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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

CASE NO. 20-CP-22-00600
CASE NO. 20-CP-22-00601
(S.C. S.Ct. Appellate Case No. 2026-001955)

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

v.

Town of Pawleys Island,.....Defendant,

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

and

Town of Pawleys Island is the Respondent-Petitioner.

**PETITIONERS-RESPONDENTS LANDOWNERS' RETURN TO
RESPONDENT-PETITIONER TOWN'S PETITION FOR CERTIORARI**

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determining the matter de novo without undue deference to a circuit judge's fee order which the Court of Appeals determined was erroneously guided by mistakes or oversights of applicable law.

I. Counterstatement by Landowners of the Questions Presented by Respondent-Petitioner Town For Review

- A. Did the Court of Appeals make statements that exceeded its scope of review?
- B. Was the Court of Appeals' "language" mistaken?
- C. Was the question of what the Corps required before the Circuit Court?
- D. Is the Town's intention to sue for a third time any basis for certiorari?
- E. Does the Record show that there was any "federal partnership"?
- F. Does the Record show what is "of critical importance" to the other 110 owners?
- G. Was the Court of Appeals correct in determining the matter de novo?

II. Counterstatement of the Case, Containing the Facts Material to the Consideration of the Questions Presented in Respondent-Petitioner Town's Petition

This case involves an astounding, long-running, hoax. In it, a town council "gaslighted," cajoled, stampeded, and threatened 110 oceanfront landowners into believing either that "public access" provisions in easements they signed did not mean public access, or that the council had a winking lack of intent to publicize or enforce the public-access provisions and other onerous terms that were stated verbatim in the documents.

While attempting to maintain this hoax, the council made six failed attempts to condemn "easements" from three landowners who insisted on reality. The landowners proposed different terms from the wildly broad terms the council proposed to them. For each of the six condemnation actions by the council, the landowners filed a challenge action, contesting the ability of the council to condemn.¹

¹ For each of the Respondent-Petitioner Town's six (6) attempts to condemn easements (three in June 2020 and three more in October 2020), the Landowners had 30 days from the time they were served in which to commence a "challenge action." S.C. Code Ann. §28-2-470 (2025).

After prevailing on their first three challenge actions, the two of the landowners filed a fee application. About five years ago,² they eventually received a fee award. Contending that the award is grossly inadequate and erroneous, they appealed to the Court of Appeals.

On a broader scale, variations of approaches to the easement issues involved, including attempts to slip in provisions for additional public access, have arisen in coastal contexts involving the U.S. Army Corps of Engineers, all over the country.

In addition to subjecting the three landowners to suit twice, the Respondent-Petitioner Town has made continuing, year-after-year, public threats. The Town has publicly promised to sue the three landowners again, for the same thing, for a third time. Two of these three landowners are the Petitioners-Respondents Landowners herein.

In its Petition to this Court for certiorari, the Town primarily contends that, in the course of recently doubling the fee award of about five years ago, the Court of Appeals made findings about the untoward acts of the Town that may jeopardize the success of the Town's intended third set of suits against all three objecting landowners.

The Landowners have themselves petitioned this Court for certiorari, but not on the unpleasant truths dutifully spoken by the Court of Appeals about the Town. The Landowners have petitioned for review of the lack of legal authority for nonpublication of the Court of Appeals' opinion, a far-reaching issue never before ruled upon by this Court in an adversary

This is a separate action in which the landowner contests the ability of the condemnor to condemn. Thus, although the Landowners were sued six (6) times by the Town, the Landowners are styled as the plaintiffs in the six challenge actions.

The landowners' bringing six actions to stop six actions technically resulted in a total of twelve (12) actions in Circuit Court, although, peculiarly under the EDPA, the live condemnation actions themselves (which require landowner preparation to argue over value) proceed initially without being filed, see id., §28-2-230(A), and in this case, were never were filed.

² November 23, 2021.

proceeding. Additionally, the Landowners seek review of the legally significant mechanics of the erroneous and precedent-violating opinion of the Court of Appeals, in which the court doubled the fees, but arbitrarily continued to grossly underaward attorney's fees to the Landowners.

The Court of Appeals' unpublished opinion concerns a fee award under one of three different standards in the Eminent Domain Procedure Act, S.C. Code Ann. §28-2-10 et seq., which governed the six failed condemnation attempts of the Town and the six challenge actions of the landowners. Two of the three different fee-award subsections are mandatory and one is nonmandatory.

The extensive "Introduction" section of the Town's Petition at 2-5 is laced with underlining and boldface emphases, and is not a component of a petition for certiorari contemplated by Rule 242(d), SCACR or the Landowners.

