

RECEIVED

Oct 09 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 20-CP-22-00930
CASE NO. 20-CP-22-00931
CASE NO. 20-CP-22-00932
Ct. App. Op. 2026-UP-275
S.C. Sup.Ct. Case 2026-001957

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.

**APPELLANTS LANDOWNERS' RETURN TO
RESPONDENT TOWN'S PETITION FOR CERTIORARI**

M. Baron Stanton (S.C. Bar #7970)
STANTON LAW OFFICES, P.A.
1230 Richland Street (29201)
P. O. Box 245
Columbia, SC 29202
803-929-1484
bastian@stantonlaw.com

ATTORNEY FOR APPELLANTS SUNSET
LODGE, LLC, FRANKLIN D. BEATTIE, AS
TRUSTEE, AND M. BARON STANTON

TABLE OF CONTENTS

I. Counterstatement by Landowners of the Questions Presented by Respondent-Petitioner Town for Review	1
A. Did the Court of Appeals err in stating that the easements sought by the Town are “extremely overbroad”; was the statement either unsupported by the Record, or outside the scope of review?	
B. Did the Court of Appeals err in increasing the fee award?	
II. Counterstatement of the Case by Landowners, Containing the Facts Material to the Consideration of the Questions Presented	1
III. Argument in Opposition to Granting Certiorari on Issues Presented by Town	21
A. The Court of Appeals did not err in stating that the easements sought by the Town are “extremely overbroad”; the statement is neither unsupported by the Record, nor outside the scope of review.	21
B. The Court of Appeals did not err in increasing the fee award.	24

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

- A. Did the Court of Appeals err in stating that the easements sought by the Town are “extremely overbroad”; was the statement either unsupported by the Record, or outside the scope of review?
- B. Did the Court of Appeals err in increasing the fee award?

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 out of 113 oceanfront landowners into trusting the council and believing either that “public access” provisions inserted into 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. Increasing, multiple, complications ensued, all of the council’s making.

In 2020-2021, while attempting to maintain this hoax, the council of Brian Henry, Guerry Green, Rocky Holliday, Ashley Carter and Sarah Zimmerman (2020-2025) made six failed attempts to condemn “easements” from three landowners who insisted on reality. In 2019, these three landowners had responded by proposing different terms from the wildly broad easement terms the council proposed to them. For each of the six condemnation lawsuits by the council in 2020, 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).

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

In 2021, the landowners prevailed on their first three challenge actions (“Challenge I”). Two of the landowners filed a fee application in Challenge I. Afterwards, the Town withdrew its second set of attempts without any consent of the landowners.

Further proceedings ensued in the landowners’ second set of challenge actions (“Challenge II”), as well as in Challenge I. In 2021, in Challenge II, the instant cases, the Town asserted that the controversy addressed by the Challenge II actions and by the Challenge I actions was moot, and moved to dismiss. The landowners presented extensive arguments that the controversy remained very much alive and that Challenge II, and pending and further discovery, should continue for purposes of obtaining peace and any other definitive remedies available thereunder. Among other things, clouded titles, the stated threat of multiplicitous litigation, expense to the landowners, and loss of evidence were argued.

The Town argued and represented to the Circuit Court that the threat of multiplicitous litigation by a condemnor wielding the government purse was tolerable because an award of attorney’s fees was available to a landowner under the EDPA to compensate a landowner, and that an award of attorney’s fees acted as a natural deterrent to such multiplicitous litigation.

In 2021, over the landowners’ objections, the Circuit Court accepted the Town’s present lawyer’s arguments and representations that the matter was moot. The Circuit Court dismissed the second set of three challenge actions as moot.²

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 The landowners appealed, and some years later, the Court of Appeals affirmed the drastic ruling in the three cases – by unpublished opinion. This Court denied certiorari.

