemization of hours provides for more than a reasonable amount of time for Plaintiffs' counsel to perform the limited necessary work in these three cases:

| | |
|-----------------------------|----------------|
| Research/Drafting Complaint | 4 hours |
| Drafting interrogatories | 3 hours |
| Misc. review/communications | 4 hours |
| Fee petition and hearing | <u>9 hours</u> |
| Total: | 20 hours |

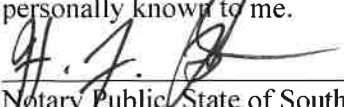
34. At Plaintiff counsel's hourly rate of \$190, this hourly total equates to a fair and reasonable fee of **\$3,800.00** for simultaneous handling of these three essentially identical matters, with this total amount to be divided among the three cases in equal, one-third shares consistent with the Plaintiffs' fee agreements as referenced in Paragraph 200 of the Stanton fee affidavit.

35. The Plaintiffs' request for expenses also overstates the amount that was reasonably and necessarily incurred in these cases (Aff. Stanton ¶ 190 and p.55 fn.35). Specifically, the claims for mileage for travel to the motion to dismiss hearing (\$52.05), filing fees for the motion to reconsider (\$31.74 x 3), and filing fee for the motion to correct Form 4 (\$31.74) all relate to their unsuccessful efforts to avoid dismissal and continue discovery. I do not dispute that the Plaintiffs' filing fees (\$180.32 x 3) and fee petition filing fee (\$31.74) were reasonably incurred, for total expenses of **\$572.70** (to be divided in equal, one third-shares between the Plaintiffs).

FURTHER AFFIANT SAYETH NOT.


William C. Dillard, Jr.

Sworn to and subscribed before me this 12th
day of December 2022, by the affiant, who is
personally known to me.


Notary Public, State of South Carolina

Name: H.F. Belser

My Commission Expires: 6/30/32

Exhibits to Affidavit of William C. Dillard, Jr.

| | | |
|------------------|---|------|
| <u>Exhibit A</u> | Case Index | p.1 |
| <u>Exhibit B</u> | February 5, 2021 Letter | p.5 |
| <u>Exhibit C</u> | Case Events Table | p.8 |
| <u>Exhibit D</u> | “Challenge 1” Fee Award | p.10 |
| <u>Exhibit E</u> | Court of Appeals Stipulation of Dismissal | p.23 |
| <u>Exhibit F</u> | Affidavit of Brian Henry (“Challenge 1”) | p.25 |



Georgetown County Fifteenth Judicial Circuit Public Index

Exhibit A



[Georgetown County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

Sunset Lodge Llc VS Pawleys Island Town Of

| | | | | | |
|----------------------|---------------|-------------------|---|--------------------|---------------|
| Case Number: | 2020CP2200932 | Court Agency: | Common Pleas | Filed Date: | 11/12/2020 |
| Case Type: | Common Pleas | Case Sub Type: | Fraud/Bad Faith 150 | File Type: | Non-Jury |
| Status: | Pending | Assigned Judge: | Clerk Of Court C P, G S, And Family Court | | |
| Disposition: | | Disposition Date: | | Disposition Judge: | |
| Original Source Doc: | | Original Case #: | | Restore Reason: | Reopened Case |
| Judgment Number: | | Court Roster: | | | |

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

| Name | Description | Type | Motion Roster | Begin Date | Completion Date | Documents |
|------------------------------|--|--------|---------------|------------------|-----------------|-----------|
| Stanton, M. Baron | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 12/06/2022-10:32 | | |
| Stanton, M. Baron | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 12/06/2022-10:32 | | |
| DuRant, Norwood David Sr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 12/06/2022-10:32 | | |
| DuRant, Norwood David Sr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 12/06/2022-10:32 | | |
| Dillard, William Clayton Jr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 12/06/2022-10:32 | | |
| Dillard, William Clayton Jr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 12/06/2022-10:32 | | |
| Dillard, William Clayton Jr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 11/21/2022-15:01 | | |
| Dillard, William Clayton Jr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 11/21/2022-15:01 | | |
| DuRant, Norwood David Sr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 11/21/2022-15:01 | | |
| DuRant, Norwood David Sr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 11/21/2022-15:01 | | |
| Stanton, M. Baron | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 11/21/2022-15:01 | | |
| Stanton, M. Baron | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | | 11/21/2022-15:01 | | |
| Sunset Lodge Llc | Decline to Sign:Order/Attorney Fees | Filing | | 10/31/2022-16:03 | | |

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|------------------------------|--|--------|--|------------------|------------------|--|
| Sunset Lodge Llc | NEF(10-21-2022 10:57:19 AM)
Motion/Attorney Fees | Filing | | 10/21/2022-11:27 | | |
| Sunset Lodge Llc | Motion/Attorney Fees/Stanton | Motion | <u>Motion Docket 12/15/2022 WEBEX Judge H Steven DeBerry</u> | 10/21/2022-10:57 | | |
| Sunset Lodge Llc | Affidavit/Attorney Fees | Filing | | 10/21/2022-10:57 | | |
| Sunset Lodge Llc | Remittitur From Court Of Appeals | Filing | | 10/07/2022-11:33 | 10/07/2022-11:40 | |
| Sunset Lodge Llc | Order | Order | | 10/07/2022-11:33 | 10/07/2022-11:40 | |
| Pawleys Island Town Of | NEF(09-07-2022 09:59:12 AM)
Stipulation/Stipulation of | Filing | | 09/07/2022-10:34 | 10/07/2022-10:34 | |
| Pawleys Island Town Of | Stipulation/Stipulation Regarding 6-3-21 Form 4 Orders | Filing | | 09/07/2022-09:59 | 10/07/2022-09:59 | |
| Pawleys Island Town Of | Appeal/Notice of Appeal to Court of Appeals | Action | | 08/12/2022-14:25 | 10/07/2022-14:25 | |
| Pawleys Island Town Of | NEF(08-11-2022 02:25:20 PM)
Appeal/Notice of Appeal to C... | Filing | | 08/11/2022-14:53 | 10/07/2022-14:53 | |
| Sunset Lodge Llc | NEF(07-22-2022 05:10:03 PM)
Motion/Alter and/or Amend | Filing | | 07/25/2022-08:47 | 10/07/2022-08:47 | |
| Sunset Lodge Llc | Motion/Alter/Amend/Correct/Reconsider Form 4/Stanton | Motion | <u>Motion Docket 12/15/2022 WEBEX Judge H Steven DeBerry</u> | 07/22/2022-17:10 | | |
| Sunset Lodge Llc | NEF(07-12-2022 11:02:50 AM)
Order/Electronic Form 4 | Filing | | 07/12/2022-11:03 | 10/07/2022-11:03 | |
| Sunset Lodge Llc | Order/Electronic Form 4/See Form 4 | Order | | 07/12/2022-11:02 | 10/07/2022-11:02 | |
| Sunset Lodge Llc | ADR/Notice of ADR | Action | | 09/09/2021-10:01 | 10/07/2022-10:01 | |
| Sunset Lodge Llc | NEF(07-02-2021 04:58:34 PM)
Notice/Other | Filing | | 07/06/2021-08:44 | 10/07/2022-08:44 | |
| Sunset Lodge Llc | Notice of Appeal/Certificate of Service | Filing | | 07/02/2021-16:58 | 10/07/2022-16:58 | |
| Stanton, M. Baron | 7/29/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | | 07/01/2021-11:49 | 10/07/2022-11:49 | |
| DuRant, Norwood David Sr. | 7/29/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | | 07/01/2021-11:49 | 10/07/2022-11:49 | |
| Dillard, William Clayton Jr. | 7/29/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | | 07/01/2021-11:49 | 10/07/2022-11:49 | |
| Sunset Lodge Llc | NEF(06-21-2021 10:01:38 AM)
ADR/Notice of ADR | Filing | | 06/21/2021-10:01 | 10/07/2022-10:01 | |
| Pawleys Island Town Of | NEF(06-14-2021 04:42:27 PM)
Motion/Relief | Filing | | 06/15/2021-10:24 | 10/07/2022-10:24 | |
| Pawleys Island Town Of | Motion to Correct or Amend Error In 6-3-21 Orders/Dillard | Motion | | 06/14/2021-16:42 | 10/07/2022-16:42 | |
| Sunset Lodge Llc | ADR/Alternative Dispute Resolution (Workflow) | Action | | 06/10/2021-17:08 | 09/19/2021-17:08 | |
| Sunset Lodge Llc | NEF(06-03-2021 12:56:15 PM)
Order/Electronic Form 4 | Filing | | 06/03/2021-12:56 | 10/07/2022-12:56 | |
| Sunset Lodge Llc | Order/Electronic Form 4/See Form 4 | Order | | 06/03/2021-12:56 | 10/07/2022-12:56 | |

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|------------------------------|---|--------|--|------------------|------------------|--|
| Pawleys Island Town Of | NEF(06-02-2021 04:10:37 PM) Memo/Memo in Opposition | Filing | | 06/02/2021-16:15 | 10/07/2022-16:15 | |
| Pawleys Island Town Of | Memo/Memo in Opposition to Mot to Reconsider Order of Dismiss | Filing | | 06/02/2021-16:10 | 10/07/2022-16:10 | |
| Stanton, M. Baron | 6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 06/01/2021-10:05 | 10/07/2022-10:05 | |
| Dillard, William Clayton Jr. | 6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 06/01/2021-10:05 | 10/07/2022-10:05 | |
| DuRant, Norwood David Sr. | 6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 06/01/2021-10:05 | 10/07/2022-10:05 | |
| Dillard, William Clayton Jr. | 6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 05/17/2021-10:37 | 10/07/2022-10:37 | |
| Stanton, M. Baron | 6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 05/17/2021-10:37 | 10/07/2022-10:37 | |
| DuRant, Norwood David Sr. | 6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 05/17/2021-10:37 | 10/07/2022-10:37 | |
| Sunset Lodge Llc | NEF(04-28-2021 12:24:16 PM) Motion/Reconsider | Filing | | 04/28/2021-12:46 | 10/07/2022-12:46 | |
| Sunset Lodge Llc | Motion/Reconsider/Stanton | Motion | | 04/28/2021-12:24 | 06/03/2021-12:24 | |
| Sunset Lodge Llc | NEF(04-22-2021 08:26:10 AM) Order/Dismissal | Filing | | 04/22/2021-08:26 | 10/07/2022-08:26 | |
| Sunset Lodge Llc | Order/Dismissal | Order | | 04/22/2021-08:26 | 10/07/2022-08:26 | |
| Sunset Lodge Llc | NEF(04-22-2021 08:25:47 AM) Order/Form 4 | Filing | | 04/22/2021-08:25 | 10/07/2022-08:25 | |
| Sunset Lodge Llc | Form 4/Mot to Dismiss&Mot for Prot Ord Granted/See Form 4 | Order | | 04/22/2021-08:25 | 10/07/2022-08:25 | |
| Sunset Lodge Llc | NEF(04-01-2021 04:12:58 PM) Order/Electronic Form 4 | Filing | | 04/01/2021-16:21 | 10/07/2022-16:21 | |
| Sunset Lodge Llc | Order/Electronic Form 4/See Form 4 | Order | | 04/01/2021-16:12 | 10/07/2022-16:12 | |
| Pawleys Island Town Of | NEF(03-31-2021 04:32:07 PM) Memo/Memo in Support | Filing | | 04/01/2021-08:30 | 10/07/2022-08:30 | |
| Sunset Lodge Llc | NEF(03-31-2021 08:55:32 PM) Reply/Other | Filing | | 04/01/2021-08:29 | 10/07/2022-08:29 | |
| Sunset Lodge Llc | Reply to Memo in Opposition | Filing | | 03/31/2021-20:55 | 10/07/2022-20:55 | |
| Pawleys Island Town Of | Memo/Memo in Support | Filing | | 03/31/2021-16:32 | 10/07/2022-16:32 | |
| Sunset Lodge Llc | NEF(03-31-2021 08:07:18 AM) Memo/Memo in Opposition | Filing | | 03/31/2021-09:52 | 10/07/2022-09:52 | |
| Sunset Lodge Llc | Memo/Memo in Opposition | Filing | | 03/31/2021-08:07 | 10/07/2022-08:07 | |
| DuRant, Norwood David Sr. | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 03/25/2021-09:14 | 10/07/2022-09:14 | |
| DuRant, Norwood David Sr. | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 03/25/2021-09:14 | 10/07/2022-09:14 | |
| Stanton, M. Baron | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 03/25/2021-09:14 | 10/07/2022-09:14 | |
| Stanton, M. Baron | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 03/25/2021-09:14 | 10/07/2022-09:14 | |
| Dillard, William Clayton Jr. | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 03/25/2021-09:14 | 10/07/2022-09:14 | |

| | | | | | | |
|------------------------------|--|--------|--|------------------|------------------|--|
| Dillard, William Clayton Jr. | 4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen | Action | | 03/25/2021-09:14 | 10/07/2022-09:14 | |
| Pawleys Island Town Of | NEF(03-05-2021 03:50:14 PM) Motion/Dismiss | Filing | | 03/05/2021-16:37 | 10/07/2022-16:37 | |
| Pawleys Island Town Of | Motion/Dismiss/Dillard | Motion | | 03/05/2021-15:50 | 04/01/2021-15:50 | |
| Pawleys Island Town Of | NEF(03-03-2021 02:59:36 PM) Answer/Answer To Amended Com... | Filing | | 03/03/2021-16:21 | 10/07/2022-16:21 | |
| Pawleys Island Town Of | Answer/Answer To Amended Complaint | Filing | | 03/03/2021-14:59 | 10/07/2022-14:59 | |
| Pawleys Island Town Of | Motion/Protection from Discovery/Dillard | Motion | | 03/03/2021-14:59 | 04/01/2021-14:59 | |
| Pawleys Island Town Of | NEF(02-10-2021 03:37:20 PM) Notice/Other | Filing | | 02/10/2021-16:50 | 10/07/2022-16:50 | |
| Pawleys Island Town Of | Notice of Abandonment of Condemnation Action | Filing | | 02/10/2021-15:37 | 10/07/2022-15:37 | |
| Pawleys Island Town Of | NEF(02-03-2021 10:32:01 AM) Notice/Notice of Appearance | Filing | | 02/03/2021-10:32 | 10/07/2022-10:32 | |
| Pawleys Island Town Of | Notice/Notice of Appearance | Filing | | 02/03/2021-10:32 | 10/07/2022-10:32 | |
| Sunset Lodge Llc | NEF(01-13-2021 12:45:47 PM) Amended/Amended Summons And ... | Filing | | 01/13/2021-14:11 | 10/07/2022-14:11 | |
| Sunset Lodge Llc | Amended/Amended Summons And Complaint | Filing | | 01/13/2021-12:45 | 10/07/2022-12:45 | |
| Pawleys Island Town Of | NEF(12-14-2020 04:09:30 PM) Notice/Notice of Appearance | Filing | | 12/14/2020-16:19 | 10/07/2022-16:19 | |
| Pawleys Island Town Of | Notice/Notice of Appearance | Filing | | 12/14/2020-16:09 | 10/07/2022-16:09 | |
| Pawleys Island Town Of | Answer/Answer | Filing | | 12/14/2020-16:09 | 10/07/2022-16:09 | |
| Sunset Lodge Llc | Summons & Complaint | Filing | | 11/12/2020-17:08 | 10/07/2022-17:08 | |

Will Dillard

**Exhibit
B**

From: Will Dillard
Sent: Friday, February 5, 2021 5:13 PM
To: Barry Stanton
Subject: Stanton, et al. v. Town of Pawleys Island (2nd Challenge Actions)
Attachments: '21.2.5 Dillard to Stanton (2nd Set of Challenge Actions).pdf

Barry:

Good afternoon. Please see the attached letter requesting a temporary “pause” on activity in the second set of challenge actions, as we have previously discussed.

Thank you,

Will

William C. Dillard, Jr., Esquire
BELSER & BELSER, P.A.
1325 Park Street, Suite 300 (29201)
P.O. Box 96, Columbia, SC 29202
Phone: (803) 929-0096
Fax: (803) 929-0196
Direct: (803) 999-1255
will@belserpa.com

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



POST OFFICE BOX 96
COLUMBIA, SC 29202

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

OFFICE LOCATION
1325 PARK STREET
SUITE 300
COLUMBIA, SC 29201

February 5, 2021

Via mail and email (bstanton@stantonlaw.com)

M. Baron Stanton
STANTON LAW OFFICES, P.A.
Post Office Box 245
Columbia, SC 29202

**Re: Request for temporary hold on case activity
("Second Set" of Challenge Actions)**

Franklin D. Beattie v. Town of Pawleys Island (Civil Action No. 2020-CP-22-0931)
Sunset Lodge, LLC v. Town of Pawleys Island (Civil Action No. 2020-CP-22-0932)
M. Baron Stanton v. Town of Pawleys Island (Civil Action No. 2020-CP-22-0930)

Dear Mr. Stanton:

As I believe we discussed when we spoke by telephone on January 29th and again on February 2nd, the Town of Pawleys Island is currently considering the manner in which it will proceed with the Condemnation Notices underlying the above referenced challenge actions filed in November. The present circumstances the Town is considering include the potential impact, if any, of the summary judgment orders issued on January 20, 2021 in the earlier filed associated cases 2020-CP-22-0600, -0601 and -602. As I notified you previously, it is entirely possible that the Town will file an "Abandonment of Condemnation" as to each of these matters sometime in the coming days.

In the meantime, as I hope you will agree, there is no need for any party to incur additional expense relating to these three matters. To the extent that you or your clients intend to look to the Town for recovery of any fees or costs, I ask that you refrain from incurring any material amounts of fees or costs in these three matters for the next thirty (30) days unless and until any developments occur that legitimately require your engagement. I believe this represents a reasonable amount of time for the parties to hit "pause" on these three cases while the Town assesses the possibilities for a disposition. Respectfully, if additional expenses are incurred in these three matters during this time frame then the Town will take the position that such expenses were incurred unreasonably.

In this spirit, I will write you separately by email to discuss postponing the deposition noticed for February 19th and to request an extension on responding to your discovery requests. If you believe now or anytime during the next thirty days that any action on the part of the Town has

ELECTRONICALLY FILED - 2022 Dec 12 7:27 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200932

imposed a deadline or other reason for you or your clients to incur expense, please let me know so that we can discuss addressing the same.

Thank you, and please let me know if you have any questions or concerns at this time.

Sincerely,

A handwritten signature in cursive script, appearing to read "William C. Dillard".

William C. Dillard, Jr.

Cc: Ryan Fabbri, Town Administrator (via email)
David Durant, Town Attorney (via email)

Case Events Table
(2020-CP-22-00930, -00931, -00932)

| <u>Date</u> | <u>Case Event</u> | <u>Hours Claimed</u> | <u>Combined Hours</u> |
|-------------|---|----------------------|-----------------------|
| 10/15/2020 | Condemnation Notice delivered to plaintiffs' counsel (approximate date) | | |
| 11/11/2020 | | 0.5 | 6.9 |
| 11/12/2020 | Summons/Complaint filed (11 pages) | 6.4 | |
| 11/13/2020 | | 1.9 | 48.0 |
| 11/16/2020 | | 1.0 | |
| 12/14/2020 | Answer filed (3 pages) | | |
| 12/15/2020 | | 1.7 | |
| 1/5/2021 | | 6.8 | |
| 1/6/2021 | | 2.9 | |
| 1/7/2021 | | 4.0 | |
| 1/8/2021 | <i>"Challenge 1" Cases - Form 4 entered granting summary judgment</i> | 1.0 | |
| 1/9/2021 | | 5.6 | |
| 1/10/2021 | Plaintiffs' First Sets of Interrogatories served | 7.0 | |
| 1/11/2021 | | 3.0 | |
| 1/12/2021 | | 7.7 | |
| 1/13/2021 | Amended Complaint filed (59 pages) | 5.4 | |
| 1/15/2021 | Plaintiffs' Notice of Deposition of Town Administrator Served | | |
| 1/20/2021 | <i>"Challenge 1" Cases - Formal summary judgment orders entered</i> | | |
| 2/3/2021 | Notice of Appearance (Dillard) | | |
| 2/5/2021 | Dillard letter to Stanton (requesting temporary pause on case activity) | | |
| 2/7/2021 | | 2.2 | 10 |
| 2/10/2021 | Notice of Abandonment of Condemnation filed | 0.4 | |
| 2/11/2021 | | 1.5 | |
| 2/12/2021 | | 3.1 | |
| 2/15/2021 | | 1.9 | |
| 3/3/2021 | Answer to Amended Complaint filed (5 pages) | | |
| 3/3/2021 | Defendant's Motion for Protective Order Regarding Discovery filed (3 pages) | | |
| 3/5/2021 | Defendant's Motion to Dismiss filed (3 pages) | | |
| 3/12/2021 | | 0.9 | |
| | Omitted - Proceedings on Motion to Dismiss | | |
| 4/22/2021 | Order of Dismissal entered | | |
| | Omitted - Proceedings on Motion to Dismiss | | |

Exhibit

C

p.8

Case Events Table
(2020-CP-22-00930, -00931, -00932)

| | | | |
|---|--|-------|------|
| 6/3/2021 | Form 4 entered (consolidating cases and denying motion to reconsider dismissal) | | |
| 7/2/2021 | Notice of Appeal filed | | |
| Omitted - Proceedings on Motions to Alter/Amend, etc. | | | |
| 9/15/2021 | | 1.6 | 37.1 |
| 9/16/2021 | | 6.0 | |
| 9/20/2022 | | 1.8 | |
| 9/21/2022 | | 6.2 | |
| 9/22/2022 | | 6.2 | |
| 9/23/2021 | | 3.9 | |
| 9/24/2022 | | 4.5 | |
| 9/25/2022 | | 4.0 | |
| 9/26/2022 | | 2.9 | |
| 10/21/2022 | Petition for Attorney Fees (2 pages) and supporting Affidavit of M. Baron Stanton (67 pages plus exhibits) filed | | |
| Prospective through 11/15/2022 | | 42.2 | 42.2 |
| TOTAL: | | 144.2 | |

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
Sunset Lodge, LLC,)
and)
Franklin D. Beattie, as trustee of The)
Franklin D. Beattie Preservation Trust,)
and)
M. Baron Stanton,)
Plaintiffs,)
v.)
Town of Pawleys Island,)
Defendant.)

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2020-CP-22-00600

**Exhibit
D**

**ORDER AWARDING
LITIGATION EXPENSES**

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

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

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

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

BACKGROUND

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

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

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

STANDARD ON REVIEW OF AN ATTORNEY FEE PETITION

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

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

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

(2) The time necessarily devoted to the case

Plaintiff’s counsel states that he has or will work 1000.5 hours, or more, in connection with the three consolidated cases. The fee claim is calculated specifically based on 950.5 hours of previously tallied claimed attorney time. For context, the plaintiffs’ first five fee statements, presenting attorney time up through five days before entry of the January 20, 2021 summary judgment order, reflect an average of 4.2 hours every weekday, including holidays, over a six-and-a-half month period (600.7¹ hours over 143 weekdays). The sixth fee statement, presenting additional attorney time up through the March 3, 2021 hearing on production of billing statements, reflects an average of 5.1 hours every weekday, including holidays, over a seven week period (173.6 hours over 34 weekdays). The plaintiffs also claimed an additional 176.2 hours since March 3, 2021. The fee statements reflect that in July 2020, the first month of the case, plaintiffs’ counsel worked 27 of the 31 days of the month for a total of 162.8 hours, an average of just over six hours per each of the 27 days worked.

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

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

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

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

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

(3) Professional standing of counsel

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

(4) Contingency of compensation

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

(5) Beneficial results obtained

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

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

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

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

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

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

(6) Customary legal fees for similar services

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

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

II. Determination of Reasonable Attorney Hours

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

III. Application of the Lodestar Analysis

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

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

IV. Plaintiffs' Out-of-Pocket Costs

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

IT THEREFORE ORDERED THAT:

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

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

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

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

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

AND IT IS SO ORDERED.

_____, South Carolina
 _____, 2021.

 The Honorable Michael G. Nettles

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-22-00600

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

Town of Pawleys Island
DEFENDANT(S)

| | |
|--|--|
| Submitted by: William C. Dillard, Jr. | Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant |
|--|--|

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

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

| INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. | | |
|---|--|--|
| Judgment in Favor of
(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 | \$ 8,913.33 |
| Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust | Town of Pawleys Island | \$ 8,913.33 |
| M. Baron Stanton | Town of Pawleys Island | \$ 881.59 |
| If applicable, describe the property, including tax map information and address, referenced in the order: | | |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest
 SCRCP Form 4C (02/2017) Page 1 of 2

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

| | | |
|----------------------------|-------------------|-------------|
| Circuit Court Judge | Judge Code | Date |
|----------------------------|-------------------|-------------|

For Clerk of Court Office Use Only

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

M. Baron Stanton, Esquire

P.O. Box 245

Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

William C. Dillard, Jr., Esquire

P.O. Box 96

Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Natalie Dahl, RPR

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

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

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



Georgetown Common Pleas

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

Case Number: 2020CP2200600

Type: Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

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

ELECTRONICALLY FILED - 2022 Nov 23 11:24 AM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200600

RECEIVED
Sep 08 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No. 20-CP-22-00932
Case No. 20-CP-22-00931
Case No. 20-CP-22-00930
Appellate Case No. 2022-001154

**Exhibit
E**

Sunset Lodge, LLC,Respondent,

v.

Town of Pawleys Island,Appellant; and

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

v.

Town of Pawleys Island,Appellant; and

M. Baron Stanton,Respondent,

v.

Town of Pawleys Island,Appellant.

STIPULATION OF DISMISSAL

The parties, through undersigned counsel, hereby stipulate pursuant to Rule 260(b), SCACR, that this appeal be dismissed, that each party be responsible for its own costs, if any, in this appeal, and that no costs shall be assessed in this appeal. This stipulation is not intended to

dismiss or otherwise affect the separately pending appeal bearing Appellate Case No. 2021-000757.

WE SO STIPULATE:

s/ William C. Dillard, Jr.

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

BELSER & BELSER, P.A.

Post Office Box 96

Columbia, SC 29202

(803) 929-0096

will@belserpa.com

Attorney for Town of Pawleys Island

s/ M. Baron Stanton

M. Baron Stanton (S.C. Bar No. 7970)

Stanton Law Offices, P.A.

P.O. Box 245

Columbia, SC 29202

(803) 929-1484

bstanton@stantonlaw.com

Attorney for Sunset Lodge, LLC,

Franklin D. Beattie, as trustee of The Franklin D.

Beattie Preservation Trust, and pro se for

M. Baron Stanton

[All signatures included with written consent]

September 8, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
Sunset Lodge, LLC,)
Plaintiff,)
v.)
Town of Pawleys Island,)
Defendant.)

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2020-CP-22-00600

Exhibit
F

**AFFIDAVIT
OF
BRIAN HENRY**

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

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

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

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

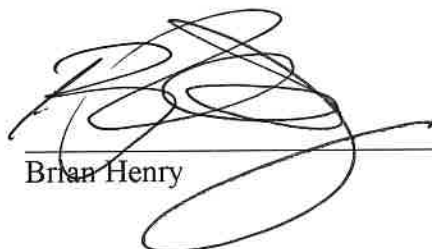
4. In the email in question, dated August 11, 2020, I asked a representative of the Army Corps of Engineers whether there was a “nuclear option” to expedite the process of moving forward with a long-term federal beach renourishment program after three landowners filed suit to bar condemnation of easements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

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

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

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

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


 Brian Henry

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


 Notary Public, State of South Carolina

Name: Preston Janco

My Commission Expires: June 4, 2031

December 12, 2022 affidavit of DuRant in opposition to
Landowner fee petition, with exhibit

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Sunset Lodge, LLC,

Plaintiff,

v.

Town of Pawleys Island,

Defendant.

and

Franklin D. Beattie, as trustee of
The Franklin D. Beattie Preservation Trust,

Plaintiff,

v.

Town of Pawleys Island,

Defendant.

and

M. Baron Stanton,

Plaintiff,

v.

Town of Pawleys Island,

Defendant.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No. 2020-CP-22-00932_

Consolidation of Civil Actions:

2020-CP-22-00932

2020-CP-22-00931

2020-CP-22-00930

**AFFIDAVIT
OF
N. DAVID DURANT, SR.**

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

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

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

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

4. These challenge action cases (which the parties have referred to as the “Challenge 2” cases) arise from the Town’s attempts to exercise its power of eminent domain to acquire beach renourishment easements on the subject properties.

5. For reference, the same plaintiffs in these Challenge 2 actions previously filed a separate set of cases, referred to by the parties as the “Challenge 1” cases, objecting to a first set of beach renourishment easement condemnation notices served in or around June 2020.¹ The Challenge 1 pleadings objected to the first set of condemnation notices on several procedural and substantive grounds.

6. Around October 15, 2020, my office delivered to Plaintiffs’ counsel a second set of condemnation notices in an attempt to address at least some of the objections raised in the Challenge 1 actions.

7. Not long after, on November 12, 2020, Plaintiffs filed these Challenge 2 actions.

8. From the time that the second set of condemnation notices were delivered around October 15, 2020, until the time that my co-counsel, William C. Dillard, Jr., appeared in the cases on February 3, 2021, very little occurred in the cases. Specifically, during this time

- a. On November 12, 2021, the Complaint was filed;
- b. On December 14, 2021, the Answer was filed;
- c. On January 10, 2021, the Plaintiff’s First Set of Interrogatories (attached as “Exhibit C” to the Stanton Affidavit) was served;

¹ The “Challenge 1” cases are *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.

- d. On January 13, 2021, the Amended Complaint was filed;
- e. On January 15, 2021, the Plaintiff's Notice of Deposition of the Town Administrator (**Exhibit A**) was served.

9. During this same period, in the separate Challenge 1 cases, the Plaintiffs' motions for summary judgment were granted by a Form 4 order entered on January 8, 2021, and a formal order entered on January 20, 2021. The Challenge 1 summary judgment orders ruled in favor of the Plaintiffs on at least some of the same procedural objections at issue in the Challenge 2 cases.

10. On February 10, 2021, shortly after the Challenge 1 summary judgment orders were entered, the Town filed its Notices of Abandonment of the condemnation notices underlying these Challenge 2 actions.

11. To my knowledge no other notable case activity, and certainly no activity initiated or otherwise caused by the Town, occurred during the period from the delivery of the second set of condemnation notices until the filing of the Notices of Abandonment on February 10, 2021. The Town did not serve any discovery requests, take any depositions, file any motions, exchange any discovery records with Plaintiffs, or otherwise create any need for Plaintiffs' counsel to devote time to the cases.

12. Likewise, during the same period between delivery and abandonment of the condemnation notices in these actions, the Plaintiffs did not take any depositions or, to my knowledge, engage in any discovery or other case activity except as set forth above.

13. The original Complaints in this action, filed November 12, 2021, contained more than enough information to detail the Plaintiffs' claims and underlying factual allegations. The 12-page Complaints attached and incorporated by reference the allegations of the Challenge 1 pleadings, and then set out approximately another 44 paragraphs related to new allegations.

14. There was no good reason for the Plaintiffs to subsequently file, on January 13, 2021, the 59-page, 375-paragraph Amended Complaints. The Amended Complaints largely tracked the allegations of the 61-page Challenge 1 pleadings which, again, were attached to and incorporated by the original Complaints in these cases. Based on my years of experience, the Amended Complaints were excessively and unnecessarily lengthy.