The "Introduction" includes misstatements of fact; it makes emphatic assertions by the Town's counsel alone, from outside the Record or without legal or factual support;³ it employs misnomers and incorrectly suggestive euphemisms that are perfunctorily presented as if they were fact or recognized terms of art, but that are pregnant with legally and factually incorrect meanings; it criticizes the length and style of Landowners' counsel's writing; it argues the Landowners' state of mind, motivations and plans; and it makes incorrect legal arguments in

³ For example, at 2, the Town references hearsay unqualified opinion statements from the now-former town administrator in an affidavit in which he states what the Corps requires as a "condition precedent" with respect to a thing he refers to only prospectively as a "Partnership Project" (a name he makes up). He refers to it only as the subject of a memorandum. He never references an actual contract with the Corps. He references no statute. He never once mentions "public access," one of the main elements of the controversy.

advance of the section of the Petition that is reserved for “Argument.” The Landowners provide this counterstatement of the case.

The Town made its first set of attempts in June 2020. These proposed condemnations all allegedly pertained to an alleged coastal “project.” However, the alleged “project” was nebulously identified. The proposed “easements” overlayed and abutted millions of dollars’ worth of oceanfront properties. The three condemnee-landowners brought three corresponding challenge actions in July 2020. In October 2020, the Town then made a second set of attempts with an altered easement description, while the first set of attempts was still pending.

The Circuit Court preliminarily issued summary judgment against the Town in the first set of attempts in early January 2021. A formal order was issued in January 20 2021. The Landowners submitted a fee application in the same month. In February 2021, the Town withdrew its second set of attempts.

On April 5, 2021, the Circuit Court finally denied the Town’s motion to reconsider the January 2021 summary judgment order. After protracted proceedings, on November 23, 2021, the Circuit Court ruled on the January 2021 fee petition in the successful challenges to the Town’s first set of attempts. The Circuit Court only awarded about 8% of what was requested.

The Record shows that the Town instituted and maintained throughout the matter, purposeful confusion, vagueness, and misunderstanding about “easements.” Publicly, and in the Circuit Court, the Town would only refer to what it tried to condemn as, generally and vaguely, an “easement” for renourishment, as if an easement is a standard thing and everybody knows what is in it. For example, in describing the terms of an easement it wanted or had already obtained, the Town would never, ever, utter “public access.”

In addition to this deliberate vagueness and generality in the Record about “easements,” over the course of vacillating possible involvement of the U.S. Army Corps of Engineers, the Town, from time to time, also refers, second-hand, to the wishes or alleged “requirements” of the Corps. Nowhere in the Record, however, is there any testimony from the Corps. The Town did all the drafting, requesting, demanding, explaining and suing in the cases. The Record is also devoid of testimony of any of the 110 cajoled owners or of any council member.

Additionally, the Town, from time to time, makes murky reference simply to a sand-augmentation “project,” as if only one thing has ever been referred to, as a “project.” One of the Town’s references to a “project” can have one meaning for purposes of one assertion, but can be argued by the Town to simultaneously mean something else for purposes of some other assertion by the Town.

Namely, the Town’s mention of a “project” may at a given time refer to one or more of the following: (i) the south-end-only “project” that was authorized by the Corps in 2006 but that was never built; (ii) the Town’s prospective independent “project” for the whole island before that project was commenced; (iii) an on-and-off, prospective, whole-island, south-end-cost-sharing, joint “project” with the Corps that never occurred; (iv) only the south-end “project,” within the foregoing prospective project, that, like the enveloping prospective “project,” never occurred; (v) the independent, 22+ year-lifespan, whole-island Town “project” that was commenced in October 2019 and completed in early March 2020; (vi) an alleged inexplicably magical transformation of all, or part, of (v) into a completed version of (i), (iii) or (iv), even though the specs are different; (vii) a nonexistent possible future “project” somehow involving the Corps; (viii) a nonexistent possible future “project” by the Town alone; or (ix) a speculative, nebulously identified program for a series of future projects that may or may not occur.

Thus, a bare statement by the Town that it “needs” an “easement” allegedly “required” on some unstated basis by the “Corps of Engineers,” for a “project” is not a fact.

In this “easement” case, untangling the confusion caused by the Town includes trying to distinguish among four different possible scopes of “easement” the Town, or a court, may be referring to at any given time in connection with a “project”: (i) a proposed easement or easement terms, if any, of the changing scope that was allegedly going to be “required” by the Corps of Engineers for a prospective project before the Town rejected the Corps and did the Town’s own sand-augmentation project without the Corps in early 2020, and did so after declaring that no easement at all was needed from the Landowners; (ii) an easement of wildly broad scope, in writing, actually set forth in the Town’s June 2020 condemnation papers (altered in the October 2020 attempt), namely an easement of the scope that the Town actually sued to condemn, while there was no project pending, after the Town had already completed its own 22+ year-lifespan project without the Corps in early 2020; (iii) an easement of the scope that the Town informed the Circuit Court in September 2020, and again in December 2020,⁴ constituted all that was needed, and all that was allegedly “required” by the Corps under some nebulous and not completely explained relationship; and (iv) a potential easement, if needed, of reasonable scope for purposes of doing a potential or hypothetical sand-augmentation project, such as the easements offered by the Landowners in 2019 and pretty much continuously thereafter, even beyond the time the Town sued the Landowners twice to condemn more onerous easements.