In 2022, after a long period of extensive proceedings in order to get a ruling on the fee application in Challenge I, and after other proceedings in the instant second set of challenges,³ the Landowners filed a fee application in the additional three condemnation attempts underlying the instant Challenge II cases. In 2023, the Landowners, not the Town, appealed the 2023 ruling on that application. The Landowners asserted the award was grossly inadequate and based on mistakes of law. After the Court of Appeals ruled this year, 2026, the Town, not the Landowners, petitioned this Court for certiorari.

In its Petition, the Town now represents to this Court that the case is not moot.

The Town also contends that the Circuit Court already awarded too much in attorney's fees and other expenses to the Landowners, and that no fees should have been awarded.

The Town represents that the matter is an "ongoing dispute" (Town Pet. at 3), and that the Town "needs" for this Court to correct the "language" of the Court of Appeals in its ruling on a fee award to the landowners, so that the Town can sue the landowners for the same thing for a third time.

To wit, the Town, now headed by Henry, Zimmerman, Groce, Hawn, and LaMaster (2026-____), states that the parties "continue to be in disagreement about the proposed easements" (Pet. at 3), that the Town "does still intend to acquire them" (id.), and that "it is highly probable that there will be additional litigation" (id.).

The Town now contends that the Circuit Court should not have awarded any attorney's fees and other expenses to the Landowners, and that the Court of Appeals should not have increased the award of attorney's fees and other expenses, and in fact should have awarded nothing, or nothing additional.

³ These are given little attention in the Town's "Introduction" or elsewhere in its Petition.

The subject fee application in the Challenge II actions was made October 21, 2022, separately from the January 2021 fee application in the “Challenge I actions.” The fee application in the Challenge I actions was amended to back out the Challenge II time and fees originally included in the Challenge I application.

Almost three-and-a-half years ago,⁴ the landowners received the fee award in the instant case, for much less than they had asked for about seven (7) months earlier. Among other things, the award included only an arbitrary award (based on a flat eight hours) for the fees incurred in seeking the fees, rather than actual fees, or fees otherwise based on actual time or actual expense incurred. Contending that the award was grossly inadequate and erroneous, they appealed to the Court of Appeals. From the Court of Appeals’ unpublished opinion observing untoward behavior of the Town, and making relatively small upward adjustments of the fee and expense award, the Town seeks a writ of certiorari.

In addition to unsuccessfully subjecting the three landowners to three suits, twice, for the same thing, and obtaining a ruling that the matter was moot, the Town has, for over four years thereafter, made continuing, year-after-year, public threats to sue again, for “easements.” The Town has, without disclosing the true details of the controversy, publicly promised to sue the three landowners again, for the same thing, for a third time. The Town affirms this intent in its Petition to this Court as part of its basis for seeking the writ.

In its Petition to this Court for certiorari, the Town primarily contends that, in the course of recently upwardly adjusting the award to the Landowners of about three-and-a-half 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.

⁴ June 8, 2023.

Two of the Landowners have themselves petitioned this Court for certiorari in the Challenge I actions, but not in the instant action, which has become unreimbursed-cost-prohibitive as a result of the fact that the cost of trying to obtain the fees exceeds the award of fees.

The Landowners' petition in the Challenge I actions does not directly concern the similar unpleasant truths also dutifully spoken there by the Court of Appeals about the Town. The Landowners have there petitioned for review of the lack of legal authority for nonpublication of the Court of Appeals' opinion, a far-reaching issue that affects every South Carolinian and others, and that has never before been ruled upon by this Court in an adversary proceeding. Additionally, the Landowners seek review of the mechanics of the legally significant, erroneous, and precedent-violating opinion of the Court of Appeals in doubling the fees, but arbitrarily continuing to grossly underaward attorney's fees to the Landowners.

The Court of Appeals' unpublished opinion in the instant case concerns a fee award under one the less used 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 "Introduction" section of the Town's Petition at 2-3 is not a component of a petition for certiorari contemplated by Rule 242(d), SCACR or the Landowners. It is laced with underlining and boldface emphases, contains controverted matter, and contains matter from outside the Record. It indeed introduces this same pattern that continues throughout the Petition.