15. Similarly, because the Plaintiffs' claims and theories in these Challenge 2 cases were to a large extent the same as those in the Challenge 1 cases, there was no need for Plaintiffs' counsel to perform extensive further factual or legal research in these cases.

16. In my opinion, the amount of attorney time reasonably devoted simultaneously to these Challenge 2 actions from the October 15, 2020 delivery of the condemnation notices to the February 10, 2021 filing of the Town's Notices of Abandonment should not have exceeded a handful of hours. Other than drafting a Complaint, reviewing the Town's Answer, drafting discovery requests, and engaging in routine communications, there was simply nothing else that needed to be done.

17. Based upon my first-hand knowledge of the proceedings, I firmly deny the claim of Plaintiffs' counsel that the Town has engaged in a "stop-at-nothing" approach to the litigation (Stanton Aff. ¶ 86). Essentially the only thing the Town did prior to filing the Notice of Abandonment was to serve and Answer to the Complaint. Nothing in the Town's approach to the case created any need for the many hours that Plaintiffs' counsel states he worked on these cases.

18. I also deny that the Town acted dishonestly or fraudulently during this litigation or in decision making efforts related to the beach renourishment easements. In any event, even though Plaintiffs' counsel strongly disagrees with the manner in which the Town proceeded, that disagreement would not have created any need for the many hours that he states he worked in these brief, straightforward, and uneventful Challenge 2 cases.

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

FURTHER AFFIANT SAYETH NOT.



N. David Durant, Sr.

Sworn to and subscribed before me this 12th day of December 2022, by the affiant, who is personally known to me.



Notary Public, State of South Carolina

Name: J. Lynn Jordan
My Commission Expires: 12/21/30

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
Sunset Lodge, LLC,)
Plaintiff,)
v.)
Town of Pawleys Island,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2020-CP-22-00932

PLAINTIFF'S
NOTICE OF DEPOSITION
OF MR. FABBRI



TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: Please take notice:

Pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Plaintiff will take the deposition of Ryan Fabbri 10:00 a.m. on Friday, February 19, 2021 at the offices of the undersigned. The deposition will continue from hour to hour, or day to day, until completion. The deposition will be recorded by stenographic and sound means and taken pursuant to the South Carolina Rules of Civil Procedure before a disinterested person authorized by law to administer oaths. If the deposition is commenced but not completed, it will be continued from time to time as agreed by the parties or pursuant to court order until completed, without further notice. If the deposition is rescheduled by agreement as to time or place after the initial notice, no further notice will be sent, and the original notice, as modified, will remain in effect.

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

1/15/21

| | | |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GEORGETOWN |) | CIVIL ACTION NO. 2020-CP-22-00932 |
| 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: 1/15/21

December 13, 2022 Town memorandum in opposition to
Landowners' motion for fees and other expenses

| | | |
|---|---|--|
| STATE OF SOUTH CAROLINA |) | IN THE CIRCUIT COURT OF THE |
| |) | FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GEORGETOWN |) | Civil Action No. 2020-CP-22-00932 |
| |) | |
| Sunset Lodge, LLC, |) | <i>Consolidation of Civil Actions:</i> |
| |) | 2020-CP-22-00932 |
| Plaintiff, |) | 2020-CP-22-00931 |
| v. |) | 2020-CP-22-00930 |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| Franklin D. Beattie, as trustee of |) | |
| The Franklin D. Beattie Preservation Trust, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| M. Baron Stanton, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**MEMORANDUM
IN OPPOSITION TO
PLAINTIFFS' PETITION FOR
ATTORNEY FEES**

The Defendant, TOWN OF PAWLEYS ISLAND ("Town"), hereby submits its Memorandum in Opposition to Plaintiffs' Motion for Expenses Including Attorney's Fees, as follows:

Introduction

Plaintiffs' fee petition seeks an award far in excess of "reasonable attorney fees, litigation expenses, and costs[.]" S.C. Code Ann. § 28-2-510(C). These consolidated cases were statutory condemnation challenge actions arising from the Town's efforts to condemn beach renourishment easements. Although the fee petition does include three distinct civil actions, the issues, theories, pleadings, and other filings were effectively identical other than being submitted under different case captions (see, e.g., Aff. Stanton p.38, fn.25), and the cases were handled simultaneously. The Plaintiffs' sole request for relief, set forth in their identical pleadings, was that "[t]he Court should quash, strike and dismiss the New [Condemnation] Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff." (Amended Complaint ¶ 372). The Town voluntarily withdrew the condemnation notices early in the litigation.

The Plaintiffs now seek an award of attorney fees in the total amount of \$26,220 based on **138 hours** of claimed attorney time. The cases effectively ended, for purposes of the fee petition, with the filing in each case of a "Notice of Abandonment" withdrawing the condemnation attempts on February 10, 2021, **less than four months** after the condemnation notices were served.¹ During this time, the Complaint, the Answer, and the 59-page, 375-paragraph Amended Complaint were filed, but virtually nothing else occurred; no motions were filed, no depositions were taken, no subpoenas were issued, no discovery records were exchanged, and, other than a set of interrogatories and a deposition notice served by the Plaintiffs, no other discovery was performed. Extensive discussion in the Plaintiffs' fee affidavit of motions, discovery, depositions, and document production actually relates to separate litigation between the parties (the "Challenge 1"

¹ The Honorable Benjamin H. Culbertson then dismissed the cases on April 22, 2021, on the grounds that the Notices of Abandonment rendered the challenge actions moot.

cases, as distinguished from these “Challenge 2” cases) that was already subject to a fee petition and award.² (Aff. Dillard ¶ 16-19).

Despite this clear record of these cases having very little activity before the Town willingly withdrew the condemnation notices, the 138 hours claimed by the Plaintiffs would equate to approximately **three-and-a-half weeks of attorney time** at 40 billed hours per week. Notably, while the Plaintiffs’ lengthy fee affidavit is quite short on details of how any time was actually spent in these cases, it appears that **79.3** of the hours are related specifically to this fee petition, and that of this amount **42.2** hours are speculative “prospective” time. (see Aff. Dillard ¶ 30(d)-(e)). Clearly, all of this is grossly out of proportion to the actual activity, needs, and scope of this brief litigation.

The Town acknowledges that the Plaintiffs did not set out to have easements acquired on their properties, and of course recognizes that it was the Town that made the decision to withdraw and abandon the condemnation notices. Nothing, however, entitles the Plaintiffs to a fee award beyond what is generally reasonable and appropriate in light of the limited scope, complexity, and duration of this litigation. In this memorandum and the supporting materials, the Town seeks to provide the Court a detailed factual and legal basis for determination of what, if anything, would be a reasonable fee award.

Specifically, the Town has filed the following in support of this memorandum:

i. *Affidavit of N. David Durant, Sr.* (12/12/22), Town Attorney and original counsel of record for the Town, providing factual information about the initiation and first stages of these cases, the limited scope and complexity of the litigation, and rebuttal of the claim that the Town’s litigation approach led to any need for the significant number of hours claimed;

² Specifically, in the Challenge 1 cases the Honorable Michael G. Nettles reduced Plaintiffs Beattie and Sunset Lodge’s combined fee claim of more than \$120,000 to \$16,000.

ii. Affidavit of William C. Dillard, Jr. (12/12/22), undersigned counsel of record for the Town and substitute lead counsel after February 3, 2021, providing factual information about the history and limited scope and complexity of these cases, as well as an opinion regarding what would be a reasonable combined fee award and detailed supporting factual analysis; and

iii. Case Events Table (Exhibit C to the Dillard Affidavit) providing, in chronological order alongside notable events that occurred in the litigation, a listing of the attorney hours Plaintiffs are claiming on specific days (“Hours Claimed” column) and during periods of the case identified as relevant groupings of time for purposes of the fee petition analysis (“Combined Hours” column). **This table is submitted in order to provide the Court a valuable tool for chronological, comparative analysis of the events in the case and the dates on which the Plaintiffs are claiming attorney time.**

Standard for Attorney Fee Awards Following Abandonment of a Condemnation

Determination of the appropriate award is governed by the fee-shifting provision of the S.C. Eminent Domain Procedure Act (“the Act”). Specifically, the Act includes the following provision for an award of attorney fees where a condemnation is abandoned:

If the condemnor abandons or withdraws the condemnation action in the manner authorized by this chapter, the condemnee is entitled to **reasonable** attorney fees, litigation expenses, and costs **as determined by the court**.

S.C. Code Ann. § 28-2-510(C) (emphasis added). Under the Act, “[l]itigation expenses’ means the reasonable fees, charges, disbursements, and expenses **necessarily incurred** from and after service of the Condemnation Notice, including, but not limited to, reasonable attorney's fees, appraisal fees, engineering fees, deposition costs, and other expert witness fees necessary for preparation or participation in condemnation actions” § 28-2-30(14) (emphasis added). Subsection -510(C) emphasizes the discretion of the trial court by providing that the fees are to be

“as determined by the court.”

When determining the reasonableness of attorney fees, the fee arrangement between the party and its attorney does not control. As recognized in S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 13, 766 S.E.2d 700, 706 (2014), a Court applying fee shifting provisions under the Act has discretion to apply the factors identified in Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). Specifically, the Court may consider “(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” Id. at 308, 486 S.E.2d at 760 (citing Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993)). “Consideration should be given to all six factors; none of the factors is controlling.” Taylor v. Medenica, 331 S.C. 575, 580, 503 S.E.2d 458, 461 (1998).

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

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

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

satisfy the burden of proof.

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

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

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

Id.

Arguments

I. The Fee Petition Was Not Timely Submitted

Initially, the Plaintiffs’ fee petition should be denied on the grounds that it was not timely submitted. The Rules of Civil Procedure Provide 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). In this litigation, Judge Culbertson entered Orders of Dismissal on April 22, 2021, and subsequently denied Plaintiffs’ Motions to Reconsider on June 3, 2021. Plaintiffs filed a Notice of Appeal of those orders on July 2, 2021, thereby necessarily taking the position that the

orders were final, but did not file their fee petition until more than a year later on October 21, 2022. While the Plaintiffs do have a pending “Motion to Alter/Amend/Correct/Reconsider” the July 12, 2022 Form 4 order that checked the box for “this order ends the case”, that motion has no bearing on the finality of the dismissal order itself, which has now been on appeal for more than a year.

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 10 days of notice of entry of judgment. Pitman v. Republic Leasing Co., 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct. App. 2002) (citing Rule 59(e), SCRPC) (applying Frivolous Proceedings Sanctions Act fee provision). Accordingly, the Plaintiffs’ motion for attorney fees is untimely and no longer within the jurisdiction of the Court, and it should be denied.

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

In the alternative, in the event that the Court determines the Plaintiffs are entitled to an award of reasonable fees and costs under Section 28-2-510(C) of the Eminent Domain Procedure Act, the Town has submitted a detailed factual analysis of the six factors identified under Jackson v. Speed in the *Affidavit of William C. Dillard, Jr.*, which is incorporated here by reference.

The underlying claims in these challenge action were not particularly complex or difficult, either legally or factually. Factual review of what Town Council considered and discussed at meetings at which relevant decisions may have been made does not present a demanding task. Plaintiffs have presented only non-itemized, daily “block billed” time listings, and have declined to provide any fee statements or time descriptions at all despite claiming to have 54 pages of such information. (Aff. Stanton ¶ 204). It is impossible to determine from Plaintiffs’ submissions how they claim any given time entries were spent.

The Plaintiffs bear the burden to support their claim and are certainly not entitled to any

presumption that the claimed attorney time was reasonable. *See, e.g., Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp.*, 295 S.C. 208, 211, 367 S.E.2d 696, 698 (1988) (“The circuit court had before it only an affidavit from [petitioner]’s counsel stating, in conclusory fashion, that the fees were reasonable. Based upon this record, we conclude that the award is unsupported by the evidence.”). The Court may reduce a fee award where it finds that the claimed time represents “excessive and duplicitous work,” *Getzen v. L. Offs. of James M. Russ, P.A.*, 323 S.C. 377, 382, 475 S.E.2d 743, 746 (1996), or “an unreasonable duplication of efforts.” *City of N. Charleston v. Claxton*, 315 S.C. 56, 63, 431 S.E.2d 610, 614 (Ct. App. 1993).

Additionally, the Plaintiffs are not entitled to recover fees associated with motions on which they did not prevail. This includes all work following the Town’s filing of the Notice of Abandonment other than a reasonable amount of time for proceedings on the fee petition. While it appears that the Plaintiffs’ fee affidavit attempts to exclude some or even much of this time from its fee request (for example, time associated with the Plaintiffs’ opposition to the motion to dismiss), the Dillard affidavit provides detailed discussion of the “post-abandonment” matters in case reference is required (see ¶ 28-29 and associated fn.4).

As is discussed in more detail in the Town’s supporting affidavits, the Plaintiffs’ \$26,220 fee request based on 138 hours of claimed attorney time is excessive and unreasonable in light of the scope and needs of this litigation and is not supported by the evidence that has been submitted. (Aff. Dillard ¶ 7-31; Aff. Durant ¶ 4-19). As supported by the additional factual analysis in the Dillard affidavit (¶32-34), a more appropriate estimate of the total time reasonably and necessarily devoted in tandem to these three related cases is approximately **20 hours**. As also discussed in the Dillard affidavit (¶ 35), the Plaintiffs’ fee petition also slightly overstates the litigation expenses they are entitled to recover.

III. Application of the Lodestar Analysis

To the extent that any award is made, application of the six factors analyzed in the Dillard affidavit leads to the following lodestar calculation for a reasonable attorney fee in this matter:

| | |
|------------------------------|--|
| Attorney fees: | \$ 3,800.00 (\$190 x 20 hours) |
| Expenses: | <u>\$ 572.70</u> |
| Total fees/expenses: | \$ 4,372.71 (rounded up to be divisible by 3) |
| 1/3 Share to Each Plaintiff: | \$1,457.57 |

IV. Section 15-77-300 is not Applicable to this Eminent Domain Challenge Action

Finally, any right the Plaintiffs' may have to an award of fees and expenses is governed by Section 28-2-510(C) of the Eminent Domain Procedure Act, as discussed above, and not by the "state action statute" found at Section 15-77-300. The S.C. Supreme Court has made it clear that, in actions within the scope of the fee shifting provisions of Section 28-2-510, the state action statute does not apply. S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 10, 766 S.E.2d 700, 704 (2014) ("Without question section 28–2–510 governs the procedure at issue and not the general state action statute codified in section 15–77–300 as the General Assembly explicitly stated, '[i]n the event of conflict between this act and any other law with respect to any subject governed by this act, this act shall prevail.' Id. § 28–2–20").

Conclusion

As set forth above, the facts and applicable law require an outright denial of the Plaintiffs' untimely petition for attorney fees. In the alternative, in the event that the Court determines that an award of reasonable attorney fees is appropriate and within its subject matter jurisdiction, the Town requests that the Court award total attorney fees and expenses of no more than \$4,732.71, to be divided in equal one-third shares by the three Plaintiffs.

Respectfully submitted,

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

December 13, 2022

March 8, 2023 Landowner updated affidavit in support of fee petition

| | | |
|---|---|--|
| STATE OF SOUTH CAROLINA |) | IN THE CIRCUIT COURT OF THE |
| |) | FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GEORGETOWN |) | Civil Action No. 2020-CP-22-00932_ |
| |) | (Consolidation of below Civil Actions) |
| Sunset Lodge, LLC, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00932 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| Franklin D. Beattie, as trustee of |) | |
| The Franklin D. Beattie Preservation Trust, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00931 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| M. Baron Stanton, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00930 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

UPDATE AND AMENDMENT TO 10/21/22
AFFIDAVIT OF M. BARON STANTON
RE REASONABLE FEES AND EXPENSES IN CASE
[NOW TO 3/27/23]

Paragraphs 190 and 192 of the 10/21/22 Stanton Affidavit were based in part on time

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estimated to be incurred through the determination of the fee award in the future which had not yet occurred in October of 2022, and are now updated, amended and supplemented as follows – other references in the 10/21/22 affidavit to the affected dates and values should also be deemed amended accordingly:

The Time Devoted to the Matter, and Expenses Incurred

190. Following is a statement of time spent and expenses incurred in Challenge II which were not included in the time and expenses submitted in the last Challenge I fee petition.¹ Time spent and expenses incurred in the stated aspects of the matter (pre-“abandonment,” a few days closely following, and post-2/10/21 fee-petition-related matters) for the approximately two years and five months from 10/16/20 to 3/23/23 are as follows:

11/18/20 statement²

| | | | |
|----------|------------------|-----|-------|
| 11/11/20 | M. Baron Stanton | 0.5 | hours |
| 11/12/20 | “ | 6.4 | hours |
| 11/13/20 | “ | 1.9 | hours |
| 11/16/20 | “ | 1.0 | hours |

¹ As noted hereinabove, this is far from all time spent on Challenge II. For the time being, it omits substantial time following the February 10, 2021 statement of abandonment if the time is not relative to this fee petition. E.g., substantial time on opposing dismissal of Challenge II in the Circuit Court and vying for an opportunity to enjoin the Town from suing the Landowners again, and appealing the dismissal are not included.

² The November 2020 and January 2021 statements were statements in which early work on the Challenge II cases was billed along with the challenge work for the initial condemnation attempt. The early time for Challenge II was later allocated and backed out of the Challenge I fee request, and later time was separately billed, starting with a March 2021 statement. The early statements were obtained by the Town in redacted form in the Challenge I cases.

1/22/21 statement

| | | | |
|----------|---|-----|-------|
| 12/15/20 | “ | 1.7 | hours |
| 1/5/21 | “ | 6.8 | hours |
| 1/6/21 | “ | 2.9 | hours |
| 1/7/21 | “ | 4.0 | hours |
| 1/8/21 | “ | 1.0 | hours |
| 1/9/21 | “ | 5.6 | hours |
| 1/10/21 | “ | 7.0 | hours |
| 1/11/21 | “ | 3.0 | hours |
| 1/12/21 | “ | 7.7 | hours |
| 1/13/21 | “ | 5.4 | hours |

3/12/21 statement

| | | | |
|---------|---|-----|-------|
| 2/7/21 | “ | 2.2 | hours |
| 2/10/21 | “ | 0.4 | hours |
| 2/11/21 | “ | 1.5 | hours |
| 2/12/21 | “ | 3.1 | hours |
| 2/15/21 | “ | 1.9 | hours |

5/21/21 statement

| | | | |
|---------|---|-----|-------|
| 3/12/21 | “ | 0.9 | hours |
|---------|---|-----|-------|

12/16/22 statement

| | | | |
|---------|---|-----|-------|
| 9/15/22 | “ | 1.6 | hours |
| 9/16/22 | “ | 6.0 | hours |

| | | | |
|----------|---|------|-------|
| 9/20/22 | “ | 1.8 | hours |
| 9/21/22 | “ | 6.2 | hours |
| 9/22/22 | “ | 6.2 | hours |
| 9/23/22 | “ | 3.9 | hours |
| 9/24/22 | “ | 4.5 | hours |
| 9/25/22 | “ | 4.0 | hours |
| 9/26/22 | “ | 2.9 | hours |
| 9/27/22 | “ | 3.2 | hours |
| 9/28/22 | “ | 5.8 | hours |
| 9/29/22 | “ | 11.9 | hours |
| 10/18/22 | “ | 9.5 | hours |
| 10/19/22 | “ | 11.0 | hours |
| 10/20/22 | “ | 5.7 | hours |
| 10/21/22 | “ | 1.9 | hours |
| 12/14/22 | “ | 4.2 | hours |
| 12/15/22 | “ | 2.3 | hours |
| 12/26/22 | “ | 1.5 | hours |

Time not yet in the system

| | | | |
|--------|---|-----|-------|
| 3/5/23 | “ | 5.2 | hours |
| 3/6/23 | “ | 7.6 | hours |

| | | |
|--|------|-------|
| Future underestimated MBS time to
conclusion of fee matter and circuit court
proceedings, 3/7/23-3/27/23 | 25.0 | hours |
|--|------|-------|

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| | | |
|---|-----------------------|-----------------------|
| Total of time for period | 190.6 hours x \$190 = | \$36,214 |
| Expenses advanced (e.g., filing fees, service of process, photocopies, postage, courier, court reporter, mileage at lower than federal reimbursement rate, mediator fee, etc. through 11/15/22) | | \$751.71 ³ |

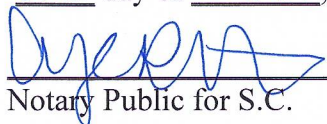
191. As noted above, I estimate that an additional 25 hours from 3/7/21 to 3/27/23, at a charge of \$4,750, will be required to conclude this case, but based on past experience and the fact that I have no present notice of what further opposition the Town may present, this may be way under. This estimate is with a reservation of right to amend or supplement and assumes no surprise “witnesses,” only the one return already filed by the Town, only one hearing, no further delay, and no appeal of the fee matter by the Town or any Landowner.

³ Filing fees (\$180.32 x 3) for challenge actions; mileage one way (\$52.05) for motion to dismiss*; filing fees (\$31.74 x 3) for motions to reconsider*; filing fee (\$31.74) for motion to correct Form 4; and filing fee (\$31.74) for fee petition. The items marked with an asterisk were after 2/10/21 and are in reasonable followup to the putative “abandonment,” because the cases they relate to were necessarily commenced because of the matters which were abandoned, exposing the Landowners to expense incident to their conclusion.

192. Subject to these assumptions, and reserving the right to amend or supplement, each Landowner hereby requests \$12, 321.91 $((\$36,214 + \$751.71) \div 3)$ as the award of fees and expenses for the stated aspects and periods, through March 27, 2023.

Sworn to me this

8th day of March, 2023


Notary Public for S.C.

My comm'n exp. 8/11/2031


s/M. Baron Stanton
M. Baron Stanton

Date: March 8, 2023

March 8, 2023 Landowner memorandum in reply to Town
December 12 and 13, 2022 opposition to fee petition, with exhibits
A-C

| | | |
|---|---|--|
| STATE OF SOUTH CAROLINA |) | IN THE CIRCUIT COURT OF THE |
| |) | FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GEORGETOWN |) | Civil Action No. 2020-CP-22-00932 |
| |) | (Consolidation of below Civil Actions) |
| Sunset Lodge, LLC, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00932 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| Franklin D. Beattie, as trustee of |) | |
| The Franklin D. Beattie Preservation Trust, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00931 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| M. Baron Stanton, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00930 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**PLAINTIFF LANDOWNERS' REPLY TO TOWN'S OPPOSITION TO
LANDOWNERS' 10/21/22 PETITION FOR ATTORNEY'S FEES AND EXPENSES**

OUTLINE OF CONTENTS

- I. Short Reply
- II. Partial, very peculiar factual, legal and procedural background
 - A. Which three of the 12 suits the fee request is for
 - B. What the suits were generally actually about
 - C. What got quashed, what was putatively “abandoned,” what got dismissed, and what was stipulated to remain pending
- III. What fees are requested
- IV. What the town contends is unreasonable about paying for actual time incurred at a low rate, divided by three
- V. The Town’s contradiction of its stipulation and of its own prior arguments
- VI. The Town’s many, many other arguments against an award based on actual hours multiplied by a low hourly rate
 - A. Equivocal claim by the Town of “sole relief”
 - B. Irrelevant “voluntariness”
 - C. Things occurring that the Town cannot see on a docket sheet
 - D. 138 hours (now 190.6 and counting) the Town misunderstands in the October 2022 affidavit
 - E. Incorrect characterization by the Town of limited scope and complexity of six lawsuits on disputed beachfront easements involving a 378-page Amended Complaint (95% denied by the Town) covering three clients and three properties
 - F. Assertion that a contingent fee agreement (not present here) does not control a statute calling for hourly fees
 - G. Incorrect, made-up, calls for additional, different, impractical, or attorney-client confidential “documentation”
 - H. Irrelevant, incorrect, dead-end discussion of mythical concept of excising motions “on which the claimant did not prevail”
 - I. Claim of lateness after stipulating to add a claim to the case and hold the case open
 - J. Inapplicable analysis in Dillard affidavit guided and skewed by affiant’s errors of law, lack of experience in the relevant field and misapprehension of reality
- VII. The requested fees should be awarded
- List of Exhibits

I. Short Reply

Each Landowner presently requests \$12,321.91. Filed with this Reply is an update of the Landowners' counsel's 10/21/22 fee affidavit. This brief has three exhibits, which are listed at the foot. The request for fees is straightforward. The Town purported to abandon its condemnation attempt. The governing statute, S.C. Code §28-2-510(C), states that when the condemnor abandons, the Landowners are entitled to their attorney's fees and other expenses.¹ Additionally, in its 4/22/21 orders, this court included the Town's stipulation that the Landowners could seek, in this challenge action, the fees assured by §28-2-510(C), and that the matter would remain open for them to do so.

Multiplying the actual hours expended by the low hourly rate charged, then adding other expenses, and then dividing by three, each Landowner is entitled to reimbursement of at least \$12,321.91 through March 27, 2023 $((190.6 \text{ hours} \times \$190/\text{hr.}) + \$751.71) \div 3 = \$12,321.91$.

Accompanying this reply brief as Exhibits A and B are affidavits of two of the clients of Landowners' counsel in the twelve (12) subject cases. They are both satisfied with the hours actually expended and the fee charged by their counsel. These affidavits were submitted in the other three challenge actions.

Each of the affiants are themselves experienced lawyers with a personal stake and personal familiarity. Unlike the Town's present lead counsel and lead affiant, each is of course familiar

¹ The Landowners have also supported their request for fees pursuant to the state Equal Access to Justice Act, S.C. Code Ann. §15-77-300, applicable to government action without substantial justification. The Town contends that the EDPA displaces or supersedes the EAJA. The Revels case mentioned in the parties' papers indicates this is the case, although the United States Supreme Court has come to the opposite conclusion with respect to the application of the federal EAJA to federal condemnations when there are also federal condemnation statutes addressing fees. The Landowners are content to proceed under S.C. Code §28-2-510(C), provided the Town will agree on the record that it applies.

with the case from the beginning. The third “client” is the Landowners’ counsel himself, who has also been in the case since the beginning, is cognizant of both the value of his own time and the importance of the matter at stake, and is naturally circumspect both in not wasting even a minute and in not spending one minute too little. His extensive 10/21/22 affidavit is already on file, and the hours and numbers were updated 3/8/21.

The Town, through counsel lacking both experience in the relevant fields and personal involvement in the case, makes many, many, confusing and often irrelevant ranging arguments. The Landowners are not requesting attorney’s fees for time not spent. They are only asking for attorney’s fees for time actually spent. The Town’s affidavits should not only be discredited, but excluded as not proper for the analysis, which is a mixed question of fact and law entrusted to the Court, not new opposing counsel.

What the Landowners seek to be reimbursed for is the time spent on what did occur.

How long the matter did not last or what was not filed in the course of it is not relevant to compensation for the hours spent while the matter did last or for the things that were actually filed or done. The Landowners are not asking to be reimbursed for what did not occur or things not done by their lawyer. There are many things their counsel did do, for which reimbursement is not presently requested, but they are not asking for reimbursement for what he did not do.

Contrary to various implications and sometimes completely pointless calculations by the Town, the Landowners are also not presently asking to be reimbursed for time which is not pre-“abandonment” time, not time reasonably incurred shortly thereafter, and not time incurred in seeking to obtain reimbursement for the fees which are sought.²

² As detailed in the Landowners’ papers, South Carolina law specifically includes in awards of attorney’s fees, the fees incurred in obtaining the fee award. The Town does not dispute that this is the law, and simply does not address it.

Again, the request and the calculation are actually simple and straightforward. The time actually spent, rather than hypothetical time or time opposing counsel deems “notable,” should be multiplied by either the rate actually charged or a higher reasonable rate, and the result should be awarded.³

Despite the fact that the Town previously stipulated that the Landowners should be able to seek their attorney’s fees, the Town now files a brief, multiple affidavits, and multiple exhibits, arguing the Landowners are not entitled to do so, while at the same time arguing that these proceedings are not time-consuming for the Landowners.

II. Partial, very peculiar factual, legal and procedural background

A. Which three of the 12 suits the fee request is for

Before the Court is the Landowners’ request for award of fees for precisely presented hours expended by one lawyer, for three condemnation cases, at a low rate, during a pandemic.⁴ This

³ See the unpublished case, SCE&G v. Sanders, No. 2005-UP-053 (S.C. Ct. App. filed January 21, 2005)(unpublished)(holding that S.C. Code Ann. §28-2-510(C) mandates an award of fees upon abandonment), in which the Court of Appeals observed:

A plain reading of the section indicates that the legislature intended to compensate a landowner who incurred monetary loss from preparation for litigating a condemnation action, only to have the condemnor withdraw at a point prior to disposition, leaving the landowner with no avenue to recover expenses. Sanders and his attorney spent time and effort planning litigation strategy that contemplated the abandoned easement as a portion of the case and but for the statute, this work would be time wasted.

The Appellate Court Rules state that an unpublished case is not precedent and therefore “should” not be cited. However, the proposition observed is commonsense, and there is little use in having appellate cases decided if the result is not to be articulated and followed.

⁴ The Town in fact first sued the Landowners in other actions in late June-early July 2020, during the wave of state and national “lockdown,” “stay at home,” “shelter in place,” or similar measures which began around March 2020, in response to the world-wide spread of infections with the deadly “COVID-19” virus. In addition to killing or severely impairing people, bankrupting various businesses, affecting the availability of food and some basic supplies, and disrupting travel, supply chains and labor supply, the pandemic led to alternative court procedures, special orders, and state and local orders and ordinances, some of which seemed to change almost daily.

time was time only spent opposing this second set of three suits by the Town on the same subject matter as the Town's prior unsuccessful set of three suits against the Landowners.⁵ The Town commenced the subject second set of three of suits on October 16, 2020, while the Town's first set of three suits was stayed as a result of the Landowners filing three independent suits challenging the Town's first attempt.

The Town purported to "abandon" its second set of three suits against the Landowners on February 10, 2021, some time after summary judgment was granted against the Town in the Landowners' first set of three suits challenging the Town's first set of three condemnation attempts. The hours for which fees are sought have been explicitly and precisely separated and excluded from the fees sought for quashing the prior unsuccessful set of three suits by the Town against the Landowners.⁶

The Town sued the Landowners a second time, in three more condemnation actions, October 16, 2020, while the Landowners were trying to get the deposition of the appraiser the Town had used for its first set of falsely based suits, described herein.

⁵ This lawyer's representation and counseling of the Landowners, and his opposition of the Town, primarily – but not exclusively – took the form of prosecuting three independent actions against the Town, in which the instant brief is being filed.

The Town blithely calls these three actions "identical," but omits any recognition of the fact that the three 378-paragraph Amended Complaints (95% denied by the Town) each address the events and multiple papers served by the Town with respect to three different clients, with three different properties, with three sets of differing events, timelines, distances, dimensions, etc. Each time a filing was made, it was essentially in triplicate, but included each of three (3) matters. Each time one was received, all three had to be examined for discrepancies.

The triplication also involved drafting, consulting with clients, providing status to clients, and billing, all while bearing in mind things that were actually different, such as locations, property descriptions, improvements, distances and factual chronologies. This was all handled while having to keep an eye to what were actually twelve (12) cases. All because of the Town's actions.

⁶ The Town mentions the ruling of Judge Nettles on the fees in the first three challenge cases. That ruling is on appeal as based on legal error, overlooking vast portions of the file, overlooking and ruling contrary to undisputed facts of the case, admitting unqualified affidavits, and gross inadequacy of the award.