⁴ See e.g., Town August 28, 2020 Mem. Supp. Mot Dism. at 10, R.p.496 (explaining only that “the easement is required because access to the project area is necessary for construction and maintenance activities,” and that “[i]f the Town intends to facilitate and remove obstacles to project implementation, the USACE needs safe and suitable access to the site,” and that “[w]ithout the easement, the USACE will not be able to rebuild and maintain the shoreline”).

Significantly, the Record shows that in court, and publicly, in describing the terms and scope of any “easement” the Town referred to, the Town would never use the words, “public access” at all. This includes describing the easements it cajoled 110 others into signing, as well as what the council sought to condemn.

The Amended Complaint alleges that the Town engaged in similar non-lighthearted wordplay in selectively publicizing aspects of the matter in the newspaper. Am.Complt. at 5, 9, 35, 37, and 58, R.pp. 220, 224, 250, 252 and 253. Verified interrogatory responses by the Landowners also identified this wordplay by the Town. (E.g., R.pp. 839, 870 and 872.) The Town’s reports to the newspaper usually only made reference to an alleged “need” for “easements,” generally. Public attention to the public-access issues or the specifics of other objections to the “easements” was avoided.

The Record reveals that this deliberate silence about shocking or otherwise objectionable easement terms started in 2018. The silence continued in the Town’s public communications, and the Town’s legal papers in Circuit Court, and the Court of Appeals, until what appears to be the Town’s first mention of the term “public access” in the Town’s instant Petition to this Court. In the Petition, the Town now contends that the Court of Appeals misunderstood the matter.⁵

⁵ In its Petition at 2, the Town now, without citation to the Record or citation of legal authority, has changed to referring to what it tried unsuccessfully to condemn as a “Perpetual Beach Storm Damage Reduction Easement,” as if that is a fixed thing. (*Id.*, citing R.p. 608 ¶¶8 and 10, where the term is not found.)

As the term has no meaning in the Record (and perhaps no previous mention whatsoever), and the Town has cited no law concerning it, this may well be regarded as one of many names the Corps has tried out from time to time, to try to provide legitimacy to a changing thing for which the Corps can provide no statutory or regulatory definition.

It was during 2019 that the 5-member volunteer town council of the Town of Pawleys Island (Braswell, Holliday, Green, Carter and Zimmerman) was pursuing a prospective joint sand-augmentation project with the Corps in which the Corps would do all the work.

The joint project was to run along nearly the whole north-south length of the approximately 3 1/2-mile, island oceanfront beach. The Corps was to charge the Town for a part of the what the Corps spent on the southernmost 1 2/10 miles, and charge the Town 100% for everything else, to the north.

Applying time pressure, the council publicly solicited only “south-end” oceanfront owners to make a grant to the Town, for free. The Town wanted a substantial oceanfront portion of their oceanfront lots, but described it in cagey terms. This request involved the southernmost approximately 113 oceanfront homes, over the approximately 1.2-mile distance.

No such request was made to any council member. Nor was such a request made for any of the approximately 2.3 miles of island beach to the north. The 5-member council publicly proclaimed to everyone on the island that timely 100% compliance of south-end owners was required or the proposed joint project would be in jeopardy.

However, under the proposed grants that the council’s attorney drafted and that the council then privately submitted to each south-end landowner to hurriedly sign, large portions of the lots, up to a point as close as two feet from the doorstep of the house, were to be subjected to a long list of rights of the Town, in perpetuity.

These proposed, perpetual, nonterminable rights were not conditioned on any work being done at all. There was also no condition that any work ever be repeated. The permanent rights were proposed to owners directly by the Town, not by the Corps of Engineers.

The proposed perpetual rights included the right to pile and leave sand on the subject portion of the lot virtually all the way to the doorstep, to tear down anything built there, to prohibit owner presence there, to prohibit owner activities and construction there, and to operate a “public beach” there, on the owner’s lot, outside the owner’s door.

It is undisputed, but very much unpublicized, that inserted amongst the long list of proposed permanent rights to be granted to the Town and its assigns were also permanent direct rights of the public. These were not egress and ingress rights.

It was proposed that the public was granted unlimited, perpetual, 24/7/365 rights to “access and use” of the whole privately owned part of the landowner’s lot, including any decks, steps, porches or other improvements found in it. The “easement” was to be filed in the permanent land records

It is undisputed that, to other islanders, the public, and the targeted south-end owners themselves, the council described what it solicited as merely an “easement” for renourishment. The council (Braswell, Green, Holliday, Carter and Zimmerman) explained that the council’s purpose for the “easement” was solely to put sand on the beach.