The "Introduction" is chocked full of statements of things, as if fact, that are the very things that are not a fact.

These are often the very things that are, or were, at issue. For example, a central contention in the case – determined adversely to the Town -- was whether the easements in the Town’s condemnation papers were “necessary.” The Circuit Court ruled in an unappealed order that they were not necessary and that the easements in the Town’s condemnation papers were not what the Town stated was “required” by the Corps of Engineers.

The “Introduction” twice perfunctorily, and incorrectly, states, as fact, that the unnecessary easements were “necessary,” and states, thrice, that the Corps “required” them, before going on to repeat this assertion five more times elsewhere in its Petition as if it were a mere cursory, accepted background fact, instead of, at best, an issue.

The “Introduction” perfunctorily states – sometimes multiply in the same sentence -- controverted and inaccurate things as fact, that are merely arguments of the Town, and that are not in the Record. This sets the stage for the whole flawed Petition. The Landowners will point out the lack of support in the Record and in the law for the Town’s repetitive word choices, and additionally occasionally offer hypothetical opposition points, although thoroughly to rebut false things stated by the Town that are not in the Record at all would similarly require the Landowners to go outside the Record.

In addition to emphatic assertions by the Town’s counsel alone, from outside the Record or without legal or factual support,⁵ the Introduction employs misnomers and incorrectly

⁵ In similar fashion, in its Petition at 11, the Town references hearsay and unqualified opinion statements from the now-former town administrator in an affidavit in the record on appeal from the other case, not this one. There, the now-exadministrator states, “the easement sought and the proposed easement grant document are a requirement by the Corps” (emphasis added), but the Town omits to recount what Mr. Fabbri states the terms to be – essentially a construction easement allowing sand to be left in place and maintenance, followup and enhancements like plantings to be done.

He refers to the easement being for a “50-year undertaking,” but does not reference any then-pending project or even a binding contract with the Corps. He references no statute. In

suggestive euphemisms that are perfunctorily presented as if they were fact or recognized terms of art, but that are controverted and pregnant with legally and factually incorrect meanings. In addition to the “Town’s” state of mind, the Introduction also argues the Landowners’ state of mind, motivations and plans. The Introduction uses all these devices to set the “facts” for the rest of its Petition, and to make incorrect legal arguments in advance of the section of the Petition that is reserved for “Argument.”⁶ The Landowners provide this counterstatement of the case.

keeping with the hoax, he never once mentions “public access,” one of the main elements of the controversy.

⁶ The Town did not, as claimed in the Introduction at 2, abandon the three additional condemnation suits “a few weeks” after the Landowners filed three challenge actions. The period was about thirteen weeks, from November 12, 2020 to February 10, 2021. Time spent is a material issue.

The Court of Appeals, did not, as the Town assumptively claims as fact at 2, make “unsupported unnecessary statements outside the scope of review of the fee award.” This is addressed below.

The Town’s future plans to engage in further unmeritorious litigation against the Landowners are not entitled to any presumption of merit by this Court or any other court. A simple bald statement of “importance” or invocation of a vague “beachgoing public” by a disgraced Town confers no such presumption. The Town states that it has such plans in the Petition at 2, and offers speculation at 2, repeated at 3, as to what the Landowners “will inevitably attempt” if the Court of Appeals’ correct statements are not erased. The Town’s ill-informed and ill-motivated wants and desires are not a basis for spontaneously transforming the facts and the rulings in the case.

The easements in the Town’s condemnation papers are not, as the Town perfunctorily claims at 2, “required” for long-term multimillion-dollar federal “support” of the Town’s “shore protection program.” That the easements were not required was an issue determined in the case, adversely to the Town, by the Circuit Court. There is no showing in the Record of any “support” the Town would actually get, or any contract for it.