The hours submitted in the instant case were specifically excised from those in the first three challenge cases and are requested only in the instant cases.

B. What the suits were generally actually about

What the suits were about is an interesting matter that requires accuracy and length. In referring obliquely to the subject matter of the suits, the Town persists in the same misleading euphemistic nomenclature that got it into all this trouble. To this day, the Town insists on referring to the subject matter of the litigation as “renourishment easements.” The Town has done plenty of renourishment without any easements of the sort involved here.

The subject is not “renourishment easements.”

The subject is permanently transformative perpetual easements for public access to the Landowners’ property, and restrictions on Landowner use of the Landowners’ own property. These easements were only sought from owners on the south end of the island, while the Town spent, and plans to spend, Town money on the beach to the north without asking for such a monstrosity. Not a single Town Council member was asked for such a monstrosity. After four years, none admit to being able to read it for himself or herself.

The proposed easements the Town was trying to take for free had explicit objectionable provisions which were pointed out. However, in a gang-minded, irrational, obsessive, factional and permanently tainted, dishonest quest, the Town pretended these provisions were not present. The Town still pretends these obnoxious features are not present, despite court ruling to the contrary. The Town still calls them “renourishment easements.”

The proposed easements granted – forever -- wide-open perpetual public access to the Landowners’ land, contained other glaring objectionable features that the Landowners have specifically detailed. These proposed easements were additionally explicitly proposed to be assignable to private or government parties in the future with no restriction. The proposed easements were not even conditioned upon initial nourishment, or renourishment, occurring.

When the Town arranged to obtain the three statutorily required appraisals for its first three attempts to condemn these monstrous easements, the Town lied about the elements of the proposed easement.

The appraisal was required to state the compensation that the appraiser believed should be required for creating and taking such an intrusive and damaging interest in land. However, in order to obtain a low compensation and posted-cash-security amount of zero, the Town arranged to have the appraiser completely omit the features that were at the very heart of the controversy. This is not mere argument. It is all established in court order. It is additionally established by unrefuted affidavits, the Town's own records, the appraisal report, and the deposition of the appraiser.

A different judge of this Circuit Court has judicially determined that the Town provided false information to the appraiser. With acute knowledge of the falsity, the Town used the same false appraisals in the second set of three condemnation suits it commenced, for a total of six condemnation actions commenced by the Town with a false basis. These were the three June 2020 suits and the three October 2020 suits, falsely backdated to June 9.

This required some degree of attention by the Landowners' counsel.

The Landowners simply want to get paid back for the time and charges actually incurred. One of many arguments the Town now mounts is that, in the opinion of the Town, which is the losing party, it should not have taken very much time or effort to defeat such a scurrilous use of legal proceedings by the Town. The Town states that the cases were not very complex or time-consuming. Yet, the actual time spent is not disputed, and the Landowners are not seeking (but would welcome) an enhanced fee based on complexity or the demands of the case.

In suing each of the Landowners twice (and, having failed, explicitly promising a third suit), the Town never once acknowledged to the court the presence of the obnoxious features in

the proposed easement. In the first cases, the Town in fact presented the easements to the court as mere construction easements to allow deposit of sand on the land and “safe” access to do the related work – a characterization the Circuit Court rejected in setting forth six (6) pages of undisputed facts of the matter.

C. What got quashed, what was putatively “abandoned,” what got dismissed, and what was stipulated to remain pending

Finally reading the handwriting on the wall,⁷ in February 2021, the Town “voluntarily withdrew” its second set of three condemnation actions which it had commenced by surprise on October 16, 2020 on the basis of the same clearly known false appraisal and other falsities.

It is procedurally significant to one of the Town’s other recent arguments to this Court that the Town did not purport to “withdraw” its second three suits by court order. The “abandonment” was not an order in the condemnation actions or a stipulation of both parties. The Town purported to “withdraw” by mere unilateral notice signed by the Town alone and sent to the Landowners.⁸

This unilateral “notice” was never entered in a court file for the October 16 condemnation notices the Town had dishonestly backdated to June 9. This is because there was no file in which to enter the “abandonment” notice. The backdated condemnation notices had been served on the Landowners, and this commenced the actions, along with the running of statutory time clocks for the Landowners to do certain things. However, the peculiar procedure prevented these papers from ever being filed with the court. A court file had never been established for them. The separate

⁷ The Town’s first set of three condemnation actions was quashed by summary judgment in January 2021 in the three separate challenge actions of the Landowners directed to those condemnation actions. In April 2021, the Town’s motion for reconsideration in the first set of three challenge actions was finally denied.

⁸ The notice was therefore not an order or judgment for purposes of any timing arguments the Town may make with respect to the conclusion of the condemnation actions.

condemnation actions therefore had been commenced, and existed, but were never assigned case numbers.

It is an important distinction that what the Town withdrew or “abandoned” were its own three separate “condemnation actions,” and that these were the suits for which the Landowners were entitled to their associated attorney’s fees. Each unfiled condemnation action had a caption and a date (albeit a false one), but no court file number or court file. These commenced, but unfiled, suits were expressly stayed when the Landowners commenced their own above-captioned three separate actions against the Town. S.C. Code Ann. §28-2-470.

The three related independent actions by the Landowners were the instant three actions reflected in the instant case caption. These actions were also pending at the time the Town “withdrew” its separate set of three additional condemnation actions. In the instant actions, other proceedings continued and are pending still.

The unfiled, but commenced, condemnation actions are the suits with respect to which the Eminent Domain Procedure Act provides that, when “abandoned,” the landowner is “entitled to” attorney’s fees.⁹

However, the statute is silent on how or when the landowner is to ask for these fees if the “abandonment” occurs before the condemnation action is given a court file.¹⁰ In inducing this Court to dismiss the above-captioned independent actions of the Landowners as “moot,” the Town

⁹ S.C. Code Ann. §28–2–510(C) provides in its entirety: “(C) If the condemnor abandons or withdraws the condemnation action in the manner authorized by this chapter, the condemnee is entitled to reasonable attorney fees, litigation expenses, and costs as determined by the court.”

¹⁰ The clear implication is that when a challenge action has been filed and all proceedings in the condemnation action are consequently stayed, an attempt to abandon without landowner consent is not “in the manner authorized by this chapter.” I.e., no abandonment can occur without landowner consent. This point was presented to the circuit judge previously.

stipulated that the Landowners could seek, in the above-captioned, filed, independent actions, the fees incurred with respect to the Town's "abandoned," unfiled, condemnation actions.

The Court specifically contemplated this in reciting the stipulation in the Court's 4/22/21 order ruling on the Town's motions to dismiss the Landowners' independent actions and to curtail discovery. There, the Court noted that discovery -- presumably discovery with a gestation period of 30 days or more -- could continue for purposes of the fee application. The Court also specifically contemplated this in the 4/22/21 Form 4 order,¹¹ stating, "[A]dditional matters, including any attorney fee petition, may precede final dismissal of the action." In this Form 4, the Court checked the box on the Form 4 denoting that the order "does not end the action."

To its irrelevant arguments that the case was "not time-consuming," the Town now adds the additional time-consuming argument that the Landowners cannot seek, in the instant independent actions, attorney's fees incurred with respect to the Town's "abandoned," unfiled,

¹¹ The sequence of orders concerning the dismissal and the continued pendency of the fee matter is as follows.

The 4/22/21 Form 4 "Form of Judgment" stated: "[X in square] does not end the case", and "[A]dditional matters, including any attorney fee petition, may precede final dismissal of the action."

The 4/22/21 formal order ruling on the discovery motion and the motion to dismiss stated: "At this time, discovery is limited to any claim that may be submitted for attorney fees or costs."

The 6/3/21 Form 4 denying the Landowner's motion to reconsider stated: "[check in square] does not end the case", and "[T]he issue of litigation costs remains pending."

The 7/12/22 Form 4, ruling on the Town's motion to reconsider language in the previous Form 4 about the abandonment of the first set of condemnation actions inexplicably states: "[check in square] ends the case."

On 7/22/22, the Landowners moved to alter and amend the 7/12/22 notice to change the box checked in the 7/12/22 Form 4 from "ends" to "does not end".

On 1/11/23, the cases were still on an active roster and had been noticed for trial. In continuing the cases to 4/17/23, Judge Seals (then chief judge for administrative purposes) issued a Form 4 stating: "Case Continued to 4-17-23 Non Jury Term of Court", and "[X in box] does not end the case."

There was thus no intention to end the case.

condemnation actions. The Town does not contend that the fees cannot be somehow sought in the unfiled actions themselves or, since the unfiled actions are abandoned, in a separate new action in equity to obtain the statutorily granted fee reimbursement. The Town contends that the request for fees is precluded in the instant independent actions because the instant actions were concluded without an application being made within 10 days.

III. What fees are requested

The fees requested are those resulting from the actual time devoted only to certain matters: (i) the time preparing for the Town's condemnation actions, as well as defending against, and defeating, those actions during the approximately four months before the "voluntary withdrawal" ("the core-proceeding time"); (ii) the time in the few days shortly following the purported "abandonment," devoted to representing the clients' interests and ascertaining the purported status of the "abandonment" and the condemnation attempts; and (iii) the additional time devoted to obtaining reimbursement for the core proceeding time (fee-for-fee time). As noted, the Landowners are entitled to fee-for-fee time under South Carolina law, and the Town does not dispute this; the Town simply ignores it.

It is important to note that what is sought involves only a fraction of the time devoted to the actual consequences of the Landowners being sued twice by the Town and having a cloud on their titles to this very day. Other proceedings in the instant independent actions are not included in the instant fee request. These include opposing dismissal of the instant actions as moot, moving to reconsider the dismissal as moot, dealing with discrepancies in "Form 4's" (much as a courtesy to the Town), and appealing the dismissal of the Landowners' independent actions as moot.

There is no uncertainty as to the actual hours the Landowners' counsel has attested were spent and recorded. The only uncertainty is the additional hours that were spent which were not

recorded and not requested. There is no duplication or overlap in the hours on which the request is based. The Landowners did not have additional lawyers in the same case doing the same things. The three Landowners also did not have separate lawyers in each of the three cases doing the same things. In fact, the three Landowners had one lawyer for all three cases, and the actual bill was divided by three. Although South Carolina law supports counting the overall total hours as being spent in each of the three cases,¹² the fee request tentatively proceeds on the same basis as billing, viz., dividing by three.

Each Landowner either was a lawyer or had a lawyer as principal,¹³ and each party followed the case and the periodic reports of hours spent from inception, and found the hours and rate reasonable.

IV. What the town contends is unreasonable about paying for actual time incurred at a low rate, divided by three¹⁴

¹² See Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008)(making award based on all time spent on multiple cases, even though the same time was spent on cases which were not the subject of the fee award).

¹³ See the affidavits of Stanton, Beattie and Howard. Stanton, who has practiced since 1986, is a party, and the professional corporation for which he works, Stanton Law Offices, P.A., billed him contemporaneously and in the ordinary course of business for his share. Beattie is a retired lawyer who practiced for over 50 years. Howard is a lawyer who has practiced for over 50 years. The affidavit of Stanton was filed 10/21/22 and the affidavits of Beattie and Howard are filed herewith as Exhibits A and B.

¹⁴ The Town has not contended that the Landowners' counsel, who was also a party to two of the six condemnation actions and two of the six challenge actions, may not recover attorney's fees. However, Rule 3.3(a)(2), RPC, Rule 407, SCACR requires disclosure of controlling authority contrary to a litigant's position. There is a case, not previously cited by either party, which might be argued to be controlling authority on the question of recovery of attorney's fees by a pro se party, even when the party is a pro se attorney litigant.

Rule 3.3(a)(2), RPC, Rule 407, SCACR states:

(a) A lawyer shall not knowingly ... (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; [or] (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

In Calhoun v. Calhoun, 339 S.C. 96, 529 S.E.2d 14 (2000), the Court decided the "novel issue" of whether a pro se attorney is allowed to recover attorney's fees when (i) the fees are

In opposing the request for fees, the Town, which lost its first attempt and “abandoned” this one, contends that the matter at hand (the Town’s second set of three suits on the same subject matter) was not very complicated, did not require much work, and should not have involved the

sought under a statute using the term “incur” with respect to attorney’s fees the statute authorizes a party recover, and when (ii) there is no showing that the attorney owed or paid the fees to anyone.

The Court concluded that in general, the majority rule allows pro se attorney litigants to recover attorney fees, but adopted, at least with respect to the statute in question, the general minority rule denying such relief.

In doing so, the Court held that the statutory term "incur" is commonly defined as "to become liable or subject to," and that therefore, the criterion for an award of attorney fees under S.C. Code §20-3-130(H) (not the governing statute in the instant case) is that the party claiming a right to a fee has paid or owes another person money for legal services, while an attorney who appears on his or her behalf does not incur such an obligation. Namely, the Court recognized that ordinarily, a pro se litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney. Accordingly, the Court held that “pro se litigants are not entitled to attorney fees under § 20-3-130(H).”

In the instant case, the applicable statute, S.C. Code §28–2–510(C), does not use the term “incur,” and simply provides that “the condemnee is entitled to reasonable attorney fees, litigation expenses, and costs as determined by the court.” However, “litigation expenses” are defined in S.C. Code §28–2–30(14) as certain broadly stated types of things “incurred from and after service of the Condemnation Notice.”

In the instant case, the Landowners’ attorney, who represented himself pro se in addition to the other two Landowners, testified by affidavit that he did so as an employee of the professional corporation for which he worked, and sent himself a bill, just as he sent to the other two Landowners.

It is submitted that the real time billed to him was discounted from the bills of the other Landowners and if he is not reimbursed for the real time billed to him, it will not be collected from or be billed to the other Landowners. Whatever he pays or paid to the professional corporation will be lost to him, just as the unreimbursed amounts the other Landowners pay or paid to the professional corporation will be lost to them. Whatever he or the other Landowners do not pay to the professional corporation will be lost to the professional corporation as income just as the unpaid bill of any client is.

In light of the 2/3 discount each Landowner received, the hourly rate was effectually reduced far below market and should be enhanced to at least \$570 before dividing the results by three. The equities favor such an enhancement, because if the Landowners’ attorney is not reimbursed, the Town will also be assessed rate effectually far below market, namely at a rate only 2/3 of the already low actual rate. Alternatively, the total lodestar fee (total 190.6 overall hours x \$190 rate) should not be divided by three, and each of the two Landowners who did not represent themselves should be awarded the whole of the reasonable fee.

time that it actually involved. The Town also impliedly argues that what a lawyer does outside the courthouse does not count and is noncompensable – that only “notable” things (in the eyes of opposing counsel) are compensable, and that these are generally things limited to opposing counsel’s experience, and generally things on a docket sheet with numbered pages.

In presenting these contentions, the Town has filed approximately 54 pages of materials. Additionally, in this matter that the Town contends is not time-consuming, the Town now opposes, altogether, attorney’s fees that the Town argued and stipulated to this Court that the Landowners should receive. After much delay and wheel-spinning, the Town bases this contention on the timing of the request.

V. The Town’s contradiction of its stipulation and of its own prior arguments

In opposing the dismissal of their independent actions as “moot” on motion of the Town, the Landowners explained the continuing damage being done by being sued twice and being expressly threatened by the Town with a third suit affecting title to, and the value of, their property. The Landowners asserted that, among other reasons, their independent actions should continue so that they would have an opportunity to address these things and avoid further irreparable damage.

In order to induce this Court to dismiss the Landowners’ three separate pending actions challenging the Town’s now “abandoned” second set of three condemnation attempts, the Town explicitly argued that an award of attorney’s fees would sufficiently protect the Landowners. The Town argued orally and in writing that an award of attorney’s fees was sufficient to protect the Landowners from the nightmare to which they have been subjected. The Town specifically argued that an award of attorney’s fees would excuse or prevent the consequences of yet a third suit which the Town stated it intended to pursue.

The Town additionally made the explicit stipulation (recognized in this Court's 4/22/21 order) that the Landowners could request, in the instant cases, their fees pertinent to the Town's "abandoned" three condemnation actions.

In the Landowners' three successful challenges to the Town's prior unsuccessful set of three suits, completely aside from the other work in the matter, the Town filed approximately 144 pages of materials (in triplicate) over the course of about eight months, related in whole or in part to opposing attorney's fees in that matter. These included approximately 104 pages (in triplicate) filed in the weeks just preceding the hearing which was finally held on the eight-month-old fee petition.

These materials, too, presented the contention that the matter was not time-consuming. The latter materials included a brief, four (4) affidavits (one from a surprise hired affiant) and numerous exhibits, as well as "prehearing motions" – that is, motions the Town presumed to have the court hear before the eight-month-old pending motion of the Landowners to recover their fees actually incurred. A look at virtually anything other than the assertions of the Town reveals that the matter has consumed time and has been less than simple.

Yet, all the Landowners want is reimbursement based on actual time spent at a low rate, further economically discounted by being divided into thirds.

The laborious task and the length required to address the Town's strained and inadmissible affidavits, citations without a relevant point, nuanced facts, euphemistic terms, and flawed analysis only portend the expenditure of more time and money, which the Town seeks to not reimburse. The Court should grant the fees requested.

VI. The Town's many, many other arguments against an award based on actual hours multiplied by a low hourly rate

A. Equivocal claim by the Town of "sole relief"

In its brief, the Town states that the “sole request for relief” was to quash, strike and dismiss only the then pending second set of actions by the Town. This assertion contradicts: (i) the Amended Complaint (also seeking to kill the then-still-pending first set of suits by the Town, not requesting that relief be “without prejudice,” and praying for other and further legal and equitable relief on the facts); (ii) the court’s 4/22/21 order (drafted by the Town)(recognizing request for other and further relief); (iii) the Town’s explicit representation to another judge of the Circuit Court and to the Court of Appeals (asserting that the Amended Complaint from the first challenge actions, which was incorporated by reference in the second challenge actions, profusely requested permanent prospective injunctive or other relief); and (iv) the provisions of Rule 54(c), SCRC.P.

In any event, the assertion is without a point, and is irrelevant to the award of attorney’s fees for actual time spent at a low rate.

B. Irrelevant “voluntariness”

In its brief, the Town states that it “voluntarily withdrew” its condemnation action, but never states why. Whatever the reason (which was being caught in the same and further frauds), the voluntariness of the “withdrawal” is not a factor relevant to determining how much time was spent up until that withdrawal.

It is also irrelevant to how much time is now spent in attempting to secure the fee award provided by statute.

Until there is such a “withdrawal” by a condemnor, the Landowner still has to strategize, prepare for condemnation, and prepare to oppose and defeat the Town’s attempt. In the instant case, the Town has actually announced the intention to sue again. This requires vigilance by the Landowners up to and beyond the “withdrawal.”

The statute itself awards fees for “abandonment,” which is supposed to be a voluntary act. Voluntariness itself is therefore no reason to reduce fees awarded when abandonment occurs.

Yet, the Town states, as if it were relevant to fees, “It was the Town that made the decision to withdraw.” The Town is no more to be commended for doing this than for being the one that decided to double its litigation against the Landowners with another dishonest set of suits in the first place. This is particularly so when the Town then waited for four months to be shot down in the first set of suits, with full knowledge of the false basis on which it proceeded, before “making the decision to withdraw.”

In its brief at 7, the Town argues again that it was “not particularly difficult” to make the Town withdraw its second set of suits. This is because the acumen and work and ability of the Landowners’ counsel caused the Town to lose its first set of condemnation actions, and tightened the noose on the Town’s second attempt by nailing down the same delicts in the Town’s second set of cases and by pursuing discovery the Town never responded to.

The Town lost both suits and is not the best judge of what is difficult and what is not, but difficulty is also beside the point: the Landowners did not start off asking for enhancement of the fee – they request reimbursement for the time spent at a low rate, whether the case was difficult or not. It still took time to represent the Landowners with respect to the threats of the second set of suits by the Town.

C. Things occurring that the Town cannot see on a docket sheet

The Town lists some filings and events and states that “nothing else occurred.” This is incorrect. Time is spent and work is done by lawyers outside the courthouse. The Town states that “virtually nothing else occurred” in the subject second set of cases during the roughly four months before the Town withdrew them and virtually promised to sue again. This is incorrect.

The Town hired Mr. Dillard as additional counsel and exchanges occurred regarding the whole of both sets of cases, including discussion of mediating the matter, which the Town never followed through on.

Further, interrogatories were indeed served. They did not draft themselves. (They were never answered.) Notice of the deposition of the then Town Administrator, Mr. Fabbri, was served in sextuplicate, and followed up on. Discovery records and the results of FOIA requests were reviewed and consulted periodically. The work in the subject second set of three cases occurred because the subject second set of three cases was commenced with surprise and without explanation at the same time the first set was pending and on the same subject, and included additional phases of dishonesty and manufacture of preposterous resolutions and other documents. Most importantly, whatever did not occur, the Landowners are not asking to be reimbursed for.

D. 138 hours (now 190.6 and counting) the Town misunderstands in the October 2022 affidavit

The Town implies that the 138 hours in the initial October 2022 fee affidavit was all during the four months. This is misleading. The Town admits only subsequently that it was 59 hours that was spent during the four months.

And this was allocated time. Namely, because the Town unexplainedly sued a second time while its first set of suits was still pending, the Landowners' counsel had to immediately start working on the second set of suits at the same time and tracked all the time together as one matter. When it became apparent that the second set of suits was going to have an independent path¹⁵ and

¹⁵ As explained in the October 2022 Stanton Affidavit (and alleged in numerous detailed paragraphs of the Amended Complaint), the Town would not respond to questions as to what the purpose and intended nature of the additional set of suits was, as the October 2021 suits were misleadingly backdated to the same date as the first set of suits commenced in June 2020, which were stayed.

require other considerations, the Landowners' counsel had to begin tracking time separately for the two related matters, at further tedious expenditure of time (in triplicate), which is uncompensated. A discrete number of hours already expended was then backed out of the tabulation of the hours in the first set of cases and was clearly identified in the fee petition on the first set of cases. These hours were placed in the tracking of hours expended on the second set of cases going forward.

Thus, there was no request in the first set of cases to reimburse for hours that are the subject of the present request in the second set of cases.

The Town misrepresents the 138 hours for which the Landowners tentatively requested reimbursement in the October 2022 affidavit. The Town implies that the 138 hours were all spent within the approximately four months from the October 16, 2020 acceptance of delivery of the notices which commenced the additional three actions and the February 10, 2021 "abandonment" by the Town.

The Town later confirmed what was apparent on the face of the suits when considered along with the Town's request that the Landowners' counsel "accept service" – they were an additional set of condemnation notices which, upon service, constituted the commencement of an additional set of suits.

The Town has never explained to any court what was intended to be corrected by the additional, largely duplicative, suits. This is with the exception of, at most, stating obliquely and unapologetically that they were intended to respond to "procedural" deficiencies in the first suits. None of the deficiencies referred to have been identified, nor has any actual attempt at correction been identified. Yet, in addition to new instances of misrepresentation and subterfuge, all the prior deficiencies were repeated, including relying on the same fraudulently obtained appraisals. These suits, too, pursued easements with obnoxious features.

One can only speculate, rather, that the duplicative suits were intended to catch the Landowners unawares, so as to take advantage of statutory timing requirements for an additional challenge suit, which, if missed, would preclude a challenge. As noted in the October 2022 affidavit, it appears that the Corps of Engineers was kept apprised of these tactics and repeated frauds.

Seventy-nine (79) hours of the 138 was for the October 2022 fee petition, all after February 10, 2021. Of the seventy-nine (79), thirty-seven (37) were for hours logged as of the time stated in the October 21, 2022 Stanton fee affidavit. Forty-two (42) hours of the Seventy-nine (79) were an estimate of what were then future hours on the fee application expected from the cutoff time of the thirty-seven (37). Only fifty-nine (59) of the 138 were for work on the case in general during the time for which the Town inaccurately implies 138 were spent.¹⁶

In its brief at 8, the Town argues the Landowners are not entitled to be reimbursed for time spent following the notice of abandonment. This is another diversionary argument, as the Landowners are not seeking anything beyond the normal time it takes to close a matter down. In the experience of most lawyers, nothing ends the very second a party gives up, or even the second that parties agree that a case is resolved.

E. Incorrect characterization by the Town of limited scope and complexity of six lawsuits on disputed beachfront easements involving a 378-page Amended Complaint (95% denied by the Town) covering three clients and three properties

The Town's assertion of limited scope and complexity and short duration is wrong. Under pressure, the Town ditched its second set of three suits after four months, but the matter is far from over. The Landowners are still being threatened to this day (e.g., P.I.C.A. meeting of September 2022 described in October 2022 aff.) and vast amounts of the time in the instant second set of suits has tentatively not been submitted.

There was much time spent opposing the Town's motion to dismiss the challenge actions at "moot," moving the court to reconsider the decision, and prosecuting the still pending appeal of

¹⁶ As noted, fees-for-fees are included under South Carolina law, which the Town does not dispute, but, instead, ignores, while at the same time presenting confusing and legally incorrect arguments "to the effect" that the four months was the only time in which recoverable hours could be spent, and that 138 hours could not have been spent during that time. It wasn't. Much of it is expended in trying to get fees reimbursed.

the decision of this Court to dismiss as moot and declining to reconsider the fact that the Town still threatened suit on the same subject matter. This time is tentatively not included in the requested fee reimbursement. However, the proceedings themselves and the papers filed demonstrate not only procedural complexity but legal novelty, difficulty with discovery, and a Town which goes through two sets of suits without ever admitting anything in the complaints. The cases bristle with strategic considerations. The Town Administrator who was involved has resigned, but none of the Town Council who ratified his actions and have taken their own have yet.

In an illusory attempt to “simplify” the tangled matter created by the Town itself and somehow reduce the actual hours spent, the Town discusses the fee request and the time spent opposing the Town’s falsely based condemnation attempts in terms only of “notable events.”

The fee statute does not call for reimbursement for “notable events.”

It calls for reimbursement of everything a lawyer reasonably does to represent his client with respect to the matter. The reasonableness of what he or she does is judged as of the time he or she does it, not in hindsight. The statute calls for reimbursement for all “events,” and all actual time, even if that involves non-“notable” phone calls, review of statutes and cases, consultations, skimming through hundreds of documents obtained, preparing outlines of others, calling or writing the other lawyer to try to resolve discovery problems or scheduling conflicts, extending other courtesies to opposing counsel, making a private discovery plan, reading multiple court notices (including incorrect ones and ones that need to be rescheduled) for multiple motions each sent in triplicate, trying to make contact with a secretive federal nonparty pulling strings but refusing to meet, appear, mediate, discuss, or correspond substantively, etc.

F. Assertion that a contingent fee agreement (not present here) does not control a statute calling for hourly fees

The Town emphasizes that the fee agreement does not control the fee award. More accurately, the fee agreement does not control unless the applicable statute states or implies that the fee agreement controls. Simply, the applicable statute controls.

The fee agreement does matter.¹⁷ This is especially so in instances where, as here, the fee agreement is already highly aligned with South Carolina’s preferred fee-award methodology for the situation pursuant to statute or common law.¹⁸ In these instances, the fee agreement remains highly influential and relevant.

For example, the Town cites the Revels case for the proposition that the fee agreement does not control. Revels was a case in which the statutory methodology of one of the three specific statutory fee award subsections of the EDPA¹⁹ was held to control. While the contingent fee earned was highly relevant, the particular statutory subsection controlled instead of the percentage-of-recovery contingent fee calculation prescribed by the fee agreement. See Revels (holding that the contingent fee constituted one factor in a constellation of factors for the court's

¹⁷ S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 766 S.E.2d 700 (2014) (“[E]ven though the contingency fee agreement is not the sole element in the calculation, it is still a significant component as it may be used to explain the basis for the fee charged by the landowner's counsel”).

¹⁸ For example, in Revels, the applicable statutory subsection itself made “(1) ‘the fee charged;’ [and] (2) the basis for the fee charged” part of the “constellation of considerations” required in awarding the fee. This made the contingency agreement and the contingent fee the landowner owed under it a relevant factor. Where the statute makes “actual time expended” a consideration, an hourly fee agreement which leads to the actual recording of time spent is not only relevant, but an additional assurance of reliability in determining those hours.

¹⁹ The EDPA has three different fee award statutes. One governs fees to the landowner in a successful challenge action. Another governs fees to the prevailing party in the condemnation action itself, i.e., in an action only concerning the amount of just compensation and not challenges to the ability of the condemnor to condemn. Another governs fees awarded, straight out, to the landowner when the condemnor “abandons” the condemnation – regardless of whether this is measured as a “success” or act of “prevailing.”

consideration in determining an award of reasonable litigation expenses to a prevailing landowner under section 28–2–510(B)(1)).²⁰

Because the governing subsection also required consideration of “the actual time expended,” the prevailing lawyers were required to go back and compile, after the fact, the hours spent or estimated to have been spent, even though the number of hours spent was not the basis for the fee agreement. Notably, this compilation was virtually assured to not be accompanied by contemporaneous descriptions of the corresponding daily activities of the attorney.

In Revels, the court’s adherence to the statutory methodology required the prevailing lawyers to compile, after the fact, the hours spent, or estimated to have been spent, even though the number of hours spent was not the basis for the fee agreement.

In the instant case, controlled by a different statutory fee award subsection (S.C. Code 28–2–510(C)), the Layman lodestar calculation is the legally preferred fee-award methodology. See Revels (holding that the discussion in Layman provides general guidance even in instances of specific methodology of the fee-shifting statute) and see S.C. Code 28–2–510(C)(containing none of the specific methodology and qualifications of section 28–2–510(B)(1)).

The Layman methodology requires the prevailing lawyers to compile, or the court to otherwise determine, the hours spent or estimated to have been spent. Neither Layman, nor any other South Carolina appellate case, requires submission of actual private attorney-client bills. The Layman methodology then requires the court to determine a reasonable hourly rate. The

²⁰ The instant fee application is not governed by S.C. Code §28–2–510(B)(1). That subsection governs fee award after a determination of the amount of just compensation. The instant case is governed, rather, by S.C. Code §28–2–510(C), applicable to the fee award in the different instance of “abandonment.”

hours are then multiplied by the rate to produce a base fee to serve as a guiding star (lodestar) for further considerations.

The lodestar base fee is then enhanced, if appropriate, by taking into account the relief afforded to the client, the significance of the case, the deterrent effect on the adverse party, the constraints under which the lawyer operated, extraordinary circumstances, and other factors.

This is ordinarily not a “penalty phase” of fee awards.

G. Incorrect, made-up, calls for additional, different, impractical, or attorney-client confidential “documentation”

The Landowners’ counsel did document the hours expended. The affidavit required by South Carolina law was submitted.

The facts of the Wyoming case cited by the Town (Dishman) are not applicable here, nor is Hensley or the Town-conjured “burden of proof” in setting forth a straightforward listing of hours worked. Nor is the Town’s dead-end implication that there was any unnecessary duplication in what the Landowners’ counsel did and billed. Further, the Town’s “block billing” citation is without a factually relevant point and is not apposite.

The Town also claims the Landowners have not presented any bills at all. Bills are not required. Further, the statement is misleading in that the Town does have redacted versions of the bills covering the early phases of the case, which are constituted by about 54 pages of private information.

The Town’s complaint about something the Town calls “block billing” is also an irrelevant complaint. Bills are not required, and niggling over their format is therefore displaced under the law of South Carolina. Even so, it appears the Town complains that it has copies of some bills, but that the Landowners themselves have not filed them.