In 2019, while applying time pressure, marshalling peer pressure, and publishing names, the council collected a substantial number of the requested granting documents. The council recorded them. Three landowners, publicly branded by the council as “holdouts,” disregarded the private side assurances made by the council, and objected to the literal terms of the requested grants.

However, each of the three objecting landowners separately offered broad, alternative perpetual grants. These would allow the described sand-augmentation work, but without

converting large portions of the landowner's private land to public land, and without other objectionable provisions detailed in the Record.

Around June 2019, the Corps backed out of the proposed joint project. The council voted to return to its previously planned independent project with different specifications. Along the way, a different mayor, Mr. Henry, was elected. The council publicly reported that no easements at all would be necessary.

Between October 2019 and March 2020, without easements from the three objecting landowners, the Town completed an island-wide, 1.1-million-cubic-yard, 22+ year-lifespan, sand-augmentation project. Regular updates were provided. This was an independent project, not a joint project with the Corps.

In early 2020, during the inception of the pandemic, the sand was all in place. There was no additional project pending. The council had not asserted or mentioned in its minutes that there was any binding contract in place with the Corps requiring easements or anything else.

Nevertheless, in June 2020, after nebulous statements that the council wanted to join a club or a program with the Corps that might increase the odds of receiving future assistance, and after numerous public announcements that the three objecting landowners would not grant "easements" to put sand on the beach, the council (now Brian Henry, Guerry Green, Rocky Holliday, Ashley Carter and Sarah Zimmerman) commenced the first three publicized condemnation actions.⁶

Each objecting landowner timely commenced a separate civil action to stop the respective condemnation (each, a "Challenge I action"). Each began with a factually and legally extensive,

⁶ Contrary to the Town's statement in its Petition at 2, the Town did not merely "attempt to initiate condemnation proceedings." The Town commenced three actions – suits -- against the Landowners. (Apr. 5, 2021 ord. at 19 n.10, R.p. 78.)

separate complaint. The Landowners thereafter made amendments, engaged in discovery, and made and opposed various motions, including a motion by the Town to require them to post \$30,000,000 in bonds to secure their implied liability in the event their actions were unsuccessful.

In August 2020, council member and mayor, Brian Henry, privately asked the Corps in writing if the Corps knew of a “nuclear option” the council could use against its constituents, the objecting landowners.

While these proceedings were underway, the Town made the aforementioned additional attempts in October 2020. To these, the Landowners timely responded with three more challenge actions (the “Challenge II actions”), with altered easement descriptions.

In the Challenge I actions, on account of a football game, the Town delayed the hearing of the Landowners’ August 2020 summary judgment motions, but the motions were heard in December 2020. In early January 2020, a preliminary order granting summary judgment in favor of the Landowners was issued.

On January 13, 2021, the Landowners prepared and filed 375-paragraph amended complaints in the Challenge II actions, describing some matters in more detail, and including six exhibits consisting of an additional 81 pages.

On January 20, 2021, in the Challenge I actions, a formal order granting summary judgment in favor of the Landowners was issued.

The January 20, 2021 order (later re-entered on April 5, 2021) quashed the condemnation attempts and dismissed the condemnation actions. Notably, in its Petition, the Town incorrectly states that the summary judgment order “specifically stated” that it was without prejudice to

“further condemnation attempts.” (Town Petn. Cert. at 2 (plural in original)(citing R.p. 73 and 84).)

The order did not specifically or unspecifically state this. The Challenge I order specifically stated that it was without prejudice to “another attempt.” (R.p. 25).⁷ The Town did not appeal any part of the January 20/April 5, 2021 summary judgment order.

In granting summary judgment, the Circuit Court held that the simple property interest that the town council publicly authorized to be condemned was not the same as the broad interest the Town had then immediately sued to condemn.

The dense, single-spaced, actual text of the interest in land described in the condemnation notices, with the interjected grants of “public access and use” buried amongst the lengthy construction terms, did not match the Town’s descriptions of the easements the Town requested.

None of the Town’s publicly stated descriptions brought up or even mentioned the term “public access.” The condemnation notices also did not match the appraisal reports the council (Henry, Green, Holliday, Carter and Zimmerman) had obtained and based the condemnation on.⁸

The terms in the condemnation notices also did not match the description that the Town provided in its papers opposing summary judgment. The Town’s opposition papers never

⁷ Specifically, the order at 13, R.p. 25, states, “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.”

⁸ In the order at 11, R.p. 70, the Circuit Court observed, “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.”

mentioned “public access” a single time. The Town explained at length that the easement the Town wanted would need to secure the Town, and maybe the Corps, a safe place to work when sand was being placed on the beach. (E.g., Town Mem. Oppn. Mot. S.J.at 4, R.p. 661.)⁹

⁹ Here, the Town stated that what it sought to condemn was “required by the Corps,” but at the same time, affirmed that what the Town sought to condemn was also exactly what the Town had previously represented to be the scope of the proposed easement, and the same as what the Town was then and there explaining to the Circuit Court was the limited scope of the proposed easement.