It is not the “shore” that is protected in federal works. To the extent that the Corps did ever become involved in a project on Pawleys (not providing “funding,” but enabling the Corps to send the Town a bill for a share of what the Corps alone decided to spend), it would not be to protect the “shore.” The shore is the area seaward of the mean high water mark. The shoreline is a line. It is between water and land. The shore is simply a location in which sand is placed as a sacrificial natural levee to protect inland structures from damage. That is the sole purpose of a “WRDA 1986” sand-augmentation project. What the Town did independently of the Corps, without the controverted easements, in 2019-2020 was not such a project, but resembles one.

On page 2, the Town again uses concertedly materially inaccurate, and, thus, misleading, euphemisms instead of legal, scientific, geological, or simply accurate, terms, when the Town

perfunctorily refers to “beach nourishment and similar shore protection.” In a WRDA 1986 sand-augmentation project – if that is what the Town refers to – the focus is not on nourishing anything. The focus is not on protecting the beach, and the focus is not on protecting the shore, the land seaward of mean high water. The focus is on lessening damage to inland structures. The focus also is not on providing or restoring beach for use as such by the “public” or the “beachgoing public” as incorrectly stated by the Town at 3 as its mission.

The case does not “involve,” as the Town claims in its Petition at 2, “Perpetual Beach Storm Damage Prevention” easements” that are “required” by USACE. There is no use of that term to describe the subject easements anywhere in the Record. There is no statute defining the term. It is made up. It is part of a series of made-up terms.

There is also no place in the Record establishing or even claiming that such a thing, if it can ever be defined, is required by USACE.

It is also incorrect that, as claimed by the Town in the “Introduction” at 2, repeated at 3, any involvement of USACE in a WRDA 1986 sand-augmentation project includes providing long-term “funding” for sand work. As explained herein, it is the Corps which needs “funding” before it can do anything. Only if there is a contract with the Corps, if and when the Corps gets funding from Congress, the Corps, then, when and if it decides to, does work (or contracts for work), and sends the local entity a bill, not funds, or “funding.”

Again it is not a fact that, as the Town claims at 2, the easements in its condemnation papers were “necessary easements,” or that the places in which the easements were requested were located within something the Town perfunctorily (and fictitiously) calls “the federal project” area. There is no federal project. None is shown in the Record to be existing, to be contracted for, or to be defined.

It is not a fact – but rather, a disputed adjective, chosen and used by the Town alone -- that, as assumptively stated by the Town at 2, the Landowners obtained summary judgment “on essentially procedural grounds.” This was a material aspect of the case and the years-long continuing hoax by the Town. The Town’s statement elsewhere in its Petition that a court “determined” the Town’s delicts to be “procedural” is false. (Compare Pet. at 5.)

If the “missteps” of the Town were “procedural,” they might more accurately have been described as procedurally fraudulent, procedurally dishonest, knowingly procedurally incorrect, procedurally in bad faith, and procedurally abusive of office and public trust. Substantively, the easements in the condemnation papers did not match the Town’s public statements, the Town’s council resolution, the Town’s appraisal, the Town’s condemnation notice recitations, and the Town’s statements to the Circuit Court. This is not a clerical error or mistake in procedure.

It is also not an established fact, as the Town claims at 2, that the Town “withdrew in order to avoid wasting time and resources on some of the same procedural issues.” Like using the adjective, “procedural,” this is merely something the Town says. The Landowners could as easily simply state that the Town made the decision because its goose was cooked, profoundly embarrassing, if not incriminating, discovery was being pursued, sanctions, criminal prosecution or other repercussions were to be avoided, and the move was a tactical but futile attempt to preserve a sinister plan and defame, threaten, and exhaust the Landowners for another four-and-a-half years, until memories faded, purses were emptied, people were dead, new faces were put on the assault, and the coast was clear.

The Town made its first set of three attempts in June 2020. These proposed condemnations all allegedly pertained to an alleged coastal “project,” but the alleged “project” was only nebulously identified.