The Town miscites Sunrise. The case does not stand for the proposition for which the Town repetitively cites it. It applies to the reasonableness of fees, not time.

Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp., 295 S.C. 208, 367 S.E.2d 696 (1988), did not state, as implied by the Town in its brief, that the party seeking fees is “not entitled to a presumption” that the duly recorded attorney time is reasonable. Sunrise states that an attorney who does not present the time that was spent in any form – whether recorded or estimated – and does not even describe generally what was done – is not entitled to a presumption that the fee requested is reasonable.

Compare Gurrobat, cited in the Town’s brief, which actually holds that after the actual hours reasonably devoted are multiplied by a reasonable rate to determine the lodestar fee as the first stage of the lodestar approach, the resulting lodestar fee is entitled to a “strong presumption of reasonableness,” and will be modified only upon rebuttal showing unreasonableness.

Thus, Sunrise, does not involve, as the Town implies, a party being entirely denied fees for the overwhelming majority of the work actually performed, on the basis of a thin “burden of proof” argument. Sunrise did not involve an attorney who somehow failed to meet some higher “burden” of proof and persuasion than submitting a plenary affidavit about the case, the work, the attorney, the rates and the sworn recorded time spent, in tenths of hours.

Sunrise, rather, is completely inapposite to this case or any issue before this Court. This Court would err in relying on it for any purpose advanced by the Town.

More specifically, Sunrise involved a complete failure to provide any information about a \$125,000 fee requested for a fifth discrete cause of action which could have been brought as its own separate case. The \$125,000 was in addition to the fees granted for four other causes of action. The fifth cause of action was for collection on an additional promissory note. The

requesting party only stated the additional amount requested and asserted that it was reasonable.

Even so, rather, than deny the fees, the appellate court remanded the case for submission of additional information and a determination of what part of the extra \$125,000 requested should be awarded.

Similarly inapposite cases cited by the Town in its brief at 8 are Getzen v. L. Offs. of James M. Russ, P.A., 323 S.C. 377, 475 S.E.2d 743 (1996), and City of N. Charleston v. Claxton, 315 S.C. 56, 63, 431 S.E.2d 610, 614 (Ct. App. 1993), which refer to deduction of time for clearly “duplicitous” work, referring to duplicative billing. Yet the citation alone is the Town’s only argument – the Town never points to a single thing that was duplicated in the time or the billings. Rather, only one lawyer worked for three Landowners, as opposed to three lawyers working for one Town. And the total fee was then divided, not multiplied, by three. As for the one lawyer, he never charged twice for the same thing and if anything, failed to charge the first time for some things. The Town actually employed two attorneys, then hired a third, and then hired a fourth to give opinion on a case in which he had no involvement. In doing this, the Town managed to spend well over \$80,000 and, in the early stages (before Mr. Dillard was counsel), managed to commence six (6) suits based on the same, uncorrected, fraudulently obtained appraisal.

The decisions of counsel to devote time to a case are determined as of the time he or she determined to spend the time, not in hindsight. Gurrobat v. HTH Corp., 346 P.3d 197 (Hawaii 2015)(cited in the Town’s brief).

Notably, the Hawaii case of Gurrobat cited by the Town discredits the unreasonable “block billing” proposition for which the Town cites the case and the proposition advanced by the Town cannot be reconciled with South Carolina law allowing mere estimates of time in cases in which

some or all time is not even recorded by the attorneys. See, e.g., Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998), Revels, Saunders v. South Carolina Pub. Serv. Auth., C.A. no. 2:93-3077-23 (D.S.C. Mar. 30, 2011)(“Mr. Bell testifies that the true number of hours he spent on this case ranges between 7,000 and 10,000 hours”), and Taylor v. Taylor, 333 S.C. 209, 508 S.E.2d 50 (Ct. App. 1998)(“Husband decries the court’s award of 10 additional hours spent by Wife’s attorneys in preparing for the fees hearing, without the support of an affidavit. We do not see the need for an affidavit in this case.”).

H. Irrelevant, incorrect, dead-end discussion of mythical concept of excising motions “on which the claimant did not prevail”

Equally pointless as not supported by the facts and not a correct statement of South Carolina law is any argument or implied argument that Town makes that any party is barred from fees on “motions on which the party did not prevail.” Citing the Hardaway case decided by the Court of Appeals, the Town refers, rather, to a case in which the fee claimant affirmatively lost – in that case, a motion for sanctions that did not factually or legally overlap with the prosecution of other parts of the case. It produced no beneficial result and was not in the course of normal strategy or prosecution of the case or the defense.

Aside from having the law wrong, there is no relevant motion that Town refers to in the instant case. Additionally, the governing statute does not use “success” as a trigger; it uses abandonment.

I. Claim of lateness after stipulating to add a claim to the case and hold the case open

The Town argues that the fee request, which was made after the Landowners cooperated in the Town’s months-long effort to correct a perceived error in the Court’s Form 4 denying the

Landowners' motion to reconsider, comes too late. The Town bases its argument on the assertion that Rule 54(d) requires a fee application to be filed within 10 days of "final judgment."

In its brief at 6, the Town argues that the Landowners "necessarily tak[e] the position that the judgment was final." In appealing the Court's ruling that the challenge actions were "moot," the Landowners did not take the position that the judgment in the case is final – only that it is appealable. While not disposing of all claims and not ending the case, the judgment affects a substantial right and is appealable.

The Town cites Pittman v. Republic Leasing, 551 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002) in support of its argument. Rather, Pittman turned on the Frivolous Procedure Act's specific reference to a requirement that the fees be requested "at conclusion of the trial." There is no such provision in the governing fee statute here. Pittman also relied on the timing of the ability of a party under Rule 59(e) to "alter or amend" a "judgment." Pittman applies to a post-trial "motion for sanctions," not the taxing of attorney's fees and other special costs. Taxing costs is not "altering or amending a judgment" and the court retains the jurisdiction to enter costs. The preceding judgment is not a matter to alter or amend, because the entry of judgment is "not to be delayed for the taxing of costs," Rule 58(a).

More importantly, the Town stipulated to, and the Court included in its orders, an ability of the Landowners to seek their fees from the "abandoned" condemnation actions, in the Landowners' instant independent actions.

In the condemnation actions, the notice of abandonment was not a "judgment." Rule 54(a) defines a "judgment" as a decree or order. The notice of abandonment was for an action which was separate from the above-captioned action.

After stipulating to the contrary, the Town cannot be heard to argue that the Landowners are expected to file a separate action in equity to recover their attorney's fees to which they are statutorily declared to be "entitled" in relation to the condemnation action the Town started but abandoned without ever filing.

The EDPA is the exclusive procedure for the matters prescribed in it and Rule 54(b) is not part of the EDPA. The order of dismissal in the instant cases orders, pursuant to the Town's stipulation, that the fees may be pursued in the instant case, and sets no time limit. The Form 4 states as well that it "does not end" the case and in fact notes that discovery as to fee matters may continue. This is inconsistent with an "implied" ten-day deadline to file a fee petition when no time is set by statute.

To the extent there was a tacit deadline to apply for fees within 10 days despite an order stating the case was not ended, and providing for continuation of discovery in the case for purposes of attorney's fee matters, the Court's main order extended that time under Rule 6(b), or should now. Rule 6(b) only excepts from the ability of the court to extend a deadline, the time for taking action under Rules 50, 52, 59, and 60. If proceeding under the Rules of Civil Procedure, a request for fees is made pursuant to Rule 54, which is not excepted from Rule 6(b).

As previously noted, the 4/22/21 Form 4 "Form of Judgment" stated that the order "does not end the case," and that "additional matters, including any attorney fee petition, may precede final dismissal of the action." The 4/22/21 formal order also stated: "At this time, discovery is limited to any claim that may be submitted for attorney fees or costs." The 6/3/21 Form 4 denying the Landowner's motion to reconsider further reiterated that the order "does not end the case," and that "the issue of litigation costs remains pending."

The cases are still on an active roster and have been noticed for hearing 4/17/23. There was thus no intention to end the case.

J. Inapplicable analysis in Dillard affidavit guided and skewed by affiant's errors of law, lack of experience in the relevant field and misapprehension of reality

In the Town's brief at 8, on behalf of the Town, Mr. Dillard spends Mr. Dillard's time, and undersigned counsel's time, on an argument purporting to rebut things for which the fee is not presently requested, namely various "post-abandonment" matters.

At 8, he submits that total time of no more than twenty (20) hours should be "allowed," when this is clearly not the actual time expended. The 20 hours is a naïve flying guess pertaining only to a hypothetical case, rather than the one that exists.

It is absurd to submit 20 hours as the time to analyze and respond appropriately (and cooperatively) to the Town's surprise request for acceptance of service, to the solicit the Town's intention as to the nature of its duplicative surprise cases, to fail to receive a response, to analyze the nature of the new cases, to review a lengthy video of a sham Town Council meeting (with no available transcript) and tedious documents on the agenda and in the subsequent minutes, to rapidly research, draft, fact-check, law-check, proof, and electronically file three lengthy lawsuits, to ask the Town to accept service of the three time-sensitive countersuits, to fail to receive a response or any cooperation, to arrange to have the three time-sensitive suits filed, to begin engaging in discovery, to begin combining discovery in the other pending cases with the new cases, to amend the three suits and their extensive and precise exhibits to produce three (3) three-hundred-and-seventy-five- (375-), paragraph amended complaints (plus precisely verified exhibits), to electronically file the same, and to engage in appropriate consultation with clients, research, consideration of possible experts, strategic thinking, correspondence and discussion with opposing counsel, etc.

The paltry 20 hours suggested by the Town is not enough to get part of the way through the original complaint. It takes 10 hours just to skim (spot checking facts and cites) part of the way through the materials the Town filed around Christmastime 2022 opposing the fee request. The Town seems to suggest that the Town's delusional and false second attempt at condemnation could be defeated by either relying on logic and honesty and nicely asking the Town to dismiss it at the inception, or filing a bare-bones one-page challenge action, pushing a mythical "autopilot" button, and waiting four months on withdrawal or the arrival of a dismissal order.

In the Town's brief at 9, Mr. Dillard engages in his own illegal version of a lodestar fee calculation employing the foregoing absurd 20-hour Town-deemed "allowance." Instead, this Court should increase the low hourly rate the Landowners' counsel actually charged, multiply it by the actual hours expended, and then enhance the product by an additional 50%.

At 9, Mr. Dillard contends Revels establishes §15-77-300 to be inapplicable when the EDPA supplies the fee award. If he will swear in his affidavit that §28-2-510(C) does govern, his affirmation will be complete. Until then, the Landowners present multiple grounds.

The Town, through its counsel who relies on his skewed affidavit, exercises absurd and unauthorized selectivity. He engages in analysis of time spent on a multi-client, multi-property, multi-faceted matter which was handled in triplicate but with some variations, which involved tangible work product never provided to anyone, involved phone calls, e-mails, texts, and personal meetings not filed or sent to him, involved correspondence and phone calls that did indeed involve him or his co-counsel, involved work presented to the court, and involved work not presented to the court, and he does so with pseudo- analysis in which he counts pages, instead of counting hours. I.e., he ignores what lawyers do besides draft and file things.

In his affidavit at para. 6, Mr. Dillard addresses “review of a 30(b)(6) notice” (for a deposition). A latecomer to the case, Dillard does not realize there was no 30(b)(6) deposition noticed yet in the case.

At para. 6 of his affidavit, Mr. Dillard indicates he reviewed the affidavit of another attorney and necessarily made his own credibility determination, which is for the judge, not Mr. Dillard, to do.

At para. 7, he reflects on the online case index, which is something the judge, as factfinder, can do for himself. In doing so, Mr. Dillard again ignores what a lawyer does outside the courtroom and outside of the filing of documents.

At para. 8, the affiant refers to the Town’s second set of “notices,” sugarcoating the fact that these constitute the Town’s second set of three publicly funded lawsuits against its own otherwise cooperative and longstanding citizens, unrepentantly based on the same falsehoods perpetrated in the first three publicly funded lawsuits. These falsehoods had already been pointed out to the Town in spades. Mr. Dillard purports to be very experienced in the limited dimension of “condemnation” (and then, not in the coastal context), but in the first set of three suits brought by his co-counsel, the Landowners were the ones who had to explain to the court and the Town that, without filing condemnation notices, service of the notices “commences” the lawsuit against the Landowner and starts a clock running. Dillard refers to “efforts to condemn” “beach renourishment’ easements,” perpetuating the same obscuring of fact that got the Town into all this trouble in the first place.

Mr. Dillard gives his legal “opinion” – and states an otherwise demonstrably false fact – that the sole request for relief in the second set of challenge actions was ending the second set of three condemnation suits. Here, his bias in the matter gets the best of him, or he exhibits a

combination of ignorance of the law and a lack of memory. What the Landowners sought has been discussed previously hereinabove, and has been covered in numerous briefs: Rule 54(c), SCRCP requires a court to grant all relief to which the facts entitle a party, whether prayed for or not. Rule 10, SCRCP expressly provides that a pleading may adopt other papers by reference, and the Amended Complaint in the second set of challenge actions adopted by reference, the Amended Complaint of the first set of challenge actions. The adopted pleading is one Mr. Dillard himself had strenuously argued to have requested broad permanent injunctive or other prospective relief. This Court itself recognized that the prayer for relief included any further and other relief to which the facts entitled the Landowners.

The fact that the Amended Complaint incorporated papers further describing the sorts of relief appropriate has been presented to the Court of Appeals in the first set of challenge actions and has been vigorously argued and briefed, but never once disputed by the Town or Mr. Dillard, except to this judge of this Court. Mr. Dillard, on behalf of the Town, has argued opposite factual contentions to different judges of this court and to other courts.

At para. 8 of the Dillard affidavit, the affiant claims “significant familiarity” with the first set of three challenge actions the Landowners had to bring after being sued the first time by the Town. What he learned about the matter was at the expense of the Landowners in teaching it. They were the ones who had to spend the time to shoot down and pin down casual falsities and evasions by the Town, as well as misstatements of the law in the very area in which Mr. Dillard claims to have extra familiarity. All his purported “familiarity” with the actual matter is a hindsight review of only the tangible vestiges of something he was not there for. His impressions are through a prism of legal error, whereas the judge can form impressions for

himself in considering a fee award, without being shunted with facts distorted and winnowed down by someone who did not have all of them to begin with.

Namely, Mr. Dillard was not there. On the other hand, Stanton was there throughout, as were each of the other two Landowners, one of whom is a lawyer and the other of whom has a lawyer as principal. Both of them have submitted affidavits as well, with the benefit of watching the matter unfold from the beginning, watching each measure and countermeasure taken, seeing every strategic juncture that came up, and witnessing the prodigious amount of work it took to pin down an uncooperative adversary who based its entire suit on a flouting of the rules.

Again, with these things in stride, the Landowners are only presently asking to be reimbursed for what they have actually incurred. They are not asking for an enhanced fee or a penalty for the Town, unless the court sees fit to approach it that way. They are asking, however, not to themselves be penalized based on an unfamiliar lawyer's blithe assessment that the case was not hard enough.

At para 10, the affiant now concedes (as he ridiculously did not in the first set of challenge actions) that "it is true ... that the broader dispute involved some procedural complexity," and acknowledges that there were "six civil actions filed." Even here, he omits that there were also six condemnation actions commenced by the Town, for a total of twelve (12) actual lawsuits, each with procedural attributes and procedural consequences.²¹ The fee statute does not distinguish between the "broader dispute" and merely what is on file. It mandates fees

²¹ Undersigned counsel can explain these attributes at argument if the court desires. They include pre-service requirements to be met by the condemnor, contents requirements, triggering deadlines at the inception, continued pendency, stay, expedited trial if challenge is unsuccessful, the right to jury or the lack of right to jury, the lack of a filed case in which to seek or enter orders or notices, and much other interplay.

for representation in the dispute. The requirement is that the time is expended in response to and is reasonably attributable to the condemnation action that was abandoned.

Having created a legally false schism, at para. 10, Mr. Dillard opines that the “cases” (in his mind, only the papers, but not the “dispute”) in particular were “not in any way complex, lengthy, or time consuming.” The simple answer to this incorrect statement is that, assuming arguendo, the cases were not complex or time-consuming, do not enhance the fee, and award only the fee for the time the cases did indeed consume, which is not in dispute.

Beyond the simple answer is that the cases were time consuming and are time consuming now. It takes over 10 hours just to get through a first skim of Mr. Dillard’s recent December 2022 filings and do preliminary spot checks of the misstated facts and miscited cases.

At para. 11, Mr. Dillard states that in the first set of challenge actions, Judge Nettles’s reasons for quashing the Town’s condemnation attempts “included” grounds also at issue in the second set of challenge actions, and “included” findings about the Town’s pre-condemnation appraisal report. Consistent with the observations earlier this brief, Mr. Dillard never acknowledges what the grounds and findings were.

At para. 12, Mr. Dillard states that on 2/5/21, he “promptly reached out” -- as indicated in his Exhibit B letter – seeking a “pause” while the Town determined whether to abandon its second set of three condemnation actions. He adds that he also did so in telephone calls. He does not mention the other extensive e-mails and exchanges around this same time, filling him in on the case, deciding how to put off discovery at his request, and in what manner to extend the Town’s time to response to the allegations in the Amended Complaint.²² Here, we have a letter

²² In the three Challenge I cases, the Town denied 95% of the original Complaint and 95% of the Amended Complaint. In the Challenge II cases, the Town denied 95% of the original

from Mr. Dillard and telephone calls. Yet, only Mr. Dillard's letter is in his "events" table. He states no criteria for what constitutes an "event." Calls in which he was a participant, other correspondence of which he was a recipient or sender, and many other things are not in his "table of events" for which he deems to "allow" the Landowners reimbursement of time and expense incurred.

While seeming to be a caricature, the situation presents the reality of the affiant's own skewed approach and argument. His affidavit is of no use to a factfinder in the matter of awarding fees. He asserts that the Town's first counsel should be able to waste the Landowners' counsel's time for six months. Then, when loss is imminent, the Town should then be able to bring in a second publicly funded lawyer. The Landowners' counsel should then receive the additional counsel's letters, spend time on the phone with him, explain the case to him, select pleadings and papers for his review, and discuss mediation with him (which the Town never follows through on and never reports back on). Then this second counsel should be allowed to opine that the Landowners should not be reimbursed for the actual bill from their lawyer, because the Town's second lead counsel (out of three Town lawyers) opines that the exchanges did not appear in the court docket sheet or the list of things he decided were "notable."

Strikingly, Mr. Dillard omits the fact that the Landowners' counsel responded to his 2/5/21 letter. This letter, too, is not on a court docket sheet and is not in Mr. Dillard's table of things he alone deems "notable" and therefore "allowed." Nor are other e-mails to Mr. Dillard that Mr. Dillard of course has and knows about. Stanton's 2/7/21 response to Mr. Dillard's letter is, however, filed herewith as Exhibit C, and is self-explanatory. Mr. Dillard does not state

Complaint, and at the point referenced, had not responded to the Amended Complaint, which the Town would later also deny 95% of.

whether any unreasonable amount of time was spent after he wrote his letter, so his letter is, again, largely without a point. Nor does Mr. Dillard elucidate on the accommodations extended to him, which also required some time to discuss or correspond about. He did, after being granted an extension, file an answer to the Amended Complaint that denied 95% of it in violation of Rules 8(b) and 11, SCRCP. This saved him time, but did not save the Landowners time, and is not a commendable way for him to save time.

At para. 13, as a badge of pride, Mr. Dillard states that he filed the notice of abandonment on 2/10/21. He does not state whether the Town ever followed through on mediation or gave a timely update that it would not occur or be pursued. He does not state whether the Town wanted a break on reimbursement of the fees it ran up for the Landowners. He does not state whether he refused to promise that the Town would not sue again.

At para. 14, Mr. Dillard states that Judge Culbertson dismissed the second set of three challenge actions as “moot,” but does not note that the order of dismissal is currently on appeal. He also does not mention that the order Judge Culbertson signed was specifically with the right to assert attorney’s fees before final dismissal.

At para. 15, Mr. Dillard introduces his Exhibit C, a “Table of Events,” which does not purport to be comprehensive and complete in stating all matters on which an attorney may spend time or on which the Landowners’ attorney did in fact actually expend time. Rather, the sole criterion for inclusion on the table is Mr. Dillard’s subjective whim to include or exclude a matter. The table does not reliably advance this court’s analysis of the attorney’s fee award in any way, and virtually assures error. There are many similar distinctions warranted for remaining parts of Mr. Dillard’s affidavit and the things attached, such as the unbelievable affidavit of the mayor claiming he meant something else by “nuclear option,” when he

previously stated he did not remember what he meant by the term. However, time is short and it should be apparent that the affidavit should be excluded in its entirety.

VII. The requested fees should be awarded.

Respectfully submitted,

s/ M. Baron Stanton
 M. Baron Stanton (S.C. Bar No. 7970)
 Stanton Law Offices, P.A.
 P.O. Box 245
 Columbia, SC 29202
 (803) 929-1484
bstanton@stantonlaw.com
*Attorney for Sunset Lodge, LLC,
 Franklin D. Beattie,
 as trustee of The Franklin D.
 Beattie Preservation Trust, and
 pro se for M. Baron Stanton*

Date: 3-8-23

List of Exhibits

This brief is a reply. The motion, a supporting affidavit of Stanton, and a proposed order and Form 4 were filed October 21, 2022. The affidavit of Stanton was updated March 8, 2023. This brief is a reply to the Town's opposing memorandum and associated materials. The exhibits to this brief are as follows:

Exhibit A – Earlier Beattie Affidavit

Exhibit B – Earlier Howard Affidavit

Exhibit C – Stanton 2/7/21 response Dillard did not attach when presenting Dillard 2/5/21 letter

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

**REPLY AFFIDAVIT OF BEATTIE TO AFFIDAVITS OF
PAGLIARINI, DURANT AND DILLARD**

1. I disagree with the affidavit testimony of Mr. Pagliarini, a lawyer never before participating in any of these cases. I also disagree with the affidavits of both of the lawyers of record for the Town of Pawleys Island, only one of whom was in the case during the time the Court ruled against the Town on its motion to dismiss, its motion to speed up the case, its motion to be allowed to not respond to discovery from the plaintiffs, its motion to require a bond, & the plaintiffs' motions for summary judgment against the Town. The other lawyer is limited mostly to participating in motions to reconsider and motions for "fee discovery."

2. I was licensed to practice law from 1961 to 2014, at which latter time I terminated the license as a result of my other retirement activities. Previously, I served in the Airforce and over the years I have been involved in many community, local, state and broader activities, including matters commercial, civic, spiritual and political. I have observed and worked directly with many fine lawyers over the years and have hired some of them. During most of my 53 years as a licensed attorney, I actively practiced. In early years, the litigation I was involved in was about equally divided between representing plaintiffs and defendants, the latter work often involving work paid by insurance carriers. My litigation migrated more toward the plaintiff's side and I was one of the founders of the Trial Lawyers' Association.

3. During much of my time in practice I was involved in litigation and appeals on many subjects, and probably was involved in about ten to twelve appeals. Throughout my practice, I

kept time records and a timekeeping system. We in fact developed a very sophisticated timekeeping system of our own which piggybacked on a packaged system. I kept time regardless of whether I was working by the hour or on a contingent fee or flat fee basis. My work involved a broad range of subject matter, including trial work on negligence and other cases, real estate work, corporate collections, probate work and worker's compensation litigation. Toward the end of my most active practice, sometimes I spent around a third of my time on worker's compensation cases. In recent years, I practiced less and moved from Aiken to Georgetown County, where I own and operate Hopsewee Plantation and attend to many business and property affairs there and elsewhere.

4. I am loath to soften this affidavit for it is just the truth, the whole truth, and nothing but the truth.

5. Contending with a dishonest party, whose attorney ignores his dishonesty, and instead, supports it, has required extraordinary effort by my counsel.

6. This case began to come about for me in the spring of 2019 with the forgery or unauthorized substitution of my easement and the destruction of my recorded plat by the plaintiff's administrator. When I discovered this, I was incredulous, and demanded his explanation. He ignored me and sought refuge behind the Town Attorney who phoned me "to settle" my accusations.

7. When I told him what his client had done, he professed "no knowledge" so I sent him a copy of my letter demanding an explanation, a witnessed copy of my executed easement (the one I had authorized), and a stamped copy of the recorded plat that I had delivered in person to the Administrator to enable the Town Attorney to fulfill his ethical duty to advise his client, The Town of Pawley's Island, of it's administrator's criminal conduct.

8. The Town attorney did not reply. The Town did nothing. After the elapse of a reasonable time & no reply or action was forthcoming from the Town Attorney, I cancelled the forged easement upon the public records with an instrument explaining my reason for doing so. From June of 2019 to the time of suing me, no effort was made by any member of the Town's governing body to inquire into these events, or explore the possibility of a compromise or resolution of the grossly inappropriate easement the Town has tried to condemn, ignoring the

fact that for more than a 100 years, my family has owned a home on the island. Instead, the Town began an action to seize 1/3 of my property, for spurious reasons in early summer of 2020.

9. Concurrently, I had already scheduled spine surgery & I knew time for recuperation would be needed so promptly getting this case over, if possible, was a major consideration. I reviewed feedback of multiple attorneys, including difficulties with confronting the Town and strategic recommendations & fees & costs & another's assessment significantly exceeded my share of the fees & costs, for which approval is now sought. My attorney's proposed strategy made the most sense to me and was the only strategy that offered at least the possibility of a prompt conclusion.

10. I then frankly advised him I considered the Town's agents & it's counsel untrustworthy & uncommunicative & he would have to be vigilant, & alert, especially in matters of discovery, deadlines, scheduling, & representations & that both were capable of covert action.

11. I offered to employ him as my counsel. Much to my surprise, instead of immediately accepting, he counselled consulting further & advised I should be aware the strategy and positions he proposed were right and just, but not without significant risk because of several apprehensions, including the absence of a successful local precedent on such a peculiar set of facts. Although first chagrined by this disclosure, upon reflection I realized it was evidence he had high ethical standards & I employed him. His work has been insightful and he has always counselled restraint in seeking fees if possible until and unless we got the Town's action thrown out, which has occurred. I am well satisfied with his performance as well as his efforts & the expenses of this case are a reflection upon the demonstrated character of the original adverse parties.

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


Franklin D. Beattie, Jr.

Date: 10-2-21

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

REPLY AFFIDAVIT OF CHARLES E. HOWARD TO AFFIDAVITS OF
PAGLIARINI, DURANT AND DILLARD

Personally appeared before me, after being duly sworn, the undersigned stated as follows:

He was issued a law license on May 11, 1971 and he has been practicing for over 50 years, all in good standing. His uncle, Ernest J. Howard, was his partner and mentor for over 30 years before his death. He is presently the senior partner in Howard, Howard, Francis & Reid, LLP, a firm formed in 1965.

Most of his practice had been in litigation primarily on plaintiff's side, and involving personal injury, as well as property and business related litigation. He has also defended suits, but tended to be more on the plaintiff side and is a member of what was formerly the Trial Lawyer's Association, now known as the American Association for Justice and South Carolina Association for Justice.

In the last fifteen years he has focused more on real estate matters, both residential and commercial, but that also includes disputes over real estate and some fairly complicated disputes regarding construction and real estate development.

Since 1977 he has been a licensed title insurance agent. He binds and writes title insurance which involves understanding and analysis of title matters and related risks.

He has sent his share of bills over his career, including not only those after successful completion of contingent fee cases, but also those in flat fee cases, and those in more complicated matters in which he billed by the hour. As counsel to real estate and development clients as well as in connection with his investments and endeavors, he has also reviewed numerous bills directed to him or to clients or partners or to entities in which was involved and have paid a number on his own account as well. In concerns he has been involved with, he has hired counsel and he has observed many excellent lawyers from the client side and observed how they have worked.

He and his wife are 32.5% stockholders and members in Sunset Lodge, LLC, which owns the house and land that is in litigation. He has paid his share of the bills in that case. He has followed this litigation from the beginning.

He has been kept informed scrupulously by his attorney, Barry Stanton, throughout the litigation, and has followed the strategy, pleadings, proceedings, rulings and other aspects of the case as and when they occurred. He has received and reviewed the bills in the matter, when presented by Mr. Stanton. He had a clear and reasonable fee and engagement agreement with Mr. Stanton, who counseled him well and thoroughly.

In his estimation, the legal work throughout has been superb and all reasonably and smartly approached.

He believes all the bills in the case to be reasonable and if he did not, he would have questioned them and would not have paid them before being satisfied. He has had virtually no

questions about the bills or the time spent on the case. He knows Mr. Stanton has spent the time and more.

He has have reviewed Mr. Stanton's fee affidavit and it is right on the mark. The award requested is reasonable and in fact conservative, and in that respect, generous to the opposing party, especially in light of what was at stake in the case and the results obtained under the circumstances.

He disagrees with the affidavit testimony of Mssrs. Dillard, DuRant and Pagliarini.

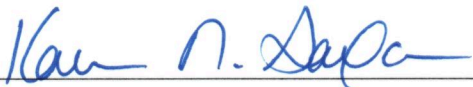
Deponent further sayeth not.



Charles E. Howard

Sworn to before me this the

4th day of Oct., 2021.



Notary Public for SC

My Commission Expires: 8/22/23

Barry Stanton

From: Barry Stanton
Sent: Sunday, February 7, 2021 5:56 PM
To: Will Dillard
Subject: Stanton, et al. v. Town of Pawleys Island (2nd Challenge Actions) ending 930, 931 and 932
Attachments: '21.2.5 Dillard to Stanton (2nd Set of Challenge Actions).pdf

Will I am responding to your attached pdf letter sent by e-mail 2-5-21 and dated the same.

Therein, you state that the Town is currently considering what to do about the October 2020 condemnation notices underlying the second set of challenge actions. You state that in the coming days it is "entirely possible" the Town may file an abandonment of condemnation as to each of those matters. That is great news.

However, I must assume that it is also entirely possible the Town will not do so.

You then ask that we avoid incurring any material amount of fees and costs in these matters, but ask that this be for a period of, not a few days, but rather, thirty days.

If you would tell me now, or indeed within the coming days, that you do intend to file such an abandonment, we can make the matter much more clear and certain.

Those actions were filed November 12, 2020, about three months ago, and were served shortly after, when the Town did not respond to a request to accept service. The Town has had knowledge of their contents since then. Their contents include the fact that the underlying notices on the same subject matter were delivered when the stay was in effect in the first challenge actions, and that the same, and further, defects were alleged in the second challenge actions.

Delivering the additional notices met the definition of vexatiously multiplying the costs of litigation for the people already sued once by the Town.

After we responded and after the Court granted summary judgment in the first set of challenges, the Town then baselessly moved to disqualify me as counsel. Even then, we have tried to give the Town a break by seeking only 2/3 of the fees incurred at a very conservative rate, with some time on the matter not included. This has been met with objections to fees and a demand for delay and a fee trial. We are about ready to reconsider our approach to the fee petition.

You have now put me on notice of which costs you will object to if, while you consider what you might and might not do, we continue to vigorously pursue extinguishment of the additional vexatious suits the Town commenced against my clients and me.

I understand that the fuller statement of the summary judgment order coming out on January 20, sixteen days before your letter, gives the Town another or at least a more immediate reason to consider the legitimacy of the specious second set of notices the Town has thus far done nothing about and made no investigation of or apology for. They are on the same subject matter as the notices attacked in the first challenge actions. I would think the coming days would be about the next three, not 30.