Thus, after describing the “easement sought” as anything other than a perpetual public access easement for use of the front porch or other property right up to the doorstep, the Town stated to the Circuit Court, “It is to be noted that the easement sought and the proposed easement grant document are a requirement by the Corps. (R.p. 667.)

Similarly, after describing only the sand-depositing and dune-planting aspects of the “required” easement, the Town emphasized, “The Town does not seek to acquire more property interest than is required by the Corps for the purpose of facilitating the beach renourishment process. There is no evidence that an equally practicable or less injurious measure exists, other than what the Town seeks to undertake. (R.p. 669.)

Thus, the Town stated, “In this regard, the Town is committed to acquire easements on oceanfront properties, as required by the Corps, for safe and suitable access to the site as well as to facilitate and remove obstacles to project implementation. (R.p. 661.)

To be comprehensive, the Town stated, “[I]t is important to understand that the process is not limited thereto and, in fact, includes other activities such as sand fencing and planting of beach grass.” (R.p. 662.)

Namely, in outlining the extent of what was allegedly “required,” the Town clarified to the Circuit Court in the summary judgment hearing, “[I]t was the Town Council’s intention to use the easements not just to put sand on the beach, but to undertake all activities related to construction and maintenance of the renourished beach.” (R.p. 662.)

The Town admitted to the Circuit Court, “To be sure, the Town made the following representation: ‘The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.’” (R.p. 662.)

The Town affirmed to the Circuit Court that the Town “required” no more than what was set forth in the appraisal reports the council (Henry, Green, Holliday, Carter, and Zimmerman) had obtained, stating, “It is unclear why the Plaintiff suggests that the easement described in the appraisal is different from the easement sought by the Town.” (R.p.667.)

In his April 5, 2021 summary judgment order at 6, the circuit judge found, 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. (R.p. 65.)

The Circuit Court held that the validity of the council's public authorization of condemnation was doomed by the Town's failure to fully consider the true burdens on the landowner in relation to the actual needs of the Town. In granting summary judgment, the order held that the condemnation notices themselves were incurably defective because an authorizing resolution and appraisals were required and, despite prior acute knowledge of the easement features to which these particular landowners objected, the town council obtained false appraisals of the easements by deliberately omitting the objected-to easement features in the description given to the Town's appraiser.

The order recognized that the Town Attorney based the monetary provisions of the condemnation papers (e.g., for the amount of the initial offer of compensation, and the security amount to be paid into court) upon the false appraisals. The order recognized that in spite of the EDPA's requirements, the Town did not provide the appraisals to the Landowners before commencing the condemnations, and did not provide the appraisals when serving the condemnation papers. The summary judgment order recognized that the Town made unequivocally false certifications regarding the providing of the appraisal in the condemnation papers themselves.¹⁰

The Town's dishonest behavior was an overlapping basis for most of the multiple theories in the objecting landowners' extensive Challenge I complaints. There was no ruling by

¹⁰ Failure to provide a summary of appraisal, as required by statute, before negotiating, has been held to be "bad faith," invalidating condemnation. Cf. City of Marietta, 302 Ga. 645 (2017)(superseding, but not rejecting, determination of Court of Appeals that failure to provide summary of appraisal, as required by statute, before negotiating, was "bad faith," invalidating condemnation).

any judge in the case against any of the theories presented. The objecting landowners did not lose a single motion by either party in the entire case on any subject.

The common facts presented by the objecting landowners included lack of necessity of the easement on two levels: (i) inclusion of more features in the easement than were necessary, namely unnecessary scope, and (ii) seeking any easement at all when no easement at all was necessary.

Under Rule 56, SCRCF, the circuit judge established as undisputed fact on summary judgment, (i) that all three objecting landowners had offered an easement with all the features stated by the Town to be necessary in the Town's brief opposing summary judgment (which brief included no mention of "public access" as a requested feature), but that the Town's condemnation attempt sought features far in excess, and (ii) that, with respect to the sand "renourishment" which had been represented to be reason for the easement, the Town had long ago completed the renourishment without any easement at all from the objecting landowners, after "publicly determining that the easements were 'not necessary.'"

On January 25, 2021, Petitioners-Respondents Landowners herein, submitted a long fee petition, in which attributes of the case were discussed.

In February 2021, the Town withdrew its second set of attempts. In doing so, the Town simultaneously affirmed an intention to sue for the same thing a third time. None of this was with landowner consent.