The proposed “easements” overlayed and abutted millions of dollars’ worth of oceanfront properties. The three condemnee-landowners brought three challenge actions in July 2020. In October 2020, the Town then made a second set of three attempts, but altered the easement description from that of the first set. The Town brought these additional lawsuits 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. The second set was still pending. A formal summary judgment order was issued January 20, 2021. The Landowners submitted a fee application in the same month. In February 2021, the Town withdrew its second set of attempts.

Similarly, the Town’s statement in its “Introduction” at 2, that the parties “exchanged pleadings” but “did not move forward with any discovery” is not accurate. The Landowners pursued discovery. The Town resisted.

The Town’s statement at 2 that the case “never reached a disposition of the merits of any claim that the easements were overbroad” is also a misleading omission of the fact that the merits had been reached in Challenge I and were res judicata as to the Town in Challenge II. The statement also ignores the Landowners’ fee-application affidavit that the Town decries at being “67 pages,” in which the Landowner’s counsel carefully explains the whole case.

Again, at 3, the Town states as fact, misleading things that are pregnant with not being fact: that the Town took “necessary” steps to “secure federal funding” to protect “the shoreline” for “the public,” that the Town “does still need” easements as “required” by USACE, that the Town’s plans are “important to the beachgoing public” that is “served by the Town,” and to the 110 owners (not served by the Town, and who had not uttered a word in the Record) represented out of the blue to be “entitled to the benefit” of federal “partnership.”

In overall effect, there is almost nothing in the “Introduction” that is accurate or true or supported by the Record or the law. Every word is suspect, in the Introduction and in the rest of the Petition, including “necessary,” “needs,” “required,” “project,” “partnership,” “funding,” “program,” “procedural,” “determined,” “easement,” etc. In keeping with the hoax, a term that appears only once is “public access,” itself a term subject to distortion.

On April 5, 2021, the Circuit Court denied the Town's motion to reconsider the January 2021 summary judgment order. 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 Record shows that, in keeping with the hoax, throughout the matter, the Town would only refer to what it tried to condemn as, generally and vaguely, an "easement" for "renourishment." For example, in keeping with the ongoing hoax, in describing the terms of an easement it wanted, or had already obtained, the Town would never, ever, utter the words, "public access."

In addition to this deliberately persistent vagueness and generality in the Record about "easements," the Town also made references to the Corps of Engineers over the course of vacillating possible involvement of the Corps. The Town, from time to time refers, second-hand, to the state of mind, 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, altering, 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, from time to time, the Town makes murky reference to 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 some other argument.

Namely, without specifics, the Town's alleged "needs" or attempts to condemn for a "project" may refer to one or more of the following: (i) the never-built south-end-only "project" that was authorized by the Corps in 2006 without any reference to easements; (ii) the prospective independent "project" by the Town for the whole island before that project was commenced,

which included no plans for easements; (iii) a never-occurring, on-and-off, prospective, whole-island, south-end-cost-sharing, joint “project” with the Corps; (iv) a never-occurring, south-end “project” within the foregoing prospective project; (v) the completed, independent, 22+ year-lifespan, whole-island, Town “project” that, after a declaration that no easements were needed, was commenced in October 2019 and completed in early March 2020; (vi) a prospective and nonexistent, 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) some other nonexistent possible future “project” somehow involving the Corps; (viii) some other nonexistent possible future “project” by the Town alone; or (ix) an undocumented, speculative, nebulously identified program for a series of future projects that may or may not occur.

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

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, 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 in July 2019 and did the Town’s own sand-augmentation project without the Corps, 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 Town’s October 2020 attempt), namely an easement of the extraordinary scope that the Town actually sued to condemn, 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 the Challenge I actions in

September 2020, and again in December 2020,⁷ 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.

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

The Amended Complaint alleges that the Town engaged in similar non-lighthearted wordplay in selectively publicizing far-less-than-half-truth aspects of the matter or outright misrepresentations in the newspaper. (Am.Complt. ¶¶19-21 and 220, R. pp 151, 152, and 181, and Challenge I Am.Complt. (incorporated in Ch.II Am. Complt. ¶182) at 5, 9, 35, 37, and 58, R.pp. 87, 91, 117, 119, and 140.)