Let me propose how killing the second set of challenge actions could be accomplished quickly and efficiently within three days:

1. Stipulate that the litigation costs of the second challenge actions are part of and can be included in the litigation costs of the first challenge actions and that of course those litigation costs cannot be recovered twice. I.e., they will not be sought in the second set of challenge actions. That way, we are not put to the expense of another whole fee petition and, presumably, fee hearing, with similar allusions to the need to incur further costs for discovery and live testimony. Everybody saves.

2. When the abandonment of the October notices is stipulated, we dismiss the second challenge actions without prejudice.

I don't want to waste time or money, but must prepare in the manner that makes the most sense to me and my schedule, not as the Town dictates based on what the Town might or might not do. We have always operated in good faith.

Best,

Barry

Barry Stanton
Cell [803-530-2642](tel:803-530-2642)
Office [803-929-1484](tel:803-929-1484) (undergoing work)

Stanton Law Offices, P.A.
P.O. Box 245
Columbia, SC 29202

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

From: Will Dillard <will@belserpa.com>
Date: 2/5/21 5:13 PM (GMT-05:00)
To: Barry Stanton <bstanton@stantonlaw.com>
Subject: Stanton, et al. v. Town of Pawleys Island (2nd Challenge Actions)

Barry:

Good afternoon. Please see the attached letter requesting a temporary "pause" on activity in the second set of challenge actions, as we have previously discussed.

Thank you,

Will

William C. Dillard, Jr., Esquire
BELSER & BELSER, P.A.
1325 Park Street, Suite 300 (29201)
P.O. Box 96, Columbia, SC 29202
Phone: (803) 929-0096
Fax: (803) 929-0196
Direct: (803) 999-1255
will@belserpa.com

March 8, 2023 e-mail of Dillard to Moree of Judge Culbertson's office, without attachments

Barry Stanton

From: Will Dillard <will@belserpa.com>
Sent: Wednesday, March 8, 2023 3:58 PM
To: BCulbertsonSC@sccourts.org
Cc: Barry Stanton
Subject: Hearing on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C/A 2020-CP-22-00932)
Attachments: '22.12.13 MIOT Attorney Fee Petition.pdf; Chronological Case Events Table (Dillard Exh.C).pdf; '22.12.12 Durant Affidavit.pdf; '22.12.12 Durant Exhibit (A).pdf; '22.12.12 Dillard Affidavit.pdf; '22.12.12 Dillard Exhibits (A-F).pdf

Ms. Moree:

Good afternoon. I represent the defendant Town of Pawleys Island in this matter scheduled for a hearing on the plaintiffs' attorney fee petition tomorrow morning before Judge Culbertson. Please find attached the following items that were previously filed in opposition to the fee petition:

- 1.) Memo in Opposition;
- 2.) Affidavits of David Durant and William C. Dillard (w/ supporting exhibits in bookmarked PDF's); and
- 3.) For easy reference, a standalone copy of a chronological "Case Events Table" exhibit (Exhibit C to the Dillard affidavit).

Thank you, and best regards,

Will Dillard



William C. Dillard, Jr., Esquire

1325 Park Street, Suite 300 (29201)

Post Office Box 96, Columbia, SC 29202

Phone: (803) 929-0096, Fax: (803) 929-0196

Direct: (803) 999-1255

will@belserpa.com

March 9, 2023 e-mail of Stanton to Moree of Judge Culbertson's office, without attachments

Barry Stanton

From: Barry Stanton
Sent: Thursday, March 9, 2023 12:53 AM
To: BCulbertsonSC@sccourts.org
Cc: Will Dillard
Subject: Hearing on motion to correct Form 4 and atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)
Attachments: 7-22-22 Motion to Reconsider Order Marking Case Ended in Chall II - Consol Sunset etc 932.pdf; 10-21-22 Mot for Exp Incl Attys Fees in Sunset 932.pdf; 10-21-22 Stanton Aff re Fees and Expenses - Consol 932.pdf; 10-21-22 FS Exh A Aff Support Motion for Attys Fees and Exp ChII.pdf; 10-21-22 FS Exh B Aff Support Motion for Attys Fees and Exp ChII.pdf; 10-21-22 FS Exh C Aff Support Motion for Attys Fees and Exp ChII.pdf; 10-21-22 FS Exh D Aff Support Motion for Attys Fees and Exp ChII.pdf; 3-8-23 Updated Amended Stanton Aff re Fees and Expenses - Consol 932 Notar.pdf; Plaintiff Landowners' reply to TOP return to Pl Indnrs Petn for Attys Fees and Exp 3-5-23.pdf; Exh A - Earlier Aff of Beattie.pdf; Exh B - Earlier Aff of Howard.pdf; Exhibit C - Stanton 2-7-21 response to Dillard 2-5-21 e-mail.pdf

Dear Ms. Moree:

On behalf of the Landowners, we would also like for Judge Culbertson to have directly, for the Thursday morning hearing, the following papers which are all e-filed, but which are also attached for convenience:

1. The Landowners' 7/22/22 **motion** of Landowners to correct perceived erroneous Form 4 dated 7/12/22;
2. The Landowners' 10/21/22 **motion** for fees and expenses;
3. The 10/21/22 Stanton affidavit supporting the above fee petition;
4. Exhibit A to the 10/21/22 Affidavit – 12/28/21 appeal of insufficient FOIA response from Corps
5. Exhibit B to the 10/21/22 Affidavit – Henry nuclear option e-mail to Corps
6. Exhibit C to the 10/21/22 Affidavit – 1/10/21 interrogatories to Town never answered
7. Exhibit D to the 10/21/22 Affidavit – 4/5/21 final order of Judge Nettles quashing first Town attempt for false information
8. The 3/8/ 23 update of the Stanton update supporting the fee petition;
9. The Landowners' 3/8/23 reply to the papers filed by the Town in opposition to the fee petition;
- 10.Exhibit A to the 3/8/23 Reply – Affidavit of Frank Beattie;
- 11.Exhibit B to the 3/8/23 Reply – Affidavit of Charlie Howard; and
- 12.Exhibit C to the 3/8/23 Reply – E-mail of Stanton responding to 2/5/21 letter of Dillard (the latter being a Town exhibit without the Stanton response).

Thank you.

Best,

Barry Stanton

M. Baron ("Barry") Stanton

STANTON LAW OFFICES, P.A.

Cell 803-530-2642

Offc. 803-929-1484 (Use cell pending building changes)

POB 245

Cola., SC 29202

From: Will Dillard <will@belserpa.com>

Sent: Wednesday, March 8, 2023 3:58 PM

To: BCulbertsonSC@sccourts.org

Cc: Barry Stanton <bstanton@stantonlaw.com>

Subject: Hearing on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C/A 2020-CP-22-00932)

Ms. Moree:

Good afternoon. I represent the defendant Town of Pawleys Island in this matter scheduled for a hearing on the plaintiffs' attorney fee petition tomorrow morning before Judge Culbertson. Please find attached the following items that were previously filed in opposition to the fee petition:

- 1.) Memo in Opposition;
- 2.) Affidavits of David Durant and William C. Dillard (w/ supporting exhibits in bookmarked PDF's); and
- 3.) For easy reference, a standalone copy of a chronological "Case Events Table" exhibit (Exhibit C to the Dillard affidavit).

Thank you, and best regards,

Will Dillard



William C. Dillard, Jr., Esquire

1325 Park Street, Suite 300 (29201)

Post Office Box 96, Columbia, SC 29202

Phone: (803) 929-0096, Fax: (803) 929-0196

Direct: (803) 999-1255

will@belserpa.com

April 12, 2023 e-mail of Dillard to Moree of Judge Culbertson's office, without attachments

Barry Stanton

From: Will Dillard <will@belserpa.com>
Sent: Wednesday, April 12, 2023 6:15 PM
To: Barry Stanton; BCulbertsonSC@sccourts.org
Subject: RE: Friday, 4/14/23 Hearing at 9:30 on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)
Attachments: '22.12.13 MIOT Attorney Fee Petition.pdf; Chronological Case Events Table (Dillard Exh.C).pdf; '22.12.12 Durant Affidavit.pdf; '22.12.12 Durant Exhibit (A).pdf; '22.12.12 Dillard Affidavit.pdf; '22.12.12 Dillard Exhibits (A-F).pdf

Ms. Moree:

Good evening. Following up on Mr. Stanton's email, I am writing on behalf of the Defendant Town of Pawleys Island to provide copies of the following previously filed items in opposition to the fee petition to be heard on Friday morning. These are the identical materials previously submitted in my March 8, 2023 email below:

1. Memo in Opposition;
2. Affidavits of David Durant and William C. Dillard (w/ supporting exhibits in bookmarked PDF's); and
3. For easy reference, a standalone copy of a chronological "Case Events Table" exhibit (Exhibit C to the Dillard affidavit).

Thank you, and best regards,

Will Dillard



William C. Dillard, Jr., Esquire
1325 Park Street, Suite 300 (29201)
Post Office Box 96, Columbia, SC 29202
Phone: (803) 929-0096, Fax: (803) 929-0196
Direct: (803) 999-1255
will@belserpa.com

From: Barry Stanton <bstanton@stantonlaw.com>
Sent: Wednesday, April 12, 2023 5:12 PM
To: BCulbertsonSC@sccourts.org
Cc: Will Dillard <will@belserpa.com>
Subject: FW: Friday, 4/14/23 Hearing at 9:30 on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)

Dear Ms. Moree:

For the Judge's convenience, we are sending copies of already-filed materials for Friday's hearing.

April 12, 2023 e-mail of Stanton to Moree of Judge Culbertson's office, without attachments

Barry Stanton

From: Barry Stanton
Sent: Wednesday, April 12, 2023 5:12 PM
To: BCulbertsonSC@sccourts.org
Cc: Will Dillard
Subject: FW: Friday, 4/14/23 Hearing at 9:30 on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)
Attachments: 10-21-22 Mot for Exp Incl Attys Fees in Sunset 932.pdf; 10-21-22 Stanton Aff re Fees and Expenses - Consol 932.pdf; 10-21-22 FS Exh A Aff Support Motion for Attys Fees and Exp Chll.pdf; 10-21-22 FS Exh B Aff Support Motion for Attys Fees and Exp Chll.pdf; 10-21-22 FS Exh C Aff Support Motion for Attys Fees and Exp Chll.pdf; 10-21-22 FS Exh D Aff Support Motion for Attys Fees and Exp Chll.pdf; 3-8-23 Updated Amended Stanton Aff re Fees and Expenses - Consol 932 Notar(1).pdf; Plaintiff Landowners' reply to TOP return to Pl Indnrs Petn for Attys Fees and Exp 3-5-23.pdf; Exh A - Earlier Aff of Beattie.pdf; Exh B - Earlier Aff of Howard.pdf; Exhibit C - Stanton 2-7-21 response to Dillard 2-5-21 e-mail.pdf

Dear Ms. Moree:

For the Judge's convenience, we are sending copies of already-filed materials for Friday's hearing.

In its simplest form, this is a request for attorney's fees based on actual sworn hours spent, multiplied by an hourly rate.

We forwarded these materials once before, before the 3/9/23 hearing at which the matter of correcting a previous Form 4 was handled. The remainder was continued.

On behalf of the Landowners, we would like for Judge Culbertson to have directly, for the Friday morning hearing, the following papers which are all e-filed, but which are also attached for convenience:

1. [Already handled and not attached -- t he Landowners' 7/22/22 **motion** to correct perceived erroneous Form 4 dated 7/12/22];
2. The Landowners' 10/21/22 **motion** for fees and expenses;
3. The 10/21/22 Stanton affidavit supporting the above fee petition;
4. Exhibit A to the 10/21/22 Affidavit – 12/28/21 appeal of insufficient FOIA response from Corps;
5. Exhibit B to the 10/21/22 Affidavit – B. Henry nuclear option e-mail to Corps;
6. Exhibit C to the 10/21/22 Affidavit – 1/10/21 interrogatories to Town never answered;
7. Exhibit D to the 10/21/22 Affidavit – 4/5/21 final order of Judge Nettles quashing first Town attempt for false information;
8. The 3/8/ 23 update of the Stanton affidavit supporting the fee petition;

9. The Landowners' 3/8/23 reply to the papers filed by the Town in opposition to the fee petition;
10. Exhibit A to the 3/8/23 Reply – Affidavit of Frank Beattie, Esq. regarding quality of work and reasonableness;
11. Exhibit B to the 3/8/23 Reply – Affidavit of Charlie Howard, Esq. regarding quality of work and reasonableness; and
12. Exhibit C to the 3/8/23 Reply – E-mail of Stanton responding to 2/5/21 letter of Dillard (the latter being a Town exhibit which does not include the Stanton response).

Best regards,

Barry Stanton

Barry
803 530 2642

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

From: Barry Stanton <bstanton@stantonlaw.com>

Date: 3/9/23 12:52 AM (GMT-05:00)

To: BCulbertsonSC@sccourts.org

Cc: Will Dillard <will@belserpa.com>

Subject: Hearing on motion to correct Form 4 and atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)

Dear Ms. Moree:

On behalf of the Landowners, we would also like for Judge Culbertson to have directly, for the Thursday morning hearing, the following papers which are all e-filed, but which are also attached for convenience:

1. The Landowners' 7/22/22 **motion** of Landowners to correct perceived erroneous Form 4 dated 7/12/22;
2. The Landowners' 10/21/22 **motion** for fees and expenses;
3. The 10/21/22 Stanton affidavit supporting the above fee petition;

April 13, 2023 e-mail of Culbertson to attorneys acknowledging transmittals, declining to read before hearing, and advising of time limits

Barry Stanton

From: Culbertson, Benjamin H. <bculbertsonj@sccourts.org>
Sent: Thursday, April 13, 2023 10:40 AM
To: Will Dillard; Barry Stanton
Cc: Culbertson, Benjamin H. Law Clerk (Joseph Heath); Culbertson, Benjamin Secretary (Ramona Moree)
Subject: RE: Friday, 4/14/23 Hearing at 9:30 on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)

Dear Attorneys:

I will not print or review the 228 pages the two of you have submitted prior to the motion hearing tomorrow morning. Be sure to e-file everything you want me to have for the motion hearing. Also, I will not entertain 2 hours of arguments on a motion for attorney fees as Mr. Stanton anticipated at the last motion hearing. If an appeal can be argued in less than an hour, so can a motion for attorney fees. Mr. Stanton will be allowed 25 minutes to argue his motion. Mr. Dillard will be given 25 minutes to argue in opposition. Then Mr. Stanton will be given 10 minutes to reply.

The motion hearing will be via WebEx. I look forward to seeing both of you tomorrow morning.

Benjamin H. Culbertson

Circuit Court Judge
P.O. Box 479 (zip code 29442)
Georgetown, South Carolina
Phone: (843) 545-3030
Fax: (843) 545-3282
Email: bculbertsonj@sccourts.org

From: Culbertson, Benjamin Secretary (Ramona Moree) <BCulbertsonSC@sccourts.org>
Sent: Thursday, April 13, 2023 10:16 AM
To: Culbertson, Benjamin H. <bculbertsonj@sccourts.org>
Cc: Culbertson, Benjamin H. Law Clerk (Joseph Heath) <BCulbertsonlc@sccourts.org>
Subject: FW: Friday, 4/14/23 Hearing at 9:30 on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)

FYI

From: Will Dillard <will@belserpa.com>
Sent: Wednesday, April 12, 2023 6:15 PM
To: Barry Stanton <bstanton@stantonlaw.com>; Culbertson, Benjamin Secretary (Ramona Moree) <BCulbertsonSC@sccourts.org>

April 13, 2023 e-mail of Stanton to Judge Culbertson,
acknowledging latter's 4/13/23 e-mail

Barry Stanton

From: Barry Stanton
Sent: Thursday, April 13, 2023 10:57 AM
To: Culbertson, Benjamin H.; Will Dillard
Cc: Culbertson, Benjamin H. Law Clerk (Joseph Heath); Culbertson, Benjamin Secretary (Ramona Moree)
Subject: RE: Friday, 4/14/23 Hearing at 9:30 on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)

Received and understood.

Thank you for the planning and scheduling notice, Your Honor. We will try to get through it in less.

Best regards,

Barry Stanton

From: Culbertson, Benjamin H. <bculbertsonj@sccourts.org>
Sent: Thursday, April 13, 2023 10:40 AM
To: Will Dillard <will@belserpa.com>; Barry Stanton <bstanton@stantonlaw.com>
Cc: Culbertson, Benjamin H. Law Clerk (Joseph Heath) <BCulbertsonlc@sccourts.org>; Culbertson, Benjamin Secretary (Ramona Moree) <BCulbertsonSC@sccourts.org>
Subject: RE: Friday, 4/14/23 Hearing at 9:30 on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)

Dear Attorneys:

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The motion hearing will be via WebEx. I look forward to seeing both of you tomorrow morning.

Benjamin H. Culbertson

Circuit Court Judge
P.O. Box 479 (zip code 29442)
Georgetown, South Carolina
Phone: (843) 545-3030
Fax: (843) 545-3282
Email: bculbertsonj@sccourts.org

April 14, 2023 e-mail of Stanton to Judge Culbertson transmitting requested proposed order from April 14 hearing, without attachments

Barry Stanton

From: Barry Stanton
Sent: Friday, April 14, 2023 3:39 PM
To: Culbertson, Benjamin H.
Cc: Culbertson, Benjamin H. Law Clerk (Joseph Heath); Culbertson, Benjamin Secretary (Ramona Moree); Will Dillard
Subject: Friday, 4/14/23 Hearing at 9:30 on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)
Attachments: 3-14-23 Landowners Proposed Order Taxing Statutory Expenses Incl Reasonable Attys Fees - Consol 932 Chll.docx; 3-14-23 Landowners Proposed Order Taxing Statutory Expenses Incl Reasonable Attys Fees - Consol 932 Chll.pdf

Dear Judge Culbertson:

Attached, in Word and PDF, is our proposed order from this morning's Webex hearing.

This is for the Landowners, the moving party. The three cases are consolidated under the Sunset Lodge file, 2020-CP-22-00932.

I neglected to ask whether you wanted us to e-file the proposed orders. Let me know if you do.

We have tried to keep this complicated matter short. Of course we would be happy to draft an order with a longer discussion if you would like, or to add discussion of any issue you may have further interest in, or make any other changes you direct. Just let me know.

Thank you for hearing us today.

Respectfully,

Barry Stanton

M. Baron ("Barry") Stanton
STANTON LAW OFFICES, P.A.
Cell 803-530-2642
Offc. 803-929-1484
POB 245
Cola., SC 29202

April 14, 2023 Landowner proposed order granting fee petition,
with Form 4

| | | |
|---|---|--|
| STATE OF SOUTH CAROLINA |) | IN THE CIRCUIT COURT OF THE |
| |) | FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GEORGETOWN |) | Civil Action No. 2020-CP-22-00932_ |
| |) | (Consolidation of below Civil Actions) |
| Sunset Lodge, LLC, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00932 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| Franklin D. Beattie, as trustee of |) | |
| The Franklin D. Beattie Preservation Trust, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00931 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| M. Baron Stanton, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00930 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**ORDER TAXING STATUTORY EXPENSES INCLUDING REASONABLE
ATTORNEY’S FEES, TO BE ENTERED AS A MONEY JUDGMENT,
ENDING CASE**

PRESIDING JUDGE: The Honorable Benjamin H. Culbertson
DATE OF HEARING: April 14, 2023
TIME OF HEARING: 9:30 a.m.

PLACE OF HEARING: Webex

PLAINTIFFS' ATTORNEY: M. Baron Stanton

DEFENDANT'S ATTORNEY: William C. Dillard, Jr. (also of record: N. David DuRant, Sr., Norwood D. DuRant, Jr.)

COURT REPORTER: See Webex

TO THE CLERK OF COURT OF THE GEORGETOWN COUNTY COURT OF
COMMON PLEAS:

Following the Town's abandonment without prejudice of the Town's second set of condemnation actions, this Court's April 22, 2021 Order dismissed the instant consolidated cases as moot, and recounted the stipulation that the Landowners could apply for attorney's fees. This Court has considered the circumstances of the case, the affidavit and motion submitted, and the subsequent briefs, affidavits and filings of the parties. This court finds as follows:

1. The expenses of \$12,321.90 as of March 27, 2023 submitted by each above-named Landowner-plaintiff are reasonable, taking into account numerous factors, the chief ones of which are that the rate is eminently reasonable and the expenses are based on no more than the actual time and expenses expended for the stated portions of the case up to the time shortly past the February 10, 2021 Notice of Abandonment, and for the time afterwards relative only to the fee petition.¹

¹ The Landowners made it clear in their papers and at the hearing that (i) all the time sworn to have been spent in this second set of six cases was actually spent (i.e., the Landowners include time only for what did actually happen in the course of representation and nothing for anything that did not happen), (ii) none of the time sworn to have been spent was the basis for a fee request in the first set of six cases (i.e., nothing has been double counted anywhere), (iii) the time sworn to have been spent does not cover all periods and subjects in the instant challenge actions, but, rather, runs up to just beyond the 2/10/21 notice of abandonment, and all the time afterwards includes only matters related to the instant request for fees (e.g., it does not include time spent on opposing the Town's motion to dismiss the challenge actions, seeking reconsideration, or prosecuting the appeal), and (iv) the time sworn to have been spent also does not include all time spent for pre-abandonment litigation and for pursuing reimbursement of fees (e.g., the estimate of 25 hours for 3/7/23 to 3/27/23 was underestimated by 69.2 hours).

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 simultaneous consideration and coordination of related litigation at the same stage and at a different stage, 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 with precision in a sworn affidavit, and was reasonably spent; in fact, some has actually not been charged. Beyond that, each Landowner-plaintiff has allocated roughly two thirds of the time actually devoted to that landowner's case to the other two plaintiff parties. I.e., each Landowner is essentially seeking fees based on one-third of the total time actually spent on that Landowner's case.

4. Counsel has professional standing justifying the rate applied and fees awarded, which are conservative. The rate and fee 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 rates and fees of others.

5. The fee application herein arises from the second set of condemnation actions commenced by the Town against the Landowners while an earlier set of condemnation attempts by the Town was pending. This procedural complication was not instituted by the Landowners. After the Landowners brought actions challenging the Town's first condemnation attempts, the Town commenced the second set of condemnation actions. After another judge of this Court

granted summary judgment against the Town in the Landowners' challenges to the first set of condemnation actions the Town commenced against the Landowners, the Town withdrew the second set of condemnation actions. The order in the first set of challenge actions by the Landowners quashed the challenged condemnation notices and declared the first set of condemnation actions commenced by those notices to be ended. The order was not appealed. It was confirmed at hearing that the time on which the instant fee request is based does not overlap with any time on which the fee request was made in the first set of actions; it is all different time.

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 \$12,321.90 or more is a reasonable award of the litigation expenses² incurred by each Landowner-plaintiff, including reasonable attorney's fees, that it is a reasonable amount for the Landowner-plaintiff's counsel to charge each Landowner-plaintiff, and that \$12,321.90 should be the award up to March 27, 2023, for the stated aspects and time periods in the case.

² Expenses submitted included filing fees (\$180.32 x 3) for challenge actions challenging the abandoned condemnation actions; mileage one way (\$52.05) for hearing of the Town's motions to dismiss* the challenge actions; filing fees (\$31.74 x 3) for motions to reconsider*; a filing fee (\$31.74) for the motion to correct a Form 4 in the challenge actions; and the filing fee (\$31.74) for the fee petition.

The items marked with an asterisk were after the Town's 2/10/21 sending of the notice of abandonment but I find the items are in reasonable followup to the Town sending the notice of abandonment, because the challenge cases these expenses relate to were necessarily commenced because of the condemnation actions which were then abandoned. This necessarily exposed the Landowners to required expenses incident to conclusion of the challenge actions.

This same rationale could be used for attorney's fees on omitted matters occurring after 2/10/21, but these matters are not ruled on in this award and are not intended to be concluded by this ruling.

7. This award is calculated as follows: 190.6 hours x \$190/hr. = \$36,214.00; \$36,214.00 (fees) + \$751.71 (other expenses) = \$36,965.71; and $\$36,965.71 \div 3 = 12,321.90$.

8. The request in this case specifically excludes certain time spent during specified times and on specified subject matter. This ruling is therefore only a ruling on the period and subject matter that is not excluded and the time spent for same. It is not a ruling on time and expenses for periods or subject matter excluded from the request (i.e., non-fee-related time substantially after 2/10/21 or any other time or expenses after 3/27/23), and is not intended to conclude either party's rights with respect to those nonincluded matters.

9. I conclude that this award is consistent with S.C. Code Ann. §28-2-510(C), the applicable fee subsection of the Eminent Domain Procedure Act for withdrawal or abandonment. Because the Town argues and concedes that §28-2-510(C) is applicable, I decline to address S.C. Code Ann. §15-77-300 proffered by the Landowners as an additional ground or basis, including the question of whether the condemnor acted without substantial justification in pressing its claim and whether there are special circumstances that would make the award of attorney's fees under §15-77-300 unjust.

10. There is the additional matter brought to the Court's attention by Landowners' counsel. That is whether an award may be made to Landowners' counsel as one of the three Landowners, representing himself, i.e., pro se. Under some views and South Carolina authority cited by the Landowners, the proper and defensible award to each Landowner could be based on 100% of the time reasonably spent for that Landowner on the time period and subjects for which time has been submitted. However, under the present approach, which emulates the fee agreement, for each Landowner, this figure is reduced by two-thirds, so that each Landowner's award would be based on one-third of the total time submitted. While it is a harsh result to deny

Landowners' counsel, as a party, the ability to reimburse himself as a lawyer for even a reduced amount of the time spent on this matter instead of on other gainful work, I am inclined to treat as applicable precedent, the Calhoun case he brought to the Court's attention, and not award to him, as a party, fees.

11. I therefore conclude that the awards to the parties shall be as follows:

Sunset Lodge, LLC -- \$12,321.90;

Franklin D. Beattie -- \$12,321.90; and

M. Baron Stanton -- \$250.57 (one-third of \$751.71).

The clerk of court is directed to tax these costs to Defendant within ten days of entry of this order. For clarity of indexing, the award to each Landowner-plaintiff shall be docketed in each Plaintiff's respective case of the three consolidated cases, the case numbers of which appear in the caption.

AND IT IS SO ORDERED.

Benjamin H. Culbertson
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-22-00932

Sunset Lodge, LLC,

Town of Pawleys Island,

PLAINTIFF(S), v.

DEFENDANT(S) (Case 20CP2200932),
and

Franklin D. Beattie, as trustee of The
Franklin D. Beattie Preservation Trust,

Town of Pawleys Island,

PLAINTIFF(S), v.

DEFENDANT(S) (Case 20CP2200931),
and

M. Baron Stanton,

Town of Pawleys Island,

PLAINTIFF(S), v.

DEFENDANT(S) (Case 20CP2200930).

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

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

☐ STAYED DUE TO BANKRUPTCY

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

Enter money judgment. This order ends the case 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 | \$12,321.90 (Case 20CP2200932) |
| Franklin D. Beattie, as trustee of the Franklin D. Beattie Preservation Trust | Town of Pawleys Island | \$12,321.90 (Case 20CP2200931) |
| M. Baron Stanton | Town of Pawleys Island | \$250.57 (Case 20CP2200930) |
| 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

ATTORNEY(S) FOR THE PLAINTIFF(S)

N. David Durant, Sr., Esquire
1801 Glens Bay Road
Surfside Beach, SC 29587

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-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. Judgment declaring condemnation notice withdrawn or abandoned and the underlying condemnation action ended, and dismissing the action including the challenge to the condemnation, was granted on April 22, 2021, as detailed in an order accompanying the earlier Form 4 of similar date. As detailed in the accompanying subsequent order taxing expenses including reasonable attorney's fees pursuant to statute, through March 27, 2023, judgment is entered for each Plaintiff in his/its respective case as shown. These cases were consolidated late in their progress and each still has a separate file and case number for purposes of indexing.

April 28, 2023 Town proposed order granting fee petition, with
Form 4

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This matter came before the Court upon petitions for litigation expenses filed by the plaintiffs Sunset Lodge, LLC (“Sunset”), Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust (“Beattie”), and M. Baron Stanton (“Stanton”). These consolidated cases were statutory condemnation challenge actions arising from the Defendant Town of Pawleys Island (“Town”)’s efforts to condemn beach renourishment easements. The plaintiffs’ fee petitions arose from the Town’s withdrawal and abandonment of the underlying condemnation notices. The condemnation notices had been served while prior actions filed by the same plaintiffs challenging a similar first set of condemnation attempts by the Town were still pending (the “Challenge 1” cases,¹ as distinguished from these “Challenge 2” cases). After summary judgment orders granted to the plaintiffs in Challenge 1, quashing that first set of condemnation notices on various procedural grounds also relevant to Challenge 2, the Town formally abandoned this second set of condemnation notices.

After filing Notices of Abandonment on February 10, 2021, the Town moved to dismiss these challenge actions. This Court granted the Town’s motion to dismiss on April 22, 2021, and denied Plaintiffs’ motion to reconsider on June 1, 2021. The plaintiffs have appealed the dismissal, and that appeal is still pending. By consent of the parties, the June 1, 2021, order also consolidated the three cases under a single civil action number.

The plaintiffs filed their petition for attorney fees on October 21, 2022. In support of their petition the plaintiffs submitted the affidavits of their attorney, which were updated and amended on March 8, 2023. The Town submitted a memorandum in opposition to the petitions as well as the affidavits of Town Attorney N. David Durant, Sr. and counsel of record William C. Dillard, Jr. In response, the plaintiffs filed a reply memorandum as well as affidavits, previously filed in one of the “Challenge 1” cases, of plaintiff Beattie and Sunset member Charlie Howard.

¹ Civil Action No. 2020-CP-22-0600, -601 and -602.

In addition to out-of-pocket costs, the plaintiffs petitioned for attorney fees in a combined total amount of \$36,214 based on proportionate amounts of a total of 190.6 hours of attorney time averred to have been spent on the three matters. Specifically, each plaintiff seeks a separate award of \$12,321.91 (one-third of \$36,214 in attorney fees and fees and \$751.71 in litigation costs).

STANDARD ON REVIEW OF AN ATTORNEY FEE PETITION

Determination of the appropriate award is governed by the fee-shifting provision of the S.C. Eminent Domain Procedure Act (“the Act”). Specifically, the Act includes the following provision for an award of attorney fees where a condemnation is abandoned:

If the condemnor abandons or withdraws the condemnation action in the manner authorized by this chapter, the condemnee is entitled to **reasonable** attorney fees, litigation expenses, and costs **as determined by the court**.

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

When determining the reasonableness of attorney fees, the fee arrangement between the party and its attorney does not control. As recognized in S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 13, 766 S.E.2d 700, 706 (2014), a Court applying fee shifting provisions under the Act has discretion to apply the factors identified in Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). Specifically, the Court may consider “(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” Id. at 308, 486 S.E.2d at 760 (citing Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659

(1993)). “Consideration should be given to all six factors; none of the factors is controlling.” Taylor v. Medenica, 331 S.C. 575, 580, 503 S.E.2d 458, 461 (1998).