The January 25, 2021 fee petition was later amended to exclude Challenge II time for submission in a separate petition based on abandonment of the second set of condemnation attempts, and to correct other small matters. As amended, the petition ultimately based the fees for the time between the stated dates in June 2020 and January 2021 on 686.9 of the hours the

Landowners' counsel, the third landowner, spent during that time, this not being the only time he spent, but being the time submitted.

The fee petition, as amended, for this period, specifically segregated, and excluded from the 686.9 hours, time attributed to the separate, additional, set of condemnation suits that the town commenced in October 2020 during the pendency of the instant suits.¹¹

The limited 686.9 hours in the fee petition also conservatively excluded other time. The fee petition explained this. Thus, the time submitted was far from all the time the Landowners' counsel had to spend on the matter.

These and other proceedings in the instant Challenge I actions continued after the January 25, 2025 fee petition, however. These included the Town's motion to reconsider summary judgment and the Town's extended contest of the fee petition itself.

On April 5, 2021, the Circuit Court eventually denied the Town's motion to reconsider summary judgment, and entered its order again, with an added footnote. The Town did not appeal any part of the January 20/April 5, 2021 summary judgment order.

In the course of the post-fee-petition matters initiated by the Town, the 686.9 hours grew to 950.5.

On November 23, 2021, the circuit judge eventually made an award based on 125 hours.

He made no finding of the actual hours devoted to the case.

He apparently based the 125 hours, rather, on the Town's lawyer's estimates of the number, type and length of hypothetical filings and hypothetical work in a hypothetical, generic

¹¹ The additional suits did become the subject of a separate fee application under a different subsection of the EDPA. In the Landowners' own petition for certiorari, they explain why they did not seek rehearing of the unpublished opinion of the Court of Appeals in the companion appeal from the fee award in the "abandoned" cases of the Town.

case involving a putative standard challenge to a condemnation. The Town's newer, opining lawyer adduced no evidence of having previously won, or handled, a challenge action for a landowner or of having testified in fee matters in cases in which he had not been involved.

Even though the Landowners proposed to divide the requested overall fees by three, and waive the third attributable to the Landowner prosecuting the case as the lawyer, the circuit judge made no enhancement of the low submitted hourly rate of \$190. He also made no other upward adjustment.

The Landowners' instant appeal therefrom was commenced about four-and-a half (4 ½) years ago as of this writing in 2026. The appeal was ruled upon by the Court of Appeals in an unpublished opinion. The Court of Appeals ruled in its unpublished opinion that the circuit judge's ruling was guided by error and was an abuse of discretion, as that term is defined in law.

The Court of Appeals ruled that it was error for the Circuit Court to base the hours actually expended, not upon hours actually expended in this case, but upon hours that might be expected to be expended in a hypothetical, different, case. The Court of Appeals stated that its unpublished opinion "affirmed the circuit court as modified."

The Court of Appeals found that the Town's handling of the matter was "troubling," and made other rulings about the Town, to which the Town takes exception in its Petition. The Court of Appeals increased the "reasonable time" component in the fee calculus by doubling it, to 250 hours. This resulted in a fee still about sixteen (16%) percent of what was requested.

The Court of Appeals still made no finding of the actual hours spent, or, if any of the actual hours were excessive, which ones were excessive and why they were excessive in light of the needs of the case or the particular activity involved. The Court of Appeals stated nothing about fees for the additional time over four (4) years pursuing the appeal of the inadequacy of the

fees, which the Court of Appeals itself doubled. By any estimation, the time and fees expended in trying to recover the fees incurred has far exceeded the fees awarded.

The Court of Appeals marked the opinion “unpublished.” The court left all other components of the fee calculation untouched, and did not explain the basis for determining that the amount of the fee the Court of Appeals prescribed was reasonable.

The decision bears the all-capitals, bold-face header, “**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**”

Both the Landowners and the Town timely petitioned for rehearing in June 2026. The Landowners explicitly moved that the Court of Appeals publish its opinion, regardless of content. Rehearing was summarily denied and both sides timely petitioned this Court..

III. Direct and Concise Argument Opposing Certiorari on the Issues the Town Presents.

A writ of certiorari “will be granted only where there are special and important reasons.” Rule 242(b), SCACR. The pertinent rule lists the nonexclusive reasons which will be considered. None of those criteria or any other important reasons apply to the Town’s contentions.

A. The Court of Appeals did not make statements that exceeded its scope of review.

The Court of Appeals stated that it assumed a de novo review. The scope of review of the Court of Appeals in reviewing the fee award was therefore only limited to not exceeding the law of the case established by the unappealed summary judgment order.

The review by the Court of Appeals allowed assessing the nature, difficulty and time demands of the case, among other things. The court observed that the acts of the Town made the case more difficult for the plaintiff Landowners. This does not exceed the scope of review.

B. The Court of Appeals did not make statements that were unsupported by the Record, and the Court of Appeals’ “language” is not mistaken.