The Record reveals that the deliberate silence by the council, its staff, and the Town Attorney 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,

⁷ See the affidavit in the Challenge I actions cited by the Town in its Petition, specifically addressing in a headed section, “Descriptions of the wording and meaning,” at Challenge I Record p. 608.

The now-former administrator never once mentions a “need” for more public access than already existed on the south end, and never mentions a “need” for public access at all, much less on private land.

He explains 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”).

and the Court of Appeals, until what appears to be the Town's first mention of the words, "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.⁸

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 project with the Corps, which had already been cast aside once and which never occurred after 2019.

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 do all the work, 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. Without any guarantee, it was contemplated that, on the southern 1.2 miles only, the Corps would come back about every nine years after completion, add any sand that was needed, and bill the Town for half of what the Corps decided to spend for what the Corps decided to do.

Applying time pressure, the council publicly solicited only "south-end" oceanfront owners to make a grant to the Town. The proposed grant, drafted by the council's Town Attorney, was a substantial oceanfront portion of the owner's oceanfront lot, but, separately from the verbiage of the document itself, the grant was described in cagey terms. This request

⁸ In its Petition at 3, the Town now, without citation to the Record or citation of legal authority, has hyper-bureaucratically 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 applicable 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 whatsoever.

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 proclaimed to everyone on the island, however, that timely 100% compliance of south-end owners with “renourishment easements” was required or the proposed joint project would be in jeopardy.

However, under the proposed grants that the council privately submitted to each south-end landowner to hurriedly sign, large portions of the lots on the ocean side, 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.

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, and bind all of the owner’s heirs and assigns forever.

To other islanders, the public, the newspaper, and the targeted south-end owners themselves, the council described what it solicited as merely an “easement” for renourishment. The 2019 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, never once mentioning “public access.”

Three landowners, publicly branded by the council as “holdouts,” disregarded the private side assurances and other prevarication by the council, and objected to the literal terms of the requested grants. 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. After a vote of no confidence in the Corps, the council voted to return to its previously planned independent project with different specifications. The council publicly reported that no easements at all would be necessary. Mr. Henry filed to run for mayor in August 2019 and was elected in November.

Between October 2019 and March 2020, without easements from the three objecting landowners, the Town completed an island-wide, 1.1-million-cubic-yard, sand-augmentation project with a lifespan the council estimated at over 22 years, after which it was estimated there

would still be 400,000 cubic yards more sand than before. 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, the council asked for “easements” again. After numerous public announcements that the three objecting landowners would not grant “easements” to put sand on the beach, the 2020 council (now Brian Henry, Guerry Green, Rocky Holliday, Ashley Carter and Sarah Zimmerman) commenced the first three publicized condemnation actions.

Each objecting landowner timely commenced a separate civil action to stop the respective condemnation. The Challenge I complaints were specific and factually and legally extensive. 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. (Exh. B to fee petition, R.p. 678.)

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.

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 2021, a preliminary order granting summary judgment in favor of the Landowners was issued.

On January 13, 2021, the Landowners filed extensive amended complaints in the Challenge II actions, including six exhibits consisting of an additional 81 pages.

On January 20, in Challenge I, the Circuit Court formally granted summary judgment.

The order (later re-entered on April 5, 2021) quashed the condemnation attempts and dismissed the condemnation actions. In its Petition at 6, the Town incorrectly states that the summary judgment order dismissed the first three attempts "without prejudice." The order specifically stated that it was without prejudice to "another attempt," with attendant defenses. (R.p. 701.)⁹ The Town did not appeal any part of the January 20/April 5, 2021 summary judgment order.

The Circuit Court held that the property interest that the council authorized to be condemned was materially different from the interest the Town had then immediately sued to condemn.