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

“[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. The applicant should exercise ‘billing judgment’ with respect to hours worked[.]” Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S. Ct. 1933, 1941, 76 L. Ed. 2d 40 (1983). “An affidavit from a party or an attorney stating only the total amount of fees and that the amount is reasonable is not sufficient to satisfy the burden of proof.” Dishman v. First Interstate Bank, 362 P.3d 360, 365 (Wyo. 2015) (citing Hensley).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Timeliness of Motion for Attorney Fees

The plaintiffs’ fee petition was filed more than a year after they filed notice of appeal of the underlying dismissal. The Town, citing Rules 54(d) and 59(e), SCRCp, argues that the fee petition was not timely submitted and, therefore, not within the subject matter jurisdiction of the Court. The Court finds that, based on intervening procedural motions, the fee petition was timely and is within its subject matter jurisdiction.

II. Applicability of Section 15-77-300 to this Eminent Domain Challenge Action

The Court finds that the plaintiffs’ fee petition is governed by Section 28-2-510(C) of the

Eminent Domain Procedure Act, and not by Section 15-77-300 (the “state action statute”). The S.C. Supreme Court has made it clear that, in actions within the scope of the fee shifting provisions of Section 28-2-510, the state action statute does not apply. S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 10, 766 S.E.2d 700, 704 (2014) (“Without question section 28–2–510 governs the procedure at issue and not the general state action statute codified in section 15–77–300 as the General Assembly explicitly stated, ‘[i]n the event of conflict between this act and any other law with respect to any subject governed by this act, this act shall prevail.’ Id. § 28–2–20”).

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

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

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

The Court finds, after full consideration of the affidavits and other materials submitted by and on behalf of the plaintiffs, that the plaintiffs’ fee claim is disproportionate and unreasonable in relation to the nature, extent, duration, and difficulty of the litigation. While the subject matter of the case was not simple, it was nonetheless brief and limited in scope and complexity.

As conceded in the affidavit of plaintiffs’ counsel, the three cases were handled in tandem and the issues, theories, pleadings, and other filings were effectively identical other than being submitted under different case captions. (e.g., 10/21/22 Stanton Aff. ¶ 66, ¶ 199, p.38 fn.25). The plaintiffs’ sole request for relief was that “[t]he Court should quash, strike and dismiss the New [Condemnation] Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff.” (Amended Complaint ¶ 372). The Town voluntarily withdrew the condemnation notices early in the litigation.

The cases effectively ended, for purposes of the fee petition, with the filing of Notices of Abandonment on February 10, 2021, less than four months after the condemnation notices were served. During this time, the Complaint, the Answer, and the Amended Complaint were filed but, as documented in the affidavits of attorneys Durant and Dillard, little else occurred; no motions were filed, no depositions were taken, no subpoenas were issued, no discovery records were exchanged, and, other than a set of interrogatories and a deposition notice served by the Plaintiffs, no other discovery was conducted. Extensive discussion in the Plaintiffs' fee affidavit of motions, discovery, depositions, and document production actually relates to the prior "Challenge 1" litigation that was already subject to a fee petition and award. (Aff. Durant ¶ 8-12; Aff. Dillard ¶ 16-19).

Furthermore, much of the plaintiff's factual and legal position came directly from the separate "Challenge 1" cases that were pending at the time these cases were filed. (Aff. Dillard ¶ 25; 10/21/22 Stanton Aff. ¶ 140 (noting that the Amended Complaint incorporated allegations of the Challenge 1 pleadings)). Although the plaintiffs elected to file 59-page, 375-paragraph Amended Complaints, the theories and allegations reflected legal work that had already been performed in the separate Challenge 1 cases. Accordingly, the necessary work for Plaintiffs' counsel in these relevant Challenge 2 cases, although it did include some new facts involving delivery of the second set of condemnation notices, was greatly reduced because of work that had already been performed in Challenge 1. (Aff. Dillard ¶ 25).

(2) The time necessarily devoted to the case

Despite the record of these cases having little activity before the Town willingly withdrew the condemnation notices, the 190.6 hours claimed by the plaintiffs would equate to approximately four and three-quarters weeks of attorney time at 40 billed hours per week. Notably, while the

plaintiffs' fee affidavit does not detail how specific entries of time were spent in these cases, the daily time totals included in the final fee affidavit show that 131.9 hours are being claimed subsequent to the plaintiffs' June 2, 2021, filing of a notice of appeal of the order of dismissal, meaning that this time could only relate to work on the fee petition or to matters arising from the plaintiffs' unsuccessful opposition to the motion to dismiss.²

The fee affidavit references specific monthly fee statements, but the plaintiffs have not submitted any documentation or itemized breakdown of how specific time was spent. Plaintiffs have presented only non-itemized, daily "block billed" time listings, and have declined to provide any fee statements or time descriptions at all despite claiming to have 54 pages of such information. (Aff. Stanton ¶ 204). It is impossible to determine from the plaintiffs' submissions how they claim any given time entries were spent. While block billing is permissible and certainly not inappropriate, in the context of a fee petition it makes it more difficult for a reviewing court to determine the reasonableness of the time claimed to have been spent.³ The Court finds it relevant that no fee statements were produced, even in redacted form, and that the fee affidavits do not include any itemization to shed light on the disproportionate amount of time presented.

The plaintiffs bear the burden to support their claim and are not entitled to a presumption that the claimed attorney time was reasonable. See, e.g., Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp., 295 S.C. 208, 211, 367 S.E.2d 696, 698 (1988) ("The circuit court had before it only an affidavit from [petitioner]'s counsel stating, in conclusory fashion, that the fees were reasonable. Based upon this record, we conclude that the award is unsupported by the evidence.").

² See Aff. Dillard ¶ 30(d) (calculating and discussing attorney time claimed in the Plaintiffs' initial 10/21/22 fee affidavit); 3/8/23 Stanton Aff. ¶ 190 (updating initial fee affidavit to claim additional attorney time associated with the fee petition hearing).

³ "Block billing is problematic because it makes it more difficult for the party requesting fees to demonstrate the reasonableness of the billed hours; a party requesting attorneys' fees block bills at its own risk." Gurrobat v. HTH Corp., 346 P.3d 197, 204 (Haw. 2015).

The Court may reduce a fee award where it finds that the claimed time represents “excessive and duplicitous work,” Getzen v. L. Offs. of James M. Russ, P.A., 323 S.C. 377, 382, 475 S.E.2d 743, 746 (1996), or “an unreasonable duplication of efforts.” City of N. Charleston v. Claxton, 315 S.C. 56, 63, 431 S.E.2d 610, 614 (Ct. App. 1993).

The Court finds that the reasonableness and necessity of the claimed attorney time is unsupported by the evidence. The claimed hours are excessive in light of the actual needs of this brief litigation, even factoring in reasonable time for the fee petition itself. Further, the record does not support the plaintiffs’ assertion that the Town’s approach to the litigation created some need or justification for plaintiffs’ counsel to work the claimed number of hours. The Court’s determination of a reasonable amount of time necessary for the three cases is discussed below.

While the plaintiffs were of course free to amend their initial 11-page, 50 paragraph Complaints, they have not demonstrated that there was any need to devote the time needed to produce Amended Complaints that were each 59 pages and 375 paragraphs in length. Under the S.C. Rules of Civil Procedure, a pleading setting forth a claim “shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief[.]” Rule 8, SCRPC. The original pleadings extensively detailed their allegations and theories, including allegations previously included in the separate “Challenge 1” actions.

The Court also finds that the plaintiffs are not entitled to recovery of fees and expenses associated with opposing the Town’s motion to dismiss and ensuing procedural motions arising from the dismissal. This includes all work following the Town’s filing of the Notice of Abandonment other than a reasonable amount of time for the fee petition. 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). As the Court of Appeals explained in Hardaway,

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

Id. The Court notes that it appears the plaintiffs' fee affidavit attempts to exclude some or even much of this time from the fee request (10/21/22 Stanton Aff. p.53, fn.33; Aff. Dillard ¶ 28-29).

(3) Professional standing of counsel

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

(4) Contingency of compensation

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

(5) Beneficial results obtained

Notwithstanding the plaintiffs' objection to the motion to dismiss and ensuing appeal, the Town's abandonment of the condemnation notices had the effect of providing the plaintiffs the relief they sought. The plaintiffs' sole request for relief was that "[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff." (Amended Complaint ¶ 372). The Notices of Abandonment had the effect of withdrawing the "New" condemnation notices which, although without prejudice to future attempts, was a beneficial result for the Plaintiffs.

(6) Customary legal fees for similar services

Plaintiff counsel's hourly rate of \$190 in this matter is reasonable based upon his professional standing and experience. The circumstances of the consolidated cases, in which the

essentially identical claims of three plaintiffs were pursued jointly, made it reasonable and in line with customary billing practices for the total fees to be divided in thirds to each of the three plaintiffs as averred by plaintiffs’ counsel (10/21/22 Stanton Aff. ¶ 66).⁴ The Court finds it is reasonable that the attorney fee award be handled in the same way, with each plaintiff being entitled to one-third of the total reasonable fee for the combined litigation. However, the Court finds that the claimed fees are not “customary” based on the number of attorney hours involved, which are significantly out of proportion to the limited case activity and duration of these matters.

IV. Determination of Reasonable Attorney Hours

After review of the case records, the submissions and oral arguments of the parties, the six factors identified under Jackson, and other applicable law, the Court finds that the reasonable amount of attorney time necessary for the plaintiffs in these three consolidated actions, including pursuit of the fee award, was **20 hours**. The Court agrees with the *Affidavit of William C. Dillard, Jr.* regarding a reasonable amount of time to be spent in tandem on the three cases, as follows:

| | |
|-----------------------------|----------------|
| Research/Drafting Complaint | 4 hours |
| Drafting interrogatories | 3 hours |
| Misc. review/communications | 4 hours |
| Fee petition and hearing | <u>9 hours</u> |
| Total: | 20 hours |

V. Application of the Lodestar Analysis

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

$$\$190 \times 20 \text{ hours} = \$3,800 \text{ (rounded)} \times 1/3 = \$1,266.67 \text{ attorney fee.}$$

⁴ At the hearing, Stanton stated he has “pending bills” from his solo practitioner law office, but has not to this point actually transferred his personal funds to the law firm in payment of the same. The Court finds that, notwithstanding Calhoun v. Calhoun, 339 S.C. 96, 529 S.E.2d 14 (2000), it is appropriate to award Stanton a proportionate share of attorney fees to the extent set forth herein.

VI. Plaintiffs' Out-of-Pocket Costs

The Court further finds that the plaintiffs' request for expenses overstates the amount that was reasonably and necessarily incurred in these cases (Aff. Stanton ¶ 190 and p.55 fn.35). Specifically, the claims for mileage for travel to the motion to dismiss hearing (\$52.05), filing fees for the motion to reconsider (\$31.74 x 3), and filing fee for the motion to correct Form 4 (\$31.74) all relate to their unsuccessful efforts to avoid dismissal and continue discovery. The plaintiffs are entitled to recover their filing fees (\$180.32 x 3) and consolidated fee petition filing fee (\$31.74), for total expenses of \$572.70 (to be divided in equal, one third-shares between the plaintiffs)

CONCLUSION

The Court finds that each plaintiff is entitled to an award of attorney fees and litigation costs in the amount of **\$1,457.57** (one-third of the combined fees and costs of \$4,372.70).

IT THEREFORE ORDERED THAT:

- 1.) Fees and expenses are awarded to Sunset Lodge, LLC in the amount of **\$1,457.57**, and judgment shall be entered against the Town and in favor of said plaintiff in that amount;
- 2.) Fees and expenses are awarded to Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust, in the amount of **\$1,457.57**, and judgment shall be entered against the Town and in favor of said plaintiff in that amount;
- 3.) Fees and expenses are awarded to M. Baron Stanton in the total amount of **\$1,457.57**, and judgment shall be entered against the Town and in favor of said plaintiff in that amount;
- 4.) These consolidated actions are hereby dismissed, without prejudice, and shall be ended and stricken from the calendar.

AND IT IS SO ORDERED.

_____, 2023

The Honorable Benjamin H. Culbertson

FORM 4

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

JUDGMENT IN A CIVIL CASE**CASE NO. 2020-CP-22-00932**

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

Town of Pawleys Island

DEFENDANT(S)

Submitted by: William C. Dillard, Jr.

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : This order applies to the cases consolidated in C/A 2020-CP-22-0932 from the cases numbered 2020-CP-22-0930, -0931, and -0932.

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 | \$ 1,457.57 |
| Franklin D. Beattie, as trustee of The
Franklin D. Beattie Preservation
Trust | Town of Pawleys Island | \$ 1,457.57 |
| M. Baron Stanton | Town of Pawleys Island | \$ 1,457.57 |
| If applicable, describe the property, including tax map information and address, referenced in the order: | | |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

M. Baron Stanton, Esquire

P.O. Box 245

Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

William C. Dillard, Jr., Esquire

P.O. Box 96

Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: WebEx

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

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

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

April 28, 2023 e-mail of Stanton to Judge Culbertson re objections to Town proposed order

Barry Stanton

From: Barry Stanton
Sent: Friday, April 28, 2023 1:54 PM
To: Culbertson, Benjamin H.
Cc: Culbertson, Benjamin H. Law Clerk (Joseph Heath); Culbertson, Benjamin Secretary (Ramona Moree); Will Dillard
Subject: Friday, 4/14/23 Hearing at 9:30 on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)
Attachments: 3-14-23 Landowners Proposed Order Taxing Statutory Expenses Incl Reasonable Attys Fees - Consol 932 Chll.docx; 3-14-23 Landowners Proposed Order Taxing Statutory Expenses Incl Reasonable Attys Fees - Consol 932 Chll.pdf; Plaintiff Landowners' reply to TOP return to Pl Indnrs Petn for Attys Fees and Exp 3-5-23.pdf; Exh A - Earlier Aff of Beattie.pdf; Exh B - Earlier Aff of Howard.pdf; Exhibit C - Stanton 2-7-21 response to Dillard 2-5-21 e-mail.pdf

Your Honor, we'd like to respond to the 11-page proposed order just submitted by the Town.

For many of the same reasons the town's extensive opposition papers required us to file substantial reply papers in this matter earlier, the proposed order just submitted by the Town is off base, is incorrect, and sets this request for fees up for appeal by the Town, the Landowners, or both.

As reflected in the previous e-mail in this thread, we sent a roughly 4-page proposed order on our attorney's fees the day of the attorney's fee hearing about 14 days ago.

Our 4-14-23 proposed order is attached again for convenience. (I notice the filename has the wrong month, but I am not renaming.)

We also attach a standalone convenience copy of our earlier 3-5-23 reply papers, including affidavits of other lawyers and another exhibit. We would like to respond further to the arguments, assertions, and unaddressed matters in the Town's proposed order. We may also ask to supplement the hours submitted. Because of other matters pending for me, I request a little time to do so.

A mere glance at the Town's proposed order immediately reveals to me things that may not be apparent to the court on the surface.

My esteemed colleague may feel compelled to include these matters in the way they are presented, but I need to point them out to the court. These include pointed omission or mischaracterization of procedural history. This matters because the controversy is not over. The mischaracterization and omission is the same the Town would use in further litigation the Town still announces it intends to bring, and in existing controversies still under appeal.

This includes overtly characterizing as mere “various procedural grounds,” the easement descriptions a different Circuit Judge ruled were false, the council proceedings he ruled were false, the appraisals he ruled were false, and the condemnation pleadings he ruled were false.

This fact is also highly relevant to the other arguments the town’s present counsel makes in the fee contest itself. Coming late to the matter, he presents the matter as if the Town’s dishonest and indifferent maneuvers were not a part of the matter. He would have you find that carefully breaking down these matters in pleadings lodged against a litigious and evasive town on a difficult subject is a short and effortless task. The Town either contends that the work was indeed short and effortless, or that the exact same work should have been short and effortless, or that the court (or the Town) should sit in judgment on a hypothetical basis of whether the work was needed, even though the Town ditched its litigation before the matters in the pleadings could be fully examined, briefed, exposed, argued and ruled upon. All of these propositions are meritless.

We have not gone into any of this at length in our 4-page proposed order limited to fees incurred. However, under the Town’s approach, we would need to.

The town’s proposed order does not accurately touch on the true nature of the underlying controversy, the contentious and urgent nature of the litigation the Landowners had already experienced when they got sued again, or the matters at stake. The Town’s account of hours worked is literally fiction, and punitive, but there is also lacking, any enhancement of the hourly rate to make up for any hour-slashing posited by the town. I.e., the town sticks to reality on the low rate and on dividing the bill into thirds, but not on the hours.

The proposed order of the Town also does not identify or address, at all, the issue of “pro se attorney’s fees” discussed at the hearing. Yet the Town simply includes the “pro se fees” in its grossly inadequate proposed order, without making a binding stipulation that these fees are recoverable.

In our proposed order, we simply have you ruling against us on this matter, but not imposing additional fee penalties based on extraneous and inaccurate information.

The Town’s proposed order also presents:

- (i) inclusion of a "standard of review" although this is a non-appellate proceeding;
- (ii) a misapplication of the previously discussed Revels case (which is a completed condemnation, not an abandonment case), the Hensley case, the Dishman case, and other cases (cited out of context and implying circumstances in the instant case which do not exist, or simply not supporting the proposition for which cited in the present circumstances); all these matters were previously briefed by us, but not in our proposed order;
- (iii) a failure to recognize that the abandonment fee award arises by statute in the unfilled condemnation action, rather than from the instant challenge case itself (the challenge case being only one of the things “incurred” as a result of the condemnation action);

- (iv) the absurd assumption and premise that “nothing occurred” in a lawyer’s representation of a client that does not appear on a docket sheet (in addition to the fact that, indeed, nothing from the unfiled condemnation action appears on the docket sheet at all);
- (v) reliance on the inadmissible affidavit of Mr. Dillard (a latecomer to the actual litigation with no demonstrated fee-award experience), which has been demonstrated to be factually incomplete and inaccurate, and to have omitted what actually did occur and what Landowner’s counsel did reasonably devote time to;
- (vi) a repeated confusing distortion of the actual facts (now different from the distortion in the Town’s briefs); it incorrectly implies that the 190.6 hours (less than 60 of which were pre-abandonment) included time spent “during the first four months” of the condemnation action as well as post-abandonment time on opposing the dismissal of the challenge actions as moot, when the latter proposition is not the case and is known not to be the case; the fee affidavit clearly delineates what time was spent at which time periods and on what subject matter (The Town’s distorted account is complete with irrelevant and distracting mathematics regarding how many weeks of work the work would be if worked continuously seriatim, to the exclusion of all other work, when this is not the case, and when the actual period of time now spans, not four months, but two and a half (2 ½) years); and
- (vii) irrelevant focus on the Town’s “voluntary” abandonment, which is a matter that is always voluntary and is the straight-up subject and basis of the fee statute applicable strictly to abandonment; the focus, rather, should be (A) on what the Landowners’ counsel judged to be proper and necessary at the time of rendering the services before there was any abandonment, and indeed mostly before the other Circuit Judge finally ruled that the Town’s first cases should be thrown out, (B) on what was necessitated by the Town suing the Landowners, and (C) on the weeks of work now done, and obviously still being done, to try to obtain the subject fees themselves.

Respectfully,

Barry Stanton

Barry
803 530 2642

From: Will Dillard <will@belserpa.com>

Sent: Friday, April 28, 2023 8:38 AM

To: Barry Stanton <bstanton@stantonlaw.com>; Culbertson, Benjamin H. <bculbertsonj@sccourts.org>

Cc: Culbertson, Benjamin H. Law Clerk (Joseph Heath) <BCulbertsonlc@sccourts.org>; Culbertson, Benjamin Secretary (Ramona Moree) <BCulbertsonSC@sccourts.org>

Subject: RE: Friday, 4/14/23 Hearing at 9:30 on atty fee petition (Sunset Lodge, et al. v. Town of Pawleys Island, C.A. 2020-CP-22-00932)

June 8, 2023 Landowner update of fee and expense affidavit

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA |) | IN THE CIRCUIT COURT OF THE |
| |) | FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GEORGETOWN |) | Civil Action No. 2020-CP-22-00932 |
| |) | <i>(Consolidation of below Civil Actions)</i> |
| Sunset Lodge, LLC, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00932 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| <i>and</i> |) | |
| |) | |
| Franklin D. Beattie, as trustee of |) | |
| The Franklin D. Beattie Preservation Trust, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00931 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| <i>and</i> |) | |
| |) | |
| M. Baron Stanton, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00930 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

UPDATE AND AMENDMENT TO 10/21/22AFFIDAVIT OF
M. BARON STANTON RE REASONABLE FEES AND EXPENSES IN CASE
[SUPPLEMENTING 3/8/23 UPDATE NOW TO 6/2/23]

Paragraphs 190 and 192 of the 10/21/22 Stanton Affidavit were based in part on time estimated to be incurred through the determination of the fee award in the future which had not yet occurred in October of 2022. These paragraphs were updated 3/8/23, again with a trailing estimate. These paragraphs are now further updated, amended and supplemented as follows – other references in the 10/21/22 affidavit to the affected dates and values should also be deemed amended accordingly:

The Time Devoted to the Matter, and Expenses Incurred

190. Following is a statement of time spent and expenses incurred in Challenge II which were not included in the time and expenses submitted in the last Challenge I fee petition.¹ Time spent and expenses incurred in the stated aspects of the matter (pre-“abandonment,” a few days closely following, and post-2/10/21 fee-petition-related matters) for the approximately two years and seven months from 10/16/20 to 6/2/23 are as follows:

11/18/20 statement²

| | | | |
|----------|------------------|-----|-------|
| 11/11/20 | M. Baron Stanton | 0.5 | hours |
| 11/12/20 | “ | 6.4 | hours |

¹ As noted hereinabove, this is far from all time spent on Challenge II. For the time being, it omits substantial time following the February 10, 2021 statement of abandonment if the time is not relative to this fee petition. E.g., substantial time on opposing dismissal of Challenge II in the Circuit Court and vying for an opportunity to enjoin the Town from suing the Landowners again, and appealing the dismissal are not included.

² The November 2020 and January 2021 statements were statements in which early work on the Challenge II cases was billed along with the challenge work for the initial condemnation attempt. The early time for Challenge II was later allocated and backed out of the Challenge I fee request, and later time was separately billed, starting with a March 2021 statement. The early statements were obtained by the Town in redacted form in the Challenge I cases.

| | | | |
|---------------------------|---|-----|-------|
| 11/13/20 | “ | 1.9 | hours |
| 11/16/20 | “ | 1.0 | hours |
| <u>1/22/21 statement</u> | | | |
| 12/15/20 | “ | 1.7 | hours |
| 1/5/21 | “ | 6.8 | hours |
| 1/6/21 | “ | 2.9 | hours |
| 1/7/21 | “ | 4.0 | hours |
| 1/8/21 | “ | 1.0 | hours |
| 1/9/21 | “ | 5.6 | hours |
| 1/10/21 | “ | 7.0 | hours |
| 1/11/21 | “ | 3.0 | hours |
| 1/12/21 | “ | 7.7 | hours |
| 1/13/21 | “ | 5.4 | hours |
| <u>3/12/21 statement</u> | | | |
| 2/7/21 | “ | 2.2 | hours |
| 2/10/21 | “ | 0.4 | hours |
| 2/11/21 | “ | 1.5 | hours |
| 2/12/21 | “ | 3.1 | hours |
| 2/15/21 | “ | 1.9 | hours |
| <u>5/21/21 statement</u> | | | |
| 3/12/21 | “ | 0.9 | hours |
| <u>12/16/22 statement</u> | | | |

| | | | |
|----------------------------|---|------|-------|
| 9/15/22 | “ | 1.6 | hours |
| 9/16/22 | “ | 6.0 | hours |
| 9/20/22 | “ | 1.8 | hours |
| 9/21/22 | “ | 6.2 | hours |
| 9/22/22 | “ | 6.2 | hours |
| 9/23/22 | “ | 3.9 | hours |
| 9/24/22 | “ | 4.5 | hours |
| 9/25/22 | “ | 4.0 | hours |
| 9/26/22 | “ | 2.9 | hours |
| 9/27/22 | “ | 3.2 | hours |
| 9/28/22 | “ | 5.8 | hours |
| 9/29/22 | “ | 11.9 | hours |
| 10/18/22 | “ | 9.5 | hours |
| 10/19/22 | “ | 11.0 | hours |
| 10/20/22 | “ | 5.7 | hours |
| 10/21/22 | “ | 1.9 | hours |
| 12/14/22 | “ | 4.2 | hours |
| 12/15/22 | “ | 2.3 | hours |
| 12/26/22 | “ | 1.5 | hours |
| <u>Time since 12/26/22</u> | | | |
| 3/5/23 | “ | 5.2 | hours |
| 3/6/23 | “ | 7.6 | hours |

Circuit Court, but it is now 6/2/23 and the actual time required is now available and has been greater and may continue. The current actual time ending with the fee application in Circuit Court is with a reservation of right to amend or supplement and assumes no further proceedings relative to recovery of fees and no appeal of the fee matter by the Town or any Landowner.

192. Subject to these assumptions, and reserving the right to amend or supplement, each Landowner hereby requests \$18,148.57 $((\$53,694.00 + \$751.71) \div 3)$ as the award of fees and expenses for the stated aspects and periods, through ~~March 27~~ ^{June 2}, 2023.

Sworn to me this

8th day of June, 2023


Notary Public for S.C.

My comm'n exp. 8/11/31

Date: June 2, 2023


s/M. Baron Stanton
M. Baron Stanton

June 20, 2023 Landowner motion to reconsider order re fees and other expenses

| | | |
|---|---|--|
| STATE OF SOUTH CAROLINA |) | IN THE CIRCUIT COURT OF THE |
| |) | FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GEORGETOWN |) | Civil Action No. 2020-CP-22-00932 |
| |) | (Consolidation of below Civil Actions) |
| Sunset Lodge, LLC, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00932 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| Franklin D. Beattie, as trustee of |) | |
| The Franklin D. Beattie Preservation Trust, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00931 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| M. Baron Stanton, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00930 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**PLAINTIFF LANDOWNERS’ MOTION TO RECONSIDER
FEE AWARD TO LANDOWNERS**

The Landowners move the Court to reconsider and change its 6-8-23 order awarding attorney's fees and expenses to them. The grounds, respectfully submitted, are that the order is guided by numerous errors of law and clear errors of fact, is confused, fails to rule on material issues, fails to follow legal protocol for such awards, and is grossly inadequate.

The Court awarded fees based on 100% of the "alleged"¹ hours up to 2-10-23, but strangely, treated the hours spent pursuing recovery of the attorney's fees ("fee-for fee") and other expenses as if nothing more than a two-page affidavit and one hearing was required in order to get the fees.

That is, the Court "found" that only eight of the 213.9 hours devoted to fee-for-fee was reasonable. In addition to this radical deduction, the Court strangely went to some length to explain how simple the "merits" part of the case (pre-2-10-23) was, even though the Court awarded 100% of the hours expended for that period. Because this explanation did not appear to pertain to the fee-for-fee component of the petition, the Landowners assume this explanation is either complete surplusage, or is meant to explain why the fee award was not enhanced.

The Court apparently gave credibility to Mr. Dillard's inadmissible affidavit and accordingly, like Mr. Dillard, oversimplified and underestimated the time actually required and consumed on such matters, and made an estimate of time when the actual time was readily available and would not have been spent unnecessarily, especially at a low hourly rate, which was then discounted to the client by 66.66.%

In particular, but without limitation, the Landowners would appreciate an actual ruling and finding on the following matters:

¹ Strangely, the Court makes no ruling on what the actual hours actually were, referring to the hours which were sworn to and presented by date in tenths of hours, as "alleged."

1. How many hours were actually (not allegedly) expended by Landowners' counsel on the matters which were the subject of the fee request? (at least 282.6)
2. How many were actually expended on preparing the 10-21-22 fee petition, pursuing a hearing, briefing the matter, and otherwise seeking to recover the fees (fee-for-fee)? (at least 213.9)
3. What is the basis, if any, for not awarding fees for the omitted 205.9 additional hours spent trying to obtain the fees? (none, or erroneous assumption fee is entirely discretionary)
4. That time spent on certain matters was clearly identified and specified by the Landowners not to be the subject of the fee request and the order is not dispositive of, and is without prejudice to recovery of, fees associated with that time on those matters.
5. That estoppel and additional equitable considerations additionally justify and require "pro se attorney's fees."
6. That the Landowners are each entitled to fees based on at least 282.6 hours x \$190 ÷ 3.

Further Actual Background and Errors in the Court's Understanding

The instant suit was a countersuit challenging the Town's second unsuccessful condemnation suit against the Landowners.² After the Town served a 2-10-21 "Notice of

² The Landowners did not "concede," as stated by the Court in its order at 4, that the second suit by the Town and the second instant challenge by the Landowners was "handled in tandem with" and was effectively "identical" to the first condemnation attempt and first challenge.

The Court is mistaken. The Court confuses the fact that in each of the Town's two attempts, the Town commenced three actions, one against each of the three Landowners, who all live in different places. These necessitated three challenge actions, for at total of 12 suits between the Town's two unsuccessful attempts.

It was the second set of three challenge actions (one for each Landowner) which were handled "in tandem," not the first and second sets of three.

Even the second set of three required triple drafting, triple proofreading, triple filing, triple serving, triple document management, etc., and also involved some differences in fact and involved nonfungible clients who were lawyers and who were often communicated with separately and had differing interests and concerns.

Abandonment,” the Town argued to this Court and Judge that the Landowners’ challenge suit should be dismissed as “moot,” merely because the Town had purported to drop the second condemnation suit “without prejudice.” The Court so ruled, despite the undisputed fact that the Town simultaneously announced plans to sue the Landowners a third time, thus subjecting them and their property to a continuing threat and cloud. These continue to this day, with threats just a matter of weeks ago, long after Hurricane Ian, which hit 9-30-22.

The first and second sets of challenge actions were at different procedural stages and could not be handled in tandem as the Court erroneously indicates.

A reading and comparison of the amended complaints in the first and second sets of challenge actions also reveals significant differences in allegations and additional legal theories.

There was an additional fraudulent Town Council meeting held as a precursor to the second condemnation attempt. Scores of allegations in the second challenge actions address that fraudulent October 12, 2020 meeting, step by step.

In it, new legal arguments were injected, in writing, into the proposed easement which the Town had claimed it had no authority to alter. These arguments were nonsensical recitations of inapplicable property law principles which are not the law in South Carolina and which don’t belong in the text of an easement anyway.

The meeting involved false resolutions, completely incongruent or illusory discussions, passing blank resolutions, and creating resolutions privately after the meeting was over. There are detailed allegations of these matters. The fact that Landowners’ counsel made parts of things look easy does not mean that they were or that they were ordinary product or that they did not require care and time.

Because the Town denied 95% of the undisputable factual allegations of any complaint in any matter in violation of Rules 8 and 11, and because of experiences with the Town’s “shell game” attachment of documents to its briefs in the first litigation, matters observed in the October 12, 2020 Town Council activities, and the backdating, to June 9, of the October notices used to commence the second set of condemnation actions, the amended complaint in the second challenge action also exhibits more granular breakdown of allegation paragraphs. It exhibits a careful, identification, documentation and parsing of what was created, served and filed when. It is in the record.

The second challenge actions (3 in number) involved a whole additional order of work, including unsuccessful attempts to get the Town to explain the purpose of the second set of actions. The second set remained at a different procedural stage from the first set, with Landowners’ counsel handling the two sets distinctly not in tandem, but trying, when possible, to combine discovery when possible, as by serving discovery requests in sextuplicate, with different captions.