The counterstatement of the case, above – all of which is supported by the Record, and which is all accurate, demonstrates that everything the Court of Appeals stated about the Town’s untoward acts was supported in the Record. The 4 ½” thick Record on Appeal, with pages printed on both sides, contains abundant support for the statements the Town addresses in its Petition.

The Court of Appeals’ statement, based on the Record made by the Town itself, that the Corps did not require the excessive terms the Town sought to condemn was not error, much less, “clear error.” That, with boldface type, underlining, or other emphases, the Town baldly states in its Petition that it is now “important” that this finding not be the case, does not change these circumstances.

The Town’s own briefs, the Landowners’ affidavit, and various papers throughout the case support the Court of Appeals’ finding regarding what was required or not. It is additionally significant that there is zero testimony from the Town’s alleged prospective “partner,” the Corps.

The Record also does not indicate a binding contract with the Corps. The Record also does not indicate an actual project legally pending (instead of already completed, without easements from the Landowners). The Record does indicate that the Corps had previously indicated flexibility on what it “wanted.” The Record does not indicate any statute imposing the terms found in the Town’s condemnation notices.

The Town's present counsel's bare statement in the Town's Petition at 3, that "the Corps most certainly does require that these particular easements be obtained" is not evidence in the Record, and is precluded by the law of the case.

In its Petition at 10, the Town argues that the Court of Appeals was wrong when the court stated that Town "erroneously claimed that a joint project [with the Corps] could not proceed without the easements."

The Record created by the Town indicates that a joint project could proceed without the unreasonably overbroad easements. In the Town's opposition papers on summary judgment, the Town's repeated statement to the Circuit Court of the scope of the easement the Corps allegedly "required" (although the Town's project was already done, there was no assertion of a binding contract with the Corps stating anything about easements, and no sand-augmentation project was pending), did not include destruction of parts of owners' homes, undue proximity or perpetual public access to, and use of, owner property. The Court of Appeals made no error here.

In its Petition at 10, the Town argues that the Court of appeals was wrong when it stated, "At the outset, the Town engaged in troubling conduct by seeking unreasonable easements exceeding the scope of those authorized by Town Council (or required by the Army Corps of Engineers)."

The Record shows conduct that was, at minimum, troubling. The Town's condemnation papers did materially and unreasonably exceed what the town council publicly authorized in its May 18, 2020 meeting. The Town's condemnation papers also exceeded what the Town described at length, in its own opposition papers on summary judgment, as the needs and required scope of the easements sought.

In its Petition at 10, the Town argues that the Court of appeals was wrong when it stated that “the Town's problematic behavior” undoubtedly increased the attorney time Landowners' counsel believed was needed to counter the Town's repeated and, “as recognized in the summary judgment order, apparently unnecessary— intrusions on their private property rights.”

The Record shows behavior that was, at minimum, problematic. The Record shows that the Town sued each owner twice, resulting in twelve suits to keep up with. The Town's suits were to try to take the Landowners' property. The summary judgment order recognized that, as to everything the Town alleged it needed in an easement, the Landowners had already offered it. This is the law of the case, as the order was not only correct, but not appealed by the Town.

C. The question of what the Corps required was before the Court on Summary judgment.

The Town argues in its Petition at 4 that “[t]he question of what the Army Corps required was not before the circuit court on summary judgment.”

Summary judgment was based in part on the Town trying to condemn something in excess of what the Town publicly represented, publicly authorized, obtained an appraisal of, and based the monetary recitations of its condemnation pleadings upon. In opposing summary judgment, the Town adduced materials to the court in which the Town claimed that the Corps essentially only need a safe place do work, put sand, follow up, and install enhancements.

A fair inference from the Record is that the key to the shell game played by the Town is the hoax on the 110 owners who were cajoled into signing wildly overbroad easements with public-access provisions incongruently slipped into the construction terms. Under this hoax, it is necessary that the Town never, ever, ever, mention “public access and use” in any public document discussing the easement terms – including court papers.

As recounted in the counterstatement of the case, above, which is supported by the Record, the Town told the Circuit Court what the Corps “required.” The Town stated that the Corps “required” easements to provide a safe and adequate place to work on moving sand, to provide a place to put sand, and to allow planting vegetation, installing sand fence and maintaining the project. This is exceeded greatly by what the Town put in the condemnation papers.¹²

D. The Town’s ill-considered intention to sue for a third time is no basis for certiorari, and the Town’s statement of the reasons for its intention is legally and factually incorrect.

¹² Regarding the alleged things “required,” or not, by the Corps, as raised in the pleadings, the July 31, 2020 Amended Complaint at 4, R.p. 219, refers clearly to “[a] term contained in a block of text the Town says was required by the Corps of Engineers when a previous project was proposed by the Corps of Engineers.” In this pleading at 10, R.p. 225, the Landowner recounts refusal of the Town to respond to FOIA requests re contents of easements “and bona fides of communications from within the Corps.”