The actual text of the interest in land described in the condemnation notices did not match the Town's descriptions of the easements the Town requested. The condemnation notices

⁹ Specifically, the order at 14, R.p. 701, 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."

also did not match the June 2020 appraisal reports the council (Henry, Green, Holliday, Carter and Zimmerman) had obtained and based the condemnation on.¹⁰

The terms in the condemnation notices also did not match the description that the Town provided in its papers opposing summary judgment. For example, the order indicates that the Town's opposition papers never mentioned the words, "public access" a single time. The Town explained to the court 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. (S.j. ord. at 6-8, R.pp. 693-695.)

The Circuit Court held that in any event, 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. 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 appraisals of "easements" by deliberately omitting 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 by the Town into court) upon the false appraisals. The order recognized that

¹⁰ In the order at 11, R.p. 698, 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."

in spite of the EDPA's requirements, the Town did not provide the appraisals to the Landowners before commencing the condemnations, and also did not provide the appraisals when serving the condemnation papers. The order recognized that the Town made false certifications regarding the providing of the appraisal in the condemnation papers themselves.¹¹

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, SCRPC, 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 fee petition in Challenge I, in which attributes of the case were discussed.

In February 2021, without the Landowners' consent, the Town withdrew its second set of attempts, and simultaneously affirmed an intention to sue for the same thing a third time.

¹¹ 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).

The January 25, 2021 fee petition in Challenge I was later amended to exclude Challenge II time for submission in a separate petition. The Challenge I fee petition, as amended, specifically segregated, and excluded from the submitted time there, time attributed to the instant additional set of condemnation suits that the Town commenced in October 2020. (See, e.g., Ch.II fee petition ¶¶190 and 193, R.pp. 649 and 652.)

On April 5, 2021, in Challenge I, 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 the January 20/April 5, 2021 summary judgment order.

On November 23, 2021, in Challenge I, the circuit judge awarded fees. He made no finding of the actual hours devoted to the case, and based the fees on 125 hours. The Landowners appealed.

Having been through the foregoing, the Landowners in the instant Challenge II case submitted a fee petition with a meticulous affidavit that the Town decries as being “67 pages long,” plus exhibits. The application was later decided and the Landowners, not the Town, appealed.

After about 4 ½ years, the fee appeal in Challenge I was ruled upon by the Court of Appeals in an unpublished opinion at the same time that it ruled on the instant approximately three-and-a-half-year-old appeal. In the instant matter, the Court of Appeals ruled in its unpublished opinion that the circuit judge’s ruling could be reviewed de novo, and also could be disregarded if based on unsupported factual conclusions.

The Court of Appeals increased the fee award and the award of other expenses.

The Court of Appeals found that the Town’s handling of the matter was “problematic,” and that the easements sought were excessive.

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. Despite request, the Court of Appeals stated nothing about fees for the additional time over three (3) years pursuing the appeal of the inadequacy of the fees, which the Court of Appeals itself increased.

The Court of Appeals marked the opinion “unpublished.” 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.”**

The Town timely petitioned for rehearing in June 2026. Rehearing was summarily denied and the Town timely petitioned this Court.

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

A. The Court of Appeals did not err in stating that the easements sought by the Town are “extremely overbroad”; the statement is neither unsupported by the Record, nor outside the scope of review.

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 and the excessiveness of the easements was supported in the Record. The voluminous Record on Appeal, with pages printed on both sides, contains abundant support for the statements the Town contests 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 firmly cemented finding not be the case, does not change these circumstances.

The Town’s own briefs, the Landowners’ fee-application affidavit, the summary judgment order in Challenge I, and various papers throughout the case support the Court of Appeals’ finding regarding the excessiveness of what the Town sought, as opposed to what the Town affirmed was “required.” It is additionally significant that there is zero testimony from the Town’s alleged prospective “partner,” the Corps.

The Record does not indicate a binding contract with the Corps. The Record 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, no matter what new or different nickname is given to them by the Town or the Corps.¹²

¹² The Town cites an unappealed, 2017, state-court, intermediate-appellate-court opinion from another state on a premise, not of federal law, but of putative “fact” involved in that case, as to what that District of the Corps “interpreted its responsibility to be” in that case, then, in New Jersey, in 2017. It is of no moment in this case, aside from the underlying fallacies and errors of the Corps, and likely the court, in that case.