All the while, the Town made public announcements about the matter (and the Landowners and their property) in meetings, mass e-mails and statements to the press. These had to been monitored and factored in, even if all the time was indeed not recorded and not the basis of any fee request at all. All the while, the Town was in cohorts with a federal agency, the Corps of Engineers, who would not have a meeting, return a call or respond to direct proposals or correspondence, and who removed all its regulations on the subject from the Code of Regulations so that it could proceed ad hoc, and in secret.

It was not simple or easy dealing with the 12 cases, three clients, three valuable properties, a secretive and indifferent federal agency, and a Town eventually represented by three lawyers with a fourth hired as an affiant.

Seeking reconsideration of the dismissal of their challenge and of their ability to obtain other and further relief, the Landowners argued that it was illegal and inequitable to subject them and their property to the threat of repetitive suit, and yet dismiss their properly lodged challenge suit without assuming all the facts in their pleadings to be true, as required by rule.

On 6-2-21, in response, the Town argued that the applicable condemnation procedure and its fee-award statute fully accounted for the expense and stress to which the Landowners were subjected, and was an appropriate deterrent against the Town instituting multiplicitous litigation.

The Town argued:

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

(Town 6-2-21 memorandum opposing reconsideration of dismissal at 5 (emphasis added).)³

It is undisputed that by this time in June 2021, the Landowners’ counsel had already expended well over 64.9 hours on each of the three cases the Town had commenced by serving papers at a deposition on 10-16-20. The 64.9 hours counts only 11-11-20 to 3-12-21, the latter date being only just past the 2-10-21 “Notice of Abandonment,” and does not include substantial and very expensive work opposing the motion to dismiss and pursuing reconsideration.⁴

³ The Town stipulated that the Landowners were entitled to fees. The “parties” did not stipulate to this, as erroneously stated by the Court in its order at 2. The Landowners assert it, but the Town made the stipulation. The Town did so to induce the Court to dismiss the Landowners’ challenge suits.

As discussed below, the Town later argued an award was precluded on a jurisdictional or other basis, and still later, submitted a proposed order erroneously stating that the applicable statute made an award only discretionary. As noted hereinbelow, the Court’s order adopted, and was guided by, that erroneous statement and incorrect citation in the Town’s proposed order.

⁴ In its order, the Court does not appear to understand the fact that all time submitted for after 3-12-21 also does not include work opposing the motion to dismiss or pursuing reconsideration of dismissal. This fact is made clear in the fee affidavit and briefs of the Landowners.

Following the June 2021 denial of the motion for reconsideration, protracted proceedings ensued, relative to correcting Form 4 orders – first, one stating facts incorrectly, and then one marking the case ended when the matter was expressly to remain open for a fee petition. These things occurred over an extended period and were not especially time-intensive, but did take time, which does add up.

An appeal of one Form 4 by the Town was filed, eventually resolved, and dismissed. A motion to reconsider was filed by the Landowners regarding the other Form 4. No time was included in the fee petition for any of the time (including time other than in drafting and filing) necessarily incurred on these matters, nor on the still pending appeal of the order of dismissal as moot, which has consumed a massive amount of time and resulted in much expense not represented at all in the fee petition.⁵

Following resolution of the first Form 4 matter, the Landowners submitted a 10-21-22 fee petition limited to matters up to just beyond the “Notice of Abandonment” and the preparation and prosecution of the fee petition itself (fee-for-fee).⁶

The fee petition comprehensively reflected the special circumstances that there was prior unsuccessful multiple litigation of the Town, a very time-consuming dispute there by the Town of the Landowners’ fee request (including arguments of “burden of proof”), and an inadequate fee award, which was under appeal.

The petition also reflected that litigation in the instant matter was still pending, that further litigation was still threatened by the Town, and that great care had to be taken to preserve confidences, to separate out the hours spent, duplicate none, isolate the subject matter of the

⁵ The Court does not appear to understand these facts in its order. These facts are made clear in the fee affidavit and briefs of the Landowners.

⁶ The Court does not appear to understand this fact in its order. This fact is made clear in the fee affidavit and briefs of the Landowners.

hours submitted, and ward off confusion by the Town and the Court. Far more than eight hours was required and spent in order to carefully prepare the affidavit alone. A motion, proposed order, proposed Form 4, comprehensive affidavit, and four exhibits were submitted.

On 11-21-22, a hearing was scheduled for 12-15-23. This generally may require reading and saving an e-mail, sometimes also checking the electronic docket, sometimes also downloading a roster and “roster news,” making a phone call to resolve any confusion in the roster news, sometimes forwarding as a courtesy to opposing counsel, calendaring the date if there is not a conflict which has to be resolved, and notifying two clients. The time may not be recorded, but if it is, it certainly occurred, even if unaccompanied by a paragraph of equal length as the present one.

On 12-12-12 to 12-12-14, the Town filed an opposing brief, and two affidavits, each with exhibits. The Town even raised jurisdictional arguments. The Landowners’ attorney read all these things, slowly. The Town argued among other things that the second Form 4 matter was an obstacle to the making of a fee award in the case, to which the Town had stipulated in its earlier briefs on mootness. This stipulation by the Town was in fact recited in the order the Court signed dismissing the case as moot.

On or before the day of the 12-15-23 WebEx hearing, Landowners’ counsel prepared and appeared, but there were technology difficulties. The presiding judge had a medical issue and could not proceed.

On 12-19-23, a hearing was scheduled for 1-6-23 with Judge Seals. There was correspondence with Judge Seals’s office about the clerk’s confusion regarding the Form 4s or the appeals, and possibly after further correspondence, the cases were sent back to Judge Culbertson for scheduling. Intermittently, correspondence with the clerk’s or administrative

judge's office also happened (but was not necessarily recorded) concerning the case being scheduled 2-21-23 and 4-17-23 for a nonjury merits trial because of all the procedural peculiarities.

On 2-10-23, a hearing was scheduled for 3-9-23 with Judge Culbertson.

Between the filing of the Town opposition papers and 3-8-23, the Landowners' counsel analyzed the Town's filings, checked misstated or incongruent facts and law, researched additional facts and law, drafted a reply brief, and did appropriate editing, rewriting and proofing. On 3-8-23, he filed it, and transmitted it. He also researched, drafted, checked, proofed and filed an affidavit updating the hours expended, and prepared three exhibits. The 3-8-23 reply brief alone took far more than eight hours to prepare, file and transmit. It is accounted for under oath, by date, in tenths of hours, in the most recent affidavit.

The Landowners' counsel prepared for the 3-9-23 hearing. A hearing was held on correction of the other Form 4. The hearing took time. The Form 4 was corrected. A hearing was set then or on 3-17-23 for 4-14-23.

A hearing was held 4-14-23 on the 10-21-22 fee petition. At its conclusion, counsel were each instructed by the Court to submit a proposed order, which Landowners' counsel submitted the same day, including a Form 4 form of judgment. Landowners' counsel reasonably expended 6.3 hours on the fee matter this day alone. This is reflected in the most recent sworn affidavit.

Throughout the progress of the case after dismissal, Landowners' counsel consulted with and reported to his clients. He responded to periodic inquiries from court personnel confused by the complications of three consolidated cases, multiple Form 4s (some conflicting), two appeals, and a remittitur. He corresponded with the Court and others about scheduling, read correspondence, answered the phone, and did the other thing lawyers must do in a case in

addition to filing documents. He prepared his bills for his clients alone and remitted his bills to his clients alone. He accurately recorded his time, did not waste it, and accurately reported it to this Court and accurately reported the matters to which it was attributed.

On 4-28-23, the Town submitted a proposed order. The Landowners' counsel read the 11 pages. He wrote to the Court. This, too, took his time.

On 6-2-23, the Landowners submitted an affidavit updating the hours expended. On 6-5-23, they submitted a proposed order updated accordingly. This took time.

Other Matters Overlooked or Misapprehended

The Court's order contains only a brief account of the procedural history. This is fine when the award is correct, but matters if the Court is not clear on the nature of the case and the true volume and intensity of work done and time expended, and deducts hours based on incorrect assumptions or understandings. The controversy is not over. The Town still announces it intends to bring further litigation, and aspects of this and other litigation are still under appeal.

A different Circuit Judge ruled that numerous offerings of the Town were false. He ruled the Town's descriptions of the subject easements were false, he ruled the council proceedings were false, he ruled the appraisals the Town used were false, and he ruled the condemnation pleadings of the Town were false. It is inescapable that, while knowing of these falsities, the Town repeated virtually all of them in the second set of condemnation attempts, and added more.

The additions included backdating the October 16 condemnation notice to June 9, 2013 to make it difficult to distinguish from the notice in the first set of attempts. Why time or expense should be spared quelling such a thing has yet to be explained by any Court, much less why a self-consciously conservative and discounted fee request should be denied in order to give the

Town, Mr. Henry, Mr. Green, Mr. Holliday, Mr. Carter, and Ms. Zimmerman a break at the expense of the Landowners, whose counsel is instead criticized for doing his job.

Coming late to the matter, the Town's most recent counsel, Mr. Dillard, presented the matter as if the Town's dishonest and indifferent maneuvers were not a part of the matter and did not have to be accounted for and anticipated in the work done by Landowners' counsel. As a sort of penalty for opposing a municipality, he recommended a fee based on a grand total of 20 hours, at \$190, divided by three. This is proof that the entire fee application could not be predictably prosecuted from beginning to end, while preserving appellate rights, in just eight hours.

The implication of the Town's silent arguments has somehow found its way into the Court's order, namely, that carefully breaking down these matters in pleadings and briefs lodged against a repetitively litigious and evasive town on a difficult subject is a short and effortless task. The Town equivocally has argued or will argue either the incorrect proposition that the work was indeed short and effortless (and that sworn undisputed time is a fabrication), or the incorrect proposition that the exact same work took the time attested to, but should have been short and effortless (and took too long), or the incorrect proposition that the Court (or the Town) should sit in judgment on a hypothetical basis of whether the work was "needed" without close examination or understanding of the matter.

The Town ditched its litigation before the matters in the pleadings could be fully examined, briefed, exposed, argued and ruled upon. Even then, success on every theory is not the test. What is reasonable is judged at the time the decision to expend time is made, not in hindsight, and the person ordinarily in the best position to judge is the lawyer doing the work who has established a fair basis for a fee with his client. It should not require a demonstration of

the reason for every single thing done. All of these propositions regarding simplicity, lack of need, or hindsight assessment of what it would take if the outcome were known in advance are meritless. We ask that the facts be clarified so that the proper basis for decision can be assessed. The facts are that counsel necessarily devoted at least 282.6 hours to the subject matters before preparing the instant motion.

Respectfully, the order does not accurately touch on the true nature of the underlying controversy, the contentious and urgent nature of the litigation, the proceedings the Landowners had already experienced when they applied for fees, or the care warranted by the matters at stake.

There is also lacking, any enhancement of the hourly rate to make up for any hour-slashing indulged in. A lower hourly rate affords the ability to devote time judged by counsel to be necessary without skimping to the client's detriment. If the Court is not going to stick to reality on the actual hours, the Court should enhance the rate applied to the artificially lowered hours and not divide the bill into thirds. Two of the Town's counsel charged the Town and its citizens \$250 per hour for this protracted litigation in which the Town has been unsuccessful.

Landowners also respectfully request additional findings on the issue of "pro se attorney's fees" discussed by the Court with some interest at the hearing. The Town did make any binding stipulation of the Town that these fees are recoverable, other than including them in its proposed order with the same draconian reductions proposed for the other two Landowners. This sets the matter up for potential counter-appeal if the Landowners appeal. We request the Court add to its finding that the circumstances of the instant case are different from those in Calhoun, which is a case the Landowners, rather than the Town, brought to the Court's attention.

We request the Court to add to its finding that as opposed to in Calhoun, there was a specific agreement and allocation of fees to the pro se attorney by his firm, and actual

contemporaneous billing, thus making the fees “incurred.” We request that the Court add a finding that, knowing the circumstances, the Town had actually stipulated earlier in the case that a fee award was available to each Landowner (including the attorney-party) and accepted the benefit of an order based on this stipulation. We request a further ruling that under the Court’s equitable jurisdiction, it would be inequitable and against the spirit of the fee statute to deprive the attorney-party of fees incurred in a very real sense if the fees to the other parties are to be reduced by two-thirds each instead of “restoring” at least a third of the total fees to the award to each of the other parties and leaving the parties to sort the matter out with their attorney.

It seems the Court unrealistically lopped off very real and necessary hours from the fee-for-fee component of the request for no reason under the assumption that the Court had the prerogative to award no fees at all. The Court may have reasoned that the Landowners had no reason to expect any fee (other than the Town’s stipulation) and that therefore, reasoning as to amounts inexplicably deducted from the award required no reason.

This is not the law in South Carolina. It seems the Court was guided into this error by the erroneous citation in the Court’s order (also found in the Town’s proposed order) as follows:

“Pursuant to the express terms of Code §28-2-510, a court is authorized to either award reasonable attorneys' fees to a prevailing landowner or deny the award in its entirety depending on the circumstances surrounding the litigation.” (Emphasis added.)

This is incorrect, and is a statement applicable only to “may award” awards under Section 510(B), not to “must award” awards under Section 510(C), which is the applicable section here. The quote is a misapplication of the previously discussed Revels case (which is a completed condemnation, not an abandonment case).

The order also presents further errors which guide its ruling as follows:

- (i) In splitting hairs on matters between 2-10-23 and 3-12-21, the order fails to recognize that the abandonment fee award arises by statute in the unfiled condemnation action, rather than from the instant challenge case itself (the challenge case being only one of the things “incurred” as a result of the condemnation action) and allows fees reasonably caused by the action abandoned, without a time-cutoff, including conclusion of matters entered because of the condemnation;
- (ii) In either refusing to enhance the rate or hours or dispensing what is actually false generosity, it requires proceeding on the absurd assumption and premise that “nothing occurred” in a lawyer’s representation of a client that does not appear on a docket sheet (in addition to the fact that, indeed, nothing from the unfiled condemnation action appears on the docket sheet at all);
- (iii) It appears to rely on the inadmissible affidavit of Mr. Dillard (a latecomer to the actual litigation with no demonstrated fee-award experience), which has been demonstrated to be factually incomplete and inaccurate, and to have omitted what actually did occur and what Landowner’s counsel did reasonably devote time to; and
- (iv) It exhibits confusion by repeatedly implying that the fee-for-fee time is mixed with time spent on other post-abandonment matters; the fee affidavit clearly delineates what time was spent at which time periods and on what subject matter.

We would welcome a hearing.

Respectfully submitted,

s/ M. Baron Stanton
 M. Baron Stanton (S.C. Bar No. 7970)
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 as trustee of The Franklin D.
 Beattie Preservation Trust, and
 pro se for M. Baron Stanton*

Date: 6-16-23

June 20, 2023 Landowner erratum or amendment of motion to reconsider

| | | |
|---|---|--|
| STATE OF SOUTH CAROLINA |) | IN THE CIRCUIT COURT OF THE |
| |) | FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GEORGETOWN |) | Civil Action No. 2020-CP-22-00932 |
| |) | (Consolidation of below Civil Actions) |
| Sunset Lodge, LLC, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00932 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| Franklin D. Beattie, as trustee of |) | |
| The Franklin D. Beattie Preservation Trust, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00931 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| M. Baron Stanton, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00930 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**AMENDED¹ PLAINTIFF LANDOWNERS' MOTION TO RECONSIDER
FEE AWARD TO LANDOWNERS**

¹ Fixing typos in 6-16-23 motion.

The Landowners move the Court to reconsider and change its 6-8-23 order awarding attorney's fees and expenses to them. The grounds, respectfully submitted, are that the order is guided by numerous errors of law and clear errors of fact, is confused, fails to rule on material issues, fails to follow legal protocol for such awards, and is grossly inadequate.

The Court awarded fees based on 100% of the "alleged"² hours up to 2-10-21, but strangely, treated the hours spent pursuing recovery of the attorney's fees ("fee-for fee") and other expenses as if nothing more than a two-page affidavit and one hearing was required in order to get the fees.

That is, the Court "found" that only eight of the 213.9 hours devoted to fee-for-fee was reasonable. (I.e., of time devoted 9-15-22 to 6-2-23.) In addition to this radical deduction, the Court strangely went to some length to explain how simple the "merits" part of the case (pre-2-10-21) was, even though the Court awarded 100% of the hours expended for that period. Because this explanation did not appear to pertain to the fee-for-fee component of the petition, the Landowners assume this explanation is either complete surplusage, or is meant to explain why the fee award was not enhanced.

The Court apparently gave credibility to Mr. Dillard's inadmissible affidavit and accordingly, like Mr. Dillard, oversimplified and underestimated the time actually required and consumed on such matters, and made an estimate of time when the actual time was readily available and would not have been spent unnecessarily, especially at a low hourly rate, which was then discounted to the client by 66.66.%

² Strangely, the Court makes no ruling on what the actual hours actually were, referring to the hours which were sworn to and presented by date in tenths of hours, as "alleged."

In particular, but without limitation, the Landowners would appreciate an actual ruling and finding on the following matters:

1. How many hours were actually (not allegedly) expended by Landowners' counsel on the matters which were the subject of the fee request? (at least 282.6)
2. How many were actually expended on preparing the 10-21-22 fee petition, pursuing a hearing, briefing the matter, and otherwise seeking to recover the fees (fee-for-fee)? (at least 213.9)
3. What is the basis, if any, for not awarding fees for the omitted 205.9 additional hours spent trying to obtain the fees? (none, or erroneous assumption fee is entirely discretionary)
4. That time spent on certain matters was clearly identified and specified by the Landowners not to be the subject of the fee request and the order is not dispositive of, and is without prejudice to recovery of, fees associated with that time on those matters.
5. That estoppel and additional equitable considerations additionally justify and require "pro se attorney's fees."
6. That the Landowners are each entitled to fees based on at least 282.6 hours x \$190 ÷ 3.

Further Actual Background and Errors in the Court's Understanding

The instant suit was a countersuit challenging the Town's second unsuccessful condemnation suit against the Landowners.³ After the Town served a 2-10-21 "Notice of

³ The Landowners did not "concede," as stated by the Court in its order at 4, that the second suit by the Town and the second instant challenge by the Landowners was "handled in tandem with" and was effectively "identical" to the first condemnation attempt and first challenge.

The Court is mistaken. The Court confuses the fact that in each of the Town's two attempts, the Town commenced three actions, one against each of the three Landowners, who all live in different places. These necessitated three challenge actions, for at total of 12 suits between the Town's two unsuccessful attempts.

Abandonment,” the Town argued to this Court and Judge that the Landowners’ challenge suit should be dismissed as “moot,” merely because the Town had purported to drop the second condemnation suit “without prejudice.” The Court so ruled, despite the undisputed fact that the

It was the second set of three challenge actions (one for each Landowner) which were handled “in tandem,” not the first and second sets of three.

Even the second set of three required triple drafting, triple proofreading, triple filing, triple serving, triple document management, etc., and also involved some differences in fact and involved nonfungible clients who were lawyers and who were often communicated with separately and had differing interests and concerns.

The first and second sets of challenge actions were at different procedural stages and could not be handled in tandem as the Court erroneously indicates.

A reading and comparison of the amended complaints in the first and second sets of challenge actions also reveals significant differences in allegations and additional legal theories.

There was an additional fraudulent Town Council meeting held as a precursor to the second condemnation attempt. Scores of allegations in the second challenge actions address that fraudulent October 12, 2020 meeting, step by step.

In it, new legal arguments were injected, in writing, into the proposed easement which the Town had claimed it had no authority to alter. These arguments were nonsensical recitations of inapplicable property law principles which are not the law in South Carolina and which don’t belong in the text of an easement anyway.

The meeting involved false resolutions, completely incongruent or illusory discussions, passing blank resolutions, and creating resolutions privately after the meeting was over. There are detailed allegations of these matters. The fact that Landowners’ counsel made parts of things look easy does not mean that they were or that they were ordinary product or that they did not require care and time.

Because the Town denied 95% of the undisputable factual allegations of any complaint in any matter in violation of Rules 8 and 11, and because of experiences with the Town’s “shell game” attachment of documents to its briefs in the first litigation, matters observed in the October 12, 2020 Town Council activities, and the backdating, to June 9, of the October notices used to commence the second set of condemnation actions, the amended complaint in the second challenge action also exhibits more granular breakdown of allegation paragraphs. It exhibits a careful identification, documentation and parsing of what was created, served and filed when. It is in the record.

The second challenge actions (3 in number) involved a whole additional order of work, including unsuccessful attempts to get the Town to explain the purpose of the second set of actions. The second set remained at a different procedural stage from the first set, with Landowners’ counsel handling the two sets distinctly not in tandem, but trying to combine discovery when possible, as by serving discovery requests in sextuplicate, with different captions.

All the while, the Town made public announcements about the matter (and the Landowners and their property) in meetings, mass e-mails and statements to the press. These had to be monitored and factored in, even if all the time was indeed not recorded and not the basis of any fee request at all. All the while, the Town was in cahoots with a federal agency, the Corps of Engineers, who would not have a meeting, return a call or respond to direct proposals or correspondence, and who removed all its regulations on the subject from the Code of Federal Regulations so that it could proceed ad hoc, and in secret.

It was not simple or easy dealing with the 12 cases, three clients residing in three cities, three valuable properties in a different town, a secretive and indifferent federal agency, and a Town eventually represented by three lawyers with a fourth hired as an affiant.

Town simultaneously announced plans to sue the Landowners a third time, thus subjecting them and their property to a continuing threat and cloud. These continue to this day, with threats just a matter of weeks ago, long after Hurricane Ian, which hit 9-30-22.

Seeking reconsideration of the dismissal of their challenge and of their ability to obtain other and further relief, the Landowners argued that it was illegal and inequitable to subject them and their property to the threat of repetitive suit, and yet dismiss their properly lodged challenge suit without assuming all the facts in their pleadings to be true, as required by rule.

On 6-2-21, in response, the Town argued that the applicable condemnation procedure and its fee-award statute fully accounted for the expense and stress to which the Landowners were subjected, and was an appropriate deterrent against the Town instituting multiplicitous litigation.

The Town argued:

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

(Town 6-2-21 memorandum opposing reconsideration of dismissal at 5 (emphasis added).)⁴

It is undisputed that by this time in June 2021, the Landowners’ counsel had already expended well over 64.9 hours on each of the three cases the Town had commenced by serving papers at a deposition on 10-16-20. The 64.9 hours counts only 11-11-20 to 3-12-21, the latter

⁴ The Town stipulated that the Landowners were entitled to fees. The “parties” did not stipulate to this, as erroneously stated by the Court in its order at 2. The Landowners assert it, but the Town made the stipulation. The Town did so to induce the Court to dismiss the Landowners’ challenge suits.

As discussed below, the Town later argued an award was precluded on a jurisdictional or other basis, and still later, submitted a proposed order erroneously stating that the applicable statute made an award only discretionary. As noted hereinbelow, the Court’s order adopted, and was guided by, that erroneous statement and incorrect citation in the Town’s proposed order.

date being only just past the 2-10-21 "Notice of Abandonment," and does not include substantial and very expensive work opposing the motion to dismiss and pursuing reconsideration.⁵

Following the June 2021 denial of the motion for reconsideration, protracted proceedings ensued, relative to correcting Form 4 orders – first, one stating facts incorrectly, and then one marking the case ended when the matter was expressly to remain open for a fee petition. These things occurred over an extended period and were not especially time-intensive, but did take time, which does add up.

An appeal of one Form 4 by the Town was filed, eventually resolved, and dismissed. A motion to reconsider was filed by the Landowners regarding the other Form 4. No time was included in the fee petition for any of the time (including time other than in drafting and filing) necessarily incurred on these matters, nor on the still pending appeal of the order of dismissal as moot, which has consumed a massive amount of time and resulted in much expense not represented at all in the fee petition.⁶

Following resolution of the first Form 4 matter, the Landowners submitted a 10-21-22 fee petition limited to matters up to just beyond the "Notice of Abandonment" and the preparation and prosecution of the fee petition itself (fee-for-fee).⁷

The fee petition comprehensively reflected the special circumstances that there was prior unsuccessful multiple litigation of the Town, a very time-consuming dispute there by the Town

⁵ In its order, the Court does not appear to understand the fact that all time submitted for after 3-12-21 also does not include work opposing the motion to dismiss or pursuing reconsideration of dismissal. This fact is made clear in the fee affidavit and briefs of the Landowners.

⁶ The Court does not appear to understand these facts in its order. These facts are made clear in the fee affidavit and briefs of the Landowners.

⁷ The Court does not appear to understand this fact in its order. This fact is made clear in the fee affidavit and briefs of the Landowners.

of the Landowners' fee request (including arguments of "burden of proof"), and an inadequate fee award, which was under appeal.

The petition also reflected that litigation in the instant matter was still pending, that further litigation was still threatened by the Town, and that great care had to be taken to preserve confidences, to separate out the hours spent, duplicate none, isolate the subject matter of the hours submitted, and ward off confusion by the Town and the Court. Far more than eight hours was required and spent in order to carefully prepare the affidavit alone. A motion, proposed order, proposed Form 4, comprehensive affidavit, and four exhibits were submitted.

On 11-21-22, a hearing was scheduled for 12-15-22. This generally may require reading and saving an e-mail, sometimes also checking the electronic docket, sometimes also downloading a roster and "roster news," making a phone call to resolve any confusion in the roster news, sometimes forwarding as a courtesy to opposing counsel, calendaring the date if there is not a conflict which has to be resolved, and notifying two clients. The time may not be recorded, but if it is, it certainly occurred, even if unaccompanied by a paragraph of equal length as the present one.

On 12-12-22 to 12-14-22, the Town filed an opposing brief, and two affidavits, each with exhibits. The Town even raised jurisdictional arguments. The Landowners' attorney read all these things, slowly. The Town argued among other things that the second Form 4 matter was an obstacle to the making of a fee award in the case, to which the Town had stipulated in its earlier briefs on mootness. This stipulation by the Town was in fact recited in the order the Court signed dismissing the case as moot.

On or before the day of the 12-15-22 WebEx hearing, Landowners' counsel prepared, and appeared, but there were technology difficulties. The presiding judge had a medical issue and could not proceed.

On 12-19-22, a hearing was scheduled for 1-6-23 with Judge Seals. There was correspondence with Judge Seals's office about the clerk's confusion regarding the Form 4s or the appeals, and possibly after further correspondence, the cases were sent back to Judge Culbertson for scheduling. Intermittently, correspondence with the clerk's or administrative judge's office also happened (but was not necessarily recorded) concerning the case being scheduled 2-21-23 and 4-17-23 for a nonjury merits trial because of all the procedural peculiarities.

On 2-10-23, a hearing was scheduled for 3-9-23 with Judge Culbertson.

Between the filing of the Town opposition papers and 3-8-23, the Landowners' counsel analyzed the Town's filings, checked misstated or incongruent facts and law, researched additional facts and law, drafted a reply brief, and did appropriate editing, rewriting and proofing. On 3-8-23, he filed it, and transmitted it. He also researched, drafted, checked, proofed and filed an affidavit updating the hours expended, and prepared three exhibits. The 3-8-23 reply brief alone took far more than eight hours to prepare, file and transmit. It is accounted for under oath, by date, in tenths of hours, in the most recent affidavit.

The Landowners' counsel prepared for the 3-9-23 hearing. A hearing was held on correction of the other Form 4. The hearing took time. The Form 4 was corrected. A hearing was set then or on 3-17-23 for 4-14-23.

A hearing was held 4-14-23 on the 10-21-22 fee petition. At its conclusion, counsel were each instructed by the Court to submit a proposed order, which Landowners' counsel submitted

the same day, including a Form 4 form of judgment. Landowners' counsel reasonably expended 6.3 hours on the fee matter this day alone. This is reflected in the most recent sworn affidavit.

Throughout the progress of the case after dismissal, Landowners' counsel consulted with and reported to his clients. He responded to periodic inquiries from court personnel confused by the complications of three consolidated cases, multiple Form 4s (some conflicting), two appeals, and a remittitur. He corresponded with the Court and others about scheduling, read correspondence, answered the phone, and did the other thing lawyers must do in a case in addition to filing documents. He prepared his bills for his clients alone and remitted his bills to his clients alone. He accurately recorded his time, did not waste it, and accurately reported it to this Court and accurately reported the matters to which it was attributed.

On 4-28-23, the Town submitted a proposed order. The Landowners' counsel read the 11 pages. He wrote to the Court. This, too, took his time.

On 6-2-23, the Landowners submitted an affidavit updating the hours expended. On 6-5-23, they submitted a proposed order updated accordingly. This took time.

Other Matters Overlooked or Misapprehended

The Court's order contains only a brief account of the procedural history. This is fine when the award is correct, but matters if the Court is not clear on the nature of the case and the true volume and intensity of work done and time expended, and deducts hours based on incorrect assumptions or understandings. The controversy is not over. The Town still announces it intends to bring further litigation, and aspects of this and other litigation are still under appeal.

A different Circuit Judge ruled that numerous offerings of the Town were false. He ruled the Town's descriptions of the subject easements were false, he ruled the council proceedings were false, he ruled the appraisals the Town used were false, and he ruled the condemnation

pleadings of the Town were false. It is inescapable that, while knowing of these falsities, the Town repeated virtually all of them in the second set of condemnation attempts, and added more.

The additions included backdating the October 16, 2020 condemnation notice to June 9, 2020 to make it difficult to distinguish from the notice in the first set of attempts . Why time or expense should be spared quelling such a thing has yet to be explained by any Court, much less why a self-consciously conservative and discounted fee request should be denied in order to give the Town, Mr. Henry, Mr. Green, Mr. Holliday, Mr. Carter, and Ms. Zimmerman a break at the expense of the Landowners, whose counsel is instead criticized for doing his job.

Coming late to the matter, the Town's most recent counsel, Mr. Dillard, presented the matter as if the Town's dishonest and indifferent maneuvers were not a part of the matter and did not have to be accounted for and anticipated in the work done by Landowners' counsel. As a sort of penalty for opposing a municipality, he recommended a fee based on a grand total of 20 hours, at \$190, divided by three. This is proof that the entire fee application could not be predictably prosecuted from beginning to end, while preserving appellate rights, in just eight hours.

The implication of the Town's silent arguments has somehow found its way into the Court's order, namely, that carefully breaking down these matters in pleadings and briefs lodged against a repetitively litigious and evasive town on a difficult subject is a short and effortless task. The Town equivocally has argued or will argue either the incorrect proposition that the work was indeed short and effortless (and that sworn undisputed time is a fabrication), or the incorrect proposition that the exact same work took the time attested to, but should have been short and effortless (and took too long), or the incorrect proposition that the Court (or the Town)

should sit in judgment on a hypothetical basis of whether the work was “needed” without close examination or understanding of the matter.

The Town ditched its litigation before the matters in the pleadings could be fully examined, briefed, exposed, argued and ruled upon. Even then, success on every theory is not the test. What is reasonable is judged at the time the decision to expend time is made, not in hindsight, and the person ordinarily in the best position to judge is the lawyer doing the work who has established a fair basis for a fee with his client. It should not require a demonstration of the reason for every single thing done. All of these propositions regarding simplicity, lack of need, or hindsight assessment of what it would take if the outcome were known in advance are meritless. We ask that the facts be clarified so that the proper basis for decision can be assessed. The facts are that counsel necessarily devoted at least 282.6 hours to the subject matters before preparing the instant motion.