At 37, R.p. 252, the Landowner recounts discussion with the Corps about changing proposed easement language, followed by delay and the Town being involved in drafting, and the Landowner not knowing whose input was responsible for or represented in the terms eventually proposed. At 44, R.p. 259, the Landowner recounts instances of the now-former town administrator Fabbri himself claiming to have moved the PEL to remove all structures from the easement area.

In the circuit judge’s April 5, 2021 summary judgment order at 13, he finds, “Certain features in the condemnation papers have already been agreed to be unnecessary and, in some cases, have been removed for others as unnecessary.” (R.p. 72.) He further observed,

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 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.

(Id., n. 6, R.p. 72.)

The Town's overstated and outright erroneous statement of the "importance" of its objective to sue again is no basis for certiorari.

In its Petition at 2, 4, and 9, the Town warns this Court that the Landowners "will attempt to use the mistaken language" of the Court of Appeals when the Town sues the Landowners again for the same thing the Landowners have already defended against twice.

First, the language is not mistaken. Secondly, the Town's whole premise in suing again is mistaken and not accurately presented. The Town's plans to sue again are not "necessary steps to secure this federal funding to protect the Pawleys island shoreline for the public."

No work done by the Corps is, as the Town claims, for "the public." Any future involvement of the Corps is also not, as the Town baldly claims, for the purpose of "protecting the Pawleys Island shoreline for the Public." The "beachgoing public" referred to by the Town has no stake at all in the matter. Additionally, no program with the Corps is "funding," in the ordinary sense of receiving money before or after the fact.

The purpose of any possible Corps involvement does not include serving the "beachgoing public" in any way. The allowed purpose of a Corps-prosecuted sand augmentation project under the Water Resources Development Act of 1986 (primarily at 33 U.S.C. § 2201 et seq.) is sheerly the protection of inland structures from storm damage, not to build beach, increase beach safety, provide entertainment or recreation, or preserve land. WRDA 1986 §103(b)(1), 33 U.S.C. § 2213(b)(1)(providing that projects with an initial 65%/35% cost share are storm damage prevention projects, as opposed to recreation projects); *id.*, §103(c)(listing no other applicable purpose to which to assign all costs); *id.*, §103(d)(requiring that costs be assigned to the purpose in §§103(b)(1) and 103(c) to which applicable).

Rather than receive funding, the local “sponsor” receives a bill over which it has no control. The Corps itself does Corps work, on a Corps project, designed by the Corps, timed by the Corps, at a price determined by the Corps, if and only if the Corps itself receives funding from Congress.

For all subsequent projects, the Town gets a bill for half of what the Corps decides to spend. Historically, the bill is higher than initially estimated by the Corps, often by an order of magnitude. In a long term contract, if ever entered, the local “sponsor” purports to illegally give the Corps fifty (50) years of blank checks.

If there is ever a contract, it purports to be a situation that is not terminable by the Town, in which the Town also agrees to “indemnify” the Corps, not to change what the Corps claims to have done, and also to incur, every year, 100% of the cost of maintaining and rehabilitating what the Corps claims to have done.

The Town did its own independent project in 2019-2020. The Corps is not necessary in order for a local government to do a sand augmentation project. The Corps is not the only source of federal assistance. However, if the local sponsor ever inextricably associates with the Corps in the manner described above, the local sponsor is disqualified from actual funding under the “duplication of benefits doctrine.” See 42 U.S.C. § 5155. The elusive and illusory “partnership” with the Corps, if entered into, disqualifies the Town for FEMA funding, other federal aid, and often other aid.

E. Nothing in the Record shows that there is any “federal partnership.”

The heading above adequately states the point, as elucidated upon in the previous section.

F. Nothing in the Record shows that imposing public access and overly proximate destructive rights on the Landowners’ land, and obtaining the ability to prevent the Landowner’s presence on his or her own land is “of critical importance” to the 110 overly trusting owners who were cajoled or duped into signing unreasonably broad easements.

The easements already obtained by the Town will ultimately damage property values in the community. In the Town's Pet. at 5, the Town argues baldly that the Court of Appeals' observations should be reviewed because third planned condemnation attempts are "of critical importance" to people who have said nothing about the matter. The Record shows these people have been misled and are being kept in the dark about it.

There is not one whit of mention in the Record of any of the other landowners in the affected section of beach supporting the unreasonable breadth of the easements, or finding it important to condemn easements from the objecting Landowners, or finding after-the-fact Corps involvement of "critical importance."

G. The Court of Appeals was correct in taking its own view, and determining the matter de novo without undue deference to a circuit judge's fee order which the Court of Appeals determined was erroneously guided by mistakes or oversights of applicable law.

The Town did not take exception to the Court of Appeals's de novo scope of review in the Town's petition for rehearing, and does not attempt to do so now.

Respectfully submitted,

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Date: 10-2-26