Even so, “requiring public access and use of Project areas funded by federal monies,” like the Town’s Introduction, is pregnant with interpretational and substantive error. 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).

“Requiring” public access is to be distinguished from “acquiring” public access. A whole project may be simply disallowed or disapproved without already sufficient public access of a certain sort and definition, but there is no statutory authorization to “require” that public access

The Town's present counsel's bare statement of what the Corps requires certainly means nothing, and is, or will be, additionally precluded by res judicata, collateral estoppel, equitable estoppel, judicial estoppel, and the inherent equitable power of a court to enjoin multiplicitous and vexatious litigation. The summary judgment order indicates that in the Town's opposition papers, the Town's 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.

The Record shows that 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 as the needs and required scope of the easements sought.

The Record shows Town 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

be acquired. The statutory scheme simply addresses cost sharing as to whole projects or portions of projects that fit the description of a "private shore," and then only to the extent that "costs are assigned to benefits to" such a shore. In the event a cost is not allowed to be shared, it is not. There is no statutory authorization to foment acquisitions that change the cost sharing. These concepts do not fare well under colloquial misdescriptions.

Nothing in federal law requires or authorizes acquisition or creation of public land in these circumstances. Additionally, the provisions apply only to the shore, not the area above MHW. Further, no costs are assigned to benefits to the area above MHW. No costs are assigned to anything except protection of inland structures, and there are no privately owned shores on the south end of Pawleys anyway. There are oceanfront homes on properties that run only to the mean high water mark.

recognized that, as to everything the Town alleged it needed in an easement, the Landowners had already offered it. This is res judicata, as the order was not only correct, but not appealed by the Town.

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 res judicata effect and other collateral effects 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 err in increasing the fee award.

The Court of Appeals did not err in finding error of law and abuse of discretion in the circuit court fee award.

The circuit judge did not base his award on actual hours, he grossly misapprehended the conservatism already present in the fee request, he grossly misapprehended the nature, magnitude, stakes, complexity, demands, difficulty, and novelty of the case, he made no upward offsetting adjustment of the rate in relation to his arbitrary minimal determinations of time required, he misunderstood the fee statute, he stated that he did not or would not read the submissions, and he did not meaningfully account for the fees incurred in seeking fees.

The Court of Appeals did not err in awarding fees and costs related to the initial stages of the Landowners' opposition to the Town's motion to dismiss as moot. Opposing the motion to dismiss the challenge actions was a natural and required part of being sued for condemnation, bringing a challenge action, pursuing it and preparing to prosecute it further, and then the

condemnor abandoning the action, leaving the landowner with sunk costs for trying to protect his rights.

The Court of Appeals did not err in increasing the award of fees to Landowner Stanton, who was both a party and the attorney for all three parties. The issue was actually raised by Stanton, not the Town. It was briefed, the court ruled, the Town did not appeal the inclusion of Stanton, and it is the law of the case.

There was no jurisdictional issue, and certainly no surviving jurisdictional issue, preventing the Circuit Court or the Court of Appeals from awarding fees. The Landowners' fee petition was not untimely, the issue was briefed and decided in the Circuit Court, the Town did not appeal the unmeritorious issue in any event, and the availability of a fee award is the law of the case. The big error on this subject was neither the Circuit Court nor the Court of Appeals awarding the Landowners substantial sums for the extensive work done refuting the Town's arguments on the issue in the Circuit Court. This failure further undermined the net value of any award made.

Respectfully submitted,

s/M. Baron Stanton

M. Baron Stanton

STANTON LAW OFFICES, P.A.

1230 Richland Street

P. O. Box 245olumbia, South Carolina 29202

803-929-1484

ATTORNEY FOR APPELLANTS

Franklin D. Beattie as trustee and Sunset Lodge,
LLC

Date: 10-9-26