Respectfully, the order does not accurately touch on the true nature of the underlying controversy, the contentious and urgent nature of the litigation, the proceedings the Landowners had already experienced when they applied for fees, or the care warranted by the matters at stake.

There is also lacking, any enhancement of the hourly rate to make up for any hour-slashing indulged in. A lower hourly rate affords the ability to devote time judged by counsel to be necessary without skimping to the client’s detriment. If the Court is not going to stick to reality on the actual hours, the Court should enhance the rate applied to the artificially lowered hours and not divide the bill into thirds. Two of the Town’s counsel charged the Town and its citizens \$250 per hour for this protracted litigation in which the Town has been unsuccessful.

Landowners also respectfully request additional findings on the issue of “pro se attorney’s fees” discussed by the Court with some interest at the hearing. The Town did not

make any binding stipulation of the Town that these fees are recoverable, other than in April-June 2021 and in including them in its April 2023 proposed order with the same draconian reductions proposed for the other two Landowners. This sets the matter up for potential counter-appeal if the Landowners appeal. We request the Court add to its finding that the circumstances of the instant case are different from those in Calhoun, which is a case the Landowners, rather than the Town, brought to the Court's attention. We request the Court to add to its finding that as opposed to in Calhoun, there was a specific agreement and allocation of fees to the pro se attorney by his firm, and actual contemporaneous billing, thus making the fees "incurred."

We request that the Court add a finding that, knowing the circumstances, the Town had actually stipulated earlier in the case that a fee award was available to each Landowner (including the attorney-party) and accepted the benefit of an order based on this stipulation.

We request a further ruling that under the Court's equitable jurisdiction, it would be inequitable and against the spirit of the fee statute to deprive the attorney-party of fees incurred in a very real sense if the fees to the other parties are to be reduced by two-thirds each instead of "restoring" at least a third of the total fees to the award to each of the other parties and leaving the parties to sort the matter out with their attorney.

It seems the Court unrealistically lopped off very real and necessary hours from the fee-for-fee component of the request for no reason under the assumption that the Court had the prerogative to award no fees at all. The Court may have reasoned that the Landowners had no reason to expect any fee (other than the Town's stipulation) and that therefore, reasoning as to amounts inexplicably deducted from the award required no reason.

This is not the law in South Carolina. It seems the Court was guided into this error by the erroneous citation in the Court's order (also found in the Town's proposed order) as follows:

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The order also presents further errors which guide its ruling as follows:

- (i) In splitting hairs on matters between 2-10-21 and 3-12-21, the order fails to recognize that the abandonment fee award arises by statute in the unfiled condemnation action, rather than from the instant challenge case itself (the challenge case being only one of the things “incurred” as a result of the condemnation action) and allows fees reasonably caused by the action abandoned, without a time cutoff, including conclusion of matters entered because of the condemnation;
- (ii) In either refusing to enhance the rate or hours or dispensing what is actually false generosity, it requires proceeding on the absurd assumption and premise that “nothing occurred” in a lawyer’s representation of a client that does not appear on a docket sheet (in addition to the fact that, indeed, nothing from the unfiled condemnation action appears on the docket sheet at all);
- (iii) It appears to rely on the inadmissible affidavit of Mr. Dillard (a latecomer to the actual litigation with no demonstrated fee-award experience), which has been demonstrated to be factually incomplete and inaccurate, and to have omitted what actually did occur and what Landowner’s counsel did reasonably devote time to; and
- (iv) It exhibits confusion by repeatedly implying that the fee-for-fee time is mixed with time spent on other post-abandonment matters; the fee affidavit clearly delineates what time was spent at which time periods and on what subject matter.

We would welcome a hearing.

Respectfully submitted,

s/ M. Baron Stanton
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Beattie Preservation Trust, and
pro se for M. Baron Stanton*

Date: 6-19-23

June 20, 2023 Landowner second erratum or amendment of motion
to reconsider

| | | |
|---|---|--|
| STATE OF SOUTH CAROLINA |) | IN THE CIRCUIT COURT OF THE |
| |) | FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GEORGETOWN |) | Civil Action No. 2020-CP-22-00932 |
| |) | (Consolidation of below Civil Actions) |
| Sunset Lodge, LLC, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00932 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| Franklin D. Beattie, as trustee of |) | |
| The Franklin D. Beattie Preservation Trust, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00931 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| and |) | |
| |) | |
| M. Baron Stanton, |) | |
| |) | |
| Plaintiff, |) | 2020-CP-22-00930 |
| v. |) | |
| |) | |
| Town of Pawleys Island, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**SECOND AMENDED¹ PLAINTIFF LANDOWNERS' MOTION TO RECONSIDER
FEE AWARD TO LANDOWNERS**

¹ Fixing typos in 6-16-23 motion and amending reference to Section 510(B) argument of Town.

The Landowners move the Court to reconsider and change its 6-8-23 order awarding attorney's fees and expenses to them. The grounds, respectfully submitted, are that the order is guided by numerous errors of law and clear errors of fact, is confused, fails to rule on material issues, fails to follow legal protocol for such awards, and is grossly inadequate.

The Court awarded fees based on 100% of the "alleged"² hours up to 2-10-21, but strangely, treated the hours spent pursuing recovery of the attorney's fees ("fee-for fee") and other expenses as if nothing more than a two-page affidavit and one hearing was required in order to get the fees.

That is, the Court "found" that only eight of the 213.9 hours devoted to fee-for-fee was reasonable. (I.e., of time devoted 9-15-22 to 6-2-23.) In addition to this radical deduction, the Court strangely went to some length to explain how simple the "merits" part of the case (pre-2-10-21) was, even though the Court awarded 100% of the hours expended for that period. Because this explanation did not appear to pertain to the fee-for-fee component of the petition, the Landowners assume this explanation is either complete surplusage, or is meant to explain why the fee award was not enhanced.

The Court apparently gave credibility to Mr. Dillard's inadmissible affidavit and accordingly, like Mr. Dillard, oversimplified and underestimated the time actually required and consumed on such matters, and made an estimate of time when the actual time was readily available and would not have been spent unnecessarily, especially at a low hourly rate, which was then discounted to the client by 66.66.%

² Strangely, the Court makes no ruling on what the actual hours actually were, referring to the hours which were sworn to and presented by date in tenths of hours, as "alleged."

In particular, but without limitation, the Landowners would appreciate an actual ruling and finding on the following matters:

1. How many hours were actually (not allegedly) expended by Landowners' counsel on the matters which were the subject of the fee request? (at least 282.6)
2. How many were actually expended on preparing the 10-21-22 fee petition, pursuing a hearing, briefing the matter, and otherwise seeking to recover the fees (fee-for-fee)? (at least 213.9)
3. What is the basis, if any, for not awarding fees for the omitted 205.9 additional hours spent trying to obtain the fees? (none, or erroneous assumption fee is entirely discretionary)
4. That time spent on certain matters was clearly identified and specified by the Landowners not to be the subject of the fee request and the order is not dispositive of, and is without prejudice to recovery of, fees associated with that time on those matters.
5. That estoppel and additional equitable considerations additionally justify and require "pro se attorney's fees."
6. That the Landowners are each entitled to fees based on at least 282.6 hours x \$190 ÷ 3.

Further Actual Background and Errors in the Court's Understanding

The instant suit was a countersuit challenging the Town's second unsuccessful condemnation suit against the Landowners.³ After the Town served a 2-10-21 "Notice of

³ The Landowners did not "concede," as stated by the Court in its order at 4, that the second suit by the Town and the second instant challenge by the Landowners was "handled in tandem with" and was effectively "identical" to the first condemnation attempt and first challenge.

The Court is mistaken. The Court confuses the fact that in each of the Town's two attempts, the Town commenced three actions, one against each of the three Landowners, who all live in different places. These necessitated three challenge actions, for at total of 12 suits between the Town's two unsuccessful attempts.

Abandonment,” the Town argued to this Court and Judge that the Landowners’ challenge suit should be dismissed as “moot,” merely because the Town had purported to drop the second condemnation suit “without prejudice.” The Court so ruled, despite the undisputed fact that the

It was the second set of three challenge actions (one for each Landowner) which were handled “in tandem,” not the first and second sets of three.

Even the second set of three required triple drafting, triple proofreading, triple filing, triple serving, triple document management, etc., and also involved some differences in fact and involved nonfungible clients who were lawyers and who were often communicated with separately and had differing interests and concerns.

The first and second sets of challenge actions were at different procedural stages and could not be handled in tandem as the Court erroneously indicates.

A reading and comparison of the amended complaints in the first and second sets of challenge actions also reveals significant differences in allegations and additional legal theories.

There was an additional fraudulent Town Council meeting held as a precursor to the second condemnation attempt. Scores of allegations in the second challenge actions address that fraudulent October 12, 2020 meeting, step by step.

In it, new legal arguments were injected, in writing, into the proposed easement which the Town had claimed it had no authority to alter. These arguments were nonsensical recitations of inapplicable property law principles which are not the law in South Carolina and which don’t belong in the text of an easement anyway.

The meeting involved false resolutions, completely incongruent or illusory discussions, passing blank resolutions, and creating resolutions privately after the meeting was over. There are detailed allegations of these matters. The fact that Landowners’ counsel made parts of things look easy does not mean that they were or that they were ordinary product or that they did not require care and time.

Because the Town denied 95% of the undisputable factual allegations of any complaint in any matter in violation of Rules 8 and 11, and because of experiences with the Town’s “shell game” attachment of documents to its briefs in the first litigation, matters observed in the October 12, 2020 Town Council activities, and the backdating, to June 9, of the October notices used to commence the second set of condemnation actions, the amended complaint in the second challenge action also exhibits more granular breakdown of allegation paragraphs. It exhibits a careful identification, documentation and parsing of what was created, served and filed when. It is in the record.

The second challenge actions (3 in number) involved a whole additional order of work, including unsuccessful attempts to get the Town to explain the purpose of the second set of actions. The second set remained at a different procedural stage from the first set, with Landowners’ counsel handling the two sets distinctly not in tandem, but trying to combine discovery when possible, as by serving discovery requests in sextuplicate, with different captions.

All the while, the Town made public announcements about the matter (and the Landowners and their property) in meetings, mass e-mails and statements to the press. These had to be monitored and factored in, even if all the time was indeed not recorded and not the basis of any fee request at all. All the while, the Town was in cahoots with a federal agency, the Corps of Engineers, who would not have a meeting, return a call or respond to direct proposals or correspondence, and who removed all its regulations on the subject from the Code of Federal Regulations so that it could proceed ad hoc, and in secret.

It was not simple or easy dealing with the 12 cases, three clients residing in three cities, three valuable properties in a different town, a secretive and indifferent federal agency, and a Town eventually represented by three lawyers with a fourth hired as an affiant.

Town simultaneously announced plans to sue the Landowners a third time, thus subjecting them and their property to a continuing threat and cloud. These continue to this day, with threats just a matter of weeks ago, long after Hurricane Ian, which hit 9-30-22.

Seeking reconsideration of the dismissal of their challenge and of their ability to obtain other and further relief, the Landowners argued that it was illegal and inequitable to subject them and their property to the threat of repetitive suit, and yet dismiss their properly lodged challenge suit without assuming all the facts in their pleadings to be true, as required by rule.

On 6-2-21, in response, the Town argued that the applicable condemnation procedure and its fee-award statute fully accounted for the expense and stress to which the Landowners were subjected, and was an appropriate deterrent against the Town instituting multiplicitous litigation.

The Town argued:

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

(Town 6-2-21 memorandum opposing reconsideration of dismissal at 5 (emphasis added).)⁴

It is undisputed that by this time in June 2021, the Landowners’ counsel had already expended well over 64.9 hours on each of the three cases the Town had commenced by serving papers at a deposition on 10-16-20. The 64.9 hours counts only 11-11-20 to 3-12-21, the latter

⁴ The Town stipulated that the Landowners were entitled to fees. The “parties” did not stipulate to this, as erroneously stated by the Court in its order at 2. The Landowners assert it, but the Town made the stipulation. The Town did so to induce the Court to dismiss the Landowners’ challenge suits.

As discussed below, the Town later argued an award was precluded on a jurisdictional or other basis, and still later, submitted a proposed order arguing that the applicable statute made an award of less than actual fees discretionary. As noted hereinbelow, the Court’s order adopted an erroneously inapplicable statement that an award of any fees at all was entirely discretionary.

date being only just past the 2-10-21 "Notice of Abandonment," and does not include substantial and very expensive work opposing the motion to dismiss and pursuing reconsideration.⁵

Following the June 2021 denial of the motion for reconsideration, protracted proceedings ensued, relative to correcting Form 4 orders – first, one stating facts incorrectly, and then one marking the case ended when the matter was expressly to remain open for a fee petition. These things occurred over an extended period and were not especially time-intensive, but did take time, which does add up.

An appeal of one Form 4 by the Town was filed, eventually resolved, and dismissed. A motion to reconsider was filed by the Landowners regarding the other Form 4. No time was included in the fee petition for any of the time (including time other than in drafting and filing) necessarily incurred on these matters, nor on the still pending appeal of the order of dismissal as moot, which has consumed a massive amount of time and resulted in much expense not represented at all in the fee petition.⁶

Following resolution of the first Form 4 matter, the Landowners submitted a 10-21-22 fee petition limited to matters up to just beyond the "Notice of Abandonment" and the preparation and prosecution of the fee petition itself (fee-for-fee).⁷

The fee petition comprehensively reflected the special circumstances that there was prior unsuccessful multiple litigation of the Town, a very time-consuming dispute there by the Town

⁵ In its order, the Court does not appear to understand the fact that all time submitted for after 3-12-21 also does not include work opposing the motion to dismiss or pursuing reconsideration of dismissal. This fact is made clear in the fee affidavit and briefs of the Landowners.

⁶ The Court does not appear to understand these facts in its order. These facts are made clear in the fee affidavit and briefs of the Landowners.

⁷ The Court does not appear to understand this fact in its order. This fact is made clear in the fee affidavit and briefs of the Landowners.

of the Landowners' fee request (including arguments of "burden of proof"), and an inadequate fee award, which was under appeal.

The petition also reflected that litigation in the instant matter was still pending, that further litigation was still threatened by the Town, and that great care had to be taken to preserve confidences, to separate out the hours spent, duplicate none, isolate the subject matter of the hours submitted, and ward off confusion by the Town and the Court. Far more than eight hours was required and spent in order to carefully prepare the affidavit alone. A motion, proposed order, proposed Form 4, comprehensive affidavit, and four exhibits were submitted.

On 11-21-22, a hearing was scheduled for 12-15-22. This generally may require reading and saving an e-mail, sometimes also checking the electronic docket, sometimes also downloading a roster and "roster news," making a phone call to resolve any confusion in the roster news, sometimes forwarding as a courtesy to opposing counsel, calendaring the date if there is not a conflict which has to be resolved, and notifying two clients. The time may not be recorded, but if it is, it certainly occurred, even if unaccompanied by a paragraph of equal length as the present one.

On 12-12-22 to 12-14-22, the Town filed an opposing brief, and two affidavits, each with exhibits. The Town even raised jurisdictional arguments. The Landowners' attorney read all these things, slowly. The Town argued among other things that the second Form 4 matter was an obstacle to the making of a fee award in the case, to which the Town had stipulated in its earlier briefs on mootness. This stipulation by the Town was in fact recited in the order the Court signed dismissing the case as moot.

On or before the day of the 12-15-22 WebEx hearing, Landowners' counsel prepared, and appeared, but there were technology difficulties. The presiding judge had a medical issue and could not proceed.

On 12-19-22, a hearing was scheduled for 1-6-23 with Judge Seals. There was correspondence with Judge Seals's office about the clerk's confusion regarding the Form 4s or the appeals, and possibly after further correspondence, the cases were sent back to Judge Culbertson for scheduling. Intermittently, correspondence with the clerk's or administrative judge's office also happened (but was not necessarily recorded) concerning the case being scheduled 2-21-23 and 4-17-23 for a nonjury merits trial because of all the procedural peculiarities.

On 2-10-23, a hearing was scheduled for 3-9-23 with Judge Culbertson.

Between the filing of the Town opposition papers and 3-8-23, the Landowners' counsel analyzed the Town's filings, checked misstated or incongruent facts and law, researched additional facts and law, drafted a reply brief, and did appropriate editing, rewriting and proofing. On 3-8-23, he filed it, and transmitted it. He also researched, drafted, checked, proofed and filed an affidavit updating the hours expended, and prepared three exhibits. The 3-8-23 reply brief alone took far more than eight hours to prepare, file and transmit. It is accounted for under oath, by date, in tenths of hours, in the most recent affidavit.

The Landowners' counsel prepared for the 3-9-23 hearing. A hearing was held on correction of the other Form 4. The hearing took time. The Form 4 was corrected. A hearing was set then or on 3-17-23 for 4-14-23.

A hearing was held 4-14-23 on the 10-21-22 fee petition. At its conclusion, counsel were each instructed by the Court to submit a proposed order, which Landowners' counsel submitted

the same day, including a Form 4 form of judgment. Landowners' counsel reasonably expended 6.3 hours on the fee matter this day alone. This is reflected in the most recent sworn affidavit.

Throughout the progress of the case after dismissal, Landowners' counsel consulted with and reported to his clients. He responded to periodic inquiries from court personnel confused by the complications of three consolidated cases, multiple Form 4s (some conflicting), two appeals, and a remittitur. He corresponded with the Court and others about scheduling, read correspondence, answered the phone, and did the other thing lawyers must do in a case in addition to filing documents. He prepared his bills for his clients alone and remitted his bills to his clients alone. He accurately recorded his time, did not waste it, and accurately reported it to this Court and accurately reported the matters to which it was attributed.

On 4-28-23, the Town submitted a proposed order. The Landowners' counsel read the 11 pages. He wrote to the Court. This, too, took his time.

On 6-2-23, the Landowners submitted an affidavit updating the hours expended. On 6-5-23, they submitted a proposed order updated accordingly. This took time.

Other Matters Overlooked or Misapprehended

The Court's order contains only a brief account of the procedural history. This is fine when the award is correct, but matters if the Court is not clear on the nature of the case and the true volume and intensity of work done and time expended, and deducts hours based on incorrect assumptions or understandings. The controversy is not over. The Town still announces it intends to bring further litigation, and aspects of this and other litigation are still under appeal.

A different Circuit Judge ruled that numerous offerings of the Town were false. He ruled the Town's descriptions of the subject easements were false, he ruled the council proceedings were false, he ruled the appraisals the Town used were false, and he ruled the condemnation

pleadings of the Town were false. It is inescapable that, while knowing of these falsities, the Town repeated virtually all of them in the second set of condemnation attempts, and added more.

The additions included backdating the October 16, 2020 condemnation notice to June 9, 2020 to make it difficult to distinguish from the notice in the first set of attempts . Why time or expense should be spared quelling such a thing has yet to be explained by any Court, much less why a self-consciously conservative and discounted fee request should be denied in order to give the Town, Mr. Henry, Mr. Green, Mr. Holliday, Mr. Carter, and Ms. Zimmerman a break at the expense of the Landowners, whose counsel is instead criticized for doing his job.

Coming late to the matter, the Town's most recent counsel, Mr. Dillard, presented the matter as if the Town's dishonest and indifferent maneuvers were not a part of the matter and did not have to be accounted for and anticipated in the work done by Landowners' counsel. As a sort of penalty for opposing a municipality, he recommended a fee based on a grand total of 20 hours, at \$190, divided by three. This is proof that the entire fee application could not be predictably prosecuted from beginning to end, while preserving appellate rights, in just eight hours.

The implication of the Town's silent arguments has somehow found its way into the Court's order, namely, that carefully breaking down these matters in pleadings and briefs lodged against a repetitively litigious and evasive town on a difficult subject is a short and effortless task. The Town equivocally has argued or will argue either the incorrect proposition that the work was indeed short and effortless (and that sworn undisputed time is a fabrication), or the incorrect proposition that the exact same work took the time attested to, but should have been short and effortless (and took too long), or the incorrect proposition that the Court (or the Town)

should sit in judgment on a hypothetical basis of whether the work was “needed” without close examination or understanding of the matter.

The Town ditched its litigation before the matters in the pleadings could be fully examined, briefed, exposed, argued and ruled upon. Even then, success on every theory is not the test. What is reasonable is judged at the time the decision to expend time is made, not in hindsight, and the person ordinarily in the best position to judge is the lawyer doing the work who has established a fair basis for a fee with his client. It should not require a demonstration of the reason for every single thing done. All of these propositions regarding simplicity, lack of need, or hindsight assessment of what it would take if the outcome were known in advance are meritless. We ask that the facts be clarified so that the proper basis for decision can be assessed. The facts are that counsel necessarily devoted at least 282.6 hours to the subject matters before preparing the instant motion.

Respectfully, the order does not accurately touch on the true nature of the underlying controversy, the contentious and urgent nature of the litigation, the proceedings the Landowners had already experienced when they applied for fees, or the care warranted by the matters at stake.

There is also lacking, any enhancement of the hourly rate to make up for any hour-slashing indulged in. A lower hourly rate affords the ability to devote time judged by counsel to be necessary without skimping to the client’s detriment. If the Court is not going to stick to reality on the actual hours, the Court should enhance the rate applied to the artificially lowered hours and not divide the bill into thirds. Two of the Town’s counsel charged the Town and its citizens \$250 per hour for this protracted litigation in which the Town has been unsuccessful.

Landowners also respectfully request additional findings on the issue of “pro se attorney’s fees” discussed by the Court with some interest at the hearing. The Town did not

make any binding stipulation of the Town that these fees are recoverable, other than in April-June 2021 and in including them in its April 2023 proposed order with the same draconian reductions proposed for the other two Landowners. This sets the matter up for potential counter-appeal if the Landowners appeal. We request the Court add to its finding that the circumstances of the instant case are different from those in Calhoun, which is a case the Landowners, rather than the Town, brought to the Court's attention. We request the Court to add to its finding that as opposed to in Calhoun, there was a specific agreement and allocation of fees to the pro se attorney by his firm, and actual contemporaneous billing, thus making the fees "incurred."

We request that the Court add a finding that, knowing the circumstances, the Town had actually stipulated earlier in the case that a fee award was available to each Landowner (including the attorney-party) and accepted the benefit of an order based on this stipulation.

We request a further ruling that under the Court's equitable jurisdiction, it would be inequitable and against the spirit of the fee statute to deprive the attorney-party of fees incurred in a very real sense if the fees to the other parties are to be reduced by two-thirds each instead of "restoring" at least a third of the total fees to the award to each of the other parties and leaving the parties to sort the matter out with their attorney.

It seems the Court unrealistically lopped off very real and necessary hours from the fee-for-fee component of the request for no reason under the assumption that the Court had the prerogative to award no fees at all. The Court may have reasoned that the Landowners had no reason to expect any fee (other than the Town's stipulation) and that therefore, reasoning as to amounts inexplicably deducted from the award was not required.

This is not the law in South Carolina. It seems the Court was guided into this error by the erroneous citation in the Court's order as follows: "Pursuant to the express terms of Code §28-2-

510, a court is authorized to either award reasonable attorneys' fees to a prevailing landowner or deny the award in its entirety depending on the circumstances surrounding the litigation.”

(Emphasis added.)

This is incorrect, and is a statement applicable only to “may award” awards under Section 510(B), not to “must award” awards under Section 510(C), which is the applicable section here.

The quote is a misapplication of the previously discussed Revels case (which is a completed condemnation, not an abandonment case).

The order also presents further errors which guide its ruling as follows:

- (i) In splitting hairs on matters between 2-10-21 and 3-12-21, the order fails to recognize that the abandonment fee award arises by statute in the unfiled condemnation action, rather than from the instant challenge case itself (the challenge case being only one of the things “incurred” as a result of the condemnation action) and allows fees reasonably caused by the action abandoned, without a time cutoff, including conclusion of matters entered because of the condemnation;
- (ii) In either refusing to enhance the rate or hours or dispensing what is actually false generosity, it requires proceeding on the absurd assumption and premise that “nothing occurred” in a lawyer’s representation of a client that does not appear on a docket sheet (in addition to the fact that, indeed, nothing from the unfiled condemnation action appears on the docket sheet at all);
- (iii) It appears to rely on the inadmissible affidavit of Mr. Dillard (a latecomer to the actual litigation with no demonstrated fee-award experience), which has been demonstrated to be factually incomplete and inaccurate, and to have omitted what actually did occur and what Landowner’s counsel did reasonably devote time to; and
- (iv) It exhibits confusion by repeatedly implying that the fee-for-fee time is mixed with time spent on other post-abandonment matters; the fee affidavit clearly delineates what time was spent at which time periods and on what subject matter.

We would welcome a hearing.

Respectfully submitted,

s/ M. Baron Stanton
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Franklin D. Beattie,
as trustee of The Franklin D.
Beattie Preservation Trust, and
pro se for M. Baron Stanton*

Date: 6-20-23

July 28, 2023 notice of appeal

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 20-CP-22-00930
CASE NO. 20-CP-22-00931
CASE NO. 20-CP-22-00932

M. Baron Stanton,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.

and

Sunset Lodge, LLC,Appellant,

v.

Town of Pawleys Island,Respondent.

NOTICE OF APPEAL

In each of these consolidated cases, consolidated below under Case 20-CP-22-932, Plaintiffs each appeal the following respective orders in each Plaintiff's case as follows:

The order of The Honorable Benjamin H. Culbertson entered June 8, 2023 (awarding fees and expenses to Plaintiff) and the order of The Honorable Benjamin H. Culbertson entered June 28, 2023 (denying motion to reconsider). Each plaintiff received written notice of entry of the June 8 order on June 8 and served a motion to reconsider on June 16, 202023. Each plaintiff received notice of entry of the June 28 order on June 28, 2022.

s/M. Baron Stanton
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SUNSET LODGE, LLC, FRANKLIN D.
BEATTIE, AS TRUSTEE, AND M. BARON
STANTON

Other Counsel of Record:

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TOWN OF PAWLEYS ISLAND

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 20-CP-22-00930
CASE NO. 20-CP-22-00931
CASE NO. 20-CP-22-00932

M. Baron Stanton,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.

and

Sunset Lodge, LLC,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 **Notice of 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: July 28, 2023

August 29, 2023 satisfactions of judgments for fees and expenses
(3)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
Civil Action No. 2020-CP-22-00932
(Consolidation of below Civil Actions)

Sunset Lodge, LLC,)
)
Plaintiff,)
)
vs.)
) Civil Action No. 2020-CP-22-00932
Town of Pawleys Island,)
)
Defendant.)
_____)
)
Franklin D. Beattie, as trustee of The)
Franklin D. Beattie Preservation Trust,)
)
Plaintiff,)
) Civil Action No. 2020-CP-22-00931
vs.)
)
Town of Pawleys Island,)
)
Defendant.)
_____)
)
M. Baron Stanton,)
)
Plaintiff,)
)
vs.) Civil Action No. 2020-CP-22-00930
)
Town of Pawleys Island,)
)
Defendant.)
_____)

SATISFACTION AND DISCHARGE OF JUDGMENT

The judgment entered against the Town of Pawleys Island on June 8, 2023, in favor of **Sunset Lodge, LLC**, in the amount of \$4,339.23 has been paid in full with accrued statutory post-judgment

interest, and Sunset Lodge, LLC, through undersigned counsel, acknowledges that said judgment has been satisfied in full and is hereby forever discharged.

This Satisfaction of Judgment and the acknowledgment of discharge herein is not intended to and does not waive or discharge any amended or additional judgment(s) that may be entered in this matter upon reconsideration, on remand from appeal, or otherwise, to the extent of any additional amounts beyond what is acknowledged herein to have been paid.

WE SO STIPULATE:

s/ M. Baron Stanton

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Attorney for Sunset Lodge, LLC

s/ William C. Dillard, Jr.

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Attorney for Town of Pawleys Island

[All signatures included with written consent]

August 29, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
Civil Action No. 2020-CP-22-00932
(Consolidation of below Civil Actions)

Sunset Lodge, LLC,)
)
Plaintiff,)
)
vs.)
) Civil Action No. 2020-CP-22-00932
Town of Pawleys Island,)
)
Defendant.)
_____)
)
Franklin D. Beattie, as trustee of The)
Franklin D. Beattie Preservation Trust,)
)
Plaintiff,)
) Civil Action No. 2020-CP-22-00931
vs.)
)
Town of Pawleys Island,)
)
Defendant.)
_____)
)
M. Baron Stanton,)
)
Plaintiff,)
)
vs.) Civil Action No. 2020-CP-22-00930
)
Town of Pawleys Island,)
)
Defendant.)
_____)

SATISFACTION AND DISCHARGE OF JUDGMENT

The judgment entered against the Town of Pawleys Island on June 8, 2023, in favor of **Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust**, (“Beattie”) in the

amount of \$4,339.23 has been paid in full with accrued statutory post-judgment interest, and Beattie, through undersigned counsel, acknowledges that said judgment has been satisfied in full and is hereby forever discharged.

This Satisfaction of Judgment and the acknowledgment of discharge herein is not intended to and does not waive or discharge any amended or additional judgment(s) that may be entered in this matter upon reconsideration, on remand from appeal, or otherwise, to the extent of any additional amounts beyond what is acknowledged herein to have been paid.

WE SO STIPULATE:

s/ M. Baron Stanton

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*Attorney for Franklin D. Beattie,
as trustee of The Franklin D.
Beattie Preservation Trust*

s/ William C. Dillard, Jr.

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will@belserpa.com
Attorney for Town of Pawleys Island

[All signatures included with written consent]

August 29, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
Civil Action No. 2020-CP-22-00932
(Consolidation of below Civil Actions)

Sunset Lodge, LLC,)
)
Plaintiff,)
)
vs.)
) Civil Action No. 2020-CP-22-00932
Town of Pawleys Island,)
)
Defendant.)
)

Franklin D. Beattie, as trustee of The)
Franklin D. Beattie Preservation Trust,)
)
Plaintiff,)
) Civil Action No. 2020-CP-22-00931
vs.)
)
Town of Pawleys Island,)
)
Defendant.)
)

M. Baron Stanton,)
)
Plaintiff,)
)
vs.) Civil Action No. 2020-CP-22-00930
)
Town of Pawleys Island,)
)
Defendant.)
)

SATISFACTION AND DISCHARGE OF JUDGMENT

The judgment entered against the Town of Pawleys Island on June 8, 2023, in favor of M. Baron Stanton in the amount of \$4,339.23 has been paid in full with accrued statutory post-judgment

interest, and M. Baron Stanton, by his signature below, acknowledges that said judgment has been satisfied in full and is hereby forever discharged.

This Satisfaction of Judgment and the acknowledgment of discharge herein is not intended to and does not waive or discharge any amended or additional judgment(s) that may be entered in this matter upon reconsideration, on remand from appeal, or otherwise, to the extent of any additional amounts beyond what is acknowledged herein to have been paid.

WE SO STIPULATE:

s/ M. Baron Stanton
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 Columbia, SC 29202
 (803) 929-1484
 bstanton@stantonlaw.com
Pro se for M. Baron Stanton

s/ William C. Dillard, Jr.
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[All signatures included with written consent]

August 29, 2023

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 II action, or reference to a paper in the preceding Challenge I action, be taken as an accurate reference to the corresponding substantially similar or identical papers and passages in the other two Challenge II or Challenge I 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

Certificates of Inclusion, Exclusion and Service

RECEIVED

Jun 05 2024

SC Court of Appeals

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.

The undersigned does 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:

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s/M. Baron Stanton
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Date: 6/5